

**RAPPORT DU GROUPE DE TRAVAIL CHARGÉ DES FORMULAIRES  
-  
RAPPORT**

*Coordonné par le Bureau Permanent*

\* \* \*

**REPORT OF THE FORMS WORKING GROUP  
-  
REPORT**

*Co-ordinated by the Permanent Bureau*

*Document préliminaire No 31-A de juillet 2007  
à l'intention de la Vingt-et-unième session de novembre 2007*

*Preliminary Document No 31-A of July 2007  
for the attention of the Twenty-First Session of November 2007*

**RAPPORT DU COMITÉ CHARGÉ DES FORMULAIRES**  
-  
**RAPPORT**

*Coordonné par le Bureau Permanent*

\* \* \*

**REPORT OF THE FORMS WORKING GROUP**  
-  
**REPORT**

*Co-ordinated by the Permanent Bureau*

## TABLE OF CONTENTS

	Page
I - INTRODUCTION.....	3
II - WORKING GROUP ACTIVITIES SINCE JUNE 2006.....	4
1. Organisation of the work .....	4
2. Mandate from the Fourth Meeting of the Special Commission.....	5
III - SHORT OVERVIEW OF THE FORMS DEVELOPED FOR THE DIPLOMATIC SESSION.....	5
1. Harmonised and consistent forms – Common features .....	6
a) <i>Medium Neutral Language</i> .....	6
b) <i>Content common to all the forms</i> .....	6
c) <i>Content common to all Applications, including the Financial Circumstances Form</i> ....	7
d) <i>Content common to all Status Reports on Applications (Art. 12(4))</i> .....	7
e) <i>Content common to all documents in support of an Application for Recognition or Recognition and Enforcement</i> .....	7
2. Specific features of individual forms .....	8
a) <i>Transmittal Form (Art. 12(2))</i> .....	8
b) <i>Acknowledgement Form (Art. 12(3))</i> .....	8
c) <i>Application for Recognition or Recognition and Enforcement of a Decision (Art. 10(1) a)</i> .....	8
d) <i>Abstract of a Decision (Art. 21(2))</i> .....	8
e) <i>Statement of Enforceability of a Decision (Art. 21 b)</i> ) .....	9
f) <i>Statement of Proper Notice (Art. 21 c)</i> ).....	9
g) <i>Application for Enforcement of a Decision Made or Recognised in the Requested State (Art. 10(1) b)</i> ).....	9
h) <i>Application for Establishment of Decision (Art. 10(1) c) and d)</i> ) .....	9
i) <i>Application for Modification of a Decision (Art. 10(1) e) and f) and (2) a) and b)</i> ) ....	9
j) <i>Financial Circumstances Form (Arts. 11(2) a) and b) and 21(1) f)</i> ).....	9
IV - WORKING GROUP RECOMMENDATIONS TO THE DIPLOMATIC SESSION .....	10
1. Proposals to modify the Revised Preliminary Draft Convention .....	10
a) <i>Article 10(2) - Application by the debtor for recognition and enforcement</i> .....	10
b) <i>Article 11 – Option 1 - Representation of the Applicant by the Central Authority</i> ...	10
c) <i>Article 12(2) - Application sent on behalf and with the consent of the applicant</i> ....	10
d) <i>Article 12(9) – At least 3 months to produce additional documents or information</i>	10
e) <i>Article 37(3)</i> .....	10
2. Status of the Forms – Mandatory or Recommended Forms .....	11
a) <i>Transmittal Form (Art. 12(2))</i> .....	11
b) <i>Acknowledgment Form (Art. 12(3))</i> .....	11
c) <i>Abstract of a Decision (Art. 21(2))</i> .....	11
d) <i>Other forms</i> .....	11
e) <i>Modifications suggested to Article 49 – Amendments of forms</i> .....	12
V - FUTURE WORK .....	12
1. Priority .....	12
2. Non-priority .....	12
Annex 1 .....	13
Acknowledgement Form under Article 12(3) .....	14

## Report of the Forms Working Group

*Australia (Co-Chair), Canada, Costa Rica, France, Germany, Netherlands, United Kingdom, United States of America, Slovakia, Sweden, DIJuF, IAWJ (Co-Chair) and NCSEA*

