

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

Working Party on Mediation in the Context of the Malta Process

At its meeting held on 31 March to 2 April 2009 the Council on General Affairs and Policy of the Hague Conference on Private International Law authorised the establishment of a Working Party in the context of the Malta Process to promote the development of mediation structures to help resolve cross-border family disputes concerning custody of, or contact with, children (see Conclusions and Recommendations: http://www.hcch.net/upload/wop/genaff_concl09e.pdf). The recommendation to establish such a Working Party derived from a proposal made by Canada that was discussed and approved at the Third Malta Conference on Cross-Frontier Family Law Issues held in St. Julian's, Malta, March 23 – 26, 2009 (see Third Malta Declaration [2009] IFL 2009 118 and http://www.hcch.net/upload/maltadecl09_e.pdf). The idea to establish a Working Party on mediation was put forward acknowledging the urgent need for effective mediation structures to assist parents in resolving cross-border disputes concerning children, including cases of unilateral removal of a child to another state, outside the geographical scope of the 1980 Hague Child Abduction Convention.

It has been recognised that there is a need for the development of practical mechanisms to ensure rapid, fair and affordable mediation by mediators trained in international family mediation. The Working Party is therefore meant to address issues such as: timeframe, costs, appropriate mediation models, the availability of legal advice to the parties, as well as how to guarantee the adherence to/enforceability of the mediation agreement in both jurisdictions concerned. Of course, the Working Party will also have to consider a number of standard issues in regard to mediation, such as confidentiality, independence and impartiality of mediators, and the training mediators should have received. Furthermore, the question of how the best interests of the child can be given thorough consideration in the mediation will have to be addressed.

It has to be emphasised that the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, both international instruments addressing cross-border family disputes involving children, promote the amicable resolution of family disputes. The entry into force in some point in the future of one or both of these instruments in a current non-Hague Convention State would therefore not contradict the mediation structures that the Working Party is hoping to establish. On the contrary, these mediation structures would be

extremely useful in the application of these international instruments and would themselves be strengthened through the legal structures put in place by the instruments.

In June 2009 co-ordination talks between the Permanent Bureau of the Hague Conference and Canada, who agreed to take a leading role in the Working Party's establishment, brought about the identification of a small group of states based on demographic factors to participate in the project. In the interest of efficiency the size of the Working Party needed to be further restricted and thus, in addition to a small number of independent mediation experts, only one expert per state was invited to join the Working Party. The states invited to designate an expert were six contracting states to the Hague Child Abduction Convention, namely Australia, Canada, France, Germany, the UK and the USA, and six non-contracting states, namely Egypt, India, Jordan, Malaysia, Morocco and Pakistan. It was decided that the Working Party members, which would be co-chaired by Canada and Pakistan, would work initially via conference calls and e-mails and that, only at a later stage, a meeting would be convened.

On 30 July, Canada hosted the first Working Party conference call, providing for the possibility of simultaneous interpretation from/into English, French and Arabic. Participating in the call were experts from Australia, Canada, Egypt, France, Germany, India, Malaysia, Pakistan, the UK and the USA as well as two independent experts and the Permanent Bureau of the Hague Conference. In preparation for that conference call, a questionnaire had been circulated to the Working Party members, responses to which are available on the Hague Conference website at www.hcch.net under 'Work in progress' then 'Child Abduction'. In its first conference call the participants of the Working Party unanimously acknowledged that the establishment of (central) contact points facilitating access to mediation was an essential step towards the setting up of effective mediation structures in their countries. In addition the participants committed themselves to collect information on the issue of enforceability of mediated agreements in all states involved in the Working Party as well as on family disputes mediated in the past in their jurisdiction in the form of case histories, including information on mediation models used in these cases. Responses to questionnaires sent to the members of the Working Party in this regard will again be made available on the Hague Conference website at www.hcch.net under 'Work in progress' then 'Child Abduction'.

At the same time, all other states involved in the Malta Process, as well as all Members of the Hague Conference, are being kept informed of the progress made by the Working Party and have the possibility to make comments and recommendations at any stage. It is hoped that other states may at a later stage be more actively involved in the Working Party and that mediation structures drawn up by the Working Party may this way be suitable to serve as a model for a greater group of States. For information on the progress made by the Working Party please consult the 'Child Abduction Section' of the Hague Conference website at www.hcch.net then 'Child Abduction Section'.

The November 2009 meeting of Special Commission on the implementation of the 2007 Child Support Convention and its Protocol

The Permanent Bureau is currently preparing the Special Commission on the implementation of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and of the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. This Special Commission will take place from 10 to 17 November 2009 and should bring together the Members of the Hague Conference (as of today 69) as well as some non-Member States that are Parties to the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance or are interested in the subject matter. In addition, certain intergovernmental organisations and non-governmental international organisations have been invited. It is intended that the Agenda of the Special Commission will include the following items.

- As a result of the Recommendations of the XXIst Diplomatic Session of the Hague Conference, the Working Group of Forms will submit draft Recommended Forms during the Special Commission. The online electronic version of the Recommended Forms should be finalised after

their adoption by the Special Commission. In addition, the Country Profile resulting from the negotiation of the convention in 2007 has been updated and will be submitted to the Special Commission for discussion and approval.

- The Permanent Bureau, assisted by the secondment from the Government of British Columbia of Hannah Roots, has also developed a comprehensive Practical Handbook for Case Workers, drafted in order to support the work of future Central Authorities under the Convention. This Practical Handbook will be discussed and reviewed by the Special Commission.
- A questionnaire on the feasibility of a Protocol to Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance to deal with the international recovery of maintenance in respect of vulnerable persons has been circulated among the States. As a result, the Permanent Bureau is drawing up a Preliminary Document reporting the findings of this consultation for discussion by the Special Commission with a view to make a recommendation to the next Council on General Affairs and Policy on the possible development of such protocol.
- The Special Commission will also discuss an Implementation Checklist drafted by the Permanent Bureau with the aim of highlighting issues which may need to be considered by States or Regional Economic Integration Organisations when implementing the Convention.
- Finally, the Special Commission will discuss a Draft Business Plan for the development of iSupport, the future electronic case management and communication system for the 2007 Child Support Convention and its Protocol, which is based in great part on the 1980 Abduction Convention case management system (iChild) in place in more than 10 Central Authorities worldwide, as well as its business and action plans, together with the question of its financial support and implications.