

Title	Tools available to ascertain whether a removal or retention is wrongful under the 1980 Child Abduction Convention (Arts 8, 14 and 15)
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Author	PB
Agenda Item	Item TBD
Mandate(s)	C&R No 63 of the 2011 SC; C&R Nos 6 and 7 of the 2017 SC
Objective	To offer practical guidance to Central and competent authorities on the tools available under the 1980 Child Abduction Convention to ascertain whether a removal or retention is wrongful, bearing in mind the primacy of speedy proceedings
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input checked="" type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
Annexes	N/A
Related Documents	- Prel. Doc. No 9 of August 2017 – Discussion paper on the operation of Article 15 of the 1980 Child Abduction Convention - Prel. Doc. No 7 of June 2023 – Compilation of responses received to the January 2023 Questionnaire on the 1980 Child Abduction Convention

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Tools available to ascertain whether a removal or retention is wrongful under the 1980 Child Abduction Convention (Arts 8, 14 and 15)

I. Introduction

- 1 This Preliminary Document (Prel. Doc.) outlines the various tools available under the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention or 1980 Convention) to ascertain whether a removal or retention is wrongful, namely those under Articles 8, 14 and 15.
- 2 This Prel. Doc. intends to be a source of straightforward and succinct information, that could be consulted by Central Authorities when making applications for return, to ensure all readily available information is included in the application and to assist the requested competent authority in swiftly ascertaining whether a removal or retention is wrongful. This Prel. Doc. also intends to provide guidance to competent authorities contemplating a request for an Article 15 decision or other determination and to assist Contracting States in their implementation of the mechanism under Article 15.
- 3 During its Sixth Meeting, the Special Commission (SC) concluded and recommended the following:

“63. The Special Commission records the problems, including delays, that were identified in the operation of Article 15. It recommends that the Permanent Bureau give further consideration to the steps which may be taken to ensure a more effective application of the Article.”¹
- 4 During its Seventh Meeting, the SC concluded and recommended the following:

“6. The Special Commission encourages discretion in the use of the Article 15 mechanism and due consideration of **other procedures which obviate the need for an Article 15 request, such as the use of Articles 8(2)(f) and 14, and direct judicial communications, where appropriate.** The Special Commission invites Contracting States to ensure expeditious and effective practices and procedures, including through legislation, for any Article 15 decision or determination, where such mechanisms are available.

7. The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. **It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group.**”² [emphasis added]

¹ [Conclusions and Recommendations adopted by the Special Commission](#), Sixth Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (Part I, June 2011; Part II, January 2012), available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings” and “Sixth Special Commission meeting (Part I, June 2011; Part II, January 2012)”.

² [Conclusions and Recommendations adopted by the Special Commission](#), Seventh Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (10-17 October 2017), available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings” and “Seventh Special Commission meeting (October 2017)”.

II. Analysis of the responses to the 2023 Questionnaire on the practical operation of the 1980 Child Abduction Convention

- 5 Most States that responded to [Prel. Doc. No 4 of January 2023](#), “Questionnaire on the Practical Operation of the 1980 Child Abduction Convention”³ (2023 Questionnaire), indicated that their competent authorities rarely receive Article 15 requests⁴ and a few even reported that they never receive such requests.⁵ A number of States reported that they are not aware of this information.⁶ A handful of States noted that their competent authorities sometimes receive such requests⁷ and only one State reported that such requests are received very often.⁸
- 6 Based on the responses to the 2023 Questionnaire, it also appears that requests under Article 15 are rarely made⁹, if ever.¹⁰ A few States reported that they do not have this information.¹¹ A handful of States reported that they sometimes request decisions under Article 15.¹² No States indicated that they issue requests under Article 15 in any high degree of frequency.
- 7 Several States reported on the good practices employed domestically in the context of Article 15 requests. For instance, model forms have been made available to make it easier for the competent authorities to formulate their requests more efficiently.¹³ It was also noted that the Central Authority in the State of the child’s habitual residence provides assistance to the left-behind parent in making their application, which guarantees that all the available information is shared with the requested State from the beginning.¹⁴ Applications are also sent with an attached certificate providing information on domestic law pertaining to children’s rights, in line with Article 8(2)(f).¹⁵ Another good practice identified was that, at the time of making the return application, the Central Authority in the State of the child’s habitual residence will consult the Country Profile of the requested State to verify what documents and information need to be furnished along with the application. In the event of uncertainty, the Central Authority in the State of habitual residence will contact the Central Authority in the requested State, prior to submitting the application, to obtain any information necessary and ensure the application is as complete as possible.¹⁶

