

Hague Conference Update: Permanent Bureau of the Hague Conference on Private International Law

Introduction

This Briefing updates readers concerning the involvement of the Hague Conference on Private International Law in several missions of the Peace and Justice Project of the City of the Hague. In addition, it provides readers with a brief summary of the Conference celebrating the 15th Anniversary of the International Hague Network of Judges (17–19 July 2013). The Conclusions and Recommendations emanating from this important event follow this Briefing.

The Hague's International City of Peace and Justice Missions and related developments in the area of International Family Law

As part of the City of the Hague's ongoing Peace and Justice Project, the Hague Conference on Private International Law is planning to take part in two missions, the first to Malaysia and Indonesia (30 November to 6 December 2013), and the second to South Africa (Spring 2014), as the next in a series of trips organised to promote the Hague as the City of International Peace and Justice. These two upcoming missions follow the highly successfully programmes which took place in the USA (March 2012) and Russia (May 2013).

These missions are intended to highlight the objectives and goals of key international organisations based in the Hague and to collectively promote their work by featuring symposia, academic conference and government meetings between the presidents and secretaries-general of the selected Hague institutions and various stakeholders.

The most recent St Petersburg mission was scheduled so that it would also coincide with the International Legal Forum, which took place from 15 to 18 May 2013, in order to capitalise on the presence of hundreds of government officials, including ministers and judges, who planned to attend the Forum.

The mission included an interactive discussion with the students and law faculty of St Petersburg State University as well as students from other universities who participated via a live web-stream of the event. This was followed by a high-level meeting of experts on alternative dispute resolution mechanisms.

As part of the official programme for the International Legal Forum which included an introductory segment on the Hague as the International City of Peace and Justice featuring all participating international organisations which took part in the trip, the then Secretary General of the

Hague Conference, Mr Hans van Loon, was featured as an expert at the following panel discussions:

- The Protection of Rights of Children and Parents within the Framework of the Hague Conventions 1980 and 1996
- Mediation and Innovative Approaches to Resolving Cross-Border Disputes in the Context of Globalization

Several bilateral meetings also took place between representatives of the Hague Conference and high-level government officials to discuss involvement in the Hague Conference and concerns related to the operation or implementation of one or more Hague Conventions. These meetings were very successful and subsequently led to an increase in Contracting States and Membership enquiries from the relevant States.

The Hague Conference expects the upcoming missions to Asia and Africa to be similarly successful. The outcomes of both missions will be reported on the Hague Conference website and in the Organisation's Annual Report.

Conference celebrating the 15th Anniversary of the International Hague Network of Judges (17 to 19 July 2013)

From 17 to 19 July 2013, more than 50 Members of the International Hague Network of Judges, representing 40 States from every region of the world, as well as experts from the Commonwealth Secretariat, IberRed (a Spanish and Portuguese-speaking judicial network) and the Permanent Bureau of the Hague Conference on Private International Law met at Cumberland Lodge, Great Windsor Park, England. The conference was the first global meeting of the International Hague Network of Judges.

In addition to celebrating the 15th Anniversary of the International Hague Network of Judges, Members of the Network adopted important Conclusions and Recommendations dealing with, among other things, the future expansion of the Network, the promotion of direct judicial communications in international family cases and the need to raise awareness of the advantages which may be derived from the use of modern technology in such cases. The full Conclusions and Recommendations of this event follow this Briefing. They are also available in Spanish on the website of the Hague Conference: www.hcch.net, under 'News & Events', '2013'.

The conference recognised the pioneering role played by Lord Justice Mathew Thorpe in the

formation and subsequent dynamic growth of the International Hague Network of Judges. Lord Justice Thorpe formally retired from the bench (Court of Appeal, United Kingdom—England and Wales, and Head of International Family Justice) on 30 July 2013. Lord Justice Thorpe's tireless and visionary efforts were crucial to the global expansion of the Network and to the promotion of the use of direct judicial communications in international family law cases. His contributions to the work of the Hague Conference and to Hague Children's Conventions more generally have been similarly substantial.

Background information

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. It was recommended that the relevant authorities (eg 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, other judges within their jurisdictions, and 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 (1980 Hague Convention). 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.

More than 15 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.

