

**REPORT OF THE EXPERTS' GROUP ON THE USE OF VIDEO-LINK AND OTHER  
MODERN TECHNOLOGIES IN THE TAKING OF EVIDENCE ABROAD**

**(2-4 DECEMBER 2015)**

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**RAPPORT DU GROUPE D'EXPERTS SUR L'UTILISATION DE LA LIAISON VIDÉO ET D'AUTRES  
TECHNOLOGIES MODERNES POUR L'OBTENTION DES PREUVES À L'ÉTRANGER**

**(DU 2 AU 4 DÉCEMBRE 2015)**

*Preliminary Document No 8 of December 2015 for the attention  
of the Council of March 2016 on General Affairs and Policy of the Conference*

*Document préliminaire No 8 de décembre 2015 à l'attention  
du Conseil de mars 2016 sur les affaires générales et la politique de la Conférence*

**Report of the Experts' Group on the Use of Video-Link and other Modern Technologies in the Taking of Evidence Abroad**

**(2-4 December 2015)**



***Introduction***

From 2 to 4 December 2015, the Experts' Group on the Use of Video-Link and other Modern Technologies in the Taking of Evidence Abroad ("the Group") met in The Hague for its first meeting. The Group was attended by 39 experts, representing 26 States and two international organisations, as well as members of the Permanent Bureau. The composition of the Group is included as Annex A.

The mandate of the Group is "to investigate the issues that may arise with the use of video-link and other modern technologies in the taking of evidence abroad" and in doing so "to study existing instruments and current practice, and explore potential ways to address these issues, including the desirability and feasibility of an optional protocol or any other instrument" (C&R No 9 of the 2015 meeting of the Council on General Affairs and Policy (hereafter, "the Council")).

Pursuant to the mandate given by the Council, the Group began its work exploring potential ways to address the issues that may arise with the use of video-link and other modern technologies in the taking of evidence under the Evidence Convention, whether those issues may be legal, practical or technical. The Group discussed the desirability and feasibility of the various options available, in the context of current practice in and between States, as well as existing regional and international instruments.

***Status of Work***

The Group took as a point of departure that its mandate did not extend to altering the content of the Convention, nor to persuade Contracting States to change their views on the character of the Convention as mandatory or non-mandatory or on its operation in any way. Other differences that were recognised as existing include at least the scope of the use of Articles 8, 9 and 17 of the Convention that could affect the utilisation of video-link and other modern technologies. The Group's intention remained to consider the use of video-link and other modern technologies only in the context of being a *means* to facilitate the operation of the Convention. As such, the Group considered the most appropriate course that would best promote and enhance the use of the Convention and promote the utilisation of these technologies thereby.

Against this background, the Group considered that the range of possible courses open to it to recommend were as follows:

- maintain the *status quo*;
- develop a guide to good practice or similar publication, including country specific information;
- develop a soft law instrument such as principles or model rules;
- develop a formal protocol to the Convention, whether optional or otherwise;
- recommend an entirely new Convention; or
- use a combination of any of these options.

In this context, there was an early general acceptance among the Group, which was confirmed as discussion proceeded, that the most appropriate course was to take the Convention as it stands, and develop a guide to good practice, in particular with country specific information in the form of individual country profiles, and possibly a soft law instrument, such as principles or model rules, as more fully discussed below.

### ***Conclusions as to Future Work and Implementation***

The Group considered that the problems that needed to be addressed were primarily practical and would be best addressed by a guide to good practice, supported by detailed and uniformly produced country profiles. The form of the guide would be developed by reference to the likely users, ranging from lawyers, including those unfamiliar with the Convention, to court officers, including judges, dealing with the Convention, to officials in designated authorities, to technical staff of courts or bodies operating the technology. The guide would be a detailed commentary on the operation of the Convention in the context of the use of video-link and other modern technologies, based on a discussion of the principal Articles and expressed in a practical way as to how requests under Chapters I and II should be approached. The guide would explain how different approaches of different jurisdictions could potentially affect the way requests for assistance are dealt with. Those differences of approach, country by country, would be explained clearly in the country profiles. The country profiles would be developed based upon information provided in comprehensive questionnaires. The guide and the country profiles would also contain all necessary technical information for the practical and efficient setting up of the required video-link communications.