### I - INTRODUCTION

1. Since the beginning of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter the Special Commission), the value of model forms to be used primarily between Central Authorities, whether mandatory or recommended, for the transmission and receipt of applications has been emphasised again and again.<sup>1</sup> Model forms are widely used under other Hague Conventions.<sup>2</sup> They facilitate the presentation of information and provide the opportunity to summarise and list documents for specific applications while reducing documentary requirements to a necessary minimum. While they may not act as substitutes for certain required documents, they may reduce the need for full translations. The familiarity of model forms, even when translated into different languages, facilitates the handling of applications. The forms developed for the Diplomatic Session make use as much as possible of “tick-boxes” and require “open-text” answers as little as possible, such as for names of parties and competent authorities and their contact details. Thus making these forms available in different languages will allow countries to overcome language barriers; it will be possible to complete a form in English and to read it in Spanish, with the exception of the “open-text” answer, which, in most cases being names and numbers, would not need to be translated.<sup>3</sup> Model forms will encourage consistent practices, regular operation and uniform interpretation of the Convention as long as there is only one single set of model forms used under the Convention. They will assist with the swift transmission of documents and information. Finally, the use of model forms will be an essential component of the development of a multilingual international electronic case management and communication system in support of the future Hague Convention.<sup>4</sup>

---

<sup>1</sup> See, “Forms Sub-Committee Report” in “Report of the Administrative Co-operation Working Group of the Special Commission of April 2005 on the International Recovery of Child Support and other Forms of Family Maintenance”, Preliminary Document No 15 of March 2005, at pp. 16-23 and “Report of the Forms Working Group of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance”, Preliminary Document No 17 of May 2006. The development of model forms for the recovery of maintenance began during the Special Commission of November 1995 on the operation of the Hague Conventions relating to maintenance obligations and of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance. The value of model forms was re-emphasised during the Special Commission on Maintenance Obligations of April 1999. See, “Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999”, drawn up by the Permanent Bureau, at paragraphs 14-21.

<sup>2</sup> See, for example, the Request and Certificate Forms of the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, the Return Request Form, the Access Request Form and the Acknowledgment Form Requesting Additional Information under the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, and the Statement of Consent to the Adoption and the Certificate of Conformity of Intercountry Adoption Recommended Model Forms under the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

<sup>3</sup> “Open-text” answers would be completed using alphabetical characters agreed-upon by the users.

<sup>4</sup> See, Information Document of June 2006 “Development of an International Electronic Case Management and Communication System in Support of the Future Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance”, prepared by the Permanent Bureau, for the attention of the Special Commission of June 2006 on the International Recovery of Child Support and other Forms of Family Maintenance.

## II - WORKING GROUP ACTIVITIES SINCE JUNE 2006

### 1. Organisation of the work

2. On 28 June 2006, the Forms Working Group (hereinafter the Working Group) met in person at the Hague after the Fourth Meeting of the Special Commission to discuss its work programme until the Diplomatic Session. Between June 2006 and August 2007, the Working Group met by conference calls on 7 occasions: 30 August 2006, 22 March, 12 and 26 April, 31 May, 5 and 19 July 2007 and in person before and during the Fifth Meeting of the Special Commission on 6, 7 and 13 May 2007.<sup>5</sup>

3. The Working Group, which is an independent Working Group of the Special Commission, has been working in close co-operation with the Administrative Co-operation Working Group, as required by its initial mandate. Also in line with this mandate, the coordination of the Working Group continued to be undertaken by the Permanent Bureau. All the forms produced during the past year have been prepared simultaneously in both French and English. The final versions of the forms have been prepared in Spanish for the Diplomatic Session.

