ENLÈVEMENT D'ENFANTS / PROTECTION DES ENFANTS CHILD ABDUCTION / PROTECTION OF CHILDREN

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ANNEXES

RAPPORT RELATIF AUX COMMUNICATIONS ENTRE JUGES CONCERNANT LA PROTECTION INTERNATIONALE DE L'ENFANT

établi par Philippe Lortie, Premier secrétaire

ANNEXES

REPORT ON JUDICIAL COMMUNICATIONS IN RELATION TO INTERNATIONAL CHILD PROTECTION

drawn up by Philippe Lortie, First Secretary

Document préliminaire No 3 B – annexes – d'avril 2011 à l'intention de la 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

Preliminary Document No 3 B – Annexes – of April 2011 for the attention of the 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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Conclusions et Recommandations relatives aux communications entre juges adoptées lors de conférences judiciaires sur la protection internationale des enfants

(organisés ou facilités par le Bureau Permanent ou auxquelles il a participées)

Conclusions and Recommendations on judicial communications adopted at judicial conferences on the international protection of children

(organised, facilitated or attended by the Permanent Bureau)

Judicial Seminar on the International Protection of Children, De Ruwenberg, 22-25 June 1998

- 1. The recommendation was made that, following the example of Australia, judges attending the seminar should raise with the relevant authorities in their jurisdictions (e.g., court presidents or other officials, as appropriate within the different legal cultures) the potential usefulness of designating 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 own jurisdictions and with judges in other states, in respect, at least initially, of issues relevant to the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.
- In accordance with the objectives of the Grotius programme of the European Union, a number of judges outlined their plans for passing on the information and experience gained during the seminar to judicial colleagues in their several jurisdictions.
- 3. As short newsletter would be circulated on a regular basis (perhaps twice yearly) by the Permanent Bureau of the Hague Conference on Private International Law to judges attending the Seminar, with a view to the exchange of information concerning judicial co-operation in matters of international child protection. The information would include any changes in personal contact details, notes on developments concerning relevant international instruments (e.g., new ratifications and accessions), reference to significant national developments (e.g., case law, procedural or organisational changes, judicial conferences/seminars, etc.), and examples of successful practice in international judicial co-operation. The network would be made available to other interested judges.
- 4. There was broad support for the view that efforts should be made to ensure greater judicial participation in the work of the Hague Conference on Private International Law, both in the development of new international instruments and in the periodic reviews of their practical operation.
- 5. There was agreement that the seminar had been of practical value in promoting mutual understanding and in forwarding the objective of more effective international judicial co-operation in matters of international child protection. It was recommended that further seminars of this kind be organised periodically (every three or four years).

[...]

Second Judicial Seminar on the International Protection of Children, De Ruwenberg, 3-6 June 2000

- 1. The Seminar has been an important event in establishing mutual understanding, respect and trust between the Judges from the different countries factors which are essential to the effective operation of the international instruments concerned with the protection of children, and in particular the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.
- 2. The format of the Seminar, involving intensive discussions among judges from four jurisdictions around a number of practical cases, has been a success and is a model for such seminars in the future. Differences of approach, where they exist, have

been revealed and the way has been opened to greater consistency in interpretation and practice under the Conventions.

3. The Judges participating in the Seminar will endeavour to inform their colleagues in their respective jurisdictions about the seminar and its outcome, and will in particular make available information about the International Child Abduction Database (< www.incadat.com >) and about the Special Commission on the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, which is to be held at The Hague in March 2001.

[...]

5. The need for more effective methods of international judicial co-operation in respect of child protection is emphasised, as well as the necessity for direct communication between Judges in different jurisdictions in certain cases. The idea of the appointment of liaison Judges in the different jurisdictions, to act as channels of communication in international cases, is supported. Further exploration of the administrative and legal aspects of this concept should be carried out. The continued development of an international network of Judges in the field of international child protection to promote personal contacts and the exchange of information is also supported.

[...]

