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

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### Introduction

Winter is upon us in The Hague: the leaves have fallen from the trees, the snow has begun and the canals may soon be full of ice-skaters ready to take advantage of the icy conditions. However, here at the Permanent Bureau, the Hague Conference's work in international family law cannot afford to freeze over.

This Briefing provides an update regarding some of the work which is being undertaken by the Hague Conference in relation to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (the '2007 Hague Child Support Convention') and the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (the '1993 Hague Intercountry Adoption Convention'). It also provides a brief report of the recent Special Commission on the practical operation of the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the 'Apostille Convention'), as well as a summary of a recent conference attended by the Permanent Bureau and information concerning a new private international law centre in Serbia. Lastly, it provides the usual 'status update' concerning the 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](http://www.hcch.net).

### The 2007 Hague Child Support Convention: an update

There have been a number of exciting recent developments relating to the 2007 Hague Child Support Convention.

The objective of the Convention is 'to ensure the effective international recovery of child support and other forms of family maintenance' (Art 1). The Convention pursues this objective by providing: an efficient and responsive system of co-operation between Contracting States in the processing of international applications for establishment and modification, and for the expedited and simplified recognition and enforcement, of maintenance decisions; effective access to cross-border maintenance procedures; and a requirement of prompt and effective enforcement of foreign maintenance decisions.

The Convention pays regard to many practical matters that can affect the efficiency with which international claims are pursued, for example, language requirements, standardised forms and

exchange of information on national laws. The Convention also encourages the use of new information technologies to reduce the costs and delays which have in the past plagued international claims. The Convention builds on the strengths of existing international instruments, in particular the existing Hague Conventions, the New York (United Nations) Convention of 1956 on the Recovery Abroad of Maintenance, as well as several regional and inter-state or inter-provincial instruments and arrangements.

### (1) Entry into Force

The 2007 Convention reached an important milestone in early 2013, entering into force on 1 January 2013, subsequent to the ratification of the Convention by two States. Albania was the second State to ratify the Convention in September 2012, following Norway's ratification in 2011. Bosnia Herzegovina has also ratified the Convention and became the third State Party to the Convention on 1 February 2013.

### (2) Caseworker's Practical Handbook

A new revised version of the Practical Handbook for Caseworkers under the 2007 Convention has been completed and has been circulated to Hague Conference Members for final comments. It is expected that the finalised Practical Handbook for Caseworkers will be published in spring 2013.

The caseworkers that manage cases, initiate and process applications, and work with other States to effectively enforce maintenance decisions, are at the heart of international maintenance establishment and enforcement: the Handbook is intended for these caseworkers. It has been written to assist caseworkers in all types of legal systems, whether they work in large States with complex information technology computer systems, managing hundreds of cases, or in small States with just a few cases. It addresses the issues and processes that will be encountered in dealing with any international case.

### (3) Electronic Country Profile

With much gratitude due to Norway and the Canadian software company Alphinat for providing monetary support and expertise, the electronic version of the Country Profile for the 2007 Convention has been completed. The electronic version of the Country Profile is currently being tested by Canada (British Columbia) Luxembourg, Norway, the Slovak Republic, and the USA, and will become more widely available in 2013.

The Country Profile is a standard form developed by the Hague Conference to assist Contracting States to the 2007 Convention in fulfilling their information-sharing obligations under the Convention (Arts 4, 6 and 57). Contracting States must provide information to the Permanent Bureau of the Hague Conference, inter alia, on their designated Central Authority, as well as information regarding national laws and procedures in the maintenance area.

The electronic version of the Country Profile, available online for States to complete, view, and electronically update with the above-mentioned information, is intended to facilitate:

- (a) timely compliance with the obligations of the Convention with a minimum of administrative effort;
- (b) information exchange between Contracting States;
- (c) cost effective translation of the information provided by Contracting States into English, French, Spanish, and other languages as required by Contracting States;
- (d) accurate and prompt case processing by well-informed caseworkers;
- (e) knowledgeable service to applicants under the Convention;
- (f) prompt updates of the information provided.

