

The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017

Document	Preliminary Document <input type="checkbox"/> Procedural Document <input type="checkbox"/> Information Document <input checked="" type="checkbox"/>	No 3 of August 2017
Title	Meeting of the International Hague Network of Judges (IHNJ), Hong Kong, 11-13 November 2015 – Conclusions and Recommendations	
Author	Permanent Bureau	
Agenda item	Nos 5 and 22	
Mandate(s)		
Objective		
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
Annexes		
Related documents		



Meeting of the International Hague Network of Judges (IHNJ)

Hong Kong, 11 to 13 November 2015
(Faculty of Law, Cheng Yu Tung Tower, Centennial Campus, University of Hong Kong)

CONCLUSIONS AND RECOMMENDATIONS

From 11 to 13 November 2015, 30 judges from Argentina, Australia, Canada, People's Republic of China (Hong Kong SAR), Germany, Israel, Japan, Netherlands, New Zealand, Philippines, Poland, Singapore, South Africa, Spain, Sri Lanka, Switzerland, United Kingdom, United States of America, Uruguay, and experts from the Commonwealth, the Hague Conference on Private International Law (HCCH), including its Asia Pacific Regional Office, met to discuss the operation of the International Hague Network of Judges ("IHNJ") and Direct Judicial Communications ("DJC") in international child protection and family law matters.

WHEREAS the meeting of the IHNJ recognises the extraordinary contribution of the Honourable Justice James Garbolino to the establishment of the IHNJ as well as his tireless efforts in the service of international family justice.

The meeting of the IHNJ reached the following Conclusions and Recommendations:

1. The meeting welcomes the growth of the IHNJ which now includes 101 judges from 75 States.

Scope of DJC

2. The meeting emphasises the proven value of the IHNJ and DJC in international child abduction cases.

3. The meeting recognises that there is a broad range of topics within international family law, including international child protection and relocation, to which the IHNJ and DJC are making a contribution and have a valuable role.

Designations to the IHNJ

4. The meeting 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") or to the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (hereinafter, the "1996 Hague Convention"), to do so forthwith.

5. The meeting encourages States to ensure the availability of a network judge or an alternate at all times.

6. The meeting 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.

7. The meeting 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.

8. The meeting reiterates that judges designated to the IHNJ should be sitting judges with appropriate authority and experience in international family law matters and, where possible, on international child abduction.

9. The tenure of members of the IHNJ should be of sufficient length to enable members to contribute to the work of the IHNJ and the practical operation of the Hague Children's Conventions¹ to the fullest extent. In particular to ensure:

- the development of professional relationships of mutual trust and confidence with other members of the IHNJ;
- the development of expertise on relevant Hague Children's Conventions and DJC; and,
- the continuity of judicial participation in consecutive meetings of Special Commissions on relevant Hague Children's Conventions.

10. The importance of mentorship and the involvement of additional judges in the work of the IHNJ was also emphasised, in order to ensure continuity within national jurisdictions.

The value of annual reports and statistics

11. The meeting notes the value of Annual Reports on the use of DJC and on the activities of members of the IHNJ and encourages members of the IHNJ, where appropriate and where resources permit, to produce such reports. Consideration should be given to the development by the Permanent Bureau of a short annual report on the activities of the IHNJ for wide dissemination.

12. The meeting 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 meeting invites members of the IHNJ to provide their statistics on DJC to the Permanent Bureau of the Hague Conference regularly, based on a template to be developed by the Permanent Bureau.

Promotion of DJC and the IHNJ

13. The meeting welcomes the finalisation of the Information Document on DJC in specific cases within the context of the IHNJ, which was distributed for comments to all members of the IHNJ, and looks forward to its wide dissemination.

14. The meeting 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 meeting notes the value of the bench books (Canada), guidelines (Hong Kong SAR), protocols (Canada) and legislation (Argentina, Spain and Uruguay) on DJC which have already been developed and encourages States which have not yet done so to consider the development of such tools, consistent with the General Principles for Judicial Communications developed by the Hague Conference. States which have already developed these tools are invited to share them with all members of the IHNJ.

16. The meeting welcomes the adoption of the Iber-American Protocol on International Judicial Co-operation at the 17th meeting of the Iber-American Judicial Summit held in Santiago, Chile (2-4 April 2014), which includes provisions of the Hague General Principles for Judicial Communications. The meeting also welcomes the adoption on 11 February 2015 by the Committee of Ministers of the Council of Europe of Recommendation CM/Rec(2015)4 to Member States on preventing and resolving disputes on child relocation and its Explanatory Memorandum, which incorporates by reference the Hague General Principles for Judicial Communications.

¹ The 1980 Hague Convention, the 1996 Hague Convention, the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* and the *Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*.