The Group considered that it should explore whether to develop, and if so in what form, soft law instruments to complement the guide and country profiles. These instruments might be in the nature of model rules, model court practice notes or directions, and/or legislative guides that would be available to make more efficient requests under the Convention to use these technologies. Without intending in any way to be exhaustive, or to pre-empt the work of the development of these documents, the Group discussed the incorporation of the following kinds of matters in the guide and country profiles:

- information required in drafting requests;
- minimum technical standards;
- differences between the taking of evidence by compulsion and not by compulsion;
- possibility (or not) of direct taking of evidence under Chapter I and/or Chapter II;
- legal safeguards for witnesses of any kind;
- appropriate approach to the taking of oaths and affirmations with consequential consideration of subjects such as perjury and contempt of court;
- applicable law;
- the need or otherwise, depending on the circumstances, for the security of the communication mechanism and any recording made;
- possible cost implications;
- the use and location of interpreters;
- the extent to which Central Authorities may usefully assist in the use of these technologies;
- issues arising in relation to requirements as to location of taking the evidence and the circumstances surrounding the taking of evidence, such as a requirement to view the whole room;
- adequate identification of all relevant actors.

In drafting the guide and preparing such country profiles, input may also be sought from practitioners, judicial officers, courts, IT professionals and other organisations or authorities.

The development of these documents was thought by the Group to be of use not only in enhancing the use of the Convention and in promoting the use of technologies, but also in exploring the points at which the Convention may, in the future, need to be amended.

The Group considered that future work would be best embarked upon by a smaller sub-group to work and draft, and to develop these documents in the manner identified above, including in consultation with external parties such as the International Bar Association, the *Conseil des barreaux européens* (CCBE), LawAsia, IberRed and other bodies or institutions as the sub-group sees appropriate.

The composition of this sub-group would reflect geographical and jurisdictional diversity.

The sub-group would then bring to the Group draft documents for approval and subsequently for submission for approval to the Council.

***Recommendation to the Council***

The Experts' Group on the use of video-link and other modern technologies under the Evidence Convention recommends that the Council on General Affairs and Policy endorse the formation of a small sub-group (respecting geographical and jurisdictional diversity) suitable for developing and drafting a guide to good practice, including detailed country profiles, and, to the extent thought appropriate by the sub-group, soft law instruments such as model rules and model practice notes (for courts), as well as model legislative guides (as described in the full report of the Experts' Group to the Council) for submission to the Experts' Group. The Permanent Bureau will keep the Council informed as to progress and timing.

**Final list of participants  
Liste définitive des participants**

**ALLEMAGNE / GERMANY**

1. Stefanie PLÖTZGEN-KAMRADT, Head of Division, Federal Office of Justice

**ANDORRA / ANDORRE**

2. Sara DIÉGUEZ, Juriste, Ministère de la Justice et de l'Intérieur

**AUSTRALIE / AUSTRALIA**

3. The Honourable Chief Justice James ALLSOP, AO, Chief Justice, Federal Court of Australia  
*Chair of the meeting*

**CHINE, RÉPUBLIQUE POPULAIRE DE / CHINA, PEOPLE'S REPUBLIC OF**

4. Haibo GOU, Legal Counsellor, Embassy of China
5. Tanshuo XU, Attaché, Department of Treaty & Law, Ministry of Foreign Affairs
6. Tailong WANG, Official, Department of Treaty & Law, Ministry of Foreign Affairs

**COLOMBIE / COLOMBIA**

7. Lucia Teresa SOLANO RAMIREZ, Second Secretary, Embassy of Colombia
8. Maria José MONTAÑA CORREA, Assistant to the Legal Section, Embassy of Colombia