III. Article 8 of the 1980 Child Abduction Convention

- 8 Article 8 of the 1980 Child Abduction Convention prescribes that return applications must contain the grounds on which the applicant's claim for the return of the child is based.¹⁷ Article 8 also

³ [Prel. Doc. No 7 of June 2023](#), “Compilation of responses received to the January 2023 Questionnaire on the 1980 Child Abduction Convention”, available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings” and “Eighth Special Commission meeting (October 2023)” (hereinafter, Prel. Doc. No 7 of June 2023).

⁴ Argentina, Australia, Bulgaria, Canada, Colombia, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Honduras, Iceland, Israel, Italy, Latvia, New Zealand, Portugal, Türkiye, Ukraine, United Kingdom (Scotland), United States of America.

⁵ Belgium, Chile, China (Macao SAR), Costa Rica, Ecuador, Georgia, Lithuania, Peru, Uruguay, Venezuela.

⁶ Brazil, Cyprus, Japan, Poland, Singapore, South Africa, United Kingdom (England and Wales), United Kingdom (Northern Ireland).

⁷ Dominican Republic, Jamaica, Panama, Switzerland.

⁸ Spain.

⁹ Australia, Belgium, Bulgaria, Canada, Chile, China (Hong Kong SAR), Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Iceland, Israel, Italy, New Zealand, Spain, Türkiye, Ukraine, United Kingdom (England and Wales), United States of America, Venezuela.

¹⁰ Argentina, Brazil, China (Macao SAR), Colombia, Costa Rica, Cyprus, Honduras, Jamaica, Lithuania, Peru, United Kingdom (Scotland), Uruguay.

¹¹ Japan, Poland, Portugal, Singapore, South Africa, United Kingdom (Northern Ireland).

¹² Dominican Republic, Georgia, Panama, Switzerland.

¹³ Argentina.

¹⁴ Dominican Republic, Lithuania.

¹⁵ Dominican Republic, New Zealand.

¹⁶ Israel.

¹⁷ Art. 8(2)(c).

provides the option for applications to be accompanied or supplemented by other documents, such as an authenticated copy of any relevant decision or agreement,¹⁸ a certificate or an affidavit from the State of the child's habitual residence on the relevant law of that State¹⁹ or any other relevant document.²⁰

- 9 In conjunction with the grounds on which the application is based, the inclusion of the supplementary documents specified under Article 8(2)(e) and (f) should, generally, be sufficient and, in some cases, can prove to be more expeditious than requests for decisions or other determinations under Article 15.²¹

A. Article 8(2)(c)

- 10 The “grounds” envisioned under Article 8(2)(c) are to be understood as the legal and factual basis on which the application rests, in particular the habitual residence of the child, rights of custody and the exercise of those rights, as well as detailed information on the location of the child, all of which are relevant to ascertain whether a retention or removal is wrongful.²² Comprehensive information provided at this stage could significantly reduce the need for decisions and other determinations under Article 15.

