

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

Introduction

This Hague Conference Briefing provides readers with: information concerning the first event co-organised by the new Asia Pacific Regional Office of the Hague Conference, based in China (Hong Kong SAR); an update on the Intercountry Adoption Technical Assistance Programme (ICATAP); and, information on the ‘Malta Process’, including an update on the activities of the Working Party on Mediation established in the context of this process. It finishes with the usual ‘status update’ concerning the Hague Children’s Conventions.

Workshop for East and Southeast Asian States on the 1993 Hague Intercountry Adoption Convention, 27 to 28 March 2013

From 27 to 28 March 2013, a Workshop for East and Southeast Asian States on the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the ‘1993 Convention’), co-organised by the Hague Conference and the Governments of Macao and Hong Kong Special Administrative Regions (SAR) of the People’s Republic of China, took place in China (Macao SAR). The Workshop was the first event organised through the Asia Pacific Regional Office of the Hague Conference since its official opening in December 2012. The event gathered high-ranking officials and experts from East and Southeast Asia to discuss matters related to intercountry adoption.

The Workshop was attended by approximately 40 experts from Cambodia, China (including Hong Kong SAR and Macao SAR), Republic of Korea, the Philippines, Thailand and Vietnam, as well as representatives from UNICEF Cambodia, the International Social Service (Hong Kong SAR and Japan offices) and members of the Permanent Bureau of the Hague Conference, including staff from its Asia Pacific Regional Office.

The Workshop provided high-level government officials and other experts with an opportunity to examine the implementation and operation of the 1993 Convention in States throughout the region. Experts shared good practices and identified ways to overcome challenges concerning, among other matters: the scope of the Convention (in particular, its applicability to adoptions by foreign nationals (short and long-term residents), dual nationals and relatives living abroad); the authorisation and monitoring of foreign adoption accredited bodies; and the financial aspects of intercountry adoption. The Workshop also provided an opportunity for State Parties to the 1993 Convention to encourage the States not yet Party to

consider ratification or accession to this Convention. Experts also had the occasion to promote and build good working relationships with delegates from neighbouring States.

The Hague Conference, through its Asia Pacific Regional Office, plans to build on this fruitful co-operation by supporting participating States in their efforts to implement, where necessary, the Conclusions and Recommendations endorsed by all participants at the close of the Workshop. The proven value of the technical assistance delivered by the Permanent Bureau of the Hague Conference within the framework of ICATAP was also noted for this purpose.

Intercountry Adoption Technical Assistance Programme: an update

Haiti

Several developments have taken place in Haiti over the past year with a view to progressively implementing the 1993 Convention.

First, after the Haitian Parliament voted in favour of the ratification of the Convention on 12 June 2012, a temporary administrative procedure was drafted in order to strengthen safeguards pending the vote on the new implementing legislation. As a result, intercountry adoptions resumed in early January 2013. Secondly, the new implementing legislation on intercountry adoption was finally adopted by the Haitian Parliament in August 2013.

Meanwhile, the Permanent Bureau has continued to provide legal and technical advice to the Haitian authorities. This has focused on strengthening the legal provisions concerning adoption and the structure of the adoption system in accordance with a ‘Work Plan for Technical Assistance’ which was drafted in close collaboration with the Haitian authorities (IBESR) and with the support of the ‘Montreal Group’ (which includes the Central Authorities of Belgium, Canada (Quebec and federal), Chile, France, Germany, Italy, the Netherlands, Switzerland, the USA, UNICEF and other international experts). Further, a two-week mission of two experts took place in March 2013 aimed at assisting the Haitian authorities with preparing for the entry into force of the 1993 Convention. After meeting with the authorities responsible for adoptions and the key actors, the experts made several recommendations to the Haitian authorities, including both short and long-term measures which take into account the opportunities and challenges arising from the implementation of the Convention. The experts

also identified the current needs of IBESR and other stakeholders in terms of technical support and training on intercountry adoption. In this respect, in September 2013, the Permanent Bureau sent an international expert to Haiti for a three month mission in order to provide daily technical support to the Haitian authorities, according to the actual needs and realities of the Haitian context.