17. The meeting agreed that consideration should be given to the development of a logo for the IHNJ.

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

18. The meeting notes developments in diverse jurisdictions globally in relation to legislative or other legal bases enabling cross-border direct judicial communications. In accordance with Conclusion and Recommendation No 79(c) of Part II of the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions, the Permanent Bureau will continue to compile an inventory of legal bases for DJC in various States. To this end, the *Briefing Note (Revised): Legal Basis for DJC within the context of the IHNJ* will be updated with additional information received, and a new survey to the IHNJ on this topic will be circulated in advance of the Seventh Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions.

19. Where there is concern in any State as to the proper legal basis for DJC under domestic law or procedure, the meeting invites States to take steps to ensure that the necessary legal basis exists.

Networks

20. The meeting 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 Hague General Principles for Judicial Communications.

21. The meeting recognises the value of national (informal and formal) and regional judicial networks and encourages members of the IHNJ to work towards forging such networks.

22. The need to co-ordinate between members of different networks within the same State is underlined.

Resources for members of the IHNJ

23. The meeting reiterates that 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.

24. The development of a secure electronic communication tool for members of the IHNJ by the Permanent Bureau is welcomed, subject to available resources.

Sharing of information and expertise

25. The meeting welcomes the future development of a specialised section of the Hague Conference website on DJC and the IHNJ.

26. The meeting highlights the usefulness of the Judges' Newsletter, in particular when published with a thematic approach. Taking into account Conclusions and Recommendations Nos 73 and 74 of Part I of the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions, the meeting supports the continued publication of the Judges' Newsletter, subject to available resources.

27. The meeting recommends that members of the IHNJ inform the Permanent Bureau of upcoming significant international and regional conferences on international family law and the subsequent "Conclusions and Recommendations" and other materials for inclusion in the Judges' Newsletter and in the forthcoming specialised section of the Hague Conference website.

28. The meeting invites members of the IHNJ to support the work of the Experts' Group on cross-border recognition and enforcement of agreements² in family matters involving children by providing to the Permanent Bureau a description of whether their court or courts can assume jurisdiction to give force of law to such an agreement (wholly or in part) in the following circumstances:

- their State is a Party to any or all of the Hague Children's Conventions;
- the agreement settles any or all issues such as: return or non-return of a child; education issues; child support or other forms of family maintenance; and, matrimonial / property matters.

The 1996 Hague Convention

29. States in the Asia Pacific and worldwide which are not yet Parties to the 1996 Hague Convention are invited to ratify or accede to this Convention. The meeting recognises the great practical value of the 1996 Hague Convention, including its potential to assist with the operation of the 1980 Hague Convention.

Next meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions

30. Subject to a decision of the Council on General Affairs and Policy of the Hague Conference, the meeting welcomes the holding of the Seventh Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions during the second half of 2017. Consideration should be given to adding an agenda item on Articles 11 and 26 of the 1996 Hague Convention.

Preparations for the fourth Malta Conference

31. The meeting notes the preparations that have commenced for the fourth Malta Conference ("Malta IV"), within the context of the Malta Process of the Hague Conference, which will take place in Malta from 2 to 5 May 2016.

32. Government representatives as well as judges will be invited to join country delegations to Malta IV. The meeting suggests that this may present an important opportunity not only to highlight the benefits of joining certain Hague Children's Conventions, but also to emphasise the great importance and high impact of the work of the IHNJ.

33. The meeting also suggests that the designation of judges to the IHNJ from States whose legal systems are influenced by or based upon Shari'a law, including in advance of ratifying or acceding to relevant Hague Children's Conventions, should be encouraged at Malta IV.

Commonwealth

34. The meeting welcomes the [Communique](#) of the Meeting of Commonwealth Law Ministers and Senior Officials adopted in Gaborone, Botswana (5-8 May 2014), which invites the promotion, *inter alia*, of the 1980 and 1996 Hague Conventions and the designation of judges to the IHNJ.

Future meetings of members of the IHNJ

35. The meeting acknowledges the value of this meeting and its successful outcome and notes the desirability of convening regular meetings of members of the IHNJ (*e.g.*, in connection with Special Commission meetings to review the Hague Children's Conventions).

Regional Offices of the Hague Conference

36. The meeting recognises the accomplishments of the Latin American Regional Office and the Asia Pacific Regional Office of the Hague Conference in facilitating the expansion of the IHNJ.

² Informally known as "package agreements".

Acknowledgements

37. The meeting expresses its sincere gratitude to the People's Republic of China, including the Hong Kong Special Administrative Region, and in particular the Department of Justice of the Hong Kong Special Administrative Region, for their generosity in hosting and financially enabling this conference. Thanks are also extended to the University of Hong Kong for providing facilities conducive to a successful conference.

13 November 2015