
Hague Conference Update

Permanent Bureau of the Hague Conference on Private International Law

General Affairs and Policy

The Council on General Affairs and Policy of the Hague Conference on Private International Law met in The Hague on 1–3 April 2008. This is the body that is responsible for determining the programme of work of the Hague Conference. The Council comprises all Members of the Conference and meets annually to discuss and determine the future work agenda of the Conference and its secretariat, the Permanent Bureau. The Conference currently consists of 69 Members: 68 States and one Regional Economic Integration Organisation, the European Community.

In its ‘Conclusions and Recommendations’ concerning future work in relation to international family law and the international protection of children, the Council decided to organise the Conference’s agenda as follows.

- Regarding cross-border mediation in family matters, the ‘Council invited the Permanent Bureau to continue to follow, and keep Members informed of, developments’ in this area. Furthermore, the Permanent Bureau was given the task of beginning work on a Guide to Good Practice on the subject. ‘As a first step, a Guide to Good Practice on the use of mediation in the context of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction [the 1980 Convention] should be prepared’. This Guide is to be submitted for consideration at the next meeting of the Special Commission to review the practical operation of that Convention, which is likely to be held in 2011.
- In respect of the 1980 Convention, the Council discussed the proposal submitted by Switzerland for a Protocol to the 1980 Convention and decided ‘to reserve for future consideration the feasibility of a Protocol to the 1980 Convention containing auxiliary rules designed to improve the operation of the Convention.’
- In relation to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007 and further to the Recommendation made by the Twenty-First Session of the Conference (the Diplomatic Session which adopted that Convention), ‘the Council invited the Permanent Bureau to prepare a questionnaire on the feasibility of developing a Protocol to the 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. It was decided that ‘[t]he responses should be submitted to the Special Commission on the implementation of that Convention’, which is likely to take place in 2009, ‘and a report be made to the Council on General Affairs and Policy meeting of 2010.’

For further information see the ‘Conclusions and Recommendations’ of the 2008 meeting of the Council on General Affairs and Policy of the Conference, available at: http://www.hcch.net/index_en.php?act=progress.listing&cat=5.

Unmarried cohabitation and registered partnerships

For more than 20 years the Hague Conference on Private International Law has been observing attentively the legal developments in the field of cohabitation outside marriage. The continuing increase in cohabitation outside marriage in many legal systems worldwide has, in recent years, led to a rapid development of legislation in this field, including legislation on registered partnerships and analogous institutions.

The Permanent Bureau of the Hague Conference published its latest comparative law report in this field in March 2008 for the attention of the meeting of the Council on General Affairs and Policy of April 2008 (see ‘Note on developments on internal and private international law concerning cohabitation outside marriage, including registered partnerships’, Preliminary Document No 11 of March 2008, drawn up by Caroline Harnois (former Legal Officer) and Juliane Hirsch (Legal Officer), available at: http://www.hcch.net/index_en.php?act=progress.listing&cat=5). The report makes reference to more than 30 legal systems that have introduced legislation on registered partnerships and more than 20 legal systems that have introduced legislation on cohabitation outside marriage other than registered partnerships in the past 10 years.

The report illustrates that the rapid development of national legislation in the field of cohabitation outside marriage is to a large extent divergent. The same is true for the rules on private international law introduced by several legal systems in this regard. The problems that this situation creates for unmarried cohabitants whose relationship has a link to more than one legal system are already becoming visible. The report also pays attention to the Convention on the Recognition of Registered Partnerships which has been adopted by the General Assembly of the

International Commission on Civil Status (ICCS) in March 2007, but is not yet in force (for further information see the website of the ICCS: <http://www.ciec1.org/ListeConventions.htm>).

The Council on General Affairs and Policy of the Hague Conference decided at its 2008 meeting that the Hague Conference should continue to follow developments in jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples. (See further: 'Conclusions and Recommendation adopted by the Council on General Affairs and Policy of the Conference', p 2, at: http://www.hcch.net/index_en.php?act=progress.listing&ccat=5.)

Updates on good practice guides

Intercountry Adoption Convention 1993

The Guide to Good Practice under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993: Implementation will be published in Spring 2008. The purpose of the Guide is to assist States (whether or not they are already Contracting States) with the practical implementation of the Convention, in a manner which achieves the objects of the Convention, namely the protection of children who are adopted internationally. The Guide aims to assist judges, policy makers and case workers who are responsible for the implementation of the Convention at the international, national and local levels.

Part I of the Guide, 'The Framework of the Convention', focuses on the fundamental principles of the Convention for the protection of children.

Part II of the Guide, 'The Framework for Protection of Children (National and International Framework)' deals with the practical and legal issues of implementing the general principles, including the institutional structures (Central Authorities and accredited bodies) to be established by Contracting States, as well as aspects of the intercountry adoption process.

Importantly, the Guide tries to emphasise the shared responsibility of receiving States and States of origin to develop and maintain ethical intercountry adoption practices. At the heart of the matter is the protection of the child's best interests, which must be the fundamental principle that

supports the development of a national child care and protection system, as well as an ethical, child-centred approach to intercountry adoption.

Child Protection Convention 1996

In the Special Commission to review the operation of the 1980 Convention and the practical implementation of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children 1996 (the 1996 Convention) that took place in The Hague in November 2006, the experts agreed with the proposal to produce a Guide to the 1996 Convention. This Guide is to be different to the Guides to Good Practice that have been published in relation to the 1980 Convention, as the same level of information is not available on how this Convention operates in practice. Instead, it will be a practical handbook directed towards all those who will be using the Convention, to assist them in understanding how it will operate in different factual situations. Work on this practical handbook is progressing and it is hoped that it will be published around the end of 2008.

Transfrontier contact concerning children

Work on General Principles and a Guide to Good Practice on Transfrontier Contact Concerning Children is now almost completed and it is hoped that it will be published early in the second half of 2008. The purpose of this Guide is to draw attention to certain general considerations and special features which need to be borne in mind by States and their authorities when formulating policies in respect of international access/contact cases. It is aimed at all States, not only those signatory to the 1980 or the 1996 Conventions. As well as offering general advice to States in formulating policy in this area; the general principles could be helpful to Central Authorities in informing their practice. They could possibly also be helpful to the courts and other authorities, as well as to applicants as they present their cases.

Enforcement under the 1980 Convention

Work continues on this Guide to Good Practice, which should be completed by the end of 2008.