- 11 Section VI of the revised Request for Return Recommended Model Form²³ includes a space wherein the applicant can state the child’s habitual residence immediately before the date of the removal or retention and elaborate on the factual elements that corroborate this assertion (e.g., the child is registered to attend school in that State).²⁴ The applicant can attach any evidence of the child’s habitual residence to the revised Request for Return Recommended Model Form, such as school and medical certificates, and make the relevant indication under section XI of the Form.²⁵

- 12 In section VI of the revised Request for Return Recommended Model Form, the applicant is also able to indicate whether they had custody rights in respect of the child at the time of the alleged removal or retention and whether those rights arose *ex lege*, by virtue of a court order or by virtue of a legally binding agreement. In line with Article 8(2)(e) to (g), any relevant documentation can be attached that supports the existence of the applicant’s rights of custody at the time of the alleged removal or retention (e.g., a copy of a court order, legal agreement, affidavit, relevant legal provisions).²⁶

B. Article 8(2)(e)

- 13 This provision allows for a return application to be accompanied by an authenticated copy of any relevant decision or agreement. This could be a certified agreement on custody and / or

18 Art. 8(2)(e).

19 Art. 8(2)(f).

20 Art. 8(2)(g).

21 [Prel. Doc. No 9 of August 2017](#), “Discussion paper on the operation of Article 15 of the 1980 Child Abduction Convention”, available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings” and “Seventh Special Commission meeting (October 2017)”, at para. 47 (hereinafter, Prel. Doc. No 9 of August 2017).

22 See Permanent Bureau of the HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I – Central Authority Practice*, available on the HCCH website at www.hcch.net under “Child Abduction Section”, then “HCCH Publications”, at p. 34, Section 3.2 (hereinafter, Guide to Good Practice on Central Authority Practice).

23 See Annex I of [Prel. Doc. No 10 of July 2023](#), “Revised Request for Return Recommended Model Form and new Request for Access Recommended Model Form under the HCCH 1980 Child Abduction Convention & Explanatory Note”, available on the HCCH website at www.hcch.net (see path indicated in note 3). This document is subject to the approval by the SC at its Eighth Meeting on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention (10-17 October 2023).

24 *Ibid.*, p. 16.

25 *Ibid.*, p. 19.

26 *Ibid.*, p. 16.

access / contact rights, a judicial decision on custody and / or access / contact rights or a divorce decision in which custody rights are provided for. Attaching such document(s) to the application could further reduce the need to have recourse to Article 15 decisions or other determinations.

- 14 Applicants can indicate, in section XI of the revised Request for Return Recommended Model Form, that the application is accompanied by a copy of relevant judicial decisions attributing rights of custody or access / contact, a copy of the marriage or registered partnership certificate of the child's parents, or a copy of the divorce decree of the child's parents or the official document stating the termination of their registered partnership.²⁷

C. Article 8(2)(f)

- 15 Article 8(2)(f) provides for another type of accompanying or supplementary documentation that can be included in the return application, namely a certificate or affidavit from the State of the child's habitual residence, concerning the relevant law of that State (including the law governing custody rights and the exercise of access / contact rights). Certificates or affidavits attached to an application by virtue of Article 8(2)(f), which are comprehensive and of a sufficient quality, can make return proceedings more time efficient and effective.²⁸
- 16 Applicants can indicate, also in section XI of the revised Request for Return Recommended Model Form, that the application is accompanied by a certificate or an affidavit emanating from the Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State.

IV. Article 14 of the 1980 Child Abduction Convention

- 17 Article 14 allows competent authorities to take judicial notice of law and decisions of the State of the child's habitual residence, without "recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable",²⁹ thereby enabling the competent authorities to act expeditiously in proceedings for the return of children.³⁰
- 18 In utilising Article 14 to ascertain whether a removal or retention has been wrongful, competent authorities may seek information on foreign law through the International Hague Network of Judges (IHNJ) and direct judicial communications.³¹ Alternatively, the Central Authority in the State of the child's habitual residence can be contacted, either directly or through the Central Authority of the requested State, to obtain additional information on the foreign law. By virtue of Article 7(e) of the Convention, the Central Authority of the State of habitual residence shall take all appropriate measures to "provide information of a general character as to the law of their State in connection with the application of the Convention".³²

²⁷ *Ibid.*, p. 19.