Third United Kingdom-German Conference on Family Law, Edinburgh, Scotland, September 2000

[...]

5. Before [new international instruments of legislation, including conventions, multilateral and bilateral] come into force the further education of judges who will be involved in their application should be promoted; bilateral or multilateral conferences may be amongst the ways whereby this is achieved;

[...]

Common Law Judicial Conference on International Parental Child Abduction, Washington, D.C., 17-21 September 2000: "Best Practices" to improve operation of the Child Abduction Convention

- 1. This Conference supports the conclusions adopted at the analogous Judicial Seminar on the International Protection of Children at the Conference Centre De Ruwenberg, 3-6 June 2000, and adopts parallel resolutions, as follows:
 - a. Such conferences are important events in emphasizing mutual understanding, respect and trust between the Judges from the different countries factors which are essential to the effective operation of international instruments concerned with the protection of children, and in particular, the Hague Child Abduction Convention.

[...]

e. The need for more effective methods of international judicial co-operation in the field of child abduction is emphasised, as well as the necessity for direct communication between Judges in different jurisdictions in certain cases. The idea of the appointment of liaison Judges in the different jurisdictions, to act as channels of communication in international cases, is supported. Further exploration of the administrative and legal aspects of this concept should be carried out. The continued development of an international network of Judges in the field of international child abduction to promote personal contacts and the exchange of information is also supported.

[...]

Francophone-Anglophone Family Law Judicial Conference, Dartington Hall, England, 4-7 June 2001

[...]

2. This colloquium supports the international collaboration of family law judges encouraged by the Hague Permanent Bureau and particularly the extension of the network of liaison judges.

[...]

Third Judicial Seminar on the International Protection of Children, De Ruwenberg, 20-23 October 2001

[...]

8. <u>Liaison Judges</u>

The growth of the network of liaison judges is noted as a significant aid to international judicial communication, collaboration and understanding.

[...]

10. <u>The Judges' Newsletter on International Child Protection</u>

The establishment of the Judges' Newsletter on International Child Protection as a biannual publication is welcomed. Liaison and other recipient judges will ensure circulation to the specialist judiciary in their respective jurisdictions.

11. Consulting the judiciary on changes in the law

Legislative processes, which concern the international protection of children, including those within the European Union, should be structured in a way, which allows for timely and appropriate consultation with those elements of the judiciary with experience in the field who will have the responsibility of applying new laws or regulations.

12. <u>International Judicial Seminars</u>

The De Ruwenberg seminar has offered an opportunity for judges and experts from seven jurisdictions to explain and compare the operation of the 1980 Hague Convention in their countries, to share experiences and to develop the mutual confidence necessary for the operation of international instruments of this kind. The Hague Conference is invited to facilitate more international judicial

conferences of this nature. States Parties are asked to recognise the importance of such events in reinforcing the international protection of their children, and to make available the necessary funding.

[...]

United Kingdom-Pakistan Judicial Conference on Child and Family Law, London, England, 15-17 January 2003

[...]

9. It is agreed that the UK and Pakistan shall each nominate a judge of the superior court to work in liaison with each other to advance the objects of this protocol.

[...]

Judges' Seminar on the 1980 Hague Convention on the Civil Aspects of International Child Abduction - Conclusions, Noordwijk, 19-22 October 2003

[...]

International Judicial Collaboration

11. This conference supports the continuing work of the Permanent Bureau to strengthen and extend international judicial collaboration.

[...]

Anglo-Egyptian Congress, London, England, 19-20 January 2004

[...]

8. The practical benefits of closer judicial collaboration should be secured by the appointment of liaison judges and by facilitating other forms of direct judicial communication.

[...]

Judicial Conference on Cross-frontier Family Law issues involving certain "Hague Convention" and "non-Hague Convention" States from the Islamic world, St. Julian's, Malta, 14-17 March 2004

- 10. Successful inter-State co-operation in child protection depends on the development of mutual trust and confidence between judicial, administrative and other competent authorities in the different States. The regular exchange of information, as well as meetings between judges (and other officials) at a bilateral or a multilateral level, are a necessary part of building this trust and confidence.¹
- 11. Networking between judges concerned with international child protection is a growing phenomenon, ideally assisted by the appointment of liaison judges.