Cambodia

Building on the work undertaken in previous years, the Permanent Bureau, in close collaboration with UNICEF, has continued to provide legal assistance to Cambodia, in particular, most recently, in relation to the drafting of Regulations (Prakas) on the financial issues concerning intercountry adoption and the criteria for authorising foreign adoption accredited bodies.

In addition, in November 2012, the Central Authority of the Philippines undertook a one month mission to Cambodia in order to train the Cambodian Central Authority (the Intercountry Adoption Central Authority Committee and Intercountry Adoption Administration) and to make recommendations with a view to intercountry adoptions being resumed in the near future. This mission included training ICAA staff on how to assess and process children's dossiers, prospective adoptive parents' dossiers and how to undertake the authorisation of foreign accredited bodies.

Madagascar

In June 2013, the Permanent Bureau participated in a national seminar on the 'Strengthening of the care of vulnerable children in Madagascar' organised by the Ministry of the Population and Social Affairs, the French Embassy in Madagascar and UNICEF. Part of the conference was dedicated to an analysis of the implementation of the 1993 Convention in the country, with a view to identifying the possible improvements in legislation and practice. More than 60 key actors attended the conference, including judges, representatives of authorities and of civil society. The Permanent Bureau also had the opportunity to work closely with the Central Authority for two days, in order to support the improvements in practice and to maintain an open discussion on several operational issues concerning the effective implementation of the Convention. Madagascar has also developed several interesting practices for the proper implementation of the 1993 Convention which might be of use to other States of origin considering joining the Convention or improving their current practices.

Other States

Chile, Colombia, Ghana, Guatemala, Korea and Lesotho have also benefited from technical assistance provided under ICATAP during the end of 2012 and the first half of 2013.

The 'Malta Process' and the Working Party on Mediation: an Update

The 'Malta Process' was launched in 2004 as a dialogue between senior judges and high-ranking government officials from Contracting States to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the '1980 Convention') and non-Contracting States with Sharia-based or influenced legal systems. It aims at improving State co-operation in order to assist with resolving difficult cross-border family law disputes in situations where the relevant international legal framework is not applicable. Discussions at the three conferences organised in the framework of the 'Malta Process' focused in particular on how to improve child protection between the relevant States by ensuring that the child's right to have continuing contact with both parents is supported and by combating the wrongful removal and retention of children.

The Working Party on Mediation was established in 2009 in the context of the 'Malta Process' with the objective of promoting the development of mediation structures to help resolve cross-border family disputes concerning custody of, or contact with, abducted children, where the Convention did not apply. Based on demographic factors and legal traditions, a small group of States was invited to designate an expert to the Working Party. These States comprised an equal number of Contracting States to the 1980 Convention and non-Contracting States, namely Australia, Canada, Egypt, France, Germany, India, Jordan, Malaysia, Morocco (which at the time was considered a non-Contracting State; in 2010, Morocco ratified the 1980 Convention, which created an 'imbalance' between the number of Contracting and non-Contracting States in the Working Party), Pakistan, the UK and the USA. Recently, South Africa (as a Contracting State to the 1980 Convention) joined the Working Party. The Working Party has invited a few non-Contracting States whose legal systems are based on or influenced by Sharia to join the Working Party.

The Working Party on Mediation calls on Contracting States to implement the 'Principles for the Establishment of Mediation Structures in the context of the Malta Process' (the 'Principles') that it had developed in 2010, and in particular suggests establishing a Central Contact Point for international family mediation in connection with cases between Contracting States and non-Contracting States whose legal system is based on or influenced by Sharia. This Central Contact Point is intended to facilitate the provision of information on available mediation services in the respective jurisdictions, access to mediation, and information regarding other important related issues, such as relevant legal information. This practical assistance is considered of particular importance since, in cases of a wrongful removal or retention of a child, it is often difficult for the left-behind parent to obtain crucial information on what steps to take, where to turn and in particular

how to access legal proceedings or find assistance regarding an amicable dispute resolution. While Contracting States to the 1980 Convention have designated Central Authorities that the left-behind person can contact for assistance, no such authority exists in non-Contracting States. A Central Contact Point for international family mediation could bridge the gap and ensure information exchange and co-operation between the state of habitual residence of the child and the state of the child's presence. Furthermore, the Central Contact Point may assist in finding practical ways of ensuring the child's right to maintain personal relations with both parents.

