

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

### Introduction

This briefing provides an update on a range of activities that have taken place in recent months at the Hague Conference on Private International Law, including:

- (A) initiatives to promote the effective implementation and operation of the Hague Children's Conventions and to further other co-operation among States in the field of child protection;
- (B) the meeting of the 2014 Council on General Affairs and Policy of the Hague Conference;
- (C) recent publications of the Hague Conference in the area of international family law; and
- (D) a status update on the Hague Children's Conventions.

Also, please note that the Permanent Bureau of the Hague Conference on Private International Law has moved its offices. Effective 9 July 2014, the new address of the Permanent Bureau is: Churchillplein 6b, 2517 JW The Hague, Netherlands.

### **(A) Facilitating the effective implementation and operation of the Hague Children's Conventions and furthering other co-operation between States in the field of child protection**

#### ***(1) The provision of training in Guinea in relation to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (the '1993 Convention'), March 2014***

From 24 to 28 March 2014, the Permanent Bureau undertook a mission to Guinea in order to provide technical assistance to the Central Authority and representatives of competent authorities concerning the 1993 Convention, which entered into force in Guinea in 2004.

The main purpose of the mission was to provide training to the members of the newly appointed (2013) 'Commission on Intercountry Adoption'. The mission raised awareness of numerous topics of interest concerning the implementation and operation of the 1993 Convention in Guinea, including: the operation of the Central Authority, procedures in relation to the declaration of adoptability of children, procedures regarding obtaining the consent of biological parents and the authorisation of foreign accredited bodies.

During the mission, the Permanent Bureau met with the Minister in charge of adoption matters (Ministre de l'Action Sociale, de la Promotion Féminine et de l'Enfance) and a judge undertaking adoption cases, as well as representatives from UNICEF and the Embassies of France, Spain and the USA. Following the mission, the Permanent Bureau made recommendations regarding the review of current adoption legislation, establishing a clear adoption procedure and collaboration with foreign accredited bodies in the best interests of the child.

#### ***(2) Seminar on 'Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children', April 2014***

On 7 April 2014, approximately 60 representatives from States, as well as judges, representatives from regional and non-governmental organisations and experts from academia met in The Hague, the Netherlands, for the seminar 'Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children'. The seminar was organised by the Government of Canada and the Permanent Bureau of the Hague Conference and hosted by the Netherlands Ministry of Foreign Affairs. The objective of the seminar was to further encourage international dialogue on cross-border family disputes in order to secure better protection mechanisms for children in situations where the relevant Hague Children's Conventions do not apply (in particular, the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the '1980 Convention') and 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* (the '1996 Convention')). The seminar also marked the tenth anniversary of the Hague Conference's 'Malta Process' that was launched at a first so-called 'Malta Conference' held in St Julian's, Malta in 2004. For further background information concerning the Malta Process, as well as its Working Party on Mediation, please see the HCCH Briefing in October [2013] IFL at 272. In addition, more information on the Malta Process is available on the Hague Conference website ([www.hcch.net](http://www.hcch.net)) under the 'Child Abduction Section'.

An overview of the Islamic perspective on how to solve cross-border family disputes involving children was explained in particular in the keynote speech given by Professor Zaleha Kamaruddin from Malaysia and during the panel session that followed by Judge Mohammad Al Natsheh from Jordan and Dr Arik Jeop from Malaysia.

The value of alternative dispute resolution mechanisms, in particular mediation, in solving international family conflicts was elaborated in the keynote speech given by Judge Annette Olland from the Netherlands and discussed in the panel that followed by panellists Dr Umar Oseni from Malaysia, Ms Alison Shalaby (Reunite, United Kingdom) and Ms Els Prins (International Child Abduction Centre, the Netherlands). These speakers presented the efforts their States or organisations have undertaken to promote and facilitate mediation in international family conflicts, such as international child abduction cases.

At the end of the seminar, the co-chair of the Working Party on Mediation, Mr William Crosbie from Canada, summed up the discussion and reflected on the 'Way Forward' including in the Malta Process and its Working Party on Mediation. Mr Crosbie emphasised the value of the Malta Process as a unique process to bring together Contracting States to selected Hague Children's Conventions and non-Contracting States whose legal systems are based on or influenced by Sharia. The Working Party on Mediation will continue to promote practical solutions through the use of mediation in order to facilitate the resolution of difficult cross-border family conflicts involving children, including disputes about custody and access. In this regard, it will also encourage more States to create Central Contact Points on International Family Mediation. Central Contact Points have already been established in Australia, France, Germany, the Netherlands, Pakistan, Slovakia and the USA, and Canada is in the process of establishing one. (The list of Central Contact Points is available on the Hague Conference website ([www.hcch.net](http://www.hcch.net)) under the 'Child Abduction Section'.)

