

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

Introduction

This briefing discusses several developments which have taken place in recent months at the Hague Conference on Private International Law, including (A) a number of initiatives which aim to facilitate the effective implementation and operation of existing Hague Conventions, as well as (B) some of the ongoing work at the Hague Conference concerning the possible development of new multilateral instruments in the area of international family law. Lastly, in (C) it finishes with the usual ‘status update’ concerning the modern Hague Children’s Conventions.

(A) Facilitating the effective implementation and operation of existing Hague Conventions

(1) Completion of an EU partnership project between Romania, ENM and the Hague Conference on the International Recovery of Maintenance

From January 2012 until January 2014, the Ministry of Justice of Romania, France’s École Nationale de la Magistrature (ENM) and the Permanent Bureau of the Hague Conference worked together on the project ‘Enhancing judicial international co-operation in matters relating to maintenance obligations’ (JUST/2010/JCIV/AG/0026), in the context of the European Union ‘Civil Justice’ Programme.

The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (the ‘2007 Hague Child Support Convention’) entered into force on 1 January 2013 and shares a number of features with a recent European Union Regulation in this field (EC Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations, applicable as of 18 June 2011).

The project was completed on 14 January 2014 and presented to the European Judicial Network Annual Meeting of Contact Points (Brussels, 28–29 January 2014), and resulted in the development of:

- (a) a Practical Handbook for Competent Authorities on the 2009 EU Maintenance Regulation, the 2007 Hague Child Support Convention and its Protocol, available in English, French and Romanian;

- (b) a two-and-a-half-day training module on the three instruments, including hypothetical cases (delivered nine times to more than 160 judges and members of 14 Central Authorities across Europe: Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Malta, Netherlands, Portugal, Slovenia and Spain); and
- (c) three information leaflets to raise public awareness of the international recovery of child support, available in English, French and Romanian.

It is expected that these materials will be helpful for the effective operation of the 2007 Hague Child Support Convention, as well as to the Permanent Bureau as it continues its global promotional efforts concerning the Convention. All documents are available on the Hague Conference website (www.hcch.net) under ‘News and Events (archive)’, dated 29 January 2014.

(2) Latin American meeting on the international protection of children and the recovery of maintenance abroad

From 4 to 6 December 2013, officials from national organs, Ministries of Foreign Affairs, Ministries of Justice, state attorneys, representatives of the judiciary, members of the International Hague Network of Judges, Central Authorities, childhood authorities and academics from Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain and Uruguay met in Santiago, Chile, for the Latin American Meeting on the International Protection of Children and the Recovery of Maintenance Abroad. The ‘Santiago Meeting’ focused on analysis and discussion of 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 Hague Child Protection Convention’) and the 2007 Hague Child Support Convention. The Santiago Meeting was jointly organised by the Hague Conference on Private International Law and the Heidelberg Center for Latin America.

The main objectives of the Santiago Meeting were to:

- (i) consider the benefits resulting from the implementation of the 1996 and 2007

Conventions and to facilitate their study by relevant national authorities and other actors in the region;

- (ii) discuss with relevant national authorities and other actors the potential impact of the coming into force of the 1996 and 2007 Conventions and to respond to questions on the implementation and operation of the two Conventions;
- (iii) disseminate the results of the analysis and products developed in the context of this initiative, and to make them available to relevant actors in the region.

The final report of the meeting, unanimously agreed upon by participants, is available in English, French and Spanish on the Hague Conference website (www.hcch.net) under 'News and Events (archive)' dated 6 December 2013.

(3) The Expert Group on the Financial Aspects of Intercountry Adoption

The Expert Group on the Financial Aspects of Intercountry Adoption has progressed considerably with its work in the past months. Three practical tools to assist with the operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (the '1993 Hague Intercountry Adoption Convention') in this complex area are now almost finalised: that is, the draft 'Note on the Financial Aspects of Intercountry Adoption', the draft 'Tables on the Costs associated with Intercountry Adoption' and the draft 'Summary List of Good Practices on the Financial Aspects of Intercountry Adoption' (see Prel Doc No 8 of February 2014 and its Annexes, available on the Hague Conference website, www.hcch.net, under 'Work in Progress', then 'General Affairs').

These documents were presented to the Council on General Affairs and Policy of the Hague Conference (hereinafter, 'the Council') at its meeting in April 2014. The Council welcomed the documents and mandated the Expert Group to continue its work as set out in the Note.

(B) Ongoing work to consider the possible development of new multilateral instruments in certain areas of international family law

(1) The 'Parentage / Surrogacy Project' of the Hague Conference on Private International Law

In 2013, in accordance with the mandates provided by the Council of the Hague Conference, the Permanent Bureau drafted and circulated several questionnaires on 'the private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements'.

