

**CONFERENCE OF HAGUE CONVENTION NETWORK JUDGES  
CELEBRATING THE 20th ANNIVERSARY  
OF  
THE INTERNATIONAL HAGUE NETWORK OF JUDGES  
(Miami, Florida, United States of America, 24-26 October 2018)**

**CONCLUSIONS AND RECOMMENDATIONS**

From 24 to 26 October 2018, judges from Argentina, Australia, Bahamas, Belgium, Brazil, Canada, Cayman Islands, Colombia, Dominican Republic, Ecuador, El Salvador, Germany, Guatemala, Guyana, Japan, Mexico, Netherlands, New Zealand, Norway, Pakistan, Panama, Portugal, Romania, Singapore, South Africa, Spain, Switzerland, United Kingdom (England and Wales and Scotland), United States of America and Venezuela and experts from the Central Authority of the United States of America, Reunite, private practice, and the Permanent Bureau of the Hague Conference on Private International Law (HCCH), met at Florida International University, Miami, to discuss the International Hague Network of Judges (“IHNJ”), direct judicial communications (“DJC”) in international family law matters and the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Child Abduction Convention) from a judicial perspective.

The discussions also touched upon other Hague Children’s Conventions, *i.e.*, the *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* (the “1996 Child Protection Convention”) and the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the “2007 Child Support Convention”).

WHEREAS the meeting of the IHNJ recognises the extraordinary contribution of the late Madam Justice Robyn Moglove Diamond to the IHNJ as well as her tireless efforts in the service of international family justice.

The conference reached the following Conclusions and Recommendations:

**The IHNJ and the use of DJC**

1. The conference welcomes the growth of the IHNJ which now includes 133 judges from 84 States. Notably, in the Americas, every jurisdiction is now covered by the IHNJ, with the exception of Bolivia, Cuba, Haiti and Turks and Caicos.
2. The conference emphasises the proven value of the IHNJ and DJC in international child abduction cases.
3. The conference encourages all States which have not yet designated judges to the IHNJ, whether or not Parties to the 1980 Child Abduction Convention or to the 1996 Child Protection Convention, to do so forthwith.
4. 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.
5. The conference encourages members of the IHNJ from States Parties to the 1980 Child Abduction 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.

6. The conference reiterates that judges designated to the IHNJ should be sitting judges with appropriate authority and experience in international family law matters.

7. The conference recognises the accomplishments of the Latin American and Caribbean Regional Office and the Asia Pacific Regional Office of the Permanent Bureau in facilitating the expansion of the IHNJ.

### **Overview of how the 1980 Child Abduction Convention is working globally and regionally (Topic 1)**

8. Since the last meeting of the IHNJ, held from 11 to 13 November 2015, in Hong Kong (Special Administrative Region, China), the 1980 Child Abduction Convention has attracted six Contracting Parties (*i.e.*, Philippines (2016), Bolivia (2016), Pakistan (2017), Jamaica (2017), Tunisia (2017) and Cuba (2018)). In addition, since its last meeting, the IHNJ has welcomed 33 additional members and nine new Member States.

9. The conference noted the results of the 2015 Nigel Lowe and Victoria Stephens Statistical Survey which shows that applications are generally resolved more quickly, compared with the 2008 Survey. The average time taken to reach a decision of judicial return was 158 days (compared with 166 days in 2008) and a judicial refusal took an average of 245 days (compared with 286 days in 2008). For applications resulting in a voluntary return the average time taken was 108 days, compared with 121 days in 2008. As there is still a severe problem of delays, the conference recognises that improvements are still required (see C&Rs No 16-18 below).

### **Promoting direct judicial communications and sharing experiences to ascertain foreign law (Art. 14), make determinations of wrongful removal (Art. 15) and organise safe return of the child (Topic 2)**

10. The conference acknowledges that the scope of DJC may be broad, and not necessarily restricted to the 1980 Child Abduction Convention.

11. Based on the experience of several Network Judges, the conference recognises the advantages of using DJC to ascertain foreign law in order to make swift determinations on the wrongful removal or retention, as well as for exploring the possible implementation of arrangements or protective measures that might be needed to secure the safe return of the child.

12. Where possible, in order to avoid delays in the procedure, the conference suggests to judges having recourse to Article 14 instead of Article 15 for a determination of whether the removal or retention was wrongful.