²⁸ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 58.

²⁹ Art. 14.

³⁰ See Permanent Bureau of the HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part II – Implementing Measures*, available on the HCCH website at www.hcch.net (see path indicated in note 22), at p. 34, Section 6.5.1 (hereinafter, *Guide to Good Practice on Implementing Measures*).

³¹ See Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at paras 40-41 and 72.

³² *Ibid.*, para. 50.

V. Article 15 of the 1980 Convention

A. Rationale and intended purpose of Article 15

19 Historically, Article 15 was drafted to address difficulties that the competent authorities of the requested State may face in deciding on a return application, having limited understanding of foreign law.³³ The purpose of Article 15 is to help the competent authorities in the requested State reach a decision in cases where it is uncertain whether the removal or retention of a child was wrongful under the law of the State of the child’s habitual residence.³⁴

20 Requests for decisions or other determinations under Article 15 are voluntary in nature. As such, “[...] the return of the child cannot be made conditional upon such decision or other determination being provided”,³⁵ as it may not be possible to obtain such a decision or determination in the State of the child’s habitual residence.³⁶

B. When to request an Article 15 decision

21 The discretionary nature of Article 15 requests has been highlighted.³⁷ It has also been noted that such discretion should be exercised with care and on an exceptional basis, given the potential for delays.³⁸

22 This being said, Article 15 requests may be necessary when the information provided for, or is already known, is insufficient. Jurisprudence has considerably elaborated on the parameters for evaluating the need for an Article 15 decision or other determination. It has been held that Article 15 requests should be carefully limited to situations where they are strictly required due to a “real doubt” regarding the relevant foreign law.³⁹ Jurisprudence in this area has also cautioned against Article 15 requests where such a request will give rise to adversarial proceedings in the State the competent authorities of which were requested to issue a decision or other determination under Article 15, as adversarial proceedings are often lengthy.⁴⁰ In this regard, it is to be borne in mind that the ultimate decision as to whether a retention or removal is wrongful under the 1980 Convention belongs to the competent authority in the requested State deciding on the return of the child. Having two adversarial proceedings dealing with the issue should be avoided in the name of efficiency and legal certainty.

23 Article 15 requests may also be valuable in ascertaining the law of new Contracting States.⁴¹ However, the addition of some clarifying questions in the Country Profile may mitigate the need for Article 15 requests in such cases (see section VII below).

24 In cases where an Article 15 request is unnecessary or where alternatives can be deployed, judicial commentary is clear that Article 15 requests should be avoided.⁴² It is interesting to note that Spain

³³ [Actes et documents de la Quatorzième session \(1980\), tome III, Child abduction 481 p.](#) (Proceedings), at p. 205, at para. 104. See, also, E. Pérez Vera, *Explanatory Report on the HCCH 1980 Child Abduction Convention*, The Hague, 1981, at para. 104 (hereinafter, Explanatory Report on the 1980 Convention). Both the above are available on the HCCH website at www.hcch.net (see path indicated in note 22).

³⁴ Guide to Good Practice on Implementing Measures, *op. cit.* note 30, p. 34, Section 6.5.1.

³⁵ Explanatory Report on the 1980 Convention, *op. cit.* note 33, at para. 120.

³⁶ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 11.

³⁷ *Ibid.*, at para. 46. See, also, C&R No 6 of the 2017 SC meeting, *op. cit.* note 2.

³⁸ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 46.

³⁹ *Taylor v. Ford* 1993 SLT 654, 03 September 1992, [INCADAT cite: HC/E/UKs 191].

⁴⁰ For example, in *Deak v. Deak* [2006] EWCA Civ 830, [INCADAT cite: HC/E/UKe 866], Art. 15 proceedings took 2 years.