4. As announced during the Fourth Meeting of the Special Commission, the Permanent bureau sought the participation of additional experts from States of civil law tradition in order to increase their representation in the Working Group. In that regard, additional experts from Canada (Québec) and Slovakia joined the Working Group in early 2007. During the last year, the membership of the Working Group was equally balanced between States of civil law tradition and States of common law tradition while keeping an appropriate representation of judicial and administrative systems. The following is a full list of the members of the Working Group:

Shireen FISHER, IAWJ<sup>6</sup> (Co-Chair)  
Zoe CAMERON, Australia (Co-Chair)<sup>7</sup>

Jorge AGUILAR CASTILLO, Costa Rica  
Philip ASHMORE, United Kingdom  
Ana-Sabine BOEHM, DIJuF<sup>8</sup>  
Edouard, DE-LEIRIS, France  
Hilde DRENTH, Netherlands  
Kay FARLEY, NCSEA  
Meg HAYNES, United States of America  
Helena KASANOVA, Slovakia  
Katie LEVASSEUR, Canada (Civil Law)  
Tracy MORROW, Canada (Common Law)  
Anna SVANTESSON, Sweden  
Hans-Michael VEITH, Germany  
Patricia WHALEN, IAWJ  
Christina WICKE, Germany

William DUNCAN, Permanent Bureau  
Philippe LORTIE, Permanent Bureau  
Sandrine ALEXANDRE, Permanent Bureau  
Jenny DEGELING, Rapporteur

<sup>5</sup> Since the beginning of its work the Working Group has met by conference calls on 23 occasions: 27 January, 3, 9, 17 and 23 February, 3 March, 25 May, 8 June, 6 and 20 July, 28 September, 26 October and 23 November 2005, 24 January, 15 March, 26 April et 30 August 2006, 22 March, 12 and 26 April, 31 May 5 and 19 July 2007. It has met in person on 4 occasions: 15 April 2005, 28 June 2006 and 6-7 and 13 May 2007.

<sup>6</sup> International Association of Women Judges.

<sup>7</sup> In June 2006, Zoe Cameron replaced Sheila Bird (Australia) Co-Chair from January 2005 until April 2006.

<sup>8</sup> Deutsches Institut für Jugendhilfe und Familienrecht e.V.

## 2. Mandate from the Fourth Meeting of the Special Commission

5. The mandate of the Forms Working Group from the Fourth Meeting of the Special Commission was:

- a) *to continue its work on medium neutral language in relation to Forms and to prepare proposals for the consideration of the Drafting Committee and the Diplomatic Conference.*
- b) *to up-date the Forms developed for this Special Commission and to continue its work on other forms in the light of the Preliminary Draft Convention to be prepared by the Drafting Committee in September 2006. Once prepared the draft Forms should be distributed to the Drafting Committee for comments before the spring 2007 Special Commission and then distributed to States prior to the Diplomatic Conference.*

### **III - SHORT OVERVIEW OF THE FORMS DEVELOPED FOR THE DIPLOMATIC SESSION**

6. With a view to facilitate the implementation of the Convention in all future Contracting States, all the forms developed by the Working Group, including the Transmittal Form (Art. 12(2)) and the Acknowledgment Form (Art. 12(3)), are respectful of the civil law and the common law legal traditions and are compatible with either administrative and judicial systems. They all follow the same model. They can all be used for either child support and / or other forms of family maintenance.<sup>9</sup> The Forms have been prepared simultaneously in both English and French and have been translated into Spanish. As the forms follow diligently the text of the Convention they can be easily translated into any other language the Convention is translated into. In addition to the Transmittal Form, the Acknowledgement Form and Status Reports, the Convention provides for eight different applications (Art. 10). Working towards the development of harmonised forms to facilitate the work of Central Authorities, the Working Group has managed to produce a minimal number of four forms to cover these eight applications.<sup>10</sup> During the last three years, the Working Group developed the following forms:

- 1) Transmittal Form (Art. 12(2))<sup>11</sup>
- 2) Acknowledgment Form (Art. 12(3))
- 3) Application for Recognition or Recognition and Enforcement of a Decision (Art. 10(1) a)) with a specific Status Report (Art. 12(4)) and the following accompanying documents
  - Abstract of a Decision (Art. 21(2))
  - Statement of Enforceability of a Decision (Art. 21(1) b))
  - Statement of Proper Notice (Art. 21(1) c))
- 4) Application for Enforcement of a Decision Made or Recognised in the Requested State (Art. 10(1) b)) with a specific Status Report (Art. 12(4))
- 5) Application for Establishment of Decision (Art. 10(1) c) and d)) with a specific Status Report (Art. 12(4))

<sup>9</sup> According to some members of the Working Group, the forms developed could be used in court or administrative tribunal proceedings in some jurisdictions.

