

# **International Cooperation and Child Abduction: Direct Judicial Communications on International Child Abduction**

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## **The International Network of Judges, Description, Designation, List of Members, and Introduction to the Draft General Principles**

**Philippe Lortie  
First Secretary Hague Conference on Private International Law**

### *Introduction*

Since the *D. v. B.* decision of 1996 from the Superior Court (Family Division) of the District of Terrebonne, Quebec,<sup>1</sup> the first case to our knowledge under the *1980 Hague Convention on the Civil Aspects of International Child Abduction* (hereinafter the "1980 Hague Convention") to discuss direct judicial communications in a specific case, the number of cases where such communications have been taking place has grown steadily. The number of judges taking advantage of such communications has also grown to a point that it has resulted in the creation of a solid Network which is now represented in all regions of the world.

A recent judicial conference, held in Brussels on 15-16 January 2009 and co-organised by the European Commission (EC) and the Hague Conference (HCCH), dedicated to the issue of direct judicial communications on family law matters and the development of judicial networks, "emphasise[d] the value of direct judicial communications in international child protection cases, as well as the development of international, regional and national judicial networks to support communications".<sup>2</sup> The Joint EC-HCCH Conference also recommended and concluded that "States that have not designated Network judges are strongly encouraged to do so".

### *The reality*<sup>3</sup>

The judicial decision that has received most attention with regard to direct communications is *Re M. and J.*<sup>4</sup> Two children were 7 and 1 at the date of the alleged wrongful removal and had lived exclusively in the United States. The parents were married and had joint rights of custody. However, the children had spent much of their lives in the care of their maternal great-grandmother, as the parents, and in particular the father, spent time in prison for drugs and other offences. In September 1998 the father, who was English, was deported from the United States and had his resident alien status revoked. On 2 January 1999, the mother, on her release on probation, removed the two boys from the home of the maternal great-grandmother and took them to England to be with the father. On 1 April 1999, the maternal great-grandmother initiated

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<sup>1</sup> *D. v. B.*, 17 May 1996, transcript, affirmed by a majority decision by the Quebec Court of Appeal, 27 September 1996. A summary of the decision can be found at < <http://www.incatat.com> > Ref. HC/E/CA 369 [17/05/1996; Superior Court of Quebec; Terrebonne, Family Division (Canada); First Instance]. See also, P.R. Beaumont and P.E. McEleavy, *The Hague Convention on International Child Abduction*, Oxford University Press, 1999, at p. 168.

<sup>2</sup> This was the first Conclusion and Recommendation out of 17 which were adopted by consensus by more than 140 judges from 54 States from around the world. A complete text of the Conclusions and Recommendations adopted by the joint EC-HCCH Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks (Brussels, 15-16 January 2009) are set out in Annex A.

<sup>3</sup> For additional examples of such communications, see, P. Lortie, "Report on Judicial Communications in Relation to International Child Protection", Prel. Doc. No 8 of October 2006 for the attention of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (30 October – 9 November 2006) and Appendices. These documents are available on the Hague Conference website: <[www.hcch.net](http://www.hcch.net)> under the "Child Abduction Section", then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents".

<sup>4</sup> *Re M. and J. (Abduction: International Judicial Collaboration)* [2000] 1 FLR 803. The decision and a summary can be found at < <http://www.incatat.com> > Ref. HC/E/UKe 266 [16/08/1999; High Court (England); First Instance].

proceedings for the return of the children. In September 1995 she, along with the maternal grandmother, had been appointed co-guardians of the older child by the Los Angeles Superior Court. The effect of this order was that the grandmothers took over parental responsibility for the child. The mother opposed the return on the basis that it would break up the family,<sup>5</sup> as the father was not allowed to re-enter the United States and she would be arrested upon arrival for breach of her probation.

The decision on the merits of whether or not the children should be with their mother or great-grandmother was a decision to be eventually taken by the court in California. On the other hand, Justice Singer was concerned that, if he sent the children back, the mother might be incarcerated and not be able to look after her children until the matter could be heard by the court in California. Thus, with the agreement of the parties and their lawyers, Justice Singer spoke to Judge Gary Ferrari who had issued the warrant for the mother's arrest, a supervising judge exercising criminal jurisdiction in California. Being fully seized of the facts, Judge Ferrari agreed to rescind the warrant for the arrest and to suspend action on it until the issues relating to the children had been resolved. Judge Ferrari then put Justice Singer in contact with Judge Paul Gutman, the supervising judge of the Los Angeles Superior Court Family Law Department. Judge Gutman subsequently agreed to ensure that the child custody proceedings would be dealt with as soon as possible. Consequently, the mother abandoned her opposition and agreed to the return of the children. However, in the interim, prior to the return of the children, the great-grandmother withdrew her agreement to the effect that the children could remain living with their mother in California until the matter be heard by the court in California. Further communications between Judge Gutman and Justice Singer ensued. As a result, on short notice, Judge Gutman agreed to hear representations on interim and immediate arrangements for the children, prior to their arrival in California.

In the *D. v. B.* decision,<sup>6</sup> two children for which the married parents had joint rights of custody were taken by their mother on 18 January 1996 from the United States to Canada, the mother's State of origin. An escalation of legal proceedings followed and on 22 January the mother initiated custody proceedings in Quebec. On 7 February a Court in California ordered the mother to return the children to Canada by 7 March. On 22 February the Quebec Court awarded the mother provisional custody. The father contested the jurisdiction of the court. On 7 March the California Court awarded interim custody to the father. Finally, the father applied to the Superior Court of Quebec for the return of the children. Further to direct communications, the return was ordered. The trial judge in Quebec made contact with the responsible judge in California to ascertain whether the mother would be at a disadvantage for having refused to comply with the California order to return with the children. Judge Stewart of the California Supreme Court stated this would not be the case were a return ordered and offered to sign an additional order clarifying his 7 March 1996 order that would ensure the custody order was interim only. The 17 May 1996 California order was subsequently set out in full in the Canadian judgment.

#### *Creation of an international network of judges*

The creation of an international network of judges was first proposed at the 1998 De Ruwenberg Seminar for Judges on the international protection of children by Lord Justice Mathew Thorpe (Judge of the Court of Appeal, England and Wales). It was recommended that relevant authorities (*e.g.* court presidents or other officials, as appropriate within the different legal cultures) in the different jurisdictions designate one or more members of the judiciary to act as a channel of communication and liaison with their national Central Authorities, with other judges within their own jurisdictions and with judges in other Contracting States, in respect, at least initially, of issues relevant to the 1980 Hague Convention. It was felt that the development of such a network would facilitate at the

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<sup>5</sup> Articles 13(b) and 12 of the 1980 Hague Convention.

<sup>6</sup> See, *supra*, note 1.

international level communications and co-operation between judges and would assist in ensuring the effective operation of the 1980 Hague Convention.