⁴¹ *Re D. (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [INCADAT cite: HC/E/UKe 880], at para. 46.

⁴² *Re F. (A Child)* [2009] EWCA Civ 416, [INCADAT cite: HC/E/UKe 1020]; *Viragh v. Foldes*, 415 Mass 96, 612 N.E.2d 241 (Mass. 1993), 29 April 1993, [INCADAT cite: HC/E/USs 81]; *Perrin v. Perrin* 1994 SC 45, [INCADAT cite: HC/E/UKs 108]; *Taylor v. Ford* 1993 SLT 654, [INCADAT cite: HC/E/UKs 191]; *Re C. (Child Abduction) (Unmarried Father: Rights of*

introduced a regulation in 2015 making it possible for the applicant to obtain a decision or other determination that the removal or retention is wrongful, prior to submitting the return application.⁴³ Such decisions are often *ex parte* and usually carry some weight. The purpose of such decisions is to pre-emptively obtain additional or supplementary information which may assist the competent authority to make a faster and more accurate decision on the wrongfulness of the removal or retention and, consequently, on the return. In line with Article 8(2)(g) of the 1980 Convention, the applicant may attach such a decision or determination to the revised Request for Return Recommended Model Form under the last item of section XI of the Form, “Other document”.⁴⁴ This “pre-emptive” mechanism, which is in the spirit of Article 15, may be a good practice insofar as it is possible to obtain such a decision or determination expeditiously (*i.e.*, *ex parte*). If Contracting States were to adopt similar practices, such decisions or determinations would fall under the scope of Article 8 and could supplement the return application. As Central Authorities shall, so far as practicable, assist applicants to obtain a decision or determination under Article 15, they could also assist applicants to obtain such a “pre-emptive” decision or determination, in accordance with their general obligations to cooperate with the competent authorities in their State as provided for in the first paragraph of Article 7.

C. What an Article 15 decision or other determination should typically include

25 The competent authority requested to issue a decision or other determination under Article 15 should, in the first place, ensure that it has jurisdiction to make such decision or other determination (*i.e.*, that their State is the State of the child’s habitual residence). If it does have such jurisdiction, it must issue a conclusive decision or determination that has “[...] a bearing upon the wrongful nature, in the Convention sense, of the removal or retention”.⁴⁵ This means that Article 15 determinations should contain a decision on the legal and factual elements under Article 3, namely that the removal was:

- “a) in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”⁴⁶

D. Weight of Article 15 decisions or other determinations

26 According to the jurisprudence, there seem to be divergent views on the binding nature of Article 15 decisions or other determinations.⁴⁷ It has been generally confirmed that Article 15 decisions or

Custody) [2002] EWHC 2219 (Fam), [INCADAT cite: HC/E/UKe 506]; *Re A. (Abduction: Declaration of Wrongful Removal)* [2002] NI 114, [INCADAT cite: HC/E/UKn 593]; *Hunter v. Murrow* [2005] EWCA Civ 976, [INCADAT cite: HC/E/UKe 809]; *Re D. (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [INCADAT cite: HC/E/UKe 880]; *Fairfax v. Ireton* [2009] 1 NZLR 540, [INCADAT cite: HC/E/NZ 1017]; *A. v. B. (Abduction: Declaration)* [2008] EWHC 2524 (Fam.), [2009] 1 FLR 1253, [INCADAT cite: HC/E/UKe 1056]; *Mercredi v. Chaffe* [2011] EWCA Civ. 272, [INCADAT cite: HC/E/UKe 1064]; Family, appeal request 1930/14, *Plonit v. Ploni*, 05 June 2014, [INCADAT cite: HC/E/IL 1317].

⁴³ See response of Spain to question 37 of the 2023 Questionnaire [here](#).

⁴⁴ It is understood that such decisions or other determinations can be attached in the original request for return or can be sent later on as supplementary information.

