

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

Introduction

Spring has arrived and, like the trees in The Hague, the Permanent Bureau's work programme continues to blossom. The annual Meeting of the Council on General Affairs and Policy of the Hague Conference on Private International Law took place from 5 to 7 April 2011. This resulted in a number of interesting developments for the Hague Conference's work in the field of international family law. These developments included the mandating of further work in the area of international surrogacy (see further below) and the acknowledgement of the preparations underway for Part I of the Sixth Meeting of the Special Commission to review the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (which will take place from 1 to 10 June in The Hague). The next Hague Conference briefing will include a summary report on this Special Commission Meeting and an update in relation to the preparations underway for Part II of the Special Commission Meeting (tentatively planned for 24 January to 1 February 2012).

A number of signatures and ratifications to the Hague Children's Conventions also took place at the Council Meeting. These are detailed below, along with any other recent signatures / ratifications / accessions to these Conventions. The full Conclusions and Recommendations of the Council on General Affairs and Policy of the Hague Conference are available on our website: www.hcch.net under 'Work in Progress' then 'General Affairs'. As usual, please visit the website for further information on Hague Conference related matters.

Cross-Frontier Surrogacy Issues Added to Hague Conference Work Programme

On 7 April 2011, following the submission of the preliminary note prepared by the Permanent Bureau on 'Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements' (Prel. Doc. No 11 of March 2011, available at: www.hcch.net then 'Work in Progress', then 'General Affairs') the Council invited the Permanent Bureau of the Hague Conference on Private International Law to intensify its work on the broad range of issues arising from international surrogacy arrangements.

International surrogacy cases often involve problems concerning the establishment or recognition of the child's legal parentage and the legal consequences which flow from such a determination (eg the child's nationality, immigration status, who has parental responsibility for the child, who is under

a duty to maintain the child, etc). Problems also arise because the parties involved in such an arrangement can often be vulnerable or put themselves at risk.

As a brief internet search of 'international surrogacy' will show, in today's world one is a click away from hundreds of websites promising to solve the problems of infertility through in vitro fertilisation techniques (IVF) and surrogacy. It is now a simple fact that surrogacy is a booming, global business which has created a host of problems, particularly when surrogacy arrangements involve parties in different countries throughout the world.

The new mandate issued by the Hague Conference's Council requires the Permanent Bureau to gather information on the practical legal needs in the area, on comparative developments in domestic and private international law, and on the prospects of achieving consensus on a global approach to addressing international surrogacy issues.

The Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction

From 23 to 25 February 2011, 73 judges, Central Authority officials, and other experts from Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Spain, United States of America, Uruguay, and Venezuela, and from the Organization of American States (OAS), IberRed, the Inter-American Children's Institute (IIN), the Ministry of Foreign Affairs of Mexico, as well as the Hague Conference on Private International Law, met in Mexico City to discuss how to improve, among the countries represented, the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the '1980 Hague Child Abduction Convention') and the *Montevideo Convention of 15 July 1989 on the International Return of Children* (the '1989 Inter-American Convention') and the implementation 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').

The meeting was organised as a follow-up to the judicial seminar on the operation of the 1980 Hague Child Abduction Convention in the Inter-American region held in Monterrey, Mexico, in December 2004 and the Inter-American experts meeting held in Buenos Aires, Argentina, in 2007, in order to chart

regional developments since those meetings, and to set new goals for the region for the coming years.

The meeting sought to address, among other topics, the expansion of the International Hague Network of Judges throughout the Americas (and the development of national networks of judges), co-operation among the regional designated Central Authorities under the respective Conventions, procedural reforms in relation to the 1980 Hague Child Abduction Convention (including discussion of the Inter-American Model Law and other regional projects), enforcement and safe return issues under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention, implementation of the 1996 Hague Child Protection Convention in the region, and preparation for and involvement of the Latin American region in the up-coming Sixth Meeting of the Special Commission to review the practical operation of the 1980 and 1996 Conventions.

The Conclusions and Recommendations endorsed by participants will be available on the Hague Conference website shortly under 'News and Events'.

Finnish-Russian Expert Conference on International Child and Family Law

On 23 March 2011 a Finnish-Russian Expert Conference was held in Helsinki to discuss questions related to international child and family law. The Permanent Bureau was invited to participate in this meeting and was represented by Deputy Secretary General, William Duncan.

It was noted at the Conference that a legislative proposal concerning the accession of Russia to the 1980 Hague Child Abduction Convention, drafted by the Russian Ministry of Education and Science, had been passed by the Government of the Russian Federation and sent to the State Duma for consideration. In this regard, the participants emphasised the significance of designating a Central Authority in accordance with the 1980 Hague Child Abduction Convention and the importance of an effective implementation mechanism in Russia. The following objectives were especially raised at the Conference:

- designating a Central Authority and starting effective Central Authority operations in Russia;
- developing co-operation between the Finnish and Russian Central Authorities;
- arranging education concerning the application of the 1980 Hague Child Abduction Convention for the competent authorities in Russia, together with the Hague Conference on Private International Law, while taking into account the administrative, funding-related and organisational issues.

The participants were also pleased to discover that Russia is making preparations for accession to the 1996 Hague Child Protection Convention. The Hague

Conference is providing some technical assistance in this regard. The Conclusions of the conference are available in full at:

http://www.hcch.net/upload/20110323helsinki_concl.pdf.

The Hague Children's Conventions: Status Update

Since the previous briefing, a number of States have ratified or acceded to the Hague Children's Conventions:

- On 24 February 2011, Malta acceded to the 1996 Hague Child Protection Convention. The Convention will enter into force in Malta on 1 January 2012.
- On 2 March 2011, the Republic of Haiti signed the *Hague Convention of 29 May 1993 on the Protection of Children and Cooperation in respect of Inter-country Adoption* (the '1993 Convention'). By signing this Convention, the Republic of Haiti has signalled its wish and intention to reform its child protection system, as well as its intercountry adoption system, which is an essential starting point for ratification of the 1993 Convention. This is the first Hague Convention which the Republic of Haiti has signed, making it the 138th State to be 'connected' to the Hague Conference on Private International Law.
- On behalf of the EU, during the Hague Conference's Council on General Affairs and Policy, the Hungarian Deputy Prime Minister and Minister of Justice & Public Administration, H.E. Dr. Tibor Navracsics, signed the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the '2007 Convention'). This EU signature constitutes a preliminary endorsement of the Convention. Next year the EU will formally become a Party to this Convention, thus binding its Member States.
- During the Council Meeting, the 2007 Convention was also ratified by Norway. Norway is the first State to ratify this Convention (although the 2007 Convention has been signed by the EU (see above), the Ukraine, the USA and Burkina Faso). The 2007 Convention has not yet entered into force (see Art. 60(1) of the 2007 Convention).
- Finally, at the Council Meeting Andorra deposited its instrument of accession to both the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* and the 1980 Hague Child Abduction Convention. Andorra has thereby become the 23rd Party to the former Convention and the 85th Contracting State to the 1980 Hague Child Abduction Convention.