Information on this seminar, including the keynote speeches, has been published in Information Document No 4 of April 2014, 'Brief summary of the international seminar *Islamic legal perspectives on cross-border family disputes involving children*, held on 7 April 2014, including keynote presentations', available on the Hague Conference website ([www.hcch.net](http://www.hcch.net)) under 'Work in Progress', then 'General Affairs'.

### **(3) Conference on 'Cross-border Family Matters and the Well-Being of the Child: Asia Pacific Perspectives', May 2014**

On 13 May 2014, the Conference 'Cross-Border Family Matters and the Well-Being of the Child: Asia Pacific Perspectives' took place in Beijing, People's Republic of China. The Conference focused on the 1980 Convention and child abduction in the Asia Pacific region. The event was organised by the Hague Conference through its Asia Pacific Regional Office and Renmin University of China, with the support of the Government of China. Financial support was provided by the International Academy of Matrimonial Lawyers (IAML) and two renowned Chinese law firms: Withers and Lipman Karas.

More than 110 judges, governmental officials, academics and other experts from six Asia Pacific States (Australia, China (including Hong Kong and Macao SAR), Japan, the Republic of Korea, Philippines and Singapore), as well as two specially invited experts from the USA and the UK, attended the conference. The conference attracted a significant number of academics and practitioners from China, including Hong Kong SAR, as well as diplomats from many of the foreign embassies situated in Beijing.

The conference began with keynote speeches by Professor Louise Ellen Teitz (First Secretary at the Permanent Bureau of the Hague Conference), Lady Justice Jill Black of the English Court of Appeal and Ambassador Susan Jacobs from the US State Department. The Chinese speakers shared their views on the differences between the requirements and obligations imposed by the 1980 Convention and China's domestic practices. Other speakers talked about the implementation of the 1980 Convention in their countries.

The conference raised awareness of the 1980 Convention and provided a regional forum for the exchange of information, experiences and practices of Asia Pacific States in cross-border child abduction cases and related issues. The participants recommended that the dialogue should be continued, with increased efforts to study and exchange views on this Convention and on how to enhance child protection measures in the Asia Pacific region. The conference also highlighted the important role of the Hague Conference's Regional Office in supporting the goals and activities of the Hague Conference in the Asia Pacific region.

### **(4) The Experts' Group on the Financial Aspects of Intercountry Adoption**

Three practical tools, produced with the support of the Experts' Group on the Financial Aspects of Intercountry Adoption, have now been finalised and are available on the 'Intercountry Adoption Section' of the Hague Conference website ([www.hcch.net](http://www.hcch.net)) under 'Expert Group on the Financial Aspects of Intercountry Adoption'. (They are currently available in English only; the French versions are in preparation.) The three documents are:

- (1) Note on the Financial Aspects of Intercountry Adoption;
- (2) Tables on the Costs Associated with Intercountry Adoption; and
- (3) Summary List of Good Practices on the Financial Aspects of Intercountry Adoption.

The Note will be published in brochure format in the coming months.

### **(B) The annual meeting of the Council on General Affairs and Policy of the Hague Conference, April 2014**

From 8 to 10 April 2014, Members of the Hague Conference gathered in The Hague for the annual

meeting of the Council on General Affairs and Policy. The Council reviewed the work of the organisation during the prior year and charted the course for future work. Two of the Conclusions and Recommendations from this meeting were reported in the last HCCH Briefing (June [2014] IFL at p 125), in the context of an update concerning the particular projects (the ‘Parentage / Surrogacy Project’ and the ‘Protection Orders Project’). However, readers may be interested to see all the Conclusions and Recommendations from this Council meeting which relate to the Hague Conference’s work in the field of family law:

***Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements***

- (3) The Council welcomed the work carried out by the Permanent Bureau and agreed that work should continue to further explore the feasibility of drawing up a multilateral instrument in this area. To this end, the Council invited the Permanent Bureau to continue information gathering, including obtaining further responses to Questionnaire No 1, in particular from States where international surrogacy arrangements take place. While the Council noted the support expressed by a considerable number of Members for the establishment of an Experts’ Group, it decided to defer the final determination of the matter to its meeting in 2015.

***Recognition and enforcement of foreign civil protection orders***

- (4) The Council welcomed the Report of the Experts’ Group meeting of February 2014 and the useful progress made in those discussions. The Council invited the Permanent Bureau to continue exploratory work, including the collection of additional statistical information and comparative information on national law using the draft Country Profile (Prel Doc No 4 B). The Permanent Bureau may then reconvene the Experts’ Group, if necessary.

