

**LIGNES DE CONDUITE ÉMERGENTES RELATIVES AU DÉVELOPPEMENT
DU RÉSEAU INTERNATIONAL DE JUGES DE LA HAYE ET
PRINCIPES GÉNÉRAUX RELATIFS AUX COMMUNICATIONS JUDICIAIRES,
Y COMPRIS LES GARANTIES COMMUNÉMENT ACCEPTÉES POUR LES COMMUNICATIONS
JUDICIAIRES DIRECTES DANS DES AFFAIRES PARTICULIÈRES,
DANS LE CONTEXTE DU RÉSEAU INTERNATIONAL DE JUGES DE LA HAYE**

document établi par le Bureau Permanent

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**EMERGING GUIDANCE REGARDING THE DEVELOPMENT
OF THE INTERNATIONAL HAGUE NETWORK OF JUDGES AND
GENERAL PRINCIPLES FOR JUDICIAL COMMUNICATIONS,
INCLUDING COMMONLY ACCEPTED SAFEGUARDS FOR
DIRECT JUDICIAL COMMUNICATIONS IN SPECIFIC CASES,
WITHIN THE CONTEXT OF THE INTERNATIONAL HAGUE NETWORK OF JUDGES**

document drawn up by the Permanent Bureau

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Commission spéciale de juin 2011 sur le fonctionnement pratique de la
Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

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Special Commission of June 2011 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

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Background

This document represents the latest version of Emerging Guidance regarding the development of the International Hague Network of Judges and a set of General Principles for Judicial Communications within the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter “the 1980 Hague Child Abduction Convention”) and the International Hague Network of Judges, including commonly accepted safeguards for direct judicial communications in specific cases. 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).¹ Among the Conclusions and Recommendations 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.²

With this in mind, the Permanent Bureau gathered together a group of experts in July 2008 to discuss a preliminary draft.³ The draft was improved in the light of comments made by the experts to provide a basis for further discussion and consultation at the Joint Conference of the European Commission-Hague Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks (hereinafter “the Joint EC-HCCH Conference”), which took place in Brussels, Belgium, in January 2009.⁴ The Joint EC-HCCH Conference underlined the continued development and refinement of the Draft General Principles for Judicial Communications in consultation

¹ “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)”, adopted by the Special Commission (hereinafter, “Conclusions and Recommendations of the Fifth Meeting of the Special Commission”). Available on the website of the Hague Conference at < www.hcch.net > under “Child Abduction Section” then “Special Commission meetings on the practical operation of the Convention”.

² Conclusion and Recommendation No 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. No 8 of October 2006 drawn up 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* (The Hague, 30 October – 9 November 2006) (hereinafter, “Prel. Doc. No 8/2006 on Judicial Communications”), at para. 73 under 7 w). Available on the website of the Hague Conference at < www.hcch.net > under “Child Abduction Section” then “Special Commission meetings on the practical operation of the Convention” and “Preliminary Documents”.

³ The following experts met at the Permanent Bureau: The Honourable Justice Victoria Bennett (Australia), Judge Eberhard Carl (Germany), Senior Judge Francisco Javier Forcada Miranda (Spain), Judge Myriam de Hemptinne (Belgium), Judge Jónas Johannsson (Iceland), The Honourable Justice Judith Kreeger (United States of America), Judge Robine de Lange-Tegelaar (Netherlands), Judge Jorge Antonio Maurique (Brazil), The Honourable Justice Dionisio Núñez Verdín (Mexico), Judge Annette C. Olland (Netherlands), The Honourable Judge Ricardo C. Pérez Manrique (Uruguay), Judge Lubomir Ptáček (Czech Republic), Kathy Ruckman (United States of America), Andrea Schulz (Germany), Judge Mônica Jacqueline Sifuentes Pacheco de Medeiros (Brazil), Judge Graciela Tagle (Argentina), François Thomas (European Union), The Right Honourable Lord Justice Mathew Thorpe (United Kingdom, England and Wales) and Markus Zalewski (European Union).