The idea of an international network of judges received further support at the two International Judicial Conferences held at De Ruwenberg in June 2000 and October 2001, and at the Common Law Judicial Conference on International Parental Child Abduction, hosted by the United States Department of State at Washington, D.C. in September 2000. Since its inception, a number of judicial conferences have supported the expansion of the International Network of Judges.<sup>7</sup> The Network currently includes 42 judges from 29 jurisdictions.<sup>8</sup> In the course of the last four years the Network has more than doubled.

### *Scope and Object*

As mentioned previously, communications under the network were initially limited to issues relevant to the 1980 Hague Convention. The Joint EC-HCCH Conference clearly indicated that communications under the Network should be broadened to include judicial communications under a broad range of international instruments<sup>9</sup> such as the *1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (hereinafter the "1996 Hague Convention"), for example with regard to the judicial cooperation mechanisms set-out under Articles 8 and 9 in relation to transfer of jurisdictions, or even the more recent *2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* and the *2007 Hague Protocol on the Law Applicable to Maintenance Obligations*. In the near future will appear under the name of each judge found in the List of Members of the International Hague Network the names of the Conventions under which the judges can initiate or accept direct judicial communications.

Judicial communications under the International Hague Network are two fold. They are either general judicial communications or direct judicial communications in specific cases as highlighted in the two examples presented above.

### *General Judicial Communications (Draft General Principles nos 3-5)<sup>10</sup>*

In the first case, such communications can either be purely internal (i.e., within the domestic court system or in relationship with Central Authorities) or international with other Members of International Hague Network. Such communications can be very helpful: experiences regarding procedures and methods, which have been developed in the course of past and current proceedings, can be exchanged between judges. Through such communications, judges from different jurisdictions may be able to inform each other and learn from one another about the handling of proceedings involving applications for return and custody under the 1980 Hague Convention; it will also assist in promoting consistent interpretation of other Conventions. Judges will then better understand how their colleagues work in other jurisdictions. Ultimately, such exchanges may well lead to an increased appreciation of the different "jurisdictional cultures". These developments have also been assisted by the now bi-annual publication by the

<sup>7</sup> A list of judicial conferences on the international protection of children, organised, facilitated or attended by the Permanent Bureau where Conclusions and Recommendations on judicial communications were adopted can be found on the Hague Conference website: < [www.hcch.net](http://www.hcch.net) > under the "Child Abduction Section" menu of the Home page then "Judicial Seminars on the International Protection of Children".

<sup>8</sup> Argentina, Australia, Brazil, Canada, Chile, China (Hong Kong SAR), Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Gabon, Iceland, Ireland, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Romania, South Africa, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela. The public List of Members of the International Hague Network is set out in Annex B for ease of reference.

<sup>9</sup> See Recommendation and Conclusion No 17 set out in Annex A.

<sup>10</sup> See the Draft General Principles for Judicial Communications within the Context of the International Hague Network of Judges set out in Annex C.

Permanent Bureau of *The Judges' Newsletter* on International Child Protection and INCADAT.<sup>11</sup>

*Direct Judicial Communications in Specific Cases (Draft General Principles nos 6-8)*<sup>12</sup>

As for the latter case of communications, one cannot emphasise enough how useful direct judicial communications in specific cases can be to resolve some of the practical issues surrounding the return of an abducted or illegally retained child. Furthermore, they may result in immediate decisions or settlements between the parents before the court in the requested State. In particular, courts could suggest and produce settlements between the parents to facilitate the return process, to remove practical obstacles to return, to help to ensure that the prompt return may be effected in safe and secure conditions for the child (and sometimes for an accompanying custodial parent), and to pave the way for any proceedings on the custody issues which are to take place in the country to which the child is returned. Direct international judicial communications may reduce the number of decisions refusing return. For example, some courts may refuse an application for return based on Article 13 *b*) of the 1980 Hague Convention because the mother who looks after the child is not allowed to enter the country to which the child is to be returned. In such cases, the concerned judges, through direct communications in writing and / or telephone, can ensure that arrangements are in place for the immediate return of the child, accompanied by the abducting parent. In some cases, the parent seeking the return of the child may offer some "undertakings" in relation to the return. How to ensure the enforceability of such undertakings in the State to which the child is to be returned is an important matter, and may be clarified in the course of judicial communications.

*Appointment process (Draft General Principle no 1)*<sup>13</sup>

Where the 1980 Hague Convention provides for the designation of Central Authorities, the drafters of the Convention did not have the wisdom of foreseeing the development of a Network of Judges in support of the Convention. Therefore, the Fourth Meeting of the Special Commission to review the operation of the 1980 Hague Convention (22-28 March 2001) (hereinafter the "Fourth Meeting of the Special Commission"), when addressing the issue of the feasibility and limitations of direct judicial communications and the development of an international network of judges, adopted a number of Conclusions and Recommendations on this issue, one of which dealt with the identification of a judge or judges or other persons or authorities to facilitate judicial communications.<sup>14</sup> However, there were no indications as to how these identifications / designations were to be carried out. These identifications / designations presented a number of challenges. For example, in a majority of States the separation of powers between the judiciary and the executive is such that the executive cannot make these designations. Furthermore, in some cases the executive is not even in a position to inform the Permanent Bureau about these designations. On another point, in some States it is not possible to contemplate an administrative co-operation role by the judiciary without a proper legislative framework in place to that effect.<sup>15</sup>

<sup>11</sup> *The Judges' Newsletter* on International Child Protection and INCADAT (the International Child Abduction Database) can be found on the Hague Conference website: < [www.hcch.net](http://www.hcch.net) > under the "Child Abduction Section" and "INCADAT" menu of the Home page.

<sup>12</sup> See the Draft General Principles for Judicial Communications within the Context of the International Hague Network of Judges set out in Annex C.

<sup>13</sup> *Ibid.*

<sup>14</sup> Conclusion and Recommendation 5.5 provides that "Contracting States are encouraged to consider identifying a judge or judges or other persons or authorities able to facilitate at the international level communications between judges or between a judge and another authority."

<sup>15</sup> The Joint EC-HCCH Conference concluded and recommended that "[w]here there is concern in any State as to the proper legal basis for direct judicial communications, whether under domestic law or procedure, or under relevant international instruments, the necessary steps should be taken to ensure that such legal basis exists." See Conclusion and Recommendation No 15 set out in Annex A.

As the Permanent Bureau was invited by that Special Commission to “continue to explore the practical mechanisms for facilitating direct international judicial communications” it prepared questionnaires in 2002<sup>16</sup> and 2006<sup>17</sup> with a view, among other matters, to knowing more from Contracting States to the 1980 Hague Convention about the feasibility and desirability of the appointment of judge to the Hague Network.

