

**CONCLUSIONS ET RECOMMANDATIONS DE LA CONFÉRENCE CONJOINTE  
COMMISSION EUROPÉENNE-HCCH SUR LES COMMUNICATIONS JUDICIAIRES DIRECTES  
CONCERNANT LES QUESTIONS DE DROIT DE LA FAMILLE ET LE DÉVELOPPEMENT DE  
RÉSEAUX JUDICIAIRES  
(15 ET 16 JANVIER 2009)**

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**CONCLUSIONS AND RECOMMENDATIONS OF THE JOINT EUROPEAN COMMISSION-HCCH  
CONFERENCE ON DIRECT JUDICIAL COMMUNICATIONS ON FAMILY LAW  
MATTERS AND THE DEVELOPMENT OF JUDICIAL NETWORKS  
(15 - 16 JANUARY 2009)**

*Document préliminaire No 3 de février 2009 à l'intention  
du Conseil de mars / avril 2009 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 3 of February 2009 for the attention  
of the Council of March / April 2009 on General Affairs and Policy of the Conference*

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(15 - 16 JANUARY 2009)**

**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.

**ANNEXE / ANNEX**



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

Agenda of the Joint Conference  
*European Commission ~ Hague Conference on Private International Law*  
Brussels, 15 to 16 January 2009

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### Thursday 15 January 2009

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8.00–9.00 a.m.

Reception of participants

9.00–9.15 a.m.

Welcoming words

*Welcoming words by Jacques Barrot, Vice-President (European Commission) and Hans van Loon, Secretary General (Hague Conference on Private International Law)*

9.15–10.15 a.m.

#### **Theme I – Direct Judicial Communications in International Child Protection Matters – A Reality**

Chair and Moderator – William DUNCAN, Deputy Secretary General (Hague Conference on Private International Law)

1. His Honour Judge Peter BOSHER, Principal Family Court Judge, Chief Judge's Chambers, Wellington (New Zealand) – “Experience of a judge from New Zealand”
2. Eberhart CARL, Former judge, *Ministerialrat*, Section on Mediation, Conciliation, Ministry of Justice, Berlin (Germany) – “Experience of a Judge from Germany”
3. The Right Honourable Mr Justice Andrew MOYLAN, The Royal Courts of Justice, Family Division, London (United Kingdom) – “Experience of a judge from England & Wales”.
4. Judge Annette OLLAND, Family and Youth Sector, Court of the Hague (the Netherlands) – “Experience of a judge from the Netherlands”
5. The Honourable Justice James GARBOLINO, Former Presiding Judge, Superior Court of California, Roseville (United States of America) – “Experience of a judge from the United States of America”

**10.15–11.00 a.m.**

General discussion

**11.00–11.15 a.m.**

*Coffee break*

**11.15 a.m.–12.15 p.m.**

**Theme II – Development of Regional and International Networks – Their scope and object, appointment process, information about members and functions of members (Draft Principles Nos 1 to 5)**

Chair and Moderator – Head of Unit of “e-justice”

1. Philippe LORTIE, First Secretary (Hague Conference on Private International Law) – “Background to the Hague Network of Judges”
2. Joao Simoes DE ALMEIDA, Secretary of the European Judicial Network in civil and commercial matters (European Commission) – “Background to the European Judicial Network”
3. The Honourable Judge Ricardo PÉREZ MANRIQUE, President of the Second Session of the Court of Appeal of Family Affairs of Uruguay, Montevideo (Uruguay) – “The Hague Network and IberRED in Latin America”
4. Judge Jónas JOHANNSSON, Héradsdómur, Reyjavíkur Court (Iceland) – “The International Hague Network of Judges – the roles and functions of a Judge”
5. Carlos Manuel GONÇALVES DE MELO MARINHO, *Juiz de Direito Conselho Superior da Magistratura*, Lisboa (Portugal) – “The European Judicial Network – the roles and functions of a Judge”

**12.15–1.00 p.m.**

General discussion

**1.00–2.30 p.m.**

*Lunch break*

**2.30–3.15 p.m.**

**Theme III – Good Practices for Direct Judicial Communications (Draft Principles Nos 6 to 9)**

Chair and Moderator – Salla SAASTAMOINEN, Head of Unit C1 “Civil Justice” (European Commission)

1. The Honourable Ms Mary FINLAY GEOGHEGAN, High Court Judge (Ireland) – “Overarching principle for direct judicial communications and commonly accepted safeguards (Draft Principle No 6)”
2. The Right Honourable Mr Justice Ben STEPHENS, Royal Courts of Justice, Belfast (United Kingdom) – “Initiating the contact (Draft Principle No 7)”
3. Judge Javier FORCADA, Juzgado de Familia de Zaragoza (Spain) – “Using best means of communications available in a multilingual context (Draft principles Nos 8 and 9)”