⁴ The Conclusions and Recommendations of the Joint EC-HCCH Judicial Conference are available on the website of the Hague Conference at < www.hcch.net > under “Child Abduction Section” then “Judicial Communications”. These Conclusions and Recommendations were adopted by consensus by more than 140 judges from more than 55 jurisdictions representing all continents.

with judges from all regions of the world and different legal traditions.⁵ The draft was the subject of discussion at a number of judicial conferences which took place thereafter.⁶

On 28 June 2010, the Permanent Bureau gathered together a group of experts drawn from the judiciary⁷ to develop further the Emerging Guidance for the development of the International Hague Network of Judges and the Draft General Principles for Judicial Communications. With a view to facilitate the work of the group of experts, a list of policy issues regarding these matters, prepared by the Permanent Bureau, was distributed to experts in advance of the meeting.

An earlier version of this document, prepared by the Permanent Bureau in light of the consultations carried out thus far, was submitted formally in March 2011 to Contracting States to the 1980 Hague Child Abduction Convention and to 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* (hereinafter "the 1996 Hague Child Protection Convention") for their comments and suggestions prior to the meeting of the Special Commission to review the operation of those two Conventions, which took place from 1 to 10 June 2011. The Special Commission gave its general endorsement to the Emerging Guidance and General Principles for Judicial Communications contained in Preliminary Document No 3 A. The current version of Preliminary Document No 3 A has been revised taking into account the discussions within the Special Commission.

This document and the General Principles for Judicial Communications are work in progress, as they could be improved in the future. Comments and suggestions from States, interested organisations, or judges, especially members of the International Hague Network of Judges, are always welcome.

Introduction

The creation of the International Hague Network of Judges specialising in family matters was first proposed at the 1998 De Ruwenberg Seminar for Judges on the international protection of children.⁸ 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 1980 Hague Child Abduction Convention. It was felt that

⁵ See, *ibid.*, Conclusion and Recommendation No 16.

⁶ The Third Judicial Conference on Cross-Frontier Family Law Issues, St. Julian's, Malta, 24-26 March 2009; the International Family Justice Judicial Conference for Common Law and Commonwealth Jurisdictions, Cumberland Lodge, Windsor, United Kingdom, 4-8 August 2009; the International Hague Network of Judges Latin American Judges' Meeting, Montevideo, Uruguay, 4 December 2009; the International Judicial Conference on Cross-border Family Relocation, Washington, D.C., United States of America, 23-25 March 2010; and, the Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, Mexico, 23-25 February 2011.

⁷ The following experts met at the Permanent Bureau: The Honourable Judge Peter Boshier (New Zealand), The Honourable Justice Jacques Chamberland (Canada, Civil Law), Judge Martina Erb-Klunemann (Germany), Senior Judge Francisco Javier Forcada Miranda (Spain), Judge Myriam de Hemptinne (Belgium), Judge Jacques M.J. Keltjens (Netherlands), The Honourable Justice Judith Kreeger (United States of America), The Honourable Justice Dionisio Núñez Verdín (Mexico), The Honourable Judge Ricardo C. Pérez Manrique (Uruguay), Judge Lubomir Ptáček (Czech Republic), Judge Mônica Jacqueline Sifuentes Pacheco de Medeiros (Brazil) and The Right Honourable Lord Justice Mathew Thorpe (United Kingdom, England and Wales). Jenny Clift (United Nations Commission on International Trade Law (UNCITRAL)) joined the group as the officer responsible at the UNCITRAL Secretariat for judicial communications in insolvency matters.

⁸ Information on the 1998 De Ruwenberg Judicial Seminar is available on the website of the Hague Conference at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children" and "Other Judicial Seminars".

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. More than 10 years later, it is now recognised that there is a broad range of international instruments, both regional and multilateral, in relation to which direct judicial communications can play a role beyond the 1980 Hague Convention.⁹

Since its inception, a number of judicial conferences have supported the expansion of the International Hague Network of Judges. The Fourth,¹⁰ Fifth¹¹ and Sixth¹² 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 their Conclusions and Recommendations demonstrate support for the International Hague Network and the continuation of work aimed at further development. In January 2009, the Joint EC-HCCH Conference emphasised 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.¹³ On that latter point, the Joint Conference invited the different networks to operate in a complementary and co-ordinated manner in order to achieve synergies, and, as far as possible, to observe the same safeguards in relation to direct judicial communications.¹⁴ The International Hague Network currently includes almost 70 judges from 48 States¹⁵ 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 with his or her colleagues in the jurisdiction and assisting with 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, the objective of such communications being to 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. In this context, members of the Network may be involved in facilitating

⁹ See Conclusion and Recommendation No 17, *supra*, note 4. See, for example, the 1996 Hague Child Protection Convention and instruments of a regional nature within the European Union and the Organization of American States.

