

Hague Conference Update

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Annual meeting of the Council on General Affairs and Policy of the Hague Conference (17-20 April 2012)

A short report

The Council on General Affairs and Policy (hereafter "the Council"), composed of all Members of the Hague Conference on Private International Law, has charge of the operation of the Conference. At its last annual meeting, held in The Hague on 17-20 April 2012, the Council addressed several areas relative to family law and provided the mandate for future work by the Permanent Bureau.

Conclusions and Recommendations (excerpts)

Review of activities of the Conference

1. The Council welcomed the activities of the Conference carried out by the Permanent Bureau since the last Council meeting (5-7 April 2011).

Ceremonies for signing and ratifying of certain Hague Conventions

2. The Council witnessed the deposit by the Ambassador of the Czech Republic of the instrument of ratification of the Convention of 13 January 2000 on the International Protection of Adults; and the signing by the Ambassador

of Serbia of the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

Current work

Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

5. The Council welcomed the successful outcome of Parts I and II of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention and took note of the Conclusions and Recommendations of the Special Commission.
6. 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 Article 13(1) b) of the 1980 Child Abduction Convention, with a component to provide guidance specifically directed to judicial authorities.
7. The Council also decided to establish an Experts' Group to carry out further exploratory research on 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 shall 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.
8. The Council supported the further work and acknowledged that should there be a need to prioritise resources, work on the Guide to Good Practice would receive preference.



Council on General Affairs and Policy of the Conference of April 2012,
(from left to right) Mr James Ding, Mr Paul Tsang and Justice Michael Hartmann, 18 April 2012

Working Party on Mediation in the context of the Malta Process

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

Proposal to establish an Asia Pacific Regional Office for the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China

14. The Council warmly endorsed the proposal to establish an Asia Pacific Regional Office for the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China. The Council noted with gratitude that funding for the Office's operation was now ensured for an initial period of three years. The future directions and the question of the financial sustainability of the Office beyond this initial period will be decided by Council in light of a comprehensive evaluation.

Future work

Accessing the content of foreign law and the need for the development of a global instrument in this area

15. The Council took note of the Conclusions and Recommendations of the European Commission – Hague Conference Joint Conference on Access to Foreign Law in Civil and Commercial Matters held in Brussels, Belgium in February 2012. The Council decided that the Permanent Bureau should continue monitoring developments but not take any further steps in this area at this point.

The application of certain private international law techniques to aspects of international migration

20. The Council accepted that the Permanent Bureau would continue to explore, in consultation with interested Members and relevant international organisations, the potential value of using certain private international law techniques in the context of international migration.

Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements

21. The Council welcomed the preliminary report drawn up by the Permanent Bureau and mandated that the Permanent Bureau continue the current work under the 2011 Council mandate and further 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 shall seek views on the needs to be addressed and approaches to be taken. The Permanent Bureau is invited to present its final Report to the Council in 2014.

Recognition and enforcement of foreign civil protection orders: A Preliminary Note

22. The Council 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 shall report to the Council in 2013.

Other topics

23. The Council invited the Permanent Bureau to continue to follow developments in the following areas:
 - b) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;
 - c) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;

Post-Convention services and activities

27. The Council noted the endorsement of the Emerging Guidance and General Principles for Judicial Communications by the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions (Part I) and invited their wide dissemination.
28. In relation to the 1993 Inter-country Adoption Convention, the Council noted the significant progress made on Accreditation and adoption accredited bodies: general principles and Guide to Good Practice as well as the preparations for the informal Experts' Group on financial aspects of inter-country adoption. The Council noted the importance of technical assistance in relation to the implementation of the 1993 Inter-country Adoption Convention and the lack of funding to continue the position of the Adoption Technical Assistance Programme Coordinator.
29. The Council welcomed the achievements of the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions.

Latest Developments in Latin America

Permanent Bureau

The Hague International Network of Judges has witnessed exponential growth in the Latin American region over the last several years. The Liaison Legal Officer has been visiting

Supreme Courts in the region, explaining the aims of the Network and the role of Network Judges in assisting with proper Convention implementation. In early 2005, no Network Judges had been designated in Latin America, whereas by the end of 2011, all Latin American States that were Parties to the 1980 Child Abduction Convention had designated Network Judges. Many of these Judges have contributed to the resolution of child abduction cases, providing advice to their colleagues in their home States and abroad and have actively promoted good practices and direct judicial communications in their jurisdictions.

From 23 to 25 February 2011, the Hague Conference—in coordination with the Inter-American Children's Institute and the Mexican Ministry of Foreign Affairs—organised the Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, held in Mexico City. Participants addressed the main obstacles to implementation of the Child Abduction Convention in their States and presented useful recommendations geared towards overcoming those obstacles. Participants also stressed the importance of urgent responses between Central Authorities; promoted the use of modern technologies; acknowledged the value of Hague Conference tools (including, among others, Guides to Good Practice, the Model Law on Procedure for the Application of the Conventions on International Child Abduction and INCADAT) as well as the International Network of Judges in improving the operation of the Convention; and urged the Hague Conference and Inter-American Children's Institute to develop training courses for Central Authorities and judges (conclusions of the meeting are available at <http://www.hcch.net/upload/temp/mex2011concl.pdf>).

The Sixth Meeting of the Special Commission to review the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention was naturally the most important event in this field. The significant number of Latin American delegations at the meeting and their active participation and contributions deserve to be mentioned, and can be explained, to a considerable 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 (reported above) and various conference calls among Hague Network Judges and Central Authorities (organised and coordinated by The Hague Conference Regional Office in Latin America).