<sup>10</sup> As part of its future work programme the Forms Work Group highly suggests developing a Practical Handbook on the use of Forms.

<sup>11</sup> During its 16-18 May 2007 meeting, the Drafting Committee reviewed the Transmittal Form under Article 12(2) and the Application for Recognition or Recognition and Enforcement for the purpose of Article 10(1) a) and related documents under Article 21.

- 6) Application for Modification of a Decision (Art. 10(1) *e*) and *f*) and (2) *a*) and *b*)) with a specific Status Report (Art. 12(4))
- 7) Financial Circumstances Form (Arts. 11(2) *a*) and *b*) and 21(1) *f*))

## 1. Harmonised and consistent forms – Common features

7. The Working Group has developed harmonised and consistent forms to facilitate processing by Central Authorities. In that respect, required information, such as contact details of Central Authorities, description of the parties, payment information, description of a decision, restricted information or attestation, is always presented in the same fashion regardless of the form. For example, items 1 to 5 of all Applications follow the same language and structure.<sup>12</sup> Only item 6 and following differ from one Application to another. Forms of the same kind always follow the same format. Harmonised and consistent forms will also facilitate the adoption of the forms and their amendments. Finally, the forms are medium neutral, as is the text of the Convention.

### *a) Medium Neutral Language*

8. The Working Group examined the practical issues surrounding electronic communication of forms and other accompanying documents and presented recommendations and advice to the Drafting Committee on these matters. The text developed by the Drafting Committee allows the implementation of information technologies without endangering due process principles. The result is a text that avoids as much as possible the use of requirements such as “signature” (where what is usually needed is a simple identification), “writing”, “original”, “sworn” and “certified”. Furthermore, exchange of views with the UNCITRAL Secretariat in relation to “authentication” issues helped the development of new provisions on the transmission of documents and related information. Language has been added to Articles 12(2), 13, 20(7) *c*), 21(3) and 26(4), further to the mandate of the Special Commission, to ensure that the language of the Convention is media-neutral, without altering its substance thereby making possible the swift transmission of documents by the most rapid means of communication available (*i.e.* technology-neutral).

### *b) Content common to all the forms*

9. The Transmittal Form, the Acknowledgment Form, all the Applications, including the specific Status Report Form (Art. 12(4)) designed for each application, and the Financial Circumstances Form have common features deriving from the text of the Convention. They all include a “Confidentiality and Personal Information Protection Notice” that follows the text of Articles 35, 36 and 37 of the Convention. As the applications forms for the purpose of Chapter III are to be used by and made through Central Authorities (Art. 9), they all include a section where it is possible to provide the contact details of the Central Authority and the name of the contact person in that Central Authority (Art. 11(1) *h*)). A file reference number is always included for follow-up purposes in combination with the names of the applicant, the person(s) for whom maintenance is sought or payable and the debtor (respondent). The Working Group deliberately chose to always identify in the forms the applicant separately as he or she could either be the person for whom maintenance is sought, a representative of that person or the debtor (*i.e.* in the case of an Application for Modification<sup>13</sup>). Furthermore, in all the applications there is always an indication as to who is the respondent. Finally, at the very end of each

<sup>12</sup> The same can be said about sections 1 to 7 all the Status of Application Reports.

<sup>13</sup> It could also be possible in the case of an application for Recognition or Recognition and Enforcement. See, paragraph 23, *infra*, for an explanation concerning this possibility.

form will appear the name of the authorised representative of the Central Authority who is processing the form and the date upon which the form is transmitted.