¹⁰ "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 Conclusions and Recommendations Nos 5.5 to 5.7. Available on the website of the Hague Conference at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents".

¹¹ Conclusions and Recommendations of the Fifth Meeting of the Special Commission, *supra*, note 1, see Part VI.

¹² Conclusions and Recommendations of Part I and Part II of the Sixth Meeting of the Special Commission to review the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and 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*, which took place in The Hague respectively from 1 to 10 June 2011 and from 25 to 31 January 2012.

¹³ See Conclusion and Recommendation No 1, *supra*, note 4.

¹⁴ See, *ibid.*, Conclusion and Recommendation No 6.

¹⁵ Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China (Hong Kong, Special Administrative Region), Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Guatemala, Honduras, Iceland (vacancy – pending designation), Ireland, Israel, Kenya, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Romania, Serbia, Singapore, South Africa, Spain, Sweden, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland (England and Wales, Northern Ireland, Scotland and the Cayman Islands (B.O.T.)), United States of America, Uruguay and Venezuela. A list of members of the International Hague Network of Judges is available on the website of the Hague Conference at < www.hcch.net > under "Child Abduction Section" then "The International Hague Network of Judges".

arrangements for the prompt and safe return of the child, including the establishment of urgent and / or provisional measures of protection and the provision of information about custody or access issues or possible measures for addressing domestic violence or abuse allegations. These communications will often result in considerable time savings and better use of available resources, all in the best interests of the child.

The Principles for Judicial Communications will provide transparency, certainty and predictability to such communications for both judges involved as well as for the parties and their representatives. Such Principles are meant to ensure that direct judicial communications are carried out in a way which respects the legal requirements in the respective jurisdictions and the fundamental principle of judicial independence in carrying out Network functions. The Principles are drafted in a flexible way to meet the various procedural requirements found in different legal systems and legal traditions.

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 within the State that such legal basis exists.¹⁶

Efforts should be made within States to promote the appropriate use of direct judicial communications in the international protection of children, to increase awareness of the existence and role of Network Judges¹⁷ and to ensure, where appropriate, that necessary support and resources are provided to enable them to function effectively.

Emerging guidance regarding the development of the International Hague Network of Judges

Over the years, a number of rules have emerged regarding the appointment and designation of members of the International Hague Network of Judges as well as information about members of the Network and its dissemination. The Joint EC-HCCH Conference recognised that adequate resources, including administrative and legal resources, should be made available to support the work of Network Judges as their workload increases.¹⁸ Furthermore, States experiencing a high volume of international child protection cases were invited to consider setting up an office to support the work of the Network Judge or Judges.¹⁹ Finally, the Joint EC-HCCH Conference recommended to advance the development of national networks in support of the international and regional networks.²⁰

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

1.1 States that have not designated Network Judges are strongly encouraged to do so.²¹

¹⁶ See Conclusion and Recommendation No 15, *supra*, note 4.

¹⁷ See, *ibid.*, Conclusion and Recommendation No 11.

¹⁸ See, *ibid.*, Conclusion and Recommendation No 13.

¹⁹ See, *ibid.*, Conclusion and Recommendation No 14.

²⁰ See, *ibid.*, Conclusion and Recommendation No 10.

²¹ See, *ibid.*, Conclusion and Recommendation No 2.

- 1.2 Judges designated to the Network with responsibility for international child protection matters should be sitting judges²² with authority and present experience in that area.²³ 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.²⁴
- 1.3 The process for the designation of Network Judges should respect the independence of the judiciary.²⁵
- 1.4 Designation of Network Judges in States that are not Parties to the Hague Children's Conventions is also encouraged.²⁶
- 1.5 States that have designated a judge specialised in child protection 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.²⁷
- 1.6 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 should resign from the Network to be replaced by sitting judges with authority and present experience in that area.
- 1.7 Designations should be made by way of a signed letter or the transmission of any official document from the competent authority responsible for the designation.
- 1.8 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 and the judge who is the alternate contact.