¹ For example, in the Euromed context.

Judicial networking facilitates the exchange of information as well as direct communications between judges, where appropriate, in specific cases.

[...]

Latin American Judges' Seminar on the 1980 Hague Convention on the Civil Aspects of International Child Abduction, Monterrey, Nuevo Leon, Mexico, 1-4 December 2004

International Co-operation

The effective functioning of the Hague Convention of 1980 in the interests of children depends on close co-operation among the Judges and among the Central Authorities of the 75 Contracting States. Regular international meetings and contacts among Judges and Central Authorities for the purpose of exchanging information, ideas and good practice are needed. These meetings and contacts help to develop and maintain the mutual understanding and trust necessary for the Convention to work well.

[...]

Liaison Judges

15. The growth of the network of liaison judges is noted as a significant aid to international judicial communication, collaboration and understanding.

[...]

Latin American Judges' Seminar: The Hague Children's Conventions and Cross-Border Protection of Children within Latin America, The Hague, Netherlands, 28 November-3 December 2005

International Co-operation

- 1. The effective functioning of the Hague Children's Conventions depends on close co-operation among Judges and Central Authorities on internal and international levels.
- 2. Particularly, within the 1980 Convention, it was recognized that when deciding on a child abduction case, the requested Judge should trust that the Judicial Authorities of the requesting State will take care of the due protection of the child, and where necessary the accompanying parent, once the child is returned.

[...]

<u>Judicial Communications and Liaison Judges</u>

- 4. Effective and fluent communications between Judges and Central Authorities should be encouraged, as a means of speeding procedures and achieving the necessary co-operation to give effective protection to the child in both States involved.
- 5. Strong support was expressed for the establishment of a network of Liaison Judges to promote and facilitate international judicial communications.

- 6. The Judges present undertook to explore in their own jurisdictions, with the support of the Permanent Bureau, the feasibility of designating a Liaison Judge.
- 7. It is important that Liaison Judges act in co-operation and co-ordination with Central Authorities.

[...]

Safe Return and Protective Measures

20. Where the proof of violence or abuse is not clear it may nevertheless be necessary, when ordering the return of the child, to ensure that the authorities in the requesting State are alerted to any risk to the child or the accompanying parent and that any necessary measures of protection are put in place in that country. This can sometimes be accomplished through the medium of the Central Authorities. A Liaison Judge may also play a co-ordinating role in such cases.

[...]
Judicial Seminars and Training

- 36. Attention was drawn to the importance of convening national and regional seminars, coordinating with other actors involved in the protection of children, promoting co-ordination and communications among judiciary in the region; resources and networking among Judges and Central Authorities; development of an International Child Protection Network.
- 37. Regular international meetings and contacts among Judges and Central Authorities for the purpose of exchanging information, ideas and good practice are needed. These meetings and contacts help to develop and maintain the mutual understanding and trust necessary for the Conventions to work well.
- 38. Recognition was given to the extreme importance of judicial training in international child protection and other areas of private international law. Training courses should be provided at the national, regional and international levels.

[...]

Continuing Dialogue among the Judges

44. The Judges present committed themselves, with the active assistance of the Permanent Bureau, to a continuing dialogue in matters of cross-border child protection within the region, and to keeping each other and the Permanent Bureau informed concerning training initiatives in their countries.

[...]

Second Judicial Conference on Cross-Frontier Family Law Issues, St. Julian's, Malta, 19-22 March 2006

[...]

9. The further development since the first Malta Declaration of the international network of liaison judges is welcomed. New legislative provisions in respect of liaison judges in certain States are welcomed, as well as the development of specific models adapted to the needs of particular States, including Federal States.²

² Significant regional developments such as the European Union Judicial Network in Civil and Commercial Matters, are also welcomed.

