

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

Introduction

Despite a generally wet and windy spring in the Netherlands, the sun shone on the meeting of the Council on General Affairs and Policy of the Hague Conference on Private International Law, which took place from 17 to 20 April 2012. The meeting proved very fruitful for the work programme of the Hague Conference. This Briefing provides a short report on the aspects of the meeting relevant to international family law. This Briefing also provides readers with an update concerning the Guide to Good Practice on Mediation under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Convention), some aspects of the work of the Hague Conference's Regional Office for Latin America in relation to international child protection, the recent seminar in Bermuda and the Caribbean region co-organised by the Hague Conference, and developments regarding intercountry adoption in Africa. The Briefing concludes with the usual update concerning the status of the modern Hague Children's Conventions.

For further information concerning the work of the Hague Conference on Private International Law, please visit our website: www.hcch.net.

Meeting of the Council on General Affairs and Policy of the Hague Conference on Private International Law, 17 to 20 April 2012

The Council on General Affairs and Policy of the Hague Conference (hereinafter, 'the Council'), is the body responsible for determining the work programme of the Hague Conference on Private International Law and its Secretariat, the Permanent Bureau. The Council comprises all Members of the organisation and meets annually. The Hague Conference currently consists of 72 Members: 71 States and one Regional Economic Integration Organisation, the European Union.

The first topic discussed at the 2012 Council meeting relevant to international family law was the recent Sixth Meeting of the Special Commission on the practical operation of 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'), which took place from 1 to 10 June 2011 (Part I) and 25 to 31 January 2012 (Part II) (brief summaries of these meetings were provided in September [2011] IFL 233 and June [2012] IFL 230). The Council meeting considered the

full reports of both meetings prepared by the Permanent Bureau, as well as the Conclusions and Recommendations reached by the Special Commission (the Special Commission documentation is available on the Hague Conference website, www.hcch.net, under 'Child Abduction section', then 'Special Commission meetings').

The Council welcomed the successful outcome of both Parts of the Special Commission and took note of the Conclusions and Recommendations. In addition, and in line with the recommendation of Part II of the Special Commission, the Council decided to establish a Working Group, composed of a broad range of experts, including judges, Central Authorities and cross-disciplinary experts, to develop a Guide to Good Practice on the interpretation and application of Art 13(1)(b) of the 1980 Convention, with a component to provide guidance specifically directed to judicial authorities. Also in accordance with the recommendation of Part II of the Special Commission, the Council decided to establish an Experts' Group to carry out further exploratory research on the cross-border recognition and enforcement of agreements reached in the course of international child disputes, including those reached through mediation, taking into account the implementation and use of the 1996 Convention. Such work will 'comprise the identification of the nature and extent of the legal and practical problems, including jurisdictional issues, and evaluation of the benefit of a new instrument, whether binding or non-binding, in this area' (para 7, Conclusions and Recommendations).

The Working Party on Mediation in the context of the Malta Process was also discussed at the meeting. The Report of the Working Party, as presented by the Co-Chairs, Justice Jillani of Pakistan and Assistant Deputy Minister William Crosbie of Canada, was welcomed by the Council, as was the direction for future work outlined by the Co-Chairs. The Council agreed that the Working Party should continue its work on the implementation of mediation structures, with the expectation of a further report on progress to the Council in 2013.

The Council meeting also discussed the progress made in relation to two projects which were new to the Hague Conference work programme in 2010 and 2011 respectively. First, the topic of the 'private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements', was the subject of a Preliminary Note in 2011 (see Prel Doc No 11 of March 2011). In light of this Note, the Council meeting in 2011 had 'invited the Permanent Bureau

to intensify its work in the area with emphasis on the broad range of issues arising from international surrogacy arrangements' (para 18 of the Conclusions and Recommendations of the 2011 Council meeting). Responding to this mandate, the 'Preliminary Report on the issues arising from international surrogacy arrangements' (Prel Doc No 10 of March 2012), prepared by the Permanent Bureau, was welcomed by the 2012 Council and it was mandated that the Permanent Bureau should continue its current work under the 2011 mandate. The Council also requested that the Permanent Bureau prepare and distribute a questionnaire in order to obtain more detailed information regarding the extent and nature of the private international law issues being encountered in relation to international surrogacy arrangements, as well as in relation to legal parentage or 'filiation' more broadly. The Questionnaire is to seek views on the needs to be addressed and approaches to be taken. The Council invited the Permanent Bureau to present its final Report on this subject to the Council in 2014. Secondly, in relation to the recognition and enforcement of foreign civil protection orders, such as in the context of domestic violence, the Permanent Bureau prepared a Preliminary Note for the 2012 meeting (Prel. Doc. No 7 of March 2012, as requested by the 2011 Council meeting). The Council considered this note and decided that the Permanent Bureau should circulate a questionnaire to members in order to assess the need and feasibility of an instrument in this area, and to obtain further information on existing legislation. The Permanent Bureau was asked to report to the Council in 2013.