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 in 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, telephone and fax numbers, as well as the judge's preferred method of communication. Finally, members should indicate 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.

²² These are judges that are currently carrying out judicial functions.

²³ See Conclusion and Recommendation No 3, *supra*, note 4.

²⁴ Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, paras 19-21.

²⁵ See Conclusion and Recommendation No 5, *supra*, note 4.

²⁶ Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 3 k).

²⁷ *Ibid.*, para. 73 under 4 l).

- 2.4 A copy of the list of judges, including their contact details, 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 a judge has been designated to the Hague Network of Judges appropriate steps should be taken for other judges or Central Authorities dealing with international child protection matters to be informed of the designation.
- 2.6 It is recommended to Central Authorities that applications under the 1980 Hague Child Abduction Convention should contain the name of the Hague Network Judge in the requesting State.

Principles for General Judicial Communications

The responsibilities of the Hague Network Judge 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 make his or her colleagues in the jurisdiction aware of legislation and Conventions on child protection in general and inform them as to their application in practice. Initiation of and participation in internal training seminars for judges and legal professionals as well as writing articles for publication is also part of this role.
- 3.2 The Hague Network Judge makes certain that other judges within his or her jurisdiction who hear international child protection cases receive their issue of *The Judges' Newsletter on International Child Protection*, 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) of the Hague Conference,²⁸ that might contribute to the development of the expertise of the individual judge.

4. Internally – relationship with Central Authorities

Another function of a Network Judge is to promote effective working relationships between all those involved in international child protection matters so as to ensure the most 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.²⁹
- 4.2 Central Authorities may play an important role in giving support to judicial networks and in facilitating direct judicial communications.³⁰
- 4.3 Successful working relationships depend on the development of mutual trust and confidence between judges and Central Authorities.

²⁸ Accessible at < www.incadat.com >.

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

³⁰ See Conclusion and Recommendation No 12, *supra*, note 4.

- 4.4 Meetings involving judges and Central Authorities at a national, bilateral, regional 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.³¹
- 4.5 The Hague Network Judge will promote within his / her jurisdiction international child protection collaboration generally.

5. Internationally – with foreign judges and the Permanent Bureau

- 5.1 The Hague Network Judge will encourage members of the judiciary in his / her jurisdiction to engage, where appropriate, in direct judicial communications.
- 5.2 The Hague Network Judge may provide, or facilitate the provision of, responses to focussed enquiries from foreign judges concerning legislation and Conventions on international child protection and their operation in his / her jurisdiction.³²
- 5.3 The Hague Network Judge is responsible for ensuring that important judgments dealing with direct judicial communications, among other matters, 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.

Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards

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, for example, 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 Judge is to receive and, where necessary, channel incoming judicial communications and initiate or facilitate outgoing communications. The Hague Network Judge may be the judge involved in the communication itself, or he or she may facilitate the communication between the judges seized with the specific case. Such communications are different from Letters of Request. The taking of evidence should follow the channels prescribed by law. When a judge is not in a position to provide assistance he or she may invite the other judge to contact the relevant authority.

³¹ Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 2 g).

³² It is important to note that Central Authorities under Art. 7 e) of the 1980 Hague Child Abduction Convention shall, in particular, either directly or through any intermediary, take all appropriate measures "to provide information of a general character as to the law of their State in connection with the application of the Convention".

Matters that may be the subject of direct judicial communications include, for example:

- a) scheduling the case in the foreign jurisdiction:
 - i) to make interim orders, *e.g.*, support, measure of protection;
 - ii) to ensure the availability of expedited hearings;
- b) establishing whether protective measures are available for the child or other parent in the State to which the child would be returned and, in an appropriate case, ensuring the available protective measures are in place in that State before a return is ordered;
- c) ascertaining whether the foreign court can accept and enforce undertakings offered by the parties in the initiating jurisdiction;
- d) ascertaining whether the foreign court can issue a mirror order (*i.e.*, same order in both jurisdictions);
- e) confirming whether orders were made by the foreign court;
- f) verifying whether findings about domestic violence were made by the foreign court;
- g) verifying whether a transfer of jurisdiction is appropriate.