⁴⁵ See Explanatory Report on the 1980 Convention, *op. cit.* note 33, at para. 120. See, also, Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 30.

⁴⁶ Art. 3. See, also, Explanatory Report on the 1980 Convention, *op. cit.* note 33, at para. 120 and Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 64.

⁴⁷ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 22. *In the Marriage of R. v. R.*, 22 May 1991, transcript, Full Court of the Family Court of Australia (Perth), [INCADAT cite: HC/E/AU 257]; *Hunter v. Murrow* [2005] EWCA Civ 976, [2005] 2 F.L.R. 1119, [INCADAT cite: HC/E/UKe 809]; *Deak v. Deak* [2006] EWCA Civ 830, [INCADAT cite: HC/E/UKe 866]; *Re D. (A Child) (Abduction: Rights of Custody)* [2007] 1 AC 619, [INCADAT cite: HC/E/UKe 880]; 5A_479/2007/frs, Tribunal fédéral, II^e cour civile, 17 octobre 2007, [INCADAT cite: HC/E/CH 953].

other determinations issued by a non-judicial foreign authority are considered advisory and are not binding on the competent authority in the requested State deciding upon the return of the child. However, there seems to be less consensus on the binding nature of Article 15 decisions or other determinations issued by a judicial authority.⁴⁸ The House of Lords appears to have settled matters for the United Kingdom by concluding that “[w]hile ultimately [...] the decision is one for the courts of the requested state, those courts must attach considerable weight to the authoritative decision of the requesting state”.⁴⁹

27 Bearing in mind that the ultimate decision on the return of the child (including the determination of whether or not the removal or retention was wrongful) rests with the competent authority in the requested State, a good practice could be to apply the standard in Article 14 to decisions or determinations issued under Article 15, namely that the competent authority in the requested State may “take notice” of them but is not bound by them. This would be in line with the overall framework of the Convention, in relation to the proof of foreign law and foreign decisions.

E. The role of Central Authorities in assisting applicants to obtain an Article 15 decision or other determination

28 According to Contracting States’ Country Profile responses under the 1980 Convention, it appears that some Central Authorities are considered issuing authorities for Article 15 decisions or other determinations.⁵⁰ Complications arise, however, when competent authorities reject Article 15 decisions or other determinations issued by Central Authorities in the form of affidavits, in accordance with Article 8(2)(f).⁵¹

29 It should be noted that, although not every Contracting State is able to provide Article 15 declarations or determinations, for those that can, such decisions or determinations may be issued by courts, Central Authorities or other authorities.⁵² Regardless of how the Article 15 mechanism is performed in one State or another, Central Authorities are obliged to assist applicants to obtain a decision under Article 15 as far as practicable.⁵³

⁴⁸ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 68. *In the Marriage of Resina* [1991] FamCA 33, [INCADAT cite: HC/E/AU 257]; *Hunter v. Murrow* [2005] EWCA Civ 976, [INCADAT cite: HC/E/UKe 809]; *Deak v. Deak* [2006] EWCA Civ 830, [INCADAT cite: HC/E/UKe 866]; *Re W. (Child Abduction: Unmarried Father)* [1999] Fam 1, [INCADAT cite: HC/E/UKe 6]; *Re B. (Child Abduction: Unmarried Father)* [1999] Fam 1, [1998] 2 FLR 146, [1998] Fam Law 452, [INCADAT cite: HC/E/UKe 7]; *Re P. (Abduction: Declaration)* [1995] 1 FLR 831, [INCADAT cite: HC/E/UKe 9]; *Re B. (Child Abduction: Habitual Residence)* [1994] 2 FLR 915, [1995] Fam Law 60, [INCADAT cite: HC/E/UKe 42], *Re S. (A Minor) (Abduction)* [1991] 2 FLR 1, [INCADAT cite: HC/E/UKe 163]; *Bordera v. Bordera* [1995] SLT 1176, 18 August 1994, [INCADAT cite: HC/E/UKs 183]; *Re F. (Minors) (Abduction: Habitual Residence)* [1992] 2 FCR 595, [INCADAT cite: HC/E/UKe 204]; *David S. v. Zamira S.*, 151 Misc. 2d 630, 574 N.Y.S.2d 429 (Fam. Ct. 1991), [INCADAT cite: HC/E/USs 208]; *Dellabarca v. Christie* [1999] NZFLR 97, [INCADAT cite: HC/E/NZ 295]; Family Appeal 001109/06, *G.H. v. G.Y.*, 24 December 2006, [INCADAT cite: HC/E/IL 984].