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'), the Council noted the significant progress made on the 'Accreditation and adoption accredited bodies: general principles and Guide to Good Practice', as well as regarding the preparations for the informal Experts' Group on the financial aspects of intercountry adoption. The Council noted the importance of technical assistance in relation to the implementation of the 1993 Convention and the lack of funding to continue the position of the Adoption Technical Assistance Programme Coordinator.

Finally, the 2012 Council meeting endorsed the initiative of the Secretary General of the Hague Conference to establish an Asia Pacific Regional Office for the organisation. It welcomed the generous offer from the Hong Kong Special Administrative Region of the People's Republic of China to host this Office, which will be the second regional office of the Hague Conference (see the update from the Latin American Regional Office below). The Council also welcomed the appointment of The Honourable Mr Justice Michael J Hartmann, who has been a member of the International Hague Network of Judges for many years, as the first Representative of the Office

after his retirement from the bench in July this year. The official opening of the Office is expected to be in the last quarter of 2012.

Publication of the Guide to Good Practice on Mediation under the 1980 Hague Child Abduction Convention

The Permanent Bureau is pleased to announce that the Guide to Good Practice on Mediation under the 1980 Convention has now been finalised and published in English and French on the website of the Hague Conference, www.hcch.net, under the 'Child Abduction Section'. Hard copies of the guide are currently being prepared and will be available in late September 2012.

As a result of the generous support provided by the European Commission, the Guide to Good Practice on Mediation will also be translated by them into the other official languages of the EU, as well as into Arabic.

An update from the Hague Conference's Regional Office in Latin America

The International Hague Network of Judges has witnessed an exponential growth in the Latin American region over the last few years. The Liaison Legal Officer for Latin America, Mr Ignacio Goicoechea, has been encouraging this growth by visiting Supreme Courts in the region, explaining the aims of the Network and the role of Network Judges in assisting with the proper implementation of the Hague Children's Conventions. In early 2005, no Network Judges had been designated in Latin America. In contrast, by the end of 2011, all Latin American States Parties to the 1980 Convention had designated Network Judges. Many of these Network Judges have contributed to the resolution of child abduction cases, providing advice to colleagues in their home States and abroad, and have actively promoted good practices and direct judicial communications in their jurisdictions. The consolidation of this work, as well as the work of Central Authorities in the region, was promoted by the Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, held in Mexico City from 23 to 25 February 2011. A brief report of this meeting was provided in the Hague Conference Briefing in June [2011] IFL 149.

The Sixth Meeting of the Special Commission to review the practical operation of the 1980 and the 1996 Conventions was also an important event for the region. The significant number of Latin American delegations at both Part I (June 2011) and Part II (January 2012) of the meeting and their active participation and contributions deserve to be mentioned, and can be explained, to a significant extent, by the intense preparatory work undertaken in the region in advance of the Special Commission. Such preparatory work included the Inter-American expert meeting of February 2011 (mentioned above)

and the various conference calls among Hague Network Judges and Central Authorities (organised and co-ordinated by the Regional Office).

In addition, on 28 January 2012, the Latin American delegations attending Part II of Special Commission, held a meeting to discuss the Hague Children's Conventions and possible actions to promote the Conventions and / or improve their operation in the region. The meeting was very helpful and, as a result of the discussions, several conclusions were drafted. These conclusions demonstrate the increased interest in the region regarding the 1996 Convention and the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. Participants requested support in the promotion and implementation of these instruments which they considered to be beneficial for the region. In particular, with regard to the 1996 Convention, participants suggested that it would be important for States that were studying the instrument to receive information about how other Latin American jurisdictions have dealt with Arts 8 and 9 of the Convention, given that the implementation of these articles may present certain challenges for the legal systems of the region. As for the 1980 Convention, the need to develop specific procedural regulations to meet the requirement of the Convention for expeditious procedures (eg Arts 2 and 11) was highlighted and, to this end, the use of the Inter-American Model Law was commended. Participants suggested that the further sharing of good practices (eg the implementation of specific procedural rules, and / or the 'concentration of jurisdiction') would be helpful to demonstrate to other jurisdictions the benefits of following such practices. In this regard, it should be noted that, on 14 June 2012, a Regional Federal Court in Brasilia, Brazil decided to concentrate jurisdiction for international child abduction cases at the first-instance level. The move, undertaken by the Regional Federal Court for the 1st Region (which includes the Federal District and 13 States), is a significant step forward for the operation of the 1980 Hague Child Abduction Convention, as practice has shown that the concentration of jurisdiction facilitates the development of judicial expertise, which then results in the Convention operating more expediently and effectively. The four other additional Regional Court jurisdictions in Brazil are expected to follow suit in the near future.

A seminar on the work of the Hague Conference on Private International Law and its relevance for the Caribbean Region and Bermuda, 21 to 24 May 2012

From 21 to 24 May 2012, 125 representatives from more than 20 States and overseas territories, international organisations, as well as members of the Permanent Bureau of the Hague Conference on Private International Law met in Bermuda to discuss the relevance of the work of the Hague Conference to

the Caribbean Region and Bermuda. The seminar was organised by the Government of Bermuda, in collaboration with the Permanent Bureau, and with the support of the Commonwealth Secretariat.

