

REPORT BY GLORIA DEHART

ON THE DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

The Hague Conference on Private International Law is in the process of developing a new convention covering child support and other forms of family maintenance. This project resulted from two special commission meetings discussing the operation and effectiveness of existing conventions on the subject, including prior Hague Conventions on the recognition of maintenance judgments and on applicable law, the United Nations Convention on the Recovery of maintenance, and other regional and bi-lateral agreements. The commissions determined that these existing conventions were either not widely ratified or were not working well and recommended that the conference undertake to develop a convention that would cover all aspects of the establishment, recognition and enforcement of child support and other forms of family maintenance, with emphasis on the cooperation of public bodies in reaching these goals. Included in the work of the commission was the development of a revision of the existing Hague Conventions on applicable law for separate acceptance by States becoming party to the maintenance Convention.

The special commission established by the Conference has met three times in The Hague and is scheduled for a fourth session in June. The draft resulting from this meeting will be considered at a "diplomatic" session next year, after which the convention will be open for ratification or accession by member, participating and other States. The draft to be considered in June is the work of a drafting committee with broad representation and based on the discussions at each of the three commission meetings. The commission is proceeding by "consensus" not by vote as has been the case in the past, due to the role of the European Union in determining the positions for the member States in matters within its competence. The IBA has been represented at all sessions of the special commission, and has participated in the work of committees set up to deal with cooperation issues, applicable Law and the development of forms for applications and reporting.

There is widespread agreement on the basic structure of the convention; cooperation through an active Central Authority; a simple means of recognizing existing orders; and obtaining orders where none exist or cannot be recognized for whatever reason. While there was an initial effort to develop a convention which established standards of jurisdiction to enter orders as well as standards for recognition of orders, there was an irreconcilable conflict, and thus jurisdiction is addressed only in the context of recognition. Most of the provisions are relatively non-controversial in principle but which require careful consideration in the details. Fortunately, the necessity of cooperation and the duties of the designated central authorities are among these. Others remain unresolved. There is also agreement that existing access to the courts of a country through representation by a privately retained attorney is not altered by the establishment of the convention system of handling cases through the central authority and that the recognition provisions will apply to all cases, not just central authority cases.

At the first session of the special commission, Margaret Bennet and Gloria DeHart

established and explained the basic IBA position on several critical issues which have remained unresolved during the successive development of the drafts. These positions follow:

- 1) Assistance in obtaining maintenance should be free of charge to the applicant including whatever legal assistance may be necessary in the system in use in that State, either utilizing agency employed attorneys or providing legal aid assistance without a means test. Those entitled to support who also have the means to retain a private attorney remain free to do so.
- 2) Establishment of the maintenance obligation must include the establishment of parentage for that purpose (or the establishment of the obligation to provide support whatever it may be called).
- 3) Support for a spouse or former spouse should be a mandatory obligation of parties to the convention and other forms of maintenance may be included as State options, and either as recognition only or establishment as well.

Accompanying this report is a copy of the latest draft which will be discussed at the commission meeting in June. It would be very helpful for the IBA representatives to have the benefit of comment and suggestions from those who are interested in this subject. Please send them by e-mail, fax or letter:

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Thank you for your comments and suggestions!