In September 2002, six jurisdictions<sup>18</sup> out of the 16 that had responded to the 2002 Questionnaire had a judge in place in accordance with paragraphs 5.5 and 5.6 of the Conclusions and Recommendations of the Fourth Meeting of the Special Commission.<sup>19</sup>

On 20 October 2006, 15 jurisdictions<sup>20</sup> out of the 45 that responded to the 2006 Questionnaire had one or more judges in place in accordance with the Conclusions and Recommendations of March 2001.

As of 15 April 2009, 29 jurisdictions<sup>21</sup> had one or more judges in place in accordance with the Conclusions and Recommendations of March 2001. In one jurisdiction out of these 29, the appointment remains informal.<sup>22</sup> It is again interesting to note that, out of the 29 jurisdictions, seventeen are of civil law tradition,<sup>23</sup> five are mixed systems combining both civil law and common law traditions,<sup>24</sup> two are federal States<sup>25</sup> and two States include jurisdictions from multi-unit States.<sup>26</sup>

Out of the jurisdictions that have not yet appointed a network judge, it does not appear from the responses to both questionnaires that such nominations would face any legal

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<sup>16</sup> Permanent Bureau, “Questionnaire concerning Practical Mechanisms for facilitating Direct International Judicial Communications in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*”, Prel. Doc. No 2 of January 2002 for the attention of the Special Commission of September / October 2002. The 2002 Questionnaire is available on the Hague Conference website at: < www.hcch.net >, under < Conventions >, < Convention No 28 >, and < Questionnaires & Responses >.

<sup>17</sup> Permanent Bureau, “Questionnaire concerning the Practical Operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (Including questions on implementation of the Hague Convention of 19 October 1996 on Jurisdictions, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children)”, Prel. Doc. No 1 of April 2006 for the attention of the Special Commission of October / November 2006 on the Civil Aspects of International Child Abduction. This document is available on the Hague Conference website *ibid*.

<sup>18</sup> China (Hong Kong Special Administrative Region), Denmark, Iceland, United Kingdom (England and Wales, Northern Ireland and Scotland).

<sup>19</sup> P. Lortie, “Practical Mechanisms for Facilitating Direct International Judicial Communications in the Context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*”, Prel. Doc. No 6 of August 2002 for the attention of the Special Commission of September / October 2002. This document is available on the Hague Conference website at: < www.hcch.net >, under < Conventions >, < Convention No 28 >, and < Practical Operations Documents >.

<sup>20</sup> Argentina, Australia, Canada (Civil Law - Quebec (1) and common law jurisdictions (1)), China (Hong Kong, Special Administrative Region), Cyprus, Denmark, Iceland, Malta, the Netherlands (2), New Zealand, Norway, United Kingdom (England and Wales and Northern Ireland), United Kingdom (Scotland), United States of America and Uruguay. Responses highlight interesting developments that are presented in this Report, in four cases, namely, Canada (establishment of a “Liaison Judge International Parental Child Abduction Special Committee” by the Canadian Judicial Council and formal appointment of two Hague Network Judges), the Netherlands (formal appointment of two Hague Network Judges through legislative authority), United Kingdom (work with non-Hague Convention States Parties and creation of the post Head of International Family Law for the jurisdiction of England and Wales) and the United States of America (possible creation of a Judicial Advisory Council by NCMEC).

<sup>21</sup> See, *supra*, note 8.

<sup>22</sup> China (Hong Kong, Special Administrative Region). It is important to note that since the 2006 Special Commission informal designations are not any longer included automatically in the list of Members of the Network. They are included only once their Central Authority has been informed about the self-appointment and it once it has provided the Permanent Bureau with the name of an authority that could turn this self-appointment into a formal designation. This explains why a judge from China (Hong Kong, Special Administrative Region) appears in the list where the self-appointments of judges from Costa Rica, Ecuador, El Salvador, Guatemala, Paraguay and Venezuela do not yet appear. See the contribution of Eimear Long with regard to the procedure set out by the Permanent Bureau to assist self-appointed judges to be formally designated by the competent authorities in their States.

<sup>23</sup> Argentina, Chile, Czech Republic, Denmark, Dominican Republic, Gabon, Iceland, Luxembourg, Mexico, Netherlands, Norway, Panama, Peru and Uruguay.

<sup>24</sup> Canada, Cyprus, Malta, South Africa and United Kingdom (Scotland).

<sup>25</sup> Australia and Canada.

<sup>26</sup> United Kingdom and China (Hong Kong, Special Administrative Region).

difficulties or constraints, with the exception of two jurisdictions, as mentioned in their response to the 2002 Questionnaire.<sup>27</sup> The reasons stated for not nominating a Hague Network Judge range from the need for administrative and law reforms to reasons of practicality and necessity. Most of the jurisdictions that have not nominated a judge / authority note the need to make the division of tasks between the judge or authority and the Central Authority under the 1980 Hague Convention very clear to avoid overlap and duplication of work. All of the appointments that have been made were of actual sitting judges and the same is contemplated for the jurisdictions, which have answered both Questionnaires in that respect and have not yet made an appointment.<sup>28</sup> To date a Central Authority or person acting in a non-judicial capacity has not been designated as a Hague Network Judge.

All the appointments that have been made are formal appointments except for one.<sup>29</sup> The procedures for the formal appointments differ but all appointments for which we have a detailed record (*i.e.* one that indicates the name of the authority that made the appointment)<sup>30</sup> involved the judiciary either in a consultative or in an appointing capacity. It appears that in most cases appointments concern the administration of the justice system or the management of the courts. The appointment procedures can be summarised as follows:

- a) The appointment is at the discretion of the Chief Judge<sup>31</sup>
- b) The appointment is at the discretion of the Supreme Court<sup>32</sup>
- c) The Central Authority consults the Chief Judge before making the appointment<sup>33</sup>
- d) The Chief Judge endorses the proposal of the Central Authority<sup>34</sup>
- e) The Judicial Council makes the appointment<sup>35</sup>
- f) The Judicial Council makes the appointment after consulting the National Association Judges<sup>36</sup>
- g) The Judges' Association makes the appointment after consulting the concerned Judge<sup>37</sup>
- h) The Judicial Council makes the appointment *sui generis*<sup>38</sup>
- i) The Judicial Council makes the appointment in accordance with the law<sup>39</sup>

Formal appointments, whether made by the judicial branch alone or with the involvement of the executive branch, and sometimes in accordance with a law, should provide the office of the Hague Network Judge with the necessary recognition and authority to function effectively,<sup>40</sup> especially in relation to direct judicial communications concerning a

<sup>27</sup> Bosnia and Herzegovina, and Germany. It is to be noted that it appears that since then the view of Germany on the subject has changed.

<sup>28</sup> The Joint EC-HCCH Conference concluded and recommended that "Judges designated to a network with responsibility for international child protection matters should be sitting judges with appropriate authority and experience in that area". See Conclusion and Recommendation No 3 set out in Annex A.