6. Communication safeguards

Overarching principles

- 6.1 Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction.³³
- 6.2 When communicating, each judge seized should maintain his or her independence in reaching his or her own decision on the matter at issue.
- 6.3 Communications must not compromise the independence of the judge seized in reaching his or her own decision on the matter at issue.

Commonly accepted procedural safeguards

- 6.4 In Contracting States in which direct judicial communications are practised, the following are commonly accepted procedural safeguards:³⁴
 - except in special circumstances, parties are to be notified of the nature of the proposed communication;
 - a record is to be kept of communications and it is to be made available to the parties;³⁵
 - any conclusions reached should be in writing;
 - parties or their representatives should have the opportunity to be present in certain cases, for example via conference call facilities.

³³ Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 m). For example, the taking of evidence should follow the channels prescribed by law.

³⁴ The text of Principle 6.4 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, 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.”

³⁵ It is to be noted that records can be kept in different forms such as, for example, a transcription, an exchange of correspondence, a note to file.

6.5 Nothing in these commonly accepted procedural safeguards prevents a judge from following rules of domestic law or practices which allow greater latitude.

7. Initiating the communication

Necessity

7.1 In considering whether the use of direct judicial communications is appropriate, the judge should have regard to speed, efficiency and cost-effectiveness.

Timing – before or after the decision is taken

7.2 Judges should consider the benefit of direct judicial communications and when in the procedure it should occur.

7.3 The timing of the communication is a matter for the judge initiating the communication.³⁶

Making contact with a judge in the other jurisdiction

7.4 The initial communication should ordinarily take place between two Hague Network Judges in order to ascertain the identity of the judge seized in the other jurisdiction.³⁷

7.5 When making contact with a judge in another jurisdiction, the initial communication should normally be in writing (see Principle No 8 below) and should in particular identify:

- a) the name and contact details of the initiating judge;
- b) the nature of the case (with due regard to confidentiality concerns);
- c) the issue on which communication is sought;
- d) whether the parties before the judge initiating the communication have consented to this communication taking place;
- e) when the communication may occur (with due regard to time differences);
- f) any specific questions which the judge initiating the communication would like answered;
- g) any other pertinent matters.

7.6 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.³⁸

³⁶ Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, para. 73 under 5 n).

³⁷ *Ibid.*, under 5 o).

³⁸ See American Law Institute, "Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases", appearing as Annex K in Prel. Doc. No 8/2006 on Judicial Communications, *supra*, note 2, Guideline 7 d).

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.³⁹
- 8.2 The initial method and language of communication should, as far as possible, respect the preferences, if any, indicated by the intended recipient in the list of members of the Hague Network. Further communications should be carried out using the initial method and language of communication unless otherwise agreed by the judges concerned.
- 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 in the country from which the communication is initiated.
- 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 good practice also to provide the message in its original language.
- 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, appropriate measures should be taken for the personal information of the parties to be kept confidential.
- 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 All communications should be typewritten.
- 8.13 Ordinarily, communications should be in writing, save where the judges concerned are from jurisdictions with proceedings conducted in the same language.

Oral communications

- 8.14 Oral communications are encouraged where judges involved come from jurisdictions which share the same language.

³⁹ 2001/470/EC: Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, Art. 8, *OJ L 174, 27/06/2001*, pp. 25-31.

- 8.15 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 who can interpret to and from their language.
- 8.16 Where necessary, personal information concerning the parties should be anonymised for the purposes of oral communication.
- 8.17 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.

9. Keeping the Central Authority informed of judicial communications

- 9.1 Where appropriate, the judge engaged in direct judicial communications may consider informing his or her Central Authority that a judicial communication will take place.

Additional information and examples of direct judicial communication can be found in the "Report on Judicial Communications in Relation to International Child Protection".⁴⁰

⁴⁰ Prel. Doc. No 8/2006 concerning judicial communications, *supra*, note 2, paras 35-42, and Prel. Doc. No 8/2006, Annexes, pp. 23-26.