It is emphasised that encouragement for the appointment of liaison judges extends to States which are not Parties to the Hague Children's Conventions.

The Judges' Newsletter on International Child Protection serves as a valuable medium for the exchange of information and opinion among judges in all countries and for the promotion of judicial seminars and conferences.

[...]

International Seminar on the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, Quito, Ecuador, 23-24 March 2006

[...]

- 3. It is necessary to develop co-operation between Childhood and Adolescence Judges and the Ecuadorian Central Authority in order to achieve the effective operation of the Hague Convention.
- 4. It is necessary to create or designate a liaison judge in each province in order to facilitate the communication between Judges both childhood and adolescence and civil and the Central Authority.

[...]

Judicial Seminar on International Co-operation and the Protection of Children in the Southern and Eastern African Region, The Hague, 3-6 September 2006

[...]

Judicial Co-operation

- 2. It is of fundamental importance to develop inter-State co-operation at the judicial level through, among other measures:
- b. developing a Judicial Network on the African continent focusing on the international protection of children;
- c. offering opportunities for training and sensitisation of Judges and Magistrates in international child protection law;
- d. holding regular international and regional meetings involving Judges and Magistrates concerned with cross border child protection cases; and
- e. promoting collaboration between the judicial, social, health and education services.

[...]

4. It is affirmed that this meeting in The Hague has provided a valuable forum for the exchange of information and ideas amongst Judges, Magistrates and other child protection Experts, and for the development of the mutual trust, confidence and solidarity amongst Judges and Magistrates necessary for effective crossborder judicial co-operation.

Judicial Seminar for French-speaking African Countries on the principal Hague Conventions on International Child Protection, International Judicial and Administrative Co-operation and International Litigation, The Hague, 27-31 August 2007

[...]

Judges' Networks

19. It was agreed to continue the development of international judicial co-operation already under way in the region under the auspices of the AA-HJF and the AHJUCAF more particularly in the field of child protection in order to foster communication, collaboration and understanding between judges internationally. The participants supported the idea of appointing within the various jurisdictions one or more judges whose task would be to facilitate international communication between judges and, especially, to act as intermediaries between their national colleagues and other judges in the Hague International Judges' Network.

Ongoing dialogue

20. The judges emphasised the importance of continuing, with the active assistance of the Permanent Bureau, the existing dialogue on issues of cross-border child protection and international judicial and administrative co-operation in the region, of keeping each other informed of training initiatives in their countries and of alerting the Permanent Bureau to those initiatives.

Seminar and training for judges

- 21. The concept behind the seminar, which included numerous discussions between judges from different countries on the basis of case studies, was shown to be useful and could be the basis for the organisation of similar seminars in the future.
- 22. There was recognition of the great importance of training and of raising the awareness of judges to international child protection and to international judicial and administrative co-operation. Training sessions should be provided at national, regional and international levels.
- 23. Attention was drawn to the importance of holding national and regional seminars, of co-ordinating with other actors involved in child protection and international judicial and administrative cooperation and of encouraging co-ordination and communication between judges in the region.
- 24. The necessary efforts should be made to raise the resources to enable technical assistance and training for that purpose in each State. The participants welcomed the efforts leading to the creation within the Permanent Bureau, with the aid of voluntary contributions, of the Hague Conference International Centre for Judicial Studies and Technical Assistance which can assist States which are considering becoming parties or which are parties to the Hague Conventions.

Third Malta Judicial Conference on Cross-Frontier Family Law Issues, St. Julian's, Malta, 23-26 March 2009

[...]

<u>Direct judicial communications and designation of International Haque Network Judges</u>

9. The conference emphasises the value of direct judicial communications in international child protection cases.

States that have not designated International Hague Network Judges are strongly encouraged to do so. This includes States that are not Parties to the relevant Hague Conventions. It is recognised that in some States designations may be difficult and in that respect, such States, where appropriate, may seek the assistance of the Permanent Bureau in making their designation.

Judges designated should be sitting judges with appropriate authority and experience in the area of international child protection.