The Principles further refer to certain standards regarding the identification of international mediation services as well as regarding the mediation process and the mediated agreement. They emphasise, for example, the importance of rendering a mediated agreement binding or enforceable in all the legal systems concerned before its implementation.

The meeting of the Working Party on Mediation in the context of the 'Malta Process' in The Hague, April 2013

From 11 to 12 April 2013, the Working Party on Mediation held a meeting in the Embassy of Canada in The Hague. The group of around 20 people included not only Working Party Members but also delegates from a few countries who were previously asked to consider membership in the Working Party and a few distinguished guest speakers. The meeting was organised by the Permanent Bureau of the Hague Conference on Private International Law in co-operation with the Government of Canada and was facilitated by the two co-chairs of the Working Party, The Honourable Chief Justice Tassaduq Hussain Jilani of the Pakistan Supreme Court and William Crosbie, Assistant Deputy Minister at the Department of Foreign Affairs and International Trade Canada. On 11 April 2013, participants were invited to a reception hosted by the German Embassy in The Hague.

The objective of the meeting was to exchange experiences on current practices with cross-border co-operation in international parental child abduction and access cases. The Working Party heard presentations from two outside expert speakers on the use of mediation in cross-border family matters from the Islamic perspective.

Dr Mohamed Keshavjee, Doctor of Islamic Law and Alternative Dispute Resolution, an expert in cross-cultural mediation with a specific focus on Muslim diaspora communities, who is based in the UK, delivered a presentation on the 'Islamic perspectives on the use of mediation in inter-spousal child abduction cases'. He emphasised the need for collaboration between Contracting and non-Contracting States to the 1980 Convention and suggested that mediation would offer a soft approach and could bring trust and confidence to the process. Dr Hamid Slimi, Chair of the Canadian Council of Imams, Imam and Resident Scholar of Sayed

Khadija Centre in Ontario, Canada, presented on the concept in Islamic law of mediation, family law, rules related to custody of the child and the wrongful removal or retention of a child. He also reflected on his experiences in promoting and using mediation in Canada. After the presentations, participants continued to discuss how family matters are dealt with in Islamic law, including custody rights and how family mediation could bring practical solutions to an increasing number of cross-border family disputes. They also exchanged information on relevant case-law in their jurisdictions. In particular, the Working Party Members from Egypt and Jordan enriched the discussion with country- and cultural-specific information and on the use of family mediation in their countries.

Several members of the Working Party presented on the work of the Central Contact Points for international family mediation that have been established in their countries for implementing the 'Principles for the Establishment of Mediation Structures in the context of the Malta Process'. The objective was to exchange information on experiences of the Central Contact Points and to discuss possible ways to promote further and enhance the concept of such a contact point. To date, Central Contact Points for international family mediation exist in Australia, France, Germany, Pakistan, Slovakia, and the USA.

The meeting in The Hague also provided an opportunity for Working Party Members to discuss future activities of the Working Party on Mediation, which may include regional workshops for government officials, judges and experts from selected countries considering possible solutions to cross-border family disputes involving children, in particular through international family mediation.

More information on the Malta Process and on the Working Party on Mediation is available at www.hcch.net, in the child abduction section.

The Hague Children's Conventions: Status Update

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

- On 5 March 2013, the Kingdom of Swaziland deposited its instrument of accession to the 1993 Convention and thus became the 90th Contracting State to this Convention. The Convention entered into force for Swaziland on 1 July 2013. In addition, on 24 May 2013, the Republic of Korea signed the 1993 Convention.
- On 10 April 2013, Serbia ratified the *Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (the '2007 Protocol'). Serbia's ratification is the second for the 2007 Protocol, following ratification by the EU on 8 April 2010. As a result of Serbia's ratification, the Protocol entered

Briefings

- into force on 1 August 2013 in the 26 EU Member States bound by the EU's ratification, as well as in Serbia.
- On 3 June 2013, the Republic of Kazakhstan deposited its instrument of accession to the 1980 Convention. The Convention entered into force for Kazakhstan on 1 September 2013.
 - On 24 July 2013, Ukraine ratified the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the '2007 Convention'). The 2007 Convention will enter into force for Ukraine on 1 November 2013.