**CORÉE, RÉPUBLIQUE DE / KOREA, REPUBLIC OF**

9. Ha-Kyung JUNG, Judge, Chuncheon District Court
10. Jongsun KANG, Counsellor, Embassy of the Republic of Korea

**ESPAGNE / SPAIN**

11. Alegría BORRÁS, Professor of International Private Law, *Universidad de Barcelona*

**ÉTATS UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA**

12. Ada E. BOSQUE, Senior Litigation Counsel, US Department of Justice, European Field Office, Embassy of the United States of America
13. Daniel KLIMOW, Attorney Advisor, Office of Legal Affairs for Overseas Citizen Service, U.S. Department of State, Bureau of Consular Affairs

**FINLANDE / FINLAND**

14. Anna-Lena HALTTUNEN, Senior Adviser for International Affairs, Department for Judicial Administration / Unit for International Judicial Administration (Central Authority), Ministry of Justice

**FRANCE**

15. Nicolas CASTELL, Rédacteur au Bureau du droit de l'Union du droit international privé et de l'entraide civile (BDIP), Direction des Affaires civiles et du Sceau, Ministère de la justice

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17. Masayoshi FURUYA, First Secretary/Legal Advisor, Embassy of Japan

**LETTONIE / LATVIA**

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19. Voldemārs KIZINO, Head of Information Technology Unit, Court Administration of Latvia

**LITUANIE / LITHUANIA**

20. Vaida PETRAVIČIENĖ, Deputy Head, Information Technology Division, National Courts Administration

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21. Alejandro LEÓN VARGAS, Second Secretary / Legal Counsel, Embassy of the United Mexican States

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22. Catherine WESTBYE, Adviser, Department for Civil Affairs, Norwegian Ministry of Justice and Public Security

**PAYS-BAS / THE NETHERLANDS**

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25. Claudia Alexandra KONG, Advanced Technician, Central Authority/Central Body, Directorate-General for the Administration of Justice  
26. Nuno LÁZARO FONSECA, Head of Office on Technology Support, Financial and Equipment Institute, Ministry of Justice  
27. Carlos GANDAREZ, Expert, Financial and Equipments Institute, Ministry of Justice

**ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD / UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

28. Nic TURNER, European Union Civil Law and Private International Law Tea and Sark, Law, Rights and International Directorate, Ministry of Justice  
29. David COOK, Master of the High Court, Queen's Bench Division, Royal Courts of Justice

**RUSSIE, FÉDÉRATION DE / RUSSIAN FEDERATION**

30. Ivan MELNIKOV, Head of Division, Judicial Department, Supreme Court of the Russian Federation

**SLOVÉNIE / SLOVENIA**

31. Judita DOLŽAN, Undersecretary, Department for International Cooperation and EU Law, Ministry of Justice

**SUÈDE / SWEDEN**

32. Mari-Ann ROOS, Judge, District Court of Stockholm

**SUISSE / SWITZERLAND**

33. Silvia MADARASZ-GAROLLA, Adjointe scientifique, Unité droit international privé, Office fédéral de la Justice

**TCHÈQUE RÉPUBLIQUE / CZECH REPUBLIC**

34. Jana VEDRALOVÁ, Head of Unit, Ministry of Justice, International Department for Civil Matters

**TURQUIE / TURKEY**

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**UNION EUROPÉENNE / EUROPEAN UNION**

36. Jacek GARSTKA, Legislative Officer, Directorate-General for Justice, A1 Civil Justice Policy, European Commission  
37. Jaana POHJANMÄKI, Directorate-General for Justice and Home Affairs, 2A Judicial Cooperation in Civil Matters and e-Justice, Council of the European Union

**EUROJUST**

38. Csaba SANDBERG, IT Security Officer  
39. Susana FONTE, Legal Officer

**SECRÉTARIAT / SECRETARIAT**

40. Christophe BERNASCONI, Secretary General  
41. Philippe LORTIE, First Secretary  
42. Marta PERTEGÁS, First Secretary  
43. Thomas JOHN, Attaché to the Secretary General  
44. Mayela CELIS, Principal Legal Officer  
45. Brody WARREN, Legal Officer  
46. Ignacio GOICOECHEA, Representative, Latin American Regional Office (by video conference)  
47. Keith LOKEN, Consultant to the Permanent Bureau  
48. Injun HWANG, Judge on Secondment  
49. Voris YATIMOV, Intern