*c) Content common to all Applications, including the Financial Circumstances Form*

10. The content of all the applications, including the Financial Circumstances Form, follow Article 11 – Option 1. The title of the application indicates clearly the nature of the application (Art. 11(1) *a*). All the information to identify the applicant, the debtor (respondent) and any person for whom maintenance is sought or payable is provided for (Art. 11(1) *b*)-*d*). A section indicates the nature of the maintenance obligation relied on (Art. 11(1) *e*). At the end of all the forms an attestation is included indicating that the form complies with the requirements of the Convention (Art. 12(2)). It also specifies that the information contained in the form and the attached documents correspond to and are in conformity with the information and documents provided by the applicant to the requesting Central Authority. This attestation concerning the regularity of the application and the information and documents contained therein is designed to minimise the need for the requested Central Authority to inquire into the validity of the application.<sup>14</sup> The attestation also includes an indication that the form is forwarded on behalf and with the consent of the applicant.<sup>15</sup> The attestation, used in combination with a “tick-box” indicating that the application has been completed directly by the applicant and transmitted through the Central Authority may provide a functional equivalent to sworn statements as required by some States. All the applications, including the Financial Circumstances Form, include a final page – “Restricted information on the Applicant” page - where it is possible to provide personal information concerning the applicant that should not be disclosed except in accordance with Article 37(3).<sup>16</sup>

*d) Content common to all Status Reports on Applications (Art. 12(4))*

11. All the Status Reports follow the same structure. They all provide for a Report on the status of the application in the requested State either in accordance with the rules provided for under the Convention (*e.g.* recognition and enforcement and modification) or under domestic law. They indicate the steps that have already been taken (past), those that are being taken (present) and the steps that will be taken (future). Finally, a section allows the requested Central Authority to indicate the reasons for any refusal to process an application (*e.g.* requirements of the Convention manifestly not fulfilled (Art. 12(8) and additional documents or information not provided in time (Art. 12(9))).

*e) Content common to all documents in support of an Application for Recognition or Recognition and Enforcement*

12. The Abstract of a Decision, Statement of Enforceability of a Decision and Statement of Proper Notice include the same content with regard to the identification of the State of origin of the decision, the identification and contact details of the competent authority producing the document and the identification of the decision and the name of the debtor in relation to the decision. Finally, at the very end of these documents will appear the name of the official from the competent authority of the State of origin who will have produced the document and the date on which the document was made in addition to the name of the authorised representative of the Central Authority who is processing the document and the date upon which the document is transmitted.

---

<sup>14</sup> It was felt that an attestation was not necessary in the case of the Transmittal Form, Acknowledgement Form and Status Report because they can only be completed by an authorised representative of the Central Authority and do not contain *per se* information or documents from the applicant that could create any liability.

<sup>15</sup> See Working Group recommendations to the Diplomatic Session, *infra*, paragraph 25.

<sup>16</sup> See, paragraph 27, *infra*, for recommendations regarding Article 37.

## 2. Specific features of individual forms

### *a) Transmittal Form (Art. 12(2))*

13. The Transmittal Form is meant to be at this point the only mandatory form. It follows very closely the wording of the Convention. Therefore, the Transmittal Form would need to be amended only if substantive provisions of the Convention were to be amended. In order to keep the form as short as possible, particulars of the applicant, the person for whom maintenance is sought or payable and the debtor are kept to a minimum; just enough to create an appropriate link with the attached application or applications. The form provides a closed list of the documents that can be attached to an application under Article 10(1) *a*) (Art. 11(1) *g*) and (3)). For other applications, it will be possible, for verification purposes, to indicate the number of supporting documents (excluding the Transmittal Form and the application itself).

### *b) Acknowledgement Form (Art. 12(3))*

14. By using this form the requested Central Authority acknowledges receipt of a specific application, concerning particular individuals and provides the requesting Central Authority with the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application. It is to be used to indicate whether the file is complete or if information is missing. It can be used in combination with a Status Report Form specific to an application. Finally, a section allows the Central Authority to indicate whether it refuses to process an application (Art. 12(8)).

### *c) Application for Recognition or Recognition and Enforcement of a Decision (Art. 10(1) a))*

15. It is important to note that the application provides a list of the bases for recognition and enforcement (Art. 17) to be completed by the requesting Central Authority in order to assist the competent authority in the State addressed. It is also possible to indicate in the form whether the respondent appeared in the proceedings in the State of origin, if not it refers to the attached Statement of Proper Notice. The Status Report for that application indicates whether the bases of Article 17 were met or if there were other grounds for refusing recognition and enforcement (Art. 19). Apart from the Financial Circumstances Form (Arts. 11(2) *a*) and *b*) and 21(1) *f*)), and those listed in the Transmittal Form, no other document can be attached to this form.