⁴⁹ *Re D. (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [INCADAT cite: HC/E/UKe 880], at para. 45. *In Re S. (A Minor) (Abduction)* [1991] 2 FLR 1, [INCADAT cite: HC/E/UKe 163], it is noted that while a determination by the foreign court (of the United States of America) did “not bind [the] court”, it should be given “very great weight indeed”. See, also, Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 68.

⁵⁰ Brazil, Burkina Faso, Chile, Denmark, Honduras, Mexico, Netherlands, Norway, Panama, Paraguay, Slovenia, and Switzerland.

⁵¹ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 56. This issue has been reported in the jurisprudence of several jurisdictions, e.g., *Perrin v. Perrin* [1994] SC 45, 29 September 1993, [INCADAT cite: HC/E/UKs 108]; *M. v. K.*, 20/06/2000; Iceland Supreme Court, [INCADAT cite : HC/E/IS 363]; *Re A. (Abduction: Declaration of Wrongful Removal)* [2002] NI 114, [INCADAT cite: HC/E/UKn 593]; *Hunter v. Murrow* [2005] EWCA Civ 976, [INCADAT cite: HC/E/UKe 809]; *Re D. (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [INCADAT cite: HC/E/UKe 880].

⁵² Guide to Good Practice on Central Authority Practice, *op. cit.* note 22, p. 38, Section 3.15.

⁵³ *Ibid.* See, also, Explanatory Report on the 1980 Convention, *op. cit.* note 33, at para. 120.

VI. Additional tools available

30 In some circumstances (e.g., where the information provided under Art. 8 is not adequate, it is not possible to contact a member of the IHNJ or the route provided under Art. 14 is insufficient), an alternative may be for the competent authority of the requested State to engage an independent, court-appointed expert on the foreign law, as an alternative to the Article 15 mechanism and with a view to maximise the expeditiousness of return proceedings.⁵⁴ However, it should be noted that involving independent experts could be costly and lengthen the proceedings.

VII. Possible additions to the Country Profile pertaining to Article 15 decisions or other determinations

31 Twenty-three out of 49 Contracting States⁵⁵ responded to the relevant question on this matter in the 2023 Questionnaire.⁵⁶ Six of those States indicated that it would be useful for one or more questions to be added to the Country Profile, most notably questions pertaining to domestic procedures for determining a wrongful removal / retention following a request under Article 15.⁵⁷ Fifteen of those States responded that they had no suggestions in this regard.⁵⁸ Only two States expressed the view that no additions needed to be made to the Country Profile.⁵⁹

32 Based on the responses received to the 2023 Questionnaire and the suggestions therein, the following additions to the Country Profile under the 1980 Convention may be considered:

- Has [name of your State] adopted any laws or procedural rules pertaining to requests under Article 15? Yes (please elaborate) / No
- In [name of your State], which authorities can make a decision or other determination under Article 15? Competent authority (please specify) / Central Authority / Other (please specify)
- In [name of your State], are proceedings to determine whether a removal / retention was wrongful *ex parte* or *inter partes* (i.e., adversarial)? *Ex parte* / Adversarial / Other (please elaborate)
- In [name of your State], are decisions or determinations under Article 15 appealable? Yes / No
- In [name of your State], is there a timeframe foreseen in the determination of a wrongful removal / retention following a request under Article 15? 1 week / 2 weeks / 1 month / Other (please specify)

VIII. Conclusion and proposal from the PB

33 The 1980 Child Abduction Convention provides several avenues through which wrongful retentions / removals can be determined, such as the supplementary documentation that can be attached to the return application (Art. 8(2)(e)-(g)), the ability of competent authorities to “take

⁵⁴ Prel. Doc. No 9 of August 2017, *op. cit.* note 21, at para. 50.