<sup>29</sup> China (Hong Kong, Special Administrative Region).

<sup>30</sup> In the case of Luxembourg, Mexico, Romania and the United States of America the Permanent Bureau was informed about the designations but without an indication as to which authority had made the designation.

<sup>31</sup> Australia, Gabon, Ireland, New Zealand, Panama, Peru and United Kingdom (England and Wales).

<sup>32</sup> Argentina, Chile, Cyprus, Dominican Republic, South Africa and Uruguay.

<sup>33</sup> United Kingdom (Scotland).

<sup>34</sup> United Kingdom (Northern Ireland).

<sup>35</sup> Norway.

<sup>36</sup> Denmark.

<sup>37</sup> Iceland.

<sup>38</sup> Canada.

<sup>39</sup> The Netherlands. A copy of the Dutch legislation providing for legal authority for the appointment of Hague Network Judge(s) can be found in Annex C to Prel. Doc. No 8 – Appendices – of October 2006. See Article 24 of the Bill concerning the Application of the *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, done at The Hague on 19 October 1996, and Council Regulation (EC) No 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility, repealing Council Regulation (EC) No 1347/2000 (OJ L 338), and amending the Civil Code, the Code of Civil Procedure and the Act concerning the Application of the EC Enforcement Regulation (hereinafter the *Dutch International Child Protection Implementation Act*).

<sup>40</sup> See the examples of roles and functions described at para. 23-29 and 61-65, *supra*.

specific case. Informal designations may be less valuable in that respect.<sup>41</sup> However, it is recognised that informal designations can be useful when it comes to general non-case specific judicial communications. The Joint EC-HCCH Conference concluded and recommended that "The process for the designation of Network judges should respect the independence of the judiciary".<sup>42</sup>

Some of the States that have not yet appointed a Hague Network Judge contemplate similar procedures. In one State, it appears that the Supreme Court will have the authority to make the appointment.<sup>43</sup> In another State it seems that the judicial council will make the appointment.<sup>44</sup> Finally, one State has indicated that its Central Authority would make the appointment after consulting the National Association of Judges and the different national courts.<sup>45</sup> While France has not yet made an appointment, a law enacted on 4 March 2002<sup>46</sup> has attributed exclusive jurisdiction to the courts of appeal to hear cases relating to international instruments dealing with the international removal of children. The objective of this law is to allow for better coordination, to facilitate communications with the Central Authority and to establish progressive contacts with other States' judicial authorities. It is, therefore, expected that if France were to designate one or more Hague Network Judge, he or she should belong to the courts of appeal. It is interesting to note that recent judicial seminars have encouraged the appointment of judges in States that are not Parties to the 1980 Hague Convention.<sup>47</sup>

#### *Information about Hague Network Members (Draft General Principle no 2)*<sup>48</sup>

Details of the individual members of the Network should be forwarded to the Permanent Bureau for inclusion on a list of members available in both English and French. The information to be provided for inclusion in the list of members of the Network should consist of the name of the judge and, if possible, in order to assist the Permanent Bureau of the Hague Conference with translation, the position of the judge and the name of the court where the judge sits in both French and English, in addition to the position and the name in the original language(s). Other information to be provided includes the official contact details of the judge, including postal and e-mail addresses as well as telephone and fax numbers, as well as the judge's preferred method of communication. Members should also indicate in the list the languages in which they are able to communicate in writing and orally. Finally, the list specifies the name of the Hague Conventions for which a judge can initiate or accept direct judicial communications. The complete list will be made available for distribution only to members of the Network. However, names and positions of the members are available to the public through the Hague Conference website and *The Judges' Newsletter on International Child Protection*. When States designate a Hague Network judge they should make this designation known to other judges or Central Authorities within their State dealing with cross-border family matters.

#### *Draft General Principles for Judicial Communications*

The document set out in Annex C represents the latest version of a set of draft principles for judicial communications within the context of the 1980 Child Abduction Convention and the International Hague Network of Judges. The drawing up of these principles began following the fifth meeting of the Special Commission to review the operation of the

<sup>41</sup> The Joint EC-HCCH Conference concluded and recommended that "As a general rule, designations should be formal. Where a designation has been made on an informal basis, every effort should be made without delay to obtain a formal designation from the relevant authority." See Conclusion and Recommendation No 4 set out in Annex A.

<sup>42</sup> See Conclusion and Recommendation No 5 set out in Annex A.

<sup>43</sup> Israel.

<sup>44</sup> Colombia.

<sup>45</sup> Switzerland.

<sup>46</sup> La Loi du 4 mars 2002.

<sup>47</sup> See Recommendation No 9 of the Malta II Judicial Conference, St. Julian's, Malta, 19-22 March 2006, and Recommendation No 2(b) of the South and Eastern African Region Judicial Seminar, The Hague, 3-6 September 2006, that can be found on the Hague Conference website, *supra*, note 7. Gabon has made such a designation.

<sup>48</sup> See the Draft General Principles for Judicial Communications within the Context of the International Hague Network of Judges set out in Annex C.

*Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006).<sup>49</sup> Among the recommendations and conclusions of this meeting, the section relating to judicial communications contains the recommendation that the future work of the Permanent Bureau would include exploring the value of drawing up principles concerning direct judicial communications, which could serve as a model for the development of good practice, with the advice of a consultative group of experts drawn primarily from the judiciary.<sup>50</sup>

With this in mind, the Permanent Bureau gathered together a group of experts in July 2008 to discuss a preliminary draft. The draft was improved in light of the comments made by the experts to provide a basis for further discussion and consultation at the Joint EC-HCCH Conference on Direct Judicial Communications and the Development of Judicial Networks that took place in Brussels 15-16 January 2009.

There will be further refinements to the draft following the Joint EC-HCCH Conference. However, this will not be the end of the consultation process. The document and general principles will remain under discussion and comments and suggestions from States, interested organisations, or judges, especially members of the International Hague Network of Judges, will be welcome. A further draft, prepared by the Permanent Bureau in the light of the full consultation process, will be submitted formally to Contracting States to the 1980 Child Abduction Convention for their comments and suggestions prior to the next meeting of the Special Commission due to take place in 2011. It will then be for the Special Commission meeting to decide how to proceed with the project and what the next steps should be.

The Joint EC-HCCH Conference recognised the importance of the project initiated by the Hague Conference on Private International Law to develop the Draft General Principles on Direct Judicial Communications and endorsed their general direction. Discussion in the Joint Conference has made a major contribution to the future development of the guidelines.<sup>51</sup>

### *Conclusion*

It is hoped that the information presented in this paper, as well as the information provided by all speakers during this Conference, will assist judges and Contracting States alike in their decision to designate a Hague Network Judges and in their actual designations. Over the years we have noticed that States and judicial authorities go about differently to make their designations to the International Hague Network of Judges. There is certainly no lack of imagination. It is hoped that the designation procedures presented will assist judges and Contracting States alike in this new area.