On January 28, 2012, the Latin American delegations who were in The Hague attending the second part of the Sixth Meeting of the Special Commission held a meeting to discuss the Hague Children's Conventions and possible actions to promote them and/or improve their operation in the Latin American region. The meeting was very helpful and as a result of the discussions, several conclusions were drafted. In summary, it is worth noting the increased interest shown in the region for the 1996 Child Protection and the 2007 Child Support Conventions. Participants requested support in the promotion and implementation of these instruments which they considered to be beneficial for the region. In particular, with regards to the 1996 Child Protection 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 given that the implementation of these articles may present certain challenges for the legal systems of the region. As for the 1980 Child Abduction Convention, the need to develop specific procedural regulations to meet the swift terms of the Convention was highlighted, and the use of the Inter-American Model Law in this regard was commended. Participants suggested that sharing experiences of States that have implemented good practices such as specific procedural regulations to apply the Convention and/or that have concentrated jurisdiction in a few judges would be helpful to persuade other jurisdictions of the benefits of following such examples. In relation to the International Hague Network of Judges, participants suggested that there was a need to develop some kind of document which further explicates the role of the Hague Network Judge and the operation of Direct Judicial Communications.

The Intercountry Adoption Technical Assistance Program (ICATAP): An Update

Guatemala – The Permanent Bureau continues its co-operation with the authorities of Guatemala concerning the implementation and application of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption (hereinafter “the 1993 Hague Intercountry Adoption Convention”). At this moment Guatemala is seeking to reinforce the capacities of its authorities, through additional staffing and training.

The Chilean Central Authority on Intercountry Adoption provided technical assistance earlier this year to the Guatemalan Central Authority's (Consejo Nacional de Adopciones, CNA) multidisciplinary team in relation to the assessment of affective bonds developed between a child and the person(s) who take(s) care of him/her.

During a recent visit of the Hague Conference Liaison Legal Officer for Latin America, the Permanent Bureau discussed the need to resolve transition cases (which started under the old system) as a priority; and the possibility of starting a pilot project for the selection of a very limited number of adoption accredited bodies that would be able to assist a small number of prospective adoptive parents in the intercountry adoption of special needs children. After discussions with the relevant authorities and experts, it was decided that the Permanent Bureau will explore the possibility of collaboration on such pilot programme at the appropriate time. In addition, the Permanent Bureau will be in contact with CNA to evaluate if there is a need to provide further technical assistance in the form of training to the CNA and review of the CNA's internal regulations, and if it is the case, assess whether the Permanent Bureau would have the necessary resources to do so.

Cambodia – Intercountry adoptions are expected to resume in January 2013. Toward that end, and with the view to

increase safeguards to protect the best interests of children, the Permanent Bureau, with the support of UNICEF, has assisted authorities with the development of new adoption regulations (Prakas) on financial issues regarding adoptions and criteria on adoption accredited bodies. The Permanent Bureau is now discussing with UNICEF how to provide further training to the relevant authorities on the 1993 Hague Intercountry Adoption Convention.

Haiti – On 12 June 2012, the Haitian Parliament has voted in favour of the ratification of the 1993 Hague Intercountry Adoption Convention. The instruments of ratification remain to be deposited with the Government of the Kingdom of the Netherlands in order for the Convention to enter into force in Haiti. A Plan for technical assistance focusing on the legal and structural strengthening of the adoption system will be conducted by the Permanent Bureau in close collaboration with the Haitian authorities (and more especially the future Central Authority) and with the support of several receiving States, UNICEF and international experts.

Official opening of the Hague Conference on Private International Law Asia Pacific Regional Office in Hong Kong (13 December 2012)

On 13 December 2012, the Hague Conference on Private International Law celebrated the official opening of its new Asia Pacific Regional Office in Hong Kong. The Opening Ceremony took place in the Central District of Hong Kong

Island at the Government House, the official residence of the Chief Executive of the Hong Kong Special Administrative Region. Guests included the Secretary General of the Hague Conference, as well as a number of senior officials including the Chief Executive of the Hong Kong Special Administrative Region, Vice Minister of Foreign Affairs of the People's Republic of China, and the Secretary for Justice of the Hong Kong Special Administrative Region. Over 100 other distinguished guests, including Consuls General and representatives from over 30 countries and international organisations, also attended the event.

During the Opening Ceremony, speakers noted the role the new Asia Pacific Regional Office in Hong Kong would play in helping to increase awareness of the value of membership of the Hague Conference and in encouraging States in the Region to join Hague Conventions, which would benefit not only States in the region, but all countries connected to the Hague Conference throughout the world.

An increased Membership base in the Region would bring wider representation of a diverse range of legal traditions to the Hague Conference and help the Organisation develop new instruments better adapted to meet the needs of the Region. It will also assist in raising revenues, help to reduce expenses for the services already provided to State Parties in the Region, and facilitate ratifications or accessions to Hague Conventions by States in the Region.

The new Office in Hong Kong is the second Regional Office of the Hague Conference and the first in the Asia Pacific. The first Regional Office is located in Buenos Aires, Argentina, to serve Latin American States.



Official Opening Ceremony of the Hague Conference on Private International Law Asia Pacific Regional Office in Hong Kong, Central District, Hong Kong, 13 December 2012