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.

The process for the designation of International Hague Network Judges should respect the independence of the judiciary.

Training programmes

- 10. Judges and other professionals from "Hague State Parties" and "non-Hague State Parties" dealing with international family disputes and child protection matters should have opportunities to increase their knowledge and understanding of the relevant international instruments and procedures through:
 - information sessions:
 - seminars and conferences;
 - participation in judicial networks;
 - receiving The Judges' Newsletter on International Child Protection.³

The Permanent Bureau of the Hague Conference on Private International Law offers its expertise to participate or assist in any such training programmes.

³ Published by the Permanent Bureau and available on the Hague Conference website at < www.hcch.net > under "Publications".

Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, Mexico, 23-25 February 2011

<u>Achievements made in the Inter-American region since the Monterrey December 2004</u> Judicial Seminar

Examples of achievements relating to the judiciary

- 1. An impressive number of regional designations to the International Hague Network of Judges was recognised. Almost all States in the Inter-American region are represented on the Hague Network.
- 2. A regional Model Law on Procedure for the Application of the Conventions on International Child Abduction was developed by a group of experts gathered by the Hague Conference on Private International and the Inter-American Children's Institute (IIN) from 19 to 21 September 2007.
- 3. Several States in the region have implemented the Model Law on Procedure for the Application of the Conventions on International Child Abduction.
- 4. Rules of procedures have been amended in a number of States with a view to increase the speed of procedures. In some cases, grounds for appeal have been limited. In some States the number of hearings for a return application has been reduced to a single hearing, where possible.
- 5. Concentration of jurisdiction has been achieved in a number of jurisdictions.
- 6. National networks of judges have been established or are being established in a number of States that, among other things, will support the Hague International Network of Judges and / or IberRed.
- 7. Direct judicial communications in specific cases have increased. The recent use in a small number of States of secured videoconferencing to facilitate such communications was welcomed.
- 8. Judicial seminars and conferences have been organised nationally and regionally in order to disseminate information, increase awareness, and provide training to judges.

[...]

Conclusions and recommendations relating to judicial matters

Members of the International Hague Network of Judges from the Inter-American region agreed as follows:

Inter-American Model Law

28. States from the Inter-American region are invited to implement the Inter-American Model Law.

[...]

Judicial communications

30. Members of the International Hague Network of Judges emphasised the importance of both general judicial communications and direct judicial communications in specific cases.

- 31. States that have not designated a Hague Network judge are strongly encouraged to do so.
- 32. Members of the Hague Network ratified the Montevideo Declaration, on the scope and content of judicial communications, adopted at the meeting of the Inter-American Network of December 2009.
- 33. The Emerging Rules regarding the Development of the International Hague Network of Judges and the Draft 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 Judge as they will be presented to the Sixth Meeting of the Special Commission to Review the Practical Operation of the 1980 and 1996 Conventions (1-10 June 2011), were endorsed.
- 34. Members of the Hague Network underlined the importance of having, as soon as possible, a legal basis to carry out direct judicial communications in specific cases. It was suggested that States and / or competent authorities be invited to provide for such a legal basis, where necessary. Such legal basis could be found in Guidelines issued by national judicial councils, Rules of Court, the Inter-American Model Law or domestic law. It is hoped that the endorsement of the Draft General Principles for Judicial Communications by the Sixth Meeting of the Special Commission of June 2011 will assist in that respect.
- 35. Efforts should be made within States of the region to promote the appropriate use of direct judicial communications, for example by the development of national rules of conduct to govern the use of direct judicial communications at the domestic level between the Member of the Hague Network and his or her colleagues within the jurisdiction, and to increase awareness of the existence and role of Network judges.
- 36. The development of national networks in support of the international and regional networks should continue to be advanced.

[...]

IT tools

41. Members of the Hague Network emphasised the importance of implementing as soon as possible, under the auspices of the Hague Conference, Internet-based secured means of communications such as secured e-mail and videoconferencing systems with a view to facilitate networking and reduce the costs of telephone communications.