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<sup>49</sup> Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (30 October-9 November 2006), drawn up by the Permanent Bureau (hereinafter, "Conclusions and Recommendations of the Fifth Meeting of the Special Commission"). Available at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings".

<sup>50</sup> Conclusion and Recommendation 1.6.7 e). This follows a suggestion for a recommendation contained in P Lortie, "Report on Judicial Communications in relation to international child protection" *Prel Doc 8 of October 2006* (hereinafter, "Prel. Doc. No 8/2006 on Judicial Communications"), at para. 73 under 7 w). Available at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings" and "Preliminary Documents".

<sup>51</sup> See Conclusion and Recommendation No 16 set out in Annex A.



## **ANNEX A**



# Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks

## Conclusions and Recommendations

On 15-16 January 2009, judges and experts from Australia, Argentina, Austria, Belgium, Benin, Brazil, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Greece, Guatemala, Hungary, Iceland, India, Ireland, Israel, Italy, Latvia, Lithuania, Malta, Mexico, Morocco, the Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States of America, Uruguay, the European Commission, the International Association of Women Judges, as well as the Hague Conference on Private International Law, met in Brussels, Belgium, to discuss direct judicial communications on family law matters and the development of judicial networks.

The judicial conference reached the following recommendations and conclusions:

1. The conference emphasises the value of direct judicial communications in international child protection cases, as well as the development of international, regional and national judicial networks to support such communications.
2. States that have not designated Network judges are strongly encouraged to do so.
3. Judges designated to a network with responsibility for international child protection matters should be sitting judges with appropriate authority and experience in that area.
4. As a general rule, designations should be formal. Where a designation has been made on an informal basis, every effort should be made without delay to obtain a formal designation from the relevant authority.
5. The process for the designation of Network judges should respect the independence of the judiciary.
6. The different networks should operate in a complementary and coordinated manner in order to achieve synergies, and should, as far as possible, observe the same safeguards in relation to direct judicial communications.

7. The valuable work of regional judicial networks such as the European Judicial Network in Civil and Commercial Matters and IberRed should be recognised and promoted.
8. Member States of the European Union which have a specialist family judge as a member of the European Judicial Network in Civil and Commercial Matters but have made no designation to the International Hague Network of Judges are invited to consider the designation of the same judge or judges to the Hague Network.
9. IberRed Member States which have not designated a specialist family judge as a contact point but have designated a judge to the Hague Network are invited to consider the designation of the same judge or judges as contact points within IberRed.
10. The development of national networks in support of the international and regional networks should be advanced.
11. Efforts should be made within States to promote the appropriate use of direct judicial communications in the international protection of children and to increase awareness of the existence and role of Network judges.
12. The conference recognises the important role that Central Authorities can play in giving support to judicial networks and in facilitating direct judicial communication.
13. Adequate resources, including administrative and legal resources, should be made available to support the work of Network judges.
14. States experiencing a high volume of international child protection cases should consider setting-up an office to support the work of the Network judge or judges.
15. Where there is concern in any State as to the proper legal basis for direct judicial communications, whether under domestic law or procedure, or under relevant international instruments, the necessary steps should be taken to ensure that such legal basis exists.
16. The conference recognises the importance of the project initiated by the Hague Conference on Private International Law to develop the Draft General Principles on Direct Judicial Communications and endorses their general direction. Discussion in the conference has made a major contribution to the future development of the guidelines. The conference looks forward to their continued development and refinement in consultation with judges from all regions of the world and different legal traditions.
17. The conference recognises that there is a broad range of international instruments in relation to which direct judicial communications can play a valuable role.

## **ANNEX B**

15 April 2009

## ***INTERNATIONAL HAGUE NETWORK OF JUDGES***

### **ARGENTINA**

Judge Graciela TAGLE, Family Judge of First Instance and of Third Nomination, Córdoba

### **AUSTRALIA**

The Honourable Chief Justice Diana BRYANT, Appeal Division, Family Court of Australia, Melbourne (alternate contact)

The Honourable Justice Victoria BENNETT, Family Court of Australia, Commonwealth Law Courts, Melbourne (primary contact)

### **BRAZIL**

Judge Mônica Jacqueline SIFUENTES PACHECO DE MEDEIROS, Federal Court, Brasília

With geographical responsibility for: the Federal District of Brasília and the Federal States of Acre, Amapá, Amazonas, Bahia, Goiás, Maranhão, Mato Grosso, Minas Gerais, Pará, Piauí, Rondônia, Roraima, Tocantins, São Paulo and Mato Grosso do Sul.

Judge Jorge Antonio MAURIQUE, Federal Court, Florianópolis

With geographical responsibility for: the Federal States of Rio de Janeiro, Espírito Santo, Rio Grande do Sul, Paraná, Santa Catarina, Pernambuco, Alagoas, Ceará, Paraíba and Rio Grande do Norte e Sergipe.

### **CANADA**

The Honourable Justice Jacques CHAMBERLAND, Court of Appeal of Quebec, Montreal (Civil Law)

The Honourable Justice Robyn M. DIAMOND, Court of Queen's Bench of Manitoba, Winnipeg (Common Law)

### **CHILE**

Judge Hemán Gonzalo LÓPEZ BARRIENTOS, Second Family Court of Santiago

**CHINA (Hong Kong, Special Administrative Region)**

The Honourable Mr Justice Darryl SAW, The Court of First Instance, High Court, Hong Kong Special Administrative Region [informal designation]

**CYPRUS**

The Honourable Justice George A. SERGHIDES, Doctor at law, President of the Family Court of Nicosia-Kyrenia, Nicosia

**CZECH REPUBLIC**

Mr Lubomir PTÁČEK, Judge, Regional Court Ústí nad Labem, Branch Office in Liberec, Liberec

**DENMARK**

The Honourable Justice Marianne LUND LARSEN, City Court of Copenhagen, Copenhagen

**DOMINICAN REPUBLIC**

*Mag.* Antonia Josefina GRULLÓN BLANDINO, Court of Children and Adolescents, National District, Civil Division, Santo Domingo

**ECUADOR**

Dr Arturo MÁRQUEZ MATAMOROS, Magistrate of the Superior Court of Máchala

**GABON (Non-State Party to the 1980 Convention)**

Judge Jean-Pierre SOBOTCHOU, *Cour de Cassation*, Libreville

**ICELAND**

Judge Jónas JOHANNSSON, *Héradsdómur Reykjavíkur* Court, Reykjavík

**IRELAND**

The Honourable Ms Justice Mary FINLAY GEOGHEGAN, The High Court, Dublin

**LUXEMBOURG**

Ms Christiane BISENIUS, Public prosecutor, Public Prosecutor Department, Luxembourg