#### **(4) Explanatory Report in Spanish**

Work has been undertaken by Professor Alegría Borrás (Universidad de Barcelona), with the assistance of the Permanent Bureau, to complete a Spanish version of the Explanatory Report of the 2007 Convention, which was drawn up by Professor Alegría Borrás and Jenny Degeling with the assistance of William Duncan and Philippe Lortie of the Permanent Bureau of the Hague Conference. The Spanish version of the Explanatory Report will be made publically available on the Hague Conference website ([www.hcch.net](http://www.hcch.net)) in 2013. The Spanish version of the Explanatory Report will be of great assistance to States in the Latin American region.

#### **(5) Heidelberg Global Maintenance Conference: March 2013**

The international conference ‘Recovery of Maintenance in the European Union and Worldwide’, organised by the German Institute for Youth Human Services and Family Law (DIJuF) and the Universities of Aberdeen and Heidelberg, in partnership with the German Federal Ministry of Justice, the National Child Support Enforcement Association (NCSEA), the Hague Conference on Private International Law and the University of Lyon, funded by the EU, will be taking place in Heidelberg, Germany, from 5–8 March, 2013. The conference will feature a wide-range of international speakers on the topic of family maintenance and child support, representing considerable expertise and cutting edge knowledge in this field. The conference is open to lawyers, judges,

caseworkers, academics, enforcement officers, policy makers, and others working, or with an interest in, this field. Registration for the conference is available online at <http://www.heidelberg-conference2013.de/registration/>, and general information on the conference program, presentations, workshops and accompanying research, is available at [www.heidelberg-conference2013.de](http://www.heidelberg-conference2013.de).

#### **(6) New 2007 Child Support Convention Materials developed to assist Judges and the General Public**

The Permanent Bureau of the Hague Conference, the École Nationale de la Magistrature of France and the Romanian Ministry of Justice are undertaking a joint project on ‘Enhancing International Judicial Cooperation in Matters relating to Maintenance Obligations’, funded by the European Commission. The project has produced a practical handbook for judges concerning the 2007 Child Support Convention, the 2009 EU Regulation on Maintenance, and the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations (where relevant), and an information brochure on the international recovery of maintenance for the general public. The practical handbook for judges and the brochure will be available in English, French and Romanian in 2013.

#### **(7) Fundraising continues for iSupport, the future electronic case management, communications and fund transfer system under the 2007 Convention**

The Permanent Bureau of the Hague Conference continues to seek the funding required to move forward with the development of the electronic iSupport system. The business plan for iSupport has already been endorsed by more than 50 states.

The 2007 Convention has the potential to benefit countless children and adults around the world. To ensure that the value of this instrument is fully realised, however, information technology must be utilised to facilitate the fast, efficient, simple, cost-effective and results-oriented international recovery of child support and other forms of family maintenance. iSupport has the potential to provide the technology needed to enable the 2007 Convention to reach its full potential.

The iSupport system will:

- provide an electronic bridge / platform between Contracting States to communicate, process data, and transfer payments under the 2007 Convention;
- develop the foundation for an electronic solution to those states that have not yet embraced e-government solutions in this area;
- assist with the effective implementation of the 2007 Convention;
- lead to greater consistency in practice among different States, as it would be in compliance

- with the 2007 Convention and linked to the electronic Country Profile;
- significantly improve communications between Central Authorities;
- alleviate translation problems by operating in different languages, using the language and medium neutral forms developed under the 2007 Convention;
- potentially generate the required statistics for monitoring the operation of the 2007 Convention; and,
- lead the way towards paperless case management.

## **The 1993 Hague Intercountry Adoption Convention: an update**

### ***Meeting of an Expert Group on the financial aspects of intercountry adoption (8–9 October 2012)***

On 8 and 9 October 2012, an Expert Group comprised of Central Authorities of States of origin and receiving states from various geographical regions and legal systems, UNICEF, the International Social Service (ISS), EurAdopt and two independent experts, met in The Hague to discuss the financial aspects of intercountry adoption.

The meeting, organised by the Permanent Bureau of the Hague Conference on Private International Law following a recommendation of the 2011 Council on General Affairs and Policy of the Hague Conference, gave rise to collaborative discussions and a commitment to work on collective solutions in this area. The Expert Group gave its enthusiastic endorsement to the ‘Discussion Paper on the Financial Aspects of Intercountry Adoption’ (August 2012) prepared by the Permanent Bureau (available on the Hague Conference website: [www.hcch.net](http://www.hcch.net), under ‘Intercountry Adoption section’), adopted definitions on this topic, worked on tables concerning the costs and contributions associated with intercountry adoptions, and reflected on the development of tools to address issues relating to the financial aspects of intercountry adoption.