Conférence conjointe de janvier 2009
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

January 2009 Joint Conference
European Commission-Hague Conference
on Direct Judicial Communications on Family Law Matters and
the Development of Judicial Networks





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.
- 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.

Loi néerlandaise de mise en œuvre de la protection internationale des enfants (traduction du Bureau Permanent)

Dutch International Child Protection Implementation Act

Dutch International Child Protection Implementation Act

Bill concerning the Application of the *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children,* done at The Hague on 19 October 1996, and Council Regulation (EC) No. 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility, Repealing Council Regulation (EC) No. 1347/2000 (OJ L 338), and amending the Civil Code, the Code of Civil Procedure and the Act concerning the Application of the EC Enforcement Regulation

[The following is an extract from The Netherlands' Bill concerning the application of the 1996 Convention and the Brussels II a Regulation. Readers might be interested in these provisions on international co-operation between courts.]

"Chapter 7 – International co-operation between courts Section 24

- 1. The Council for the Judiciary shall designate one or more children's judges, who are charged in particular with facilitating contacts between courts in the Netherlands before whom proceedings are pending under the Convention, the Regulation or this Act and courts abroad who have jurisdiction in such matters, and contacts between courts abroad before whom such proceedings are pending and courts in the Netherlands who have jurisdiction in such matters.
- 2. If a court in the Netherlands wishes to consult a court abroad in connection with proceedings as referred to in subsection 1, it may do so through the intermediary of the judge referred to in subsection 1.
- 3. If a court abroad wishes to consult a court in the Netherlands in connection with proceedings as referred to in subsection 1 which are pending before it, it may also do so through the intermediary referred to in subsection 2.
- 4. If documents need to be translated in connection with a consultation as referred to in subsections 2 or 3 or if the assistance of an interpreter is necessary for this purpose, the judge referred to in subsection 1 shall arrange for this.
- 5. Before a consultation as referred to in subsection 2 takes place, the court before which the proceedings are pending shall inform the parties of this. After the consultation has taken place, it shall report to the parties on the consultation.
- 6. The transfer of applications as referred to in Articles 8 and 9 of the Convention and Article 15 of the Regulation shall be arranged through the intermediary of the judge referred to in subsection 1. The court which has transferred an application shall inform the parties of this."

Loi type de la CNUDCI de 1997 sur l'insolvabilité internationale 1997 UNCITRAL Model Law on Cross-Border Insolvency

1997 UNCITRAL Model Law on Cross-Border Insolvency

[...]

Article 25. Cooperation and direct communication between a court of this State and foreign courts or foreign representatives

- 1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State].
- 2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives.

- 1. In matters referred to in article 1, a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts and foreign representatives.
- 2. The [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

- a) Appointment of a person or body to act at the direction of the court;
- b) Communication of information by any means considered appropriate by the court:
- c) Coordination of the administration and supervision of the debtor's assets and affairs;
- d) Approval or implementation by courts of agreements concerning the coordination of proceedings;
- e) Coordination of concurrent proceedings regarding the same debtor;
- f) [The enacting State may wish to list additional forms or examples of cooperation].

Illinois State No 750 ILCS 35

Illinois State No 750 ILCS 35

Section 7. Simultaneous Proceedings in Other States

- (a) A court of this state shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.
- (b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under Section 10 and shall consult the child custody registry established under Section 17 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.
- (c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with Sections 20 through 23 of this Act. If a court of this state has made a custody judgment before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

Section 8. Inconvenient Forum

(a) A court which has jurisdiction under this Act to make an initial or modification judgment may decline to exercise its jurisdiction any time before making a judgment if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

[...]

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available to the parties.

Section 24. International Application

The general policies of this Act extend to the international area [...].