**MALTA**

The Honourable Justice Joseph AZZOPARDI, Court of Justice, Valletta

**MEXICO**

*Lic. Adriana CANALES PÉREZ, Magistrada de la Tercera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal, Mexico*

*Lic. Dionisio NÚÑEZ VERDIN, Juez Tercero de lo Familiar en Guadalajara, Jalisco*

**NETHERLANDS**

Judge Robine DE LANGE-TEGELAAR, President of the Family and Youth Sector, Court of The Hague, The Hague (primary contact)

Judge Jacques M.J. KELTJENS, Vice-President of the Family and Youth Sector, Court of The Hague, The Hague (alternate contact)

**NEW ZEALAND**

His Honour Judge Peter BOSHIER, Principal Family Court Judge, Chief Judges' Chambers, Wellington

**NORWAY**

Judge Anne Marie SELVAAG, Trondheim District Court, Trondheim

Judge Stein EIKVÅG, Office of the City Registrar in Oslo

**PANAMA**

*Lic. Edgar TORRES SAMUDIO, Juzgado de Niñez y Adolescencia del Circuito Judicial de Chiriquí, Chiriquí*

*Lic. Delia CEDEÑO P., Juzgado Segundo de Niñez y Adolescencia del Primer Circuito Judicial de Panama*

**PERU**

*Dra. Luz María CAPUÑAY CHÁVEZ, President of the First Family Division of the Superior Court of Justice of Lima*

**ROMANIA**

Judge Andreea Florina MATEESCU, Bucharest Tribunal, V<sup>th</sup> Civil Section, Bucharest (primary contact)

Judge Anca Magda VLAICU, Bucharest Tribunal, IV<sup>th</sup> Civil Section, Bucharest  
(alternate contact)

### **SOUTH AFRICA**

The Honourable Mrs Justice Belinda VAN HEERDEN, Supreme Court of Appeal, Bloemfontein

### **SPAIN**

*Mag. Lic.* Francisco Javier FORCADA MIRANDA, Court of First Instance Saragossa

### **UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

#### ***For England and Wales***

The Right Honourable Lord Justice Mathew THORPE, Judge of the Court of Appeal, Head of International Family Justice, The Royal Courts of Justice, London

#### ***For Northern Ireland***

The Honourable Mr Justice Ben STEPHENS, The Royal Courts of Justice, Belfast

#### ***For Scotland***

The Honourable Lady SMITH (Anne), Judge, Senator of the College of Justice, Court of Session, Parliament House, Edinburgh

### **UNITED STATES OF AMERICA**

The Honourable Justice James GARBOLINO, Former Presiding Judge, Superior Court of California, Roseville

The Honorable Judith L. KREEGER, Circuit Judge, Eleventh Judicial Circuit of Florida, Miami

The Honorable Peter J. MESSITTE, United States Federal District Judge, US District Court for the District of Maryland, Greenbelt

The Honourable Mary W. SHEFFIELD, Presiding Judge, Circuit Court, Rolla

### **URUGUAY**

The Honourable Judge Ricardo C. PÉREZ MANRIQUE, President of the Second Session of the Court of Appeal of Family Affairs of Uruguay, Montevideo

### **VENEZUELA**

*Dra.* Rosa Isabel REYES REBOLLEDO, Co-ordinator Judge for the Judicial Circuit of Child Protection, Children and Adolescents of the Judicial District of the Caracas Metropolitan Area and National Coordinator of International Adoption



## **ANNEX C**

**DRAFT  
NOT TO BE CIRCULATED**

**PROJET DE PRINCIPES GÉNÉRAUX RELATIFS AUX COMMUNICATIONS JUDICIAIRES  
DANS LE CONTEXTE DU RÉSEAU INTERNATIONAL DE JUGES DE LA HAYE**

*Document de travail en cours de préparation par le Bureau Permanent conformément à la Recommandation et Conclusion No 1.6.7 de la Cinquième réunion de la Commission spéciale sur le fonctionnement de la Convention de La Haye du 25 octobre 1980 sur les aspects civils de l'enlèvement d'enfants et la mise en œuvre de la Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants (30 octobre – 9 novembre 2006).*

*Document établi par le Bureau Permanent*

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**DRAFT GENERAL PRINCIPLES FOR JUDICIAL COMMUNICATIONS  
WITHIN THE CONTEXT OF THE INTERNATIONAL HAGUE NETWORK OF JUDGES**

*Discussion document under preparation by the Permanent Bureau in accordance with Recommendation and Conclusion No 1.6.7 of the Fifth Meeting of the Special Commission to review the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the practical implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (30 October – 9 November 2006).*

*Conférence conjointe Commission européenne – Conférence de La Haye sur les communications judiciaires directes concernant les questions de droit de la famille et le développement de réseaux judiciaires, Bruxelles, 15-16 janvier 2009*

*European Commission – Hague Conference, Joint Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks,  
Brussels, 15-16 January 2009*

## Table of contents

	<b>Page</b>
<b>Introduction .....</b>	<b>2</b>
<b>Building a network.....</b>	<b>3</b>
1. Appointment and designation of members of the International Hague Network of Judges .....	3
2. Information about members of the Network .....	4
<b>General judicial communications .....</b>	<b>4</b>
3. Internally – within the domestic court system.....	4
4. Internally - relationship with Central Authorities.....	5
5. Internationally .....	5
<b>Direct judicial communications in specific cases.....</b>	<b>5</b>
6. Communication safeguards .....	6
7. Initiating the communication .....	6
8. The form of communications and language difficulties .....	7

**Draft general principles for judicial communications  
within the context of the International Hague Network of Judges**

***Introduction***

The creation of the International Hague Network of Judges specialised in family matters was first proposed at the 1998 De Ruwenberg Seminar for Judges on the international protection of children. It was recommended that the relevant authorities (e.g., court presidents or other officials as is appropriate within the different legal cultures) in the different jurisdictions designate one or more members of the judiciary to act as a channel of communication and liaison with their national Central Authorities, with other judges within their jurisdictions and with judges in other Contracting States, in respect, at least initially, of issues relevant to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. It was felt that the development of such a network would facilitate communications and co-operation between judges at the international level and would assist in ensuring the effective operation of the 1980 Hague Convention.

Since its inception, a number of judicial conferences have supported the expansion of the International Hague Network of Judges. Both the Fourth<sup>52</sup> and Fifth<sup>53</sup> Meetings of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* discussed these developments and the Conclusions and Recommendations from both demonstrate support for the International Hague Network and the continuation of work aimed at further development. The International Hague Network currently includes more than 25 judges from approximately 20 jurisdictions in all continents.