Conclusions and Recommendations

From 17 to 19 July 2013, judges from Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Cayman Islands, China (Hong Kong SAR), Costa Rica, Czech Republic, Denmark, Dominican Republic, Ecuador, Finland, France, Germany, Hungary, Ireland, Israel, Kenya, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Rwanda, Singapore, Slovakia, Spain, Switzerland, Trinidad and Tobago, Uruguay, United Kingdom (England and Wales, Northern Ireland), United States of America, Venezuela and experts from the Commonwealth Secretariat, IberRed and the Permanent Bureau of the Hague Conference on Private International Law, met at Cumberland Lodge, United Kingdom, to discuss the International Hague Network of Judges ('IHNJ') and Direct Judicial Communications ('DJC') in international family law matters.

Whereas the conference recognises:

- the extraordinary contribution and the instrumental role of Lord Justice Thorpe in the establishment and remarkable growth of the IHNJ and DJC, as well as his tireless efforts in the service of international family justice; and
 - the significant work of Mrs Justice Belinda van Heerden in international family justice, in particular in the South African region.
- Participants at the conference send their best wishes to her for a full and speedy recovery.

The conference reached the following Conclusions and Recommendations:

1. The conference welcomes:
 - a. The growth of the IHNJ which now includes 82 judges from 55 States; and
 - b. The official publication of the *Emerging Guidance and General Principles for Judicial Communications* and encourages its wide dissemination both within the judiciary and the legal profession more broadly.

The scope of DJC

2. The conference emphasises the proven value of the IHNJ and DJC in international child abduction cases.
3. The conference recognises that there are a broad range of topics within international family law, including international child protection and relocation, to which the IHNJ and DJC can make a contribution and can have a valuable role to play.

Designations to the IHNJ

4. The conference encourages all States which have not yet designated judges to the IHNJ, whether or not Parties to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter, the '1980 Hague Convention'), to do so forthwith.
5. The conference recognises the need for current Members of the IHNJ and the Permanent Bureau of the Hague Conference to work together to encourage and bring about new designations to the IHNJ.
6. The conference encourages Members of the IHNJ from States Parties to the 1980 Hague Convention to partner with a judge from a State Party which has not yet designated a judge to the IHNJ (in particular, those with which they may have special ties) in order to work with the judge in the latter State to bring about a designation to the IHNJ.
7. The conference reiterates that judges designated to the IHNJ must be sitting judges with appropriate authority and experience in international family law matters.

The Value of Annual Reports and Statistics

8. The conference notes the value of Annual Reports on the use of DJC and the activities of Members of the IHNJ and encourages Members of the IHNJ, where appropriate and where resources permit, to produce such reports.
9. The conference notes the value of statistics, including for raising awareness of the use of DJC, and encourages Members to keep statistics, for example on the number and nature of the requests for assistance which they receive. The conference invites Members of the IHNJ to provide their statistics on DJC to the Permanent Bureau of the Hague Conference on a regular basis.

Promotion of DJC and the IHNJ, including judicial education

10. The conference welcomes the development of the Information Document on DJC in specific cases within the context of the IHNJ and, following circulation of the document to Members of the IHNJ for comments, looks forward to its wide dissemination.
11. The conference recognises the potential for judicial education bodies in every State to promote the use of DJC and to raise awareness and educate judges generally concerning the modern Hague Children's Conventions and the IHNJ with a view to developing expertise and building mutual trust and confidence.
12. The conference encourages States which have designated a Member to the IHNJ, on the occasion of the appointment of every new family and child law judge to the bench, to include information concerning the use of DJC and the IHNJ in any information pack provided in order to inform new judges of the existence of these tools and of their benefit.
13. The conference notes the existence and value of DJC in international family law matters and the IHNJ, as well as the name of the designated judge to the IHNJ in the State (where applicable) and his / her role and functions, should be brought to the attention of:
 - a. Every Chief Judge (Head of Bench);
 - b. All the members of the specialised family and child law judiciary;
 - c. All relevant legal practitioner bodies / institutions (e.g., bar associations); and
 - d. If appropriate, other relevant family law organisations within the State.

In this regard, a good practice is to make available information concerning the IHNJ and DJC, as well as the name of the designated judge to the IHNJ, through relevant websites.

14. The conference notes the value of the benchbooks / guidelines / protocols on DJC

which have already been developed in some States and encourages States which have not yet done so to consider the development of such tools consistent with the *Emerging Guidance and General Principles for Judicial Communications* developed by the Hague Conference. States which have already developed these tools are invited to:

- a. Promote their wide dissemination within the judiciary in their State; and
 - b. Share these tools with all Members of the IHNJ.
15. The conference welcomes the future development of a specialised section of the Hague Conference website on DJC and the IHNJ.
 16. Members of the IHNJ may consider, where possible and appropriate, engaging with the media in their State to raise awareness generally regarding DJC in international family law matters.