13. The conference emphasises the importance for members of the IHNJ to use their best efforts to swiftly respond to DJC requests. When the requested judge anticipates a delay in providing a response, he / she should at a minimum acknowledge receipt of the request and provide an indication as to when a response will be provided.

14. The conference recognises the potential for judicial education bodies and other bodies in every State to promote the use of DJC and to raise awareness and educate judges, practitioners and other system actors concerning the Hague Children's Conventions and the IHNJ, with a view to developing expertise and building mutual trust and confidence.

15. The conference recognises the benefit of:
- reporting case law on DJC for inclusion in INCADAT (the International Child Abduction Database < [www.incadat.com](http://www.incadat.com) >); and
  - reporting experiences of DJC on the future specialised section of the HCCH website on the IHNJ and in *The Judges' Newsletter on International Child Protection*.

**Avoiding delays: Revision of internal procedures applicable to child abduction cases, in administrative, judicial and enforcement phases (Topic 3)**

16. The conference notes that several jurisdictions have developed special guidelines and / or procedures which provide for strict timeframes both at first instance and appeal levels, and which have allowed to shorten considerably the timeframes to decide 1980 Child Abduction Convention cases.

17. The conference encourages judges to review internal judicial procedures applicable to child abduction cases (including, where applicable, at the enforcement phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter timeframes consistent with Articles 2 and 11 of the 1980 Child Abduction Convention. In particular, judges should give consideration as to whether concentration of jurisdiction, if possible, will assist in resolving child abduction cases in their jurisdiction, and if so, promote it as appropriate.

18. The conference recognises the importance of being creative and flexible in order to facilitate access to the proceedings by parents such as being flexible when scheduling hearings and accepting the use of appropriate audio-video secure means of communication when a parent cannot appear in person before the court.

**Co-operation between Hague Network Judges and between Hague Network Judges and Central Authorities – Sharing of experiences (Topic 4)**

19. The conference welcomes the increasing co-operation within States between the member(s) of the IHNJ and the relevant Central Authorities resulting in the enhanced operation of the 1980 and 1996 Conventions.

20. The conference takes note that many members of the IHNJ have developed excellent working relationships with their Central Authorities. Some have regular meetings to discuss the operation of the Convention, trainings and implementation of good practices.

**Mediating Hague Convention cases (Topic 5)**

21. The conference welcomes the appropriate use of mediation in international child abduction cases. Guidance with respect to the appropriate use of mediation may be found in particular in the [Guide to Good Practice on Mediation](#).

22. The conference notes that some jurisdictions have reported successful results in including mediation within the judicial procedure (court-based mediation). Parties are referred to mediation at the start of the proceedings in a way that does not generate delays to such proceedings. In such context, mediation also facilitates the preparation of parents for the outcomes of return proceedings.

23. Subject to limitations under domestic law, the conference encourages the use of modern means of technology to allow at distance mediation, if appropriate, where in-person mediation is not practicable.

**Report on Professors Marilyn Freeman and Nicola Taylor's latest research project on "The Voice of the Child" – Volume XXII of *The Judges Newsletter* (Topic 6)**

24. The conference welcomes the latest research project by Professors Marilyn Freeman and Nicola Taylor on the voice of the child in relation to Article 13(2) of the 1980 Child Abduction Convention and welcomes the possible expansion of the research project to cover the voice of the child in general under both the 1980 Child Abduction and the 1996 Child Protection Conventions including mediation under these Conventions.

25. The conference acknowledges that there exists across jurisdictions a wide range of approaches and methods to ascertain the views of the child. Some jurisdictions have developed guidelines to hear children.

26. The conference takes note that in some jurisdictions the voice of the child is considered evidence where it is not the case in other jurisdictions.

27. The conference further emphasises that the person hearing the child, whether a judge or other professional, in a Hague case should have received adequate training. Psychologists or other professionals hearing the child should receive training on the 1980 Child Abduction Convention.