⁵⁵ Australia, Bulgaria, Canada, China (Hong Kong SAR), China (Macao SAR), Colombia, Ecuador, El Salvador, France, Georgia, Honduras, Lithuania, Montenegro, Panama, Peru, Poland, Portugal, Slovakia, Spain, United Kingdom (Northern Ireland), United Kingdom (Scotland), United States of America, Venezuela.

⁵⁶ Prel. Doc. No 7 of June 2023, *op. cit.* note 3. See question 38: “Considering C&R No 7 of the 2017 SC, what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?”

⁵⁷ Australia, Canada, El Salvador, Georgia, Spain, Switzerland.

⁵⁸ Bulgaria, China (Hong Kong SAR), China (Macao SAR), Colombia, Ecuador, Honduras, Lithuania, Montenegro, Panama, Poland, Portugal, Slovakia, United Kingdom (Scotland), United States of America, Venezuela.

⁵⁹ United Kingdom (Northern Ireland), France.

notice” of the law of the child’s State of habitual residence (Art. 14) and the requests under Article 15.

34 Decisions and other determinations under Article 15 are purely voluntary and discretionary in nature. Such decisions and other determinations can be necessary and may prove useful in some circumstances, particularly where the information already available to the requested State is insufficient. However, the potential for delays associated with requests under Article 15 has also been highlighted. Given that the operation of the 1980 Convention is underpinned by speedy, efficient and effective procedures, it may be a good practice for Contracting States that provide for decisions or determinations under Article 15 to ensure that such proceedings are as speedy as possible (e.g., *ex parte*), in order to avoid adversarial proceedings in two different States about the same issue. Furthermore, the utility of the IHNJ and direct judicial communications in obtaining information on foreign law should not be overlooked.

35 The SC may wish to consider and discuss the following C&R:

- a. The SC noted that Central Authorities shall take all appropriate measures to provide as much information as possible at the beginning of the return application process, bearing in mind the six-week deadline foreseen under Article 11 and having regard to the importance of speedy procedures. Gathering as much information as possible, as quickly as possible, at the beginning of the process will result in more clarity for competent authorities and save time.
- b. The SC encouraged Contracting States to make use of the provisions under Article 8 as much as possible and in a manner that is as time efficient as possible. In this regard, the SC encouraged Contracting States to use the revised Request for Return Recommended Model Form.
- c. The SC emphasised the discretionary nature of Article 15 requests and encouraged Contracting States that provide for such requests to have procedures in place to enhance efficiency. This can be achieved, for example, by enacting laws or procedural rules in this area or by designating a specific person or competent authority to handle such requests.
- d. The SC underlined that the IHNJ can play an important role in facilitating the expeditious provision of information on foreign law.
- e. The SC noted that decisions or other determinations issued under Article 15 are subject to the standard of Article 14 in that the competent authority of the requested State may “take notice” of them and give them due weight but is not bound by them.
- f. In addition to providing for requests under Article 15, the SC invited Contracting States to implement, where possible, procedures for left-behind parents to obtain swift, *ex parte*, “pre-emptive” decisions or determinations of wrongful removal before making their applications for return under the 1980 Convention.
- g. The SC invited the PB to draw up a note containing information on the use of Article 8, 14 and 15 of the 1980 Convention, drawing from the contents of this Prel. Doc. If necessary, this can be done with the assistance of a small Working Group.