4. The Honourable Mr James FARLEY, Former judge, now Counsel, McCarthy Tétrault, Toronto, Ontario (Canada) – “Judicial co-operation good practices in the field of cross-border insolvency proceedings in the light of the proposed Hague Draft Principles”

**3.15–4.00 p.m.**

General discussion

**4.00–4.15 p.m.**

*Tea break*

**4.15–5.15 p.m.**

**Theme IV – Offices and Mechanisms to facilitate Judicial Communications (Draft Principles Nos 3 to 5)**

Chair and Moderator – Saliou ABOUDOU, President of the Supreme Court (Benin)

1. Delia WILLIAMS, Lawyer to Lord Justice Thorpe (Head of International Family Justice for England and Wales) (United Kingdom) – “Role and functions of the Head of International Family Law Justice”
2. The Honourable Mr Justice Jacques M.J. KELTJENS, Vice-President of the Family and Youth Sector, Court of The Hague (the Netherlands) – “The Dutch Office for direct judicial communications”
3. Judge Mônica SIFUENTES PACHECO DE MEDEIROS, Federal Court, Brasilia (Brazil) – “Dividing the Brazilian territory in two and the Permanent Working Group”
4. Eimear LONG, Legal Officer (Hague Conference on Private International Law) – “Support from the Permanent Bureau”
5. Olivier TELL, Deputy Head of Unit, DG JLS – Civil Justice Unit (European Commission) – “Support from the European Commission”
6. Esther PÍAS GARCÍA, Counsel of Foreign Relations at the Spanish General Council for the Judiciary – “Support from IberRED”

**5.15–6.00 p.m.**

General discussion

**6.00 p.m.**

End of work

*Conference Dinner*

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**Friday 16 January 2009**

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**9.30–10.30 a.m.**

**Theme V – National Networks in support of the International or Regional Networks (Draft Principles No 3)**

Chair and Moderator – Carlos Manuel GONÇALVES DE MELO MARINHO, *Juiz de Direito Conselho Superior da Magistratura*, Lisboa (Portugal)

1. The Honourable Madam Justice Robyn M. DIAMOND, Court of Queen’s Bench(Family Division) of Manitoba (Canada) – “Provincial and Territorial Hague Network of Judges for Canada”
2. Judge Graciela TAGLE, Family Judge of First Instance and of Third Nomination, Córdoba (Argentina) – “National Network for Argentina”
3. The Honourable Judith L. KREEGER, Circuit Court Judge, Eleventh Judicial Circuit of Florida (United States of America) – “National Network in the making in the United States of America”
4. Javier L. PARRA GARCÍA, *Secretario de Gobierno, Tribunal Superior de Justicia de la Region de Murcia* (Spain) – “National Network for Spain in support of the European Judicial Network”

**10.30–11.15 a.m.**

General discussion

**11.15–11.30 a.m.**

*Coffee break*

**11.30 a.m.–12.15 p.m.**

**Theme VI – The interaction between judicial networks and Central Authorities (Draft Principles Nos 1.1, 7.3 and 7.4)**

Chair and Moderator – Philippe LORTIE, First Secretary (Hague Conference on Private International Law)

1. The Honourable Justice Jacques CHAMBERLAND, Court of Appeal of Quebec, Montreal (Canada) – “The division of powers and the protection of the judge’s independence and impartiality (the point of view of a jurisdiction of civil law tradition)”
2. Andrea SCHULZ, Head of the German Central Authority, *Bundesamt für Justiz, Zentrale Behörde*, Bonn (Germany) – “The role of a Central Authority”
3. Karima ZOUAOUI, *Magistrat, direction des affaires civiles et du sceau*, Ministry of Justice, Paris (France) – “The view of France”
4. The Honourable Mrs Catherine McGUINNESS, Former Supreme Court Judge (Ireland) – “The division of powers and the protection of the judge’s independence and impartiality (the point of view of a jurisdiction of common law tradition)”

**12.15–1.00 p.m.**

General discussion

**1.00–2.30 p.m.**

*Lunch break*

**2.30–3.15 p.m.**

### **Theme VII – The Future of Direct Judicial Communications**

Co-chairs and Moderators – Francisco FONSECA, Director, Directorate Civil Justice, Rights & Citizenship (European Commission) and William DUNCAN, Deputy Secretary General (Hague Conference on Private International Law)