**Draft Guide to Good Practice on Article 13(1)(b) (Topic 7)**

28. The conference welcomes the progress made on the development of a Draft Guide to Good Practice on Article 13(1)(b).

**Practical strategies for implementing the Convention and enforcing judicial orders (Topic 8)**

29. The conference acknowledges the importance for return orders to be crafted such that they may be enforced quickly and effectively. In particular, return orders should, in so far as possible and appropriate, include details with respect to the persons and steps involved to help facilitate the safe return of the child to his / her country of habitual residence. Central Authorities in both States should also coordinate as appropriate to help facilitate the safe return of the child.

30. As appropriate, the conference encourages judges to re-establish contact between the left-behind parent and the child as soon as possible in the proceedings.

31. The conference takes note that many members of the IHNJ have been instrumental in implementing changes of practices or procedures in their jurisdictions, with a view to securing an effective operation of the 1980 Child Abduction Convention, and encourages all Hague Network Judges to consider the possible need for adjustments, in consultation with their Central Authority, as appropriate, in their respective jurisdictions.

**The role of the Hague Network Judge within the framework of the 1996 Convention, and its interplay with the 1980 Child Abduction Convention in dealing with return, relocation and access cases (including urgent measures of protection and advance recognition) (Topic 9)**

32. The conference notes the many benefits and use of the 1996 Child Protection Convention in relation to the use of the 1980 Child Abduction Convention, including the primary role played by the authorities of the State of habitual residence of the child, rules on jurisdiction, applicable law, recognition and enforcement and co-operation with respect to the organisation and enforcement of

rights of custody, access / contact, urgent measures of protection, possible post-return assistance and relocation.

33. When taking measures of protection in accordance with the 1996 Child Protection Convention in a child abduction case (for example, to facilitate interim access or ensure safe return), judges are invited, preferably through Central Authorities or members of the IHNJ by way of DJC to obtain information on available measures of protection in the other State with a view to ensuring the effective implementation of such measures.

#### ***The Judges Newsletter* and development of IT communications tools by the Permanent Bureau (Topic 10)**

34. The conference highlights the usefulness of *The Judges' Newsletter*, in particular when published with a thematic approach. Taking into account Conclusions and Recommendations Nos 71 and 72 of the Seventh Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions, the conference supports the continued publication of *The Judges' Newsletter*, subject to available resources.

35. The conference recommends that the next volume of *The Judges' Newsletter* (Vol. XXIII) be a Special Issue on the 20th Anniversary of the IHNJ and *The Judges' Newsletter*.

36. The conference invites judges to share with the Permanent Bureau any special topic relevant to international child protection that they would like to see addressed in a future volume of *The Judges' Newsletter*.

37. The conference welcomes the future development of a secured IHNJ Platform of the HCCH website, funded by a voluntary contribution of the Federal Ministry of Justice and Consumer Protection of Germany.

38. The conference invites interested judges who would like to be involved in the development of the secured IHNJ Platform to reach out to the Permanent Bureau.

39. The conference recommends that members of the IHNJ post on the future secured IHNJ Platform of the HCCH website information relevant to international family law, such as upcoming significant international and regional conferences on international family law and the subsequent "Conclusions and Recommendations" and other materials. As much as possible, these resources should be shared with Central Authorities to ensure that the State Parties to the 1980 Child Abduction and 1996 Child Protection Conventions are aware of the latest developments and events.

#### **Possible criminal prosecution of abducting parent and facilitators; effects on child abduction cases and safe return (Topic 11)**

40. The conference noted Conclusion and Recommendation No 1.8.4 of the 2006 Special Commission meeting to review the operation of the 1980 and 1996 Hague Conventions:

"The Special Commission reaffirms Recommendation 5.2 of the 2001 meeting of the Special Commission: 'The impact of a criminal prosecution for child abduction on the possibility of achieving a return of the child is a matter which should be capable of being taken into account in the exercise of any discretion which the prosecuting authorities have to initiate, suspend or withdraw charges.' The Special Commission underlines that Central Authorities should inform left-behind parents of the implications of instituting criminal proceedings including their possible adverse effects on achieving the return of the child. In cases of

voluntary return of the child to the country of habitual residence, Central Authorities should co-operate, in so far as national law allows, to cause all charges against the parent to be abandoned. The Central Authorities should also inform the left-behind parent of the alternative means available to resolve the dispute amicably.”

#### **Future meetings of members of the IHNJ**

41. The conference acknowledges the value of this meeting and its successful outcome and notes the desirability of convening meetings of members of the IHNJ and officials from Central Authorities.

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