The seminar covered all of the main areas of private international law addressed by Hague Conventions including, in the family law area, the conventions on international child protection, family and property relations. Participants appreciated the opportunity to learn and to exchange information and experiences. They also benefited from the participation of recognised international experts. The Regional Conference proved successful in promoting the work of the Hague Conference and demonstrated the utility of the Hague Conventions to jurisdictions in the Caribbean Region.

The Regional Conference adopted 'Conclusions and Recommendations' which are available at: <http://www.hcch.net/upload/concl2012bermuda.pdf>. A more detailed report of this meeting, by Lord Justice Thorpe, is provided in a separate article in this issue of IFL.

Intercountry Adoption in Africa: an update

In just a few short years, the number of intercountry adoptions of African children has increased dramatically. According to a report drawn up by the African Child Policy Forum ('Africa: The New Frontier for Intercountry Adoption', 2012, available at www.africanchildinfo.net), between 2003 and 2011 at least 35,000 children from Africa were adopted outside the continent, representing a 300% increase in an 8 year period. These numbers are growing exponentially as other regions which were traditionally a 'source' of children for intercountry adoption (eg Southeast Asia, the ex-USSR, Latin America) are reinforcing their legislation and encouraging national alternative care solutions for children deprived of family protection. However, the number of prospective adoptive parents who wish to adopt young and healthy children remains steady in the West. Being confronted with other countries' encouragement of intercountry adoption of special needs children, these candidates for adoption are turning to the African continent.

In many African countries, child protection systems are comparatively weak and legislation is obsolete, incomplete and / or improperly implemented. As a result, it is more difficult to prevent and combat the abduction, sale of and trafficking of children for the purposes of adoption. This calls for a greater vigilance and respect for the principles of international treaties, such as the 1989 United Nations Convention on the Rights of the Child, the 1990 African Charter on the Rights and Welfare of the Child, and the 1993 Hague Intercountry Adoption Convention. Measures aimed at reversing this trend and promoting respect for the rights and interests of children in intercountry adoption include providing better information to the biological families before obtaining their consent to adoption, and an improved implementation of the principle of

subsidiarity, including the reinforcement of family preservation services, the development of domestic adoption and the implementation of the safeguards contained in the 1993 Convention.

The African actors are gradually reaffirming their will to deal with questions related to child protection, in a manner that is congruent with their values and traditions, by promoting informal alternative care measures and by avoiding systematic recourse to intercountry adoption for African children deprived of parental protection. Further, it is important to note that, in numerous cases, filiation by full adoption does not reflect the true wishes of the biological parents who would like to maintain a bond with their child, as is the case with so-called ‘simple adoptions’.

The fundamental principles and safeguards contained in the 1993 Convention were emphasised by the participants in two recent pan-African conferences, in which the Permanent Bureau of the Hague Conference on Private International Law was invited to participate. At both the Conference of sub-Saharan African Francophone Countries on the strengthening of families and alternative care measures (Dakar, Senegal, 10 to 11 May 2012: ‘Conférence des pays francophones d’Afrique subsaharienne sur la mobilisation autour du renforcement de la famille et de la prise en charge alternative’) and the Fifth International Policy Conference on the African Child, held in Addis Ababa, Ethiopia, at the end of May 2012, there was significant awareness of the urgent need to regulate intercountry adoptions and a growing interest in the 1993 Convention, widely acknowledged to be the legal instrument of reference with regard to intercountry adoption. In this respect, the ‘Guidelines for Action on Intercountry Adoption of Children in Africa’, drafted by the African Child Policy Forum and a group of international experts and presented in Addis Ababa, provide practical guidance and translate the rules and principles contained in the relevant international instruments, including the 1993 Convention.

To date, 13 sub-Saharan African States are Parties to the 1993 Convention. Other African countries are actively interested and, to this end, the Permanent Bureau, through its Intercountry Adoption Technical Assistance Programme (ICATAP), participated in an awareness-raising seminar on the 1993 Convention in Cotonou, Benin, on 12 and 13 June 2012. Other States, such as the Ivory Coast, Mozambique, Namibia, Ghana and Lesotho, have approached the Permanent Bureau to request technical assistance aimed at helping them become Parties to the 1993 Convention and implement the principles and safeguards promoted by the Convention. These countries are aware that a simple ratification or accession to the treaty would be ineffective without an in-depth national reform of their structures and procedures relevant to intercountry adoption.

There remain formidable challenges for the African continent in the field of intercountry adoption, notably in deterring improper material gain and monitoring the role of private actors in the adoption process. Faced with frequently inadequate resources or deficient child protection systems, the political will of African States to protect children deprived of parental protection and to encourage co-operation amongst stakeholders remains decisive.

The Hague Children’s Conventions: status update

Since the last Hague Conference Briefing, two developments can be reported regarding the status of the Hague Children’s Conventions:

- On 18 April 2012, Serbia signed the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations; and
- On 29 April 2012, Fiji acceded to the 1993 Hague Intercountry Adoption Convention (entry into force, 1 August 2012).