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Following are some relevant extracts from the draft Bill and prefatory notes and comments by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Section 110. Communication between Courts¹

- (a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].
- (b) Communications between courts that affect the substantive rights of a party must be made in a manner that allows the parties to participate, or allows the parties to present jurisdictions facts and legal arguments to the courts, before a final determination is made as to which forum is appropriate. A record must be made of those communications between courts. The record may consist of notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum of other electronic communications between the courts, or a memorandum made by one of more courts after the communication.
- (c) Communications between courts on schedules, calendars, court records, and other matters that do not affect the substantive rights of the parties may occur without informing the parties. A record need not be made of those communications.

Section 204. Temporary Emergency Jurisdiction²

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

[...]

¹ Comment by NCCUSL: "This section emphasizes the role of judicial communications under the Act. It contains the authorization for a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication and recognizes that there will be

Language has been added to emphasize the role of the parties in the communication process. If the communication between the court involves relatively inconsequential concerns such as scheduling, calendars or consultation on other minor matters, the communication can occur without the parties being informed or participating. Included within this type of communication would be matters of cooperation between courts

under Section 112.

increasing use of modern communication techniques.

However, on all matters which could affect the parties' substantive rights, a court must communicate with another court in a manner which allows the parties to participate or to present jurisdictional facts and arguments. In particular this includes communications that are required under Section 204 (Emergency Jurisdiction), Section 206 (Simultaneous Proceedings), Section 207 (Forum Non Conveniens), and Section 305 (Simultaneous Proceedings). In any event, a record of the communication must be made. No particular form of communication is required to inform the parties that a communication between courts is scheduled. An informal communication is sufficient.

The purpose of this section is to regularize the communication process between courts. It preserves the flexibility necessary to accommodate busy judicial schedules while including protection for the parties against unauthorized *ex parte* communications. A full discussion of the problem can be found in State *ex rel Grape* v. *Zach*, 524 N.W.2d 788 (Neb. 1994)."

² Comment by NCCUSL: "The communication between courts is to be accomplished in accordance with Section 110. The communication under this section affects the substantive rights of the parties and therefore the provisions of that section on participation of parties and making of the record are applicable."

(d) A court of this state that has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made, by a court of a state having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency and protect the safety of the parties and the child.

Section 206. Simultaneous Proceedings³

- (a) Except as otherwise provided in Section 204, a court of this state may not exercise its jurisdiction under this [section] if at that time of the commencement of the proceedings a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction substantially in conformity with this [Act], unless the proceeding is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.
- (b) Except as otherwise provided in Section 204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this [Act], the court of this state shall stay its proceedings and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this [Act] does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.
- (c) Proceed with the modification under conditions it considers appropriate.

Section 306. Simultaneous Proceedings

If a proceeding for enforcement under this [section] has been or is commenced in this State and a court of this State determines that a proceeding to modify the determination has been commenced in another State having jurisdiction to modify the determination under [section] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

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³ Comment by NCCUSL: "Under this Act, the simultaneous proceedings problem will arise only when there is no home state and more than one significant connection state. For those cases this section retains the "first in time" rule of the UCCJA. Subsection (b) retains the UCCJA's policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another state. The communication is governed by Section 110. It is a communication that affects the substantive rights of the parties."

Pratiques recommandées au Canada pour les communications judiciaires entre tribunaux (Traduction du Bureau Permanent)

The Canadian Recommended Practices for Court-to-Court Judicial Communications

Recommended practices for court-to-court judicial communications

Background

The Canadian Judicial Council, which has approved the establishment of the Canadian Network of Contact Judges, has given the Network the mandate to explore the concept of judicial networking and collaboration in cases of child abduction and custody. The following checklist sets out the Network's recommendations for such practices.

Checklist1

INITIATING CONTACT WITH FOREIGN COURTS

A. Due process and transparency

1. Every judge engaging in direct judicial communication must respect the law in his or her jurisdiction.

Notification of the Parties about communication

a) The parties and/or counsel involved should be notified in advance if possible of the nature of the proposed communication provided that such notice does not unduly delay the process.