***Recognition and enforcement of voluntary cross-border agreements***

- (5) The Council welcomed the initial report of the Experts’ Group meeting (Prel Doc No 5). The Council invited the Permanent Bureau to circulate a questionnaire and to convene another meeting of the Experts’ Group to consider further the role that existing Hague Family Law Conventions play in cross-border recognition and enforcement of agreements in international child disputes, as well as the impact that an additional instrument might have on the practical use and ‘portability’ of these agreements across borders.

The Council invited the Permanent Bureau to expand the composition of the Experts’ Group so as to include more judges and practitioners. The Permanent Bureau will report to Council in 2015.

***Post-Convention services and activities***

- (13) The Council welcomed the progress of the Working Group in developing a Guide to Good Practice on the interpretation and application of Art 13(1)(b) of the 1980 Child Abduction Convention, and invited the Group to continue its work. The Permanent Bureau will report to Council in 2015.
- (14) The Council welcomed the publication of the Emerging Guidelines and General Principles for Direct Judicial Communications and the growth of the International Hague Network of Judges.
- (15) The Council welcomed the publication of the Practical Handbook on the operation of the 1996 Child Protection Convention.
- (16) The Council welcomed the work accomplished by the Permanent Bureau in relation to the electronic tools under the 2007 Child Support Convention (iSupport) and the 1980 Child Abduction Convention (INCADAT, INCASTAT) and encouraged States to support the work in this area.
- (17) The Council welcomed the publication of the Explanatory Report on the 2007 Child Support Convention, including the Spanish version. The Council also welcomed the publication of the Practical Handbook for Caseworkers under the 2007 Child Support Convention.
- (18) In relation to the 1993 Intercountry Adoption Convention, the Council:
  - (a) welcomed the draft Note on the financial aspects of intercountry adoption and its annexes (Prel Doc No 8) and mandated the Experts’ Group to continue its work as set out in the draft Note;
  - (b) welcomed the preparatory work in relation to the next meeting of the Special Commission on the practical operation of this Convention, which is scheduled for the first half of 2015; and
  - (c) noted the importance of technical assistance in relation to the implementation of this Convention and the need to secure funding to continue the position of the Intercountry Adoption Technical Assistance Programme Co-ordinator.

***Working Party on Mediation in the context of the Malta Process***

- (21) The Council welcomed the report of the Working Party on Mediation in the context of the Malta Process, as presented by the Co-Chair, Mr William R Crosbie of Canada (Info Doc No 4), as well as the direction for future work outlined

by the Co-Chair. The Council welcomed the increased engagement and activity by the members of the Working Party and agreed that the Working Party continue its work on the implementation of mediation structures and establishment of Central Contact Points, with the expectation of a further report on progress to the Council in 2015.

Please note that the full ‘Conclusions and Recommendations’ from this meeting are available on the Hague Conference website ([www.hcch.net](http://www.hcch.net)) under ‘Work in Progress’, then ‘General Affairs’.

### **(C) Recent Hague Conference publications in international family law**

As mentioned in the Conclusions and Recommendations from the 2014 Council meeting, several Hague Conference publications have been finalised recently in the area of international family law. These include:

- The Practical Handbook on the operation of the 1996 Convention (published in English and French; Spanish version in preparation).
- The e-Country Profile under the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (‘2007 Convention’). A Contracting State may use the Country Profile to fulfil its obligations to provide information to the Permanent Bureau of the Hague Conference under the 2007 Convention (see Art 57(2)).

- The Practical Handbook for Caseworkers under the 2007 Convention. The Practical Handbook is available in electronic form only.
- The Spanish version of the Explanatory Report on the 2007 Convention.
- Volume XX of the Judges’ Newsletter. The special focus of this volume of the Judges’ Newsletter is on the concentration of jurisdiction under the 1980 Convention and other international child protection instruments. This is the first volume of the Judges’ Newsletter that is available in electronic form only.

All of these publications (other than the e-Country Profile) may be downloaded on the Hague Conference website ([www.hcch.net](http://www.hcch.net)), under ‘HCCH Publications’, followed by the relevant sub-heading.

### **(D) The Hague Children’s Conventions: status update**

Since the last Hague Conference briefing, the following developments can be reported regarding the status of the modern Hague Children’s Conventions:

- On 1 April 2014, Georgia deposited its instrument of accession to the 1996 Convention. The Convention will enter into force for Georgia on 1 March 2015. In addition, Belgium ratified the 1996 Convention on 28 May 2014 and the Convention will enter into force in Belgium on 1 September 2014. The 1996 Convention therefore now counts 41 Contracting States.