The role of a member of the International Hague Network of Judges is to be a link between his or her colleagues at the domestic level and other members of the Network at the international level. There are two main communication functions exercised by members of the Network. The first communication function is of a general nature (i.e., not case specific). It includes the sharing of general information from the International Hague Network or the Permanent Bureau to his or her colleagues in the jurisdiction and the reverse flow of information. It may also encompass participation in international judicial seminars. The second communication function consists of direct judicial communications with regard to specific cases. For example, members of the Network may be involved in facilitating arrangements for the safe return of the child, including the establishment of provisional protective measures and the provision of information about custody or access issues or possible measures for addressing domestic violence or abuse allegations. The objective of these communications is to favour the prompt return of the child and address any lack of information that the competent judge has about the situation and legal implications in the State of the habitual residence of the child.

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<sup>52</sup> Conclusions and Recommendations of the Fourth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (22–28 March 2001), drawn up by the Permanent Bureau (hereinafter, “Conclusions and Recommendations of the Fourth Meeting of the Special Commission”), see paras 5.5, 5.6 and 5.7. Available at < [www.hcch.net](http://www.hcch.net) > under “Child Abduction Section” then “Special Commission meetings” and “Preliminary Documents”.

<sup>53</sup> Conclusions and Recommendations of the Fifth Meeting of the Special Commission,, *supra*, note 1, see Part VI. Available at < [www.hcch.net](http://www.hcch.net) > under “Child Abduction Section” then “Special Commission meetings”.

## **Building a network**

### **1. Appointment and designation of members of the International Hague Network of Judges**

- 1.1 States are encouraged to consider identifying preferably an active sitting judge or judges or other persons or authorities<sup>54</sup> able to facilitate at the international level communications between judges or between a judge and another authority in relation to international child protection matters, including international child abductions.<sup>55</sup>
- 1.2 States where a judge has appointed herself / himself on a voluntary basis (informal designation) to the International Hague Network of Judges are invited to proceed as soon as possible to a formal designation. Furthermore, informally designated judges are invited to explore in their jurisdictions, with the support of the Permanent Bureau, where appropriate, the feasibility of being formally designated.<sup>56</sup> Competent authorities responsible for making such designations vary from State to State. Examples of these competent authorities include judicial councils, supreme courts, chief justices, assemblies of judges or sometimes the Ministry of Justice or other relevant government department.<sup>57</sup>
- 1.3 Designation of judges in States that are not Parties to the Hague Children's Conventions is also encouraged.<sup>58</sup>
- 1.4 States that have designated a judge specialised in family matters in the context of other networks are invited to do the same within the context of the International Hague Network of Judges and vice versa.<sup>59</sup>
- 1.5 Where possible, designations should be for as long a period as possible in order to provide stability to the Network while recognising the need to have new members join the Network on a regular basis. It is established practice that judges who are no longer active sitting judges should resign from the Network to be replaced by active sitting judges.
- 1.6 Designations should be made by way of a signed letter from the competent authority responsible for the designation.
- 1.7 Where two or more members are designated for a State, it is established practice that designation should identify the territorial units or systems of law for which each judge has responsibility, and should also indicate the judge who is the primary contact for those members and an alternate contact.
- 1.8 Self-appointment will not be accepted where a competent authority has already designated a member from that State.

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<sup>54</sup> The group of experts that met on 3-4 July 2008 at the invitation of the Permanent Bureau recommended that consideration be given to whether the Network should remain open to persons other than sitting judges as none of these persons have joined the Network since its creation.

<sup>55</sup> Conclusions and Recommendations of the Fourth Meeting of the Special Commission, *supra*, note 3, para. 5.5.

<sup>56</sup> "Report on Judicial Communications in Relation to International Child Protection", Prel. Doc. No 8/2006 on Judicial Communications, para 73 under 3 j). Available at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings" and "Preliminary Documents".

<sup>57</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, paras 19-21.

<sup>58</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 3 k).

<sup>59</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 4 l).

## **2. Information about members of the Network**

- 2.1 Details of the individual members of the Network should be forwarded to the Permanent Bureau for inclusion on a list of members available in both English and French.
- 2.2 The information to be provided for inclusion in the list of members of the Network should consist of the name of the judge and, if possible, in order to assist the Permanent Bureau of the Hague Conference with translation, the position of the judge and the name of the court where the judge sits in both French and English, in addition to the position and the name in the original language(s). Other information to be provided includes the official contact details of the judge, including postal and e-mail addresses as well as telephone and fax numbers, as well as the judge's preferred method of communication. Finally, members should indicate in the list the languages in which they are able to communicate in writing and orally.
- 2.3 This information will be kept by the Permanent Bureau and should be updated as necessary.
- 2.4 The complete list will be made available for distribution only to members of the Network. However, names and positions of the members are available to the public through the Hague Conference website and *The Judges' Newsletter on International Child Protection*.
- 2.5 When States designate a Hague Network judge they should make this designation known to other judges or Central Authorities within their State dealing with cross-border family matters.
- 2.6 It is recommended that applications under the 1980 Convention should contain the name of the Hague Network judge in the requesting State.

### ***General judicial communications***

The responsibilities of the Hague Network judge may include the collecting of information and news relevant to the implementation of the Hague Conventions and other international child protection matters, both nationally and internationally. He or she will then ensure that this information is disseminated both internally to other judges within his or her State, and internationally amongst members of the Network.

## **3. Internally – within the domestic court system**

- 3.1 The Hague Network judge should be available to advise his or her colleagues in the jurisdiction on legislation and Conventions on child protection in general and about their application in practice. Initiation of and participation in internal training seminars for judges may also be part of this role.
- 3.2 The Hague Network judge is responsible for ensuring that other judges within his or her jurisdiction who hear international child protection cases receive their issue of *The Judges' Newsletter on the International Protection of Children*, published by the Permanent Bureau of the Hague Conference, and are aware of any other information, such as on the International Child Abduction Database (INCADAT),<sup>60</sup> that might contribute to the development of the expertise of the individual judge.

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<sup>60</sup> Accessible at < [www.incadat.com](http://www.incadat.com) >.

#### **4. Internally - relationship with Central Authorities**

Another function is to promote effective working relationships between all those involved in international child protection matters so as to ensure the more effective application of the relevant rules and procedures.

- 4.1 It is recognised that the relationship between judges and Central Authorities can take different forms.<sup>61</sup>
- 4.2 Central Authorities are encouraged to facilitate judicial communications.<sup>62</sup>
- 4.3 Successful working relationships depend on the development of mutual trust and confidence between judges and Central Authorities.
- 4.4 Meetings involving judges and Central Authorities at a national, bilateral or multilateral level are a necessary part of building this trust and confidence and can assist in the exchange of information, ideas and good practice.<sup>63</sup>
- 4.5 The Hague Network judge will promote within his / her jurisdiction international child protection collaboration generally.