Legal Basis for DJC and the appointment of judges to the IHNJ

17. The conference welcomes the *Briefing Note: Legal Basis for DJC within the context of the IHNJ* and, following circulation of the Note to all Members of the IHNJ for comments, looks forward to its wide dissemination.
18. Where there is concern in any State as to the proper legal basis for DJC under domestic law or procedure, the conference invites States to take steps to ensure the necessary legal basis exists.
19. The conference notes the many different non-legislative bases for the use of DJC which were reported by Members of the IHNJ (e.g., the common law legal tradition, the general legal and constitutional order, the consent of the parties, guidelines emanating from national judicial councils, court regulatory decisions, the procedural / administrative nature of DJC, reliance on implied obligations under the Hague Children's Conventions) and invites other States to consider these practices with a view to utilising them in their own jurisdiction as possible legal bases for DJC.

Resources for Members of the IHNJ

20. The conference reiterates that the authorities appointing a judge to the IHNJ must be reminded of the importance of providing the appointee with the proper environment and resources to fulfil his / her role and functions adequately.
21. The conference notes that some judges designated to the IHNJ are being supported in their role by an Office dealing with judicial co-operation in international family law matters. Where possible and appropriate, other States may consider establishing such an Office.

Networks

22. The conference affirms the importance of continuing to develop and foster relationships with other networks (e.g., IberRed, the European Judicial Network) and invites these networks to observe appropriate safeguards in relation to DJC such as those set out in the *Emerging Guidance and General Principles for Judicial Communications*.
23. The conference recognises the value of national (informal and formal) and regional judicial networks and encourages Members of the IHNJ to work towards forging such networks.

Reporting case law and experience with DJC

24. The conference recognises the benefit of:
 - a. Reporting case law on DJC for inclusion in INCADAT (the International Child Abduction Database, < www.incadat.com >); and
 - b. Reporting experience of DJC in The Judges' Newsletter on International Child Protection.
25. The conference recommends that the next volume of The Judges' Newsletter be a Special Issue on the 15th Anniversary of the IHNJ.
26. The conference recommends that Members of the IHNJ inform the Permanent Bureau of the Hague Conference of upcoming significant international and regional conferences on international family law and the subsequent 'Conclusions and Recommendations' for inclusion in The Judges' Newsletter and in the forthcoming specialised section of the website of the Hague Conference.

International Family Relocation

27. The conference welcomes recent research across a number of jurisdictions on the topic of international family relocation and recognises the value of further research and international dialogue on this topic.

Modern technologies and secured communications

28. The conference notes the successful use of videoconferencing in international family cases reported by many Members of the IHNJ.
29. The conference encourages Members of the IHNJ to play an important role in raising awareness among the judiciary in their State concerning the value of videoconferencing in international family

cases and the potential value of DJC in facilitating the use of this technology.

30. The IHNJ is open to considering the further use of new tools and technologies in order to facilitate and improve DJC and the efficacy of the IHNJ: for example, platforms for secured means of communication such as Iber@ (developed by IberRed).
31. The conference recommends that, in relation to each State, it be established:
 - a. the extent to which DJC in relation to a cross-border case concerning a child, or records of such communications, are accessible to the public; and
 - b. if accessible to the public, by what means, if any, a requesting judge could secure limitation of access to such communications.

Future Meetings of Members of the IHNJ

32. The conference acknowledges the value of this meeting and its successful outcome and notes the desirability of convening regular meetings of Members of the IHNJ (for example, in connection with Special Commission meetings to review the Hague Children's Conventions). The next meeting of the IHNJ must take place before the next Special Commission meeting on the practical operation of the 1980 and 1996 Hague Conventions.

Regional Offices of the Hague Conference

33. The conference recognises the accomplishments of the Latin American Regional Office of the Hague Conference, welcomes the creation of the new Asia Pacific Regional Office and strongly supports the future establishment of an African Regional Office.

Acknowledgements

34. The conference expresses its sincere gratitude to:
 - a. the Judicial Office for England and Wales, the Commonwealth Secretariat, the Foreign and Commonwealth Office of the United Kingdom, UNICEF and the State Department of the United States of America for funding this conference; and
 - b. the Office of the Head of International Family Justice (Edward Bennett and Karen Wheller) and the Judicial Office for England and Wales (Maria Wright and Emma Courtman) for organising this conference.

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