Questionnaire No 1, circulated in April 2013, was addressed to Members of the Hague Conference and non-Member interested States. It sought information from States concerning their internal and private international laws relating to legal parentage, as well as information concerning their experience of international surrogacy arrangements. The questionnaire also sought views on the desirability and feasibility of further international work in this field. Questionnaires Nos 2 to 4 were addressed to specialist legal practitioners, health professionals and surrogacy agencies respectively and focused more directly on the issues arising from international surrogacy arrangements. Information was also provided to the Permanent Bureau by intending parents who have undertaken international surrogacy arrangements via three intending parent associations. The Permanent Bureau has also continued its co-operation with several governmental and non-governmental organisations interested in this topic.

This broad consultation process was undertaken with a view to producing an analysis, for Members of the Hague Conference, of the desirability and feasibility of progressing work at the organisation towards a multilateral instrument on the private international law issues surrounding the status of children. The Permanent Bureau drafted Preliminary Document No 3 B of March 2014, 'The Desirability and Feasibility of Further Work on the Parentage/Surrogacy Project', with an accompanying 'Study on Legal Parentage and the issues arising from International Surrogacy Arrangements' (Prel Doc No 3 C of March 2014), for the attention of the 2014 meeting of the Council. At this meeting, 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. While the Council noted the support expressed by a considerable number of Members for the establishment of an Expert Group in this area, it decided to defer the final determination of this matter to its meeting in 2015.

Preliminary Document No 3 B and its accompanying Study are available on the Hague Conference website (www.hcch.net) under 'Specialised sections', then 'Parentage / Surrogacy Project'. This specialised section of the website also explains the background to this project, the mandates under which the Permanent Bureau is currently working, and draws together all existing documentation concerning the project into one user-friendly space.

(2) The Expert Group on the Recognition and Enforcement of Foreign Civil Protection Orders

On 12 and 13 February 2014, the Permanent Bureau hosted an international meeting of experts on the topic of the recognition and enforcement of foreign protection orders. The Group included experts from

Argentina, Canada, China, the European Union, France, Japan, the Netherlands, South Africa, Spain, the United Kingdom and the United States, among others. The Expert Group agreed upon a series of 30 Conclusions and Recommendations in relation to potential future international work which the Hague Conference may undertake in this area.

The topic of ‘the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases’ was added to the Agenda of the Conference in April 2011 at the Council on General Affairs and Policy of the Hague Conference (the ‘Council’) (see Conclusion and Recommendation No 23 of the Council on General Affairs and Policy of the Conference (5–7 April 2011)).

The terms ‘protection order’, ‘protection measure’ or other similar terminologies are used in various jurisdictions and under various national or regional legal instruments, denoting legal regimes which seek to protect victims or potential victims of domestic violence and other types of harmful interpersonal behaviour (for examples, see Conclusion and Recommendation No 2 of the meeting). Specific types of protection orders in various jurisdictions may include ‘restraining orders’, ‘stay away’ or ‘no contact’ orders, ‘barring orders’, and other types of civil or criminal injunctions.

The Sixth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention welcomed the addition of this topic to the Hague Conference Agenda and recommended that ‘account should be taken of the possible use of such orders in the context of the 1980 Convention’ (see Conclusion and Recommendation No 43 of Part I of the Sixth Meeting of the Special Commission (1–10 June 2011)).

Permanent Bureau preliminary research has noted significant national and regional policy attention to this area of law based on, among other things, a growing awareness of ‘[t]he ease of international cross-border travel combined with the severe risk to an individual who cannot obtain immediate recognition and enforcement of a foreign protection order’ (see ‘Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note’ Prel Doc No 7 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference, at p 5).

A Report of the meeting of the Expert Group has been published on the Hague Conference website

(www.hcch.net) (Prel Doc No 4 A of March 2014, accessible under ‘Work in Progress’, then ‘General Affairs’) and was circulated to the Council, together with the Conclusions and Recommendations of the meeting, for consideration at its April 2014 meeting. At this meeting, the Council welcomed the Report and the useful progress made and 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 Council also stated that the Permanent Bureau may reconvene the Expert Group, if necessary.

(C) 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:

- Croatia and Serbia acceded to the 1993 Hague Inter-country Adoption Convention on 5 and 18 December 2013 respectively. In addition, having signed the Convention in 2011, Haiti ratified the Convention on 16 December 2013. The 1993 Convention entered into force for all three States on 1 April 2014.
- Japan signed and ratified the 1980 Hague Child Abduction Convention on 24 January 2014. The Convention entered into force for Japan on 1 April 2014. On 21 March 2014, Iraq acceded to the 1980 Hague Child Abduction Convention. The Convention will enter into force for Iraq on 1 June 2014.
- On 9 April, the European Union approved the 2007 Hague Child Support Convention. The European Union is the fifth Contracting Party to join the 2007 Convention, which came into force on 1 January 2013. As of 1 August 2014, the 2007 Convention will apply between, on the one hand, all Members of the European Union (with the exception of Denmark) and, on the other hand, Albania, Bosnia & Herzegovina, Norway and Ukraine. As a result, 31 States will be connected with the 2007 Convention. In relations between Contracting Parties, the 2007 Hague Child Support Convention replaces the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956 to which 23 Members of the European Union are also Contracting States.