#### **5. Internationally**

- 5.1 The Hague Network judge will encourage members of the judiciary in his / her jurisdiction to participate in direct judicial communications.
- 5.2 The Hague Network judge will provide responses to enquiries from foreign judges and Central Authorities about general matters concerning legislation and Conventions on child protection and their operation in his / her jurisdiction.
- 5.3 The Hague Network Judge may be responsible for ensuring that important judgments are sent to the editors of the International Child Abduction Database (INCADAT).
- 5.4 The Hague Network judge may be invited to contribute to the Permanent Bureau's *Judges' Newsletter*.
- 5.5 The Hague Network judge is encouraged to participate in international judicial seminars on child protection in so far as it is relevant and possible.

#### ***Direct judicial communications in specific cases***

Direct judicial communications refer to communications that take place between sitting judges concerning a specific case. Current practice shows that these communications mostly take place in child abduction cases under the 1980 Hague Child Abduction Convention. These cases show that these communications can be very useful for resolving some of the practical issues surrounding return and they may result in immediate decisions or settlements between the parents before the court in the requested State.

The role of the Hague Network judges is to receive and, where necessary, channel international direct judicial incoming communications and initiate or facilitate such outgoing direct judicial communications. The Hague Network judge can be the judge involved in the communication itself, or he or she can facilitate the communication

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<sup>61</sup> Conclusions and Recommendations of the Fifth Meeting of the Special Commission, *supra*, note 1, para. 1.6.4; Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, paras 27-29 and para. 73 under 2 b).

<sup>62</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 2 a).

<sup>63</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 2 g).

between two judges who might be concerned with the specific case. Such communications are different from Letters of Request regarding evidentiary matters.

## 6. Communication safeguards

### Overarching principle

6.1 Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction.<sup>64</sup>

### Commonly accepted safeguards

6.2 ~~In Contracting States in which direct judicial communications are practised, the following are commonly accepted safeguards. When direct judicial communications occur, judges are encouraged to respect the following commonly accepted safeguards:~~<sup>65</sup>

- communications ~~should~~ should be limited primarily to logistical issues and the exchange of information [and should not address the merits of the case];
- ordinarily, parties are to be notified in advance of the nature of proposed communication;
- a record is to be kept of communications and it is to be made available to the parties;
- confirmation of any ~~agreement~~ arrangement reached should be in writing;
- parties or their representatives ~~should~~ should be present in certain cases, for example via conference call facilities.

## 7. Initiating the communication

### Necessity

7.1 The judge instigating the communication must hold the view that the communication is necessary and may prove to be the speediest and most efficient way of resolving a particular point in the case.<sup>66</sup>

### Timing – before or after the decision is taken

7.2 The timing of the communication is a matter for the judge initiating the communication.<sup>67</sup>

### Making contact with the other judge involved

7.3 [The initial communication should take place directly between two Hague Network judges in order to ensure the identity of the judges involved.<sup>68</sup>]<sup>69</sup>

<sup>64</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 m).

<sup>65</sup> The modification, shown above in track changes, follows from the views of experts consulted that consideration should be given to amend Recommendation No 5.6 of the Fourth Meeting of the Special Commission (22-28 March 2001), which originally stated:

“In Contracting States in which direct judicial communications are practised, the following are commonly accepted safeguards:

- communications to be limited to logistical issues and the exchange of information;
- parties to be notified in advance of the nature of proposed communication;
- record to be kept of communications;
- confirmation of any agreement reached in writing;
- parties or their representatives to be present in certain cases, for example via conference call facilities.”

<sup>66</sup> J. Wall, “Ground Rules for Cross-Frontier Judicial Communication”, Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, Annex J.

<sup>67</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 n).

<sup>68</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 o).



[or]<sup>70</sup>

- 7.3 [Where the two States concerned with the case, which is the subject of the communication, have designated sitting judges as members of the Network, the initial communication should take place directly between these two judges in order to ensure the identity of the judges involved.<sup>71</sup>
- 7.4 Where at least one of the States concerned with the case, which is the subject of the communication, has designated as a member of the Network a person other than a "sitting" judge, the communication should be initiated with the assistance of both Central Authorities concerned, provided that the ensuing communication takes place between two "sitting" judges.<sup>72</sup>]
- 7.5 The time and place for communications between the courts should be to the satisfaction of both courts. Personnel other than judges in each court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation of counsel unless otherwise ordered by either of the courts.<sup>73</sup>

## **8. The form of communications and language difficulties**

- 8.1 Judges should use the most appropriate technological facilities in order to communicate as efficiently and as swiftly as possible.<sup>74</sup>
- 8.2 The method and language of communication should, as far as possible, respect the preferences, if any, indicated by the intended recipient.
- 8.3 Where two judges do not understand a common language, and translation or interpretation services are required, such services could be provided either by the court or the Central Authority from which the communication is transmitted.
- 8.4 Hague Network judges are encouraged to improve their foreign language skills.

### Written communications

- 8.5 Written communications, particularly in initiating the contact, are valuable as they provide for a record of the communication and help alleviate language and time zone barriers.
- 8.6 Where the written communication is provided through translation, it is recognised that providing the original version of the message is a good practice.
- 8.7 Communications should always include the name, title and contact details of the sender.
- 8.8 Communications should be written in simple terms taking into account the language skills of the recipient.

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<sup>69</sup> If it is decided that the Network should be limited to sitting judges, the first version of principle 7.3 may be considered for inclusion.

<sup>70</sup> This is to show the alternative between the first version of principle 7.3 above and the combination of the second version of principle 7.3 and principle 7.4 below.

<sup>71</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 o).

<sup>72</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 p).

<sup>73</sup> American Law Institute, "Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases", Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, Annex K, Guideline 7 d).

<sup>74</sup> Article 8, 2001/470/EC: Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters *Official Journal L 174*, 27/06/2001 P. 0025 – 0031.

- 8.9 As far as possible, personal information of the parties should be anonymised for the purposes of written communications.
- 8.10 Written communications should be transmitted using the most rapid and efficient means of communication and, in those cases where it is necessary for confidential data to be transmitted, secured means of communication should be employed.
- 8.11 Written communications should always be acknowledged as soon as possible with an indication as to when a response will be provided.
- 8.12 As far as possible, written communications should be typewritten.

#### Oral Communications

- 8.13 Oral communications are also encouraged.
- 8.14 Where the judges do not speak the same language, one or both of them, subject to an agreement between the two judges concerned, should have at their disposal a competent and neutral interpreter that can interpret to and from their language.
- 8.15 Where necessary, personal information of the parties should be anonymised for the purposes of oral communications.
- 8.16 Oral communications can take place either by telephone or videoconference and, in those cases where it is necessary that they deal with confidential information, such communications should be carried out using secured means of communication.

Additional information and examples of direct judicial communication can be found in "Report on Judicial Communications in Relation to International Child Protection", Preliminary Document No 8 of October 2006 (see the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings" and "Preliminary Documents").