The Conclusions and Recommendations adopted by the Expert Group are available on the ‘Intercountry Adoption Section’ of the Hague Conference website.

### ***Working Group to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases***

In October 2012, the ‘Discussion Paper: Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases’ was finalised. The Discussion Paper was drawn up by the Central Authority of Australia with the collaboration of the Permanent Bureau and with contributions from other States. The Discussion Paper is available in English, French and Spanish on the ‘Intercountry Adoption Section’ of the Hague Conference website.

The Discussion Paper is the result of the work of the informal group co-ordinated by the Australian Central Authority following the recommendations of the 2010 meeting of the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention. The Discussion Paper proposes specific forms of co-operation between States to prevent and address illicit practices in the framework of the 1993 Hague Intercountry Adoption Convention.

Further work in this area may take the form of practical guidelines for Central Authorities to ensure that the principles of co-operation mentioned in the Discussion Paper are supported and implemented.

### ***Francophone Workshop on the 1993 Hague Intercountry Adoption Convention, (Dakar, Senegal, 27–30 November 2012)***

As a follow up to the first Francophone Seminar held in The Hague (Netherlands) in June 2009, the Hague Conference, in partnership with the Governments of France, Belgium, Italy, The Netherlands and Switzerland organised a 4 day workshop on the implementation and operation of the 1993 Hague Intercountry Adoption Convention in certain Francophone countries of origin in Africa and the Caribbean (Haiti). The workshop took place in Dakar (Senegal) and gathered almost 60 experts from Central Authorities, the judiciary and international organisations.

The aim of the workshop was to bring together experts and judges from different French-speaking countries in order to increase knowledge about the Convention and promote its practical implementation in these States. The work programme included the sharing of experience and good practices in a wide range of fields related to intercountry adoption. The workshop also encouraged other countries to sign and ratify or accede to the Convention in order to guarantee that intercountry adoptions take place in respect of the best interests of the child. Participants also spent a significant amount of time discussing practical cases based on real situations.

The invited countries were countries of origin which are Parties to the Convention (Burkina Faso, Burundi, Guinea, Mauritius, Madagascar, Mali, Rwanda, Senegal and Togo) and countries of origin which have shown an interest in becoming a Party (Benin, Congo, Côte d’Ivoire, Niger, Haiti and Democratic Republic of Congo). Furthermore, French-speaking experts from Belgium, Canada, France, Italy, the Netherlands, the USA and Switzerland were invited, as well as experts from other international organisations (UNICEF) and non-governmental organisations (Euradopt, International Social Service, Save the Children).

Since 2009, three new francophone African States have signed and ratified or acceded to the Convention (Senegal, Togo, and Rwanda), and a Caribbean francophone State has signed the Convention and adopted a decree of ratification (Haiti).

The Conclusions and Recommendations of this conference are available in English and French, on the 'Inter-country Adoption Section' of the Hague Conference website.

### **Special Commission on the practical operation of the Apostille Convention (The Hague, 6–9 November 2012)**

From 6 to 9 November 2012, a Special Commission was convened by the Permanent Bureau at the Peace Palace in The Hague to review the practical operation of the Apostille Convention. This was the third meeting of the Special Commission, which previously met in 2003 and 2009, and was attended by over 160 experts from 75 States and international organisations.

Although not one of the Hague Children's Conventions, the Apostille Convention can play an important role in cross-border family matters – particularly inter-country adoption – by facilitating the circulation of public documents that are used in such matters (eg civil status documents, adoption papers and adoption decrees). This was recognised by the Special Commission, which called on States that are Party to the 1993 Hague Inter-country Adoption Convention to join the Apostille Convention (if they have not already done so). This echoes a similar recommendation made by the Special Commission on the practical operation of the Inter-country Adoption Convention at its meeting in 2010. At present, the Apostille Convention has 104 Contracting States, and over 20 States Parties to the Inter-country Adoption Convention have not yet joined the Apostille Convention.