3. Record of the communication

- a) Judges involved in a particular communication should keep a record of what was discussed preferably using a recording device or court reporter.
- b) The record should be available to the parties and the judge in the other jurisdiction if requested.
- c) Any correspondence, emails or other written communication between judges should be preserved for the record.

4. Participation of the parties

- a) If both judges involved in the communication agree, the parties or their representative may be permitted to be present during the communication.
- b) If both judges involved in the communication agree to permit one party or representative to be present, then the other party or representative should be permitted to be present.
- c) Unless it would unduly delay the process, parties or their representative would be encouraged to be present for example via conference call facility.
- d) If both judges involved in the communication agree, the parties or their representative may be permitted to speak during the communication.
- e) If the judges involved in the communication agree to permit one party or representative to speak, then the other party or representative should be permitted a chance to answer.
- f) Consideration may be given to allow counsel to submit a question or provide information relating to the proposed communication.

¹ It is acknowledged with appreciation that James Garbolino's Hague Convention website which includes a checklist formed the basis for this checklist along with the Ontario Superior Court's "Protocol for Direct Judicial Communication and Justice Martinson's decision in *Hoole v Hoole* 2008 BCSC 1248.

5. Language

a) Because of the necessity for clarity and precision, where there are language differences, and where interpretation is needed, professional interpreters are preferred.

6. Consensus or Arrangement

a) Confirmation of any consensus or arrangements reached as between judges should be confirmed in writing and made available to the parties.

B. Nature of the request to communicate

- 1. Is there a question of foreign (interprovincial or international) law or procedure to discuss with a judge in the foreign jurisdiction?
 - a) Is there a case pending before the foreign court?
 - b) If so, is there a need to speak with the judge who actually handled portions of the case, or will any judge in the foreign jurisdiction suffice?
 - c) If no case is pending, consider the difficulty in finding a judge with whom to communicate in the foreign jurisdiction. In this instance, if there is a Network judge consider contacting that judge.
- 2. **Avoid** discussions with the foreign judge about the merits of the case.
- 3. Can the question be answered or dealt with by the Central Authority in your jurisdiction or the Central Authority in the foreign jurisdiction? If it can, consider having the Central Authority address the issue or obtain the information.
- 4. Specific examples of questions of foreign law or procedure that may arise include:
 - a) scheduling of the case in the foreign jurisdiction:
 - making of interim orders, e.g. support, protection orders;
 - ii) availability of expedited hearings;
 - b) availability of protective orders for the child or other parent;
 - c) can the foreign court accept and enforce undertakings offered by the parties in your jurisdiction;
 - d) is the foreign court willing to entertain a mirror order (same order in both jurisdictions) if the parties are in agreement;
 - e) are criminal charges pending in the foreign jurisdiction against an abducting parent;
 - f) can the abducting parent return to the foreign jurisdiction if an order is made returning the child;
 - g) what services are available to the family or the child upon the return of the child;
 - h) logistics of returning the child.

C. Setting up the communication and initiating the contact

1. Where appropriate, invite the parties or their representative to make submissions as to whether there should be court-to-court communications and the nature of the communications;

- 2. If the initiating judge decides such communication should be made in interprovincial or territorial matters they may do so by:
 - a) contacting the judge directly; or
 - b) contacting the Network judge in their jurisdiction who will assist in facilitating communication between the initiating judge and the appropriate judge in the other jurisdiction.
- 3. If it is an international matter, the initiating judge should consider contacting either their local Network judge or one of the two Canadian International Liaison judges who will assist in facilitating communication between the initiating judge and the appropriate judge in the other country.
- 4. The initial communication should be in writing (fax or e-mail) and should identify:
 - a) 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 further documents should be exchanged;
 - e) when the communication should occur (with due regard to time differences);
 - any specific questions which the initiating judge would like answered;
 - g) any other pertinent matters.
- 5. Unless the initiating judge decides otherwise, all written communications should be copied to the parties or their representative.
- 6. If the other jurisdiction is not English / French speaking, the initiating judge should make their best efforts to have the initial communication appropriately translated.