1. The Honourable Diana BRYANT QC, Chief Justice, Family Court of Australia, Melbourne (Australia) – “Direct judicial communications in 2018 - What can we expect?”
2. Lubomir PTÁČEK, Judge, Regional Court of Ústí nad Labem (Czech Republic) – “Ideas regarding direct judicial communications for the purpose of Article 15 of the Brussels II *bis* Regulation”
3. Dionisio NÚÑEZ VERDIN, *Juez Tercero de lo Familiar en Guadalajara* (Mexico) – “Future use of information technology for direct judicial Communications”
4. Judge Robine DE LANGE-TEGELAAR, Vice-President of the Family and Youth Sector, Court of The Hague (the Netherlands) – “Adoption and use by different networks of the draft principles for judicial communications”
5. The Right Honourable Lord Justice Mathew THORPE, Judge of the Court of Appeal, Head of International Family Justice (United Kingdom) – “The future of direct judicial communications”

**3.15–4.00 p.m.**

General discussion

**4.00–4.15 p.m.**

*Tea break*

**4.15–4.45 p.m.**

### **Theme VIII – Conclusions and Recommendations**

Co-chairs and Moderators – Francisco FONSECA, Director, Directorate Civil Justice, Rights & Citizenship (European Commission) and William DUNCAN, Deputy Secretary General (Hague Conference on Private International Law)

**4.45–5.45 p.m.**

General discussion

**5.45–6.00 p.m.**

End of work – Closing

Att. Draft General Principles for Judicial Communications within the Context of the International Hague Network of Judges

## PROJET – NE PAS DISTRIBUER

### 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).*

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## DRAFT – NOT TO BE CIRCULATED

### 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

	Page
<b>BACKGROUND</b> .....	<b>3</b>
<b>INTRODUCTION</b> .....	<b>4</b>
<b>BUILDING A NETWORK</b> .....	<b>5</b>
1. Appointment and designation of members of the International Hague Network of Judges.....	5
2. Information about members of the Network.....	5
<b>GENERAL JUDICIAL COMMUNICATIONS</b> .....	<b>6</b>
3. Internally – within the domestic court system .....	6
4. Internally - relationship with Central Authorities .....	6
5. Internationally.....	7
<b>DIRECT JUDICIAL COMMUNICATIONS IN SPECIFIC CASES</b> .....	<b>7</b>
6. Communication safeguards .....	8
7. Initiating the communication .....	8
8. The form of communications and language difficulties .....	9

DRAFT

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

***Background***

This document 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 *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>1</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>2</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, to take place in Brussels in January 2009.

It is expected that it will be possible to make further refinements to the draft following the Joint EC-HCCH conference in January. 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. It will then be for the Special Commission meeting to decide how to proceed with the project and what the next steps should be.

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<sup>1</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>2</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".

## **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>3</sup> and Fifth<sup>4</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>3</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>4</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>5</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>6</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>7</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>8</sup>
- 1.3 Designation of judges in States that are not Parties to the Hague Children's Conventions is also encouraged.<sup>9</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>10</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.

### **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.

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<sup>5</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>6</sup> Conclusions and Recommendations of the Fourth Meeting of the Special Commission, *supra*, note 3, para. 5.5.

<sup>7</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>8</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, paras 19-21.

<sup>9</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 3 k).

<sup>10</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 4 l).

- 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>11</sup> that might contribute to the development of the expertise of the individual judge.

### **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.

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<sup>11</sup> Accessible at < [www.incadat.com](http://www.incadat.com) >.

- 4.1 It is recognised that the relationship between judges and Central Authorities can take different forms.<sup>12</sup>
- 4.2 Central Authorities are encouraged to facilitate judicial communications.<sup>13</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>14</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 between two judges who might be concerned with the specific case. Such communications are different from Letters of Request regarding evidentiary matters.

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<sup>12</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>13</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 2 a).

<sup>14</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 2 g).

## 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>15</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>16</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>17</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>18</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>19</sup>]<sup>20</sup>

[or]<sup>21</sup>

<sup>15</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 *m*).

<sup>16</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>17</sup> J. Wall, "Ground Rules for Cross-Frontier Judicial Communication", Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, Annex J.

<sup>18</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 *n*).

<sup>19</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 *o*).

<sup>20</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.

- 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>22</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>23</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>24</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>25</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.
- 8.9 As far as possible, personal information of the parties should be anonymised for the purposes of written communications.

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<sup>21</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>22</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 o).

<sup>23</sup> Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 p).

<sup>24</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>25</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.

- 8.10 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").