The Special Commission also addressed other issues concerning the practical operation of the Convention that may affect inter-country adoption procedures, including the wrongful rejection of Apostilles (authentication certificates issued under the Convention for public documents) solely on the basis of their form or how they are issued.

The Conclusions and Recommendations of the meeting are available, in English, French and Spanish, on the website of the Hague Conference ([www.hcch.net](http://www.hcch.net), then 'Apostille section').

### **UNICEF Conference on the Theory and Practice of Child Protection Systems (New Delhi, India, 13–16 November 2012)**

From 13 to 16 November 2012, the Permanent Bureau was invited to present the work of the Hague Conference at a conference entitled, 'A Better Way to Protect All Children: The Theory and Practice of Child Protection Systems'. Held in New Delhi, India, and organised by UNICEF with the assistance of UNHCR, Save the Children and World Vision, participants included high level members of these organisations, representatives of regional offices of UNICEF, and a number of academics.

The purpose of the conference was to bring together a broad range of experts, representing both

the theoretical and practical aspects of child protection, in order to engage in high-level discussions on ways to strengthen and expand child protection systems. A systems approach seeks to address the often fragmented nature of responses to child protection by shifting away from a focus on a 'narrowly defined forensic understanding of child protection towards a greater emphasis on early intervention, prevention and family support' (source: Background Note for the conference).

The Permanent Bureau's representative spoke on the opening panel which addressed the 'Scope of Child Protection Systems'. The representative emphasised the fact that we live in a world where children and families cross borders with greater frequency and ease than ever before. In light of the transnational nature of child protection work today, national authorities and court systems must co-operate with their counterparts abroad if they are to be effective in ensuring the adequate protection of children and families.

Participants were given an overview of the Hague Conference's conventions in the area of international child protection, including the 1980 Hague Child Abduction Convention, the 1993 Hague Inter-country Adoption 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 Hague Child Protection Convention'), along with the post-convention services the Permanent Bureau provides in support of these conventions. The Hague Conference supports a network of administrative and judicial authorities that work together in furthering the best interests of the child in accordance with the principles contained within the UNCRC.

### **Opening of the Centre for Private International Law of the Hague Conventions in Niš, Serbia**

On 5 October 2012, during the 10th Jubilee Conference on Private International Law in Niš (Serbia) organised by Professor Mirko Živković and teaching assistant Sanja Marjanović, the Secretary General of the Hague Conference was asked to inaugurate a room in the Faculty of Law of Niš which is entirely devoted to the Hague Conference and its work: the Centre for Private International Law of the Hague Conventions. The Centre, the only one of this kind in this part of Europe, will promote a more extensive study of private international law on the Hague Conventions and help graduate and post-graduate students in their master and doctoral studies.

The participants to the Jubilee Conference, from all over former Yugoslavia, Greece, Turkey, Bulgaria, Sweden and Germany, showed great, unreserved, enthusiasm for this initiative.



## **The Hague Children's Conventions: Status Update**

On 13 September 2012, Albania deposited its instrument of ratification of the 2007 Hague Child Support Convention. The instrument was accompanied by reservations and a declaration. Since the deposit of the instrument of ratification by Albania is the second deposit, the Convention (as mentioned in the update above), in accordance with its Article 60, first paragraph, entered into force on 1 January 2013.

On 25 October 2012, the depositary of the Hague Conventions also received the instrument of ratification of Bosnia and Herzegovina concerning the 2007 Hague Child Support Convention. In accordance with its Article 60, the Convention entered into force for Bosnia and Herzegovina on 1 February 2013.

On 26 September 2012, Sweden deposited its instrument of ratification of the 1996 Hague Child Protection Convention. The instrument was accompanied by a reservation. The Convention, in accordance with its Article 61(2)(a), entered into force for Sweden on 1 January 2013. With the exception of Belgium and Italy, all EU Member States are now Parties to the 1996 Convention.

On 13 December 2012, the Republic of Korea deposited its instrument of accession to the 1980 Hague Child Abduction Convention. The deposit was followed by the designation of a Central Authority under this Convention. The Convention will enter into force for the Republic of Korea on 1 March 2013. The Republic of Korea is the 89th Contracting State to this Convention.