### *d) Abstract of a Decision (Art. 21(2))*

16. The Abstract of a decision, to be completed by the competent authority, provides all the necessary information in order to make an abstract either of: (1) a decision the terms of which would apply to a single person or to a group of persons; (2) a decision that would have different terms for different persons; or, (3) a decision that combines common terms for a group of persons and individual terms for separate persons within the same group. The Abstract can cover any kind of payments whether they are maintenance payments *per se*, arrears, interest, health insurance, school fees, or any other specified payments, arrangements or conditions. The Abstract provides for standard periods for these payments (*e.g.* week, two weeks, month, etc.) but allows the possibility to specify other periods if necessary. Finally, the Abstract provides for any decisions on indexation of maintenance, interest, and costs and expenses. It will also be possible to indicate the time until which the decision shall remain in effect. The Abstract of a decision could in effect be used as a model decision.

*e) Statement of Enforceability of a Decision (Art. 21 b))*

17. The Statement of Enforceability, also to be completed by the competent authority, indicates in a very simple way whether the decision is enforceable in the State of origin.

*f) Statement of Proper Notice (Art. 21 c))*

18. In accordance with the Convention (Art. 19 e)), the Statement of Proper Notice indicates that the respondent did not appear in the proceedings in the State of origin, but had proper notice of the proceedings and an opportunity to be heard or that the respondent did not appear in the proceedings in the State of origin, but had proper notice of the decision and an opportunity to challenge it on fact and law. This document will also be completed by the competent authority.

*g) Application for Enforcement of a Decision Made or Recognised in the Requested State (Art. 10(1) b))*

19. As the Convention does not set out any documentary requirements for this Application, the Working Group developed a list of documents to be attached to this application, such as the decision, statement of arrears and Financial Circumstances Form. Any other document could be attached to the Application. It is important to note that, save for an application made under Article 10(1) a), any information to be included in or document to be attached to an application would have to be specified by declaration in accordance with Article 58 by the requested State (Art. 11(1) g)).<sup>17</sup>

*h) Application for Establishment of Decision (Art. 10(1) c) and d))*

20. The Working Group also developed a list of possible documents that could be attached to this application.<sup>18</sup>

*i) Application for Modification of a Decision (Art. 10(1) e) and f) and (2) a) and b))*

21. Again for this Application, the Working Group developed a list of possible documents that could be attached to the Application.<sup>19</sup> When completing the application, the applicant will be invited to select pre-defined (1) modifications that are sought and (2) changes that have occurred since the decision was made or last modified, in support of the Application for Modification. The same application can be used for any of the applications under Article 10(1) e) and f) and 10(2) a) and b). Thus the same form can be used whether the applicant is the creditor or the debtor. In the case of an application made under Article 10(2) b), the applicant will be invited to identify the requirements of Article 15 that apply or may apply.

*j) Financial Circumstances Form (Arts. 11(2) a) and b) and 21(1) f))*

22. The same Financial Circumstances Form can be used for any of the Applications. Thus, the Financial Circumstances Form being multifunctional is rather comprehensive. However, the form does not have to be completed in full for each application. A section of the Form indicates which parts have to be completed for each application. It will also depend on the requirements of each States for financial information (e.g. to establish the quantum or the provision of legal assistance). In that respect, the Working Group

---

<sup>17</sup> The Country Profile of each Contracting State would indicate the documentary requirements for each application.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

recommends using the country profile in combination with the Financial Circumstances Form.<sup>20</sup>

#### **IV - WORKING GROUP RECOMMENDATIONS TO THE DIPLOMATIC SESSION**

##### **1. Proposals to modify the Revised Preliminary Draft Convention**

###### *a) Article 10(2) - Application by the debtor for recognition and enforcement*

23. The Working Group suggests making available to a debtor an additional application under Article 10(2) for recognition and enforcement of a decision. The debtor could use this application to seek the recognition and enforcement of a decision.

###### *b) Article 11 – Option 1 - Representation of the Applicant by the Central Authority*

24. Some members of the Working Group indicated that, in some States, Central Authorities and competent authorities cannot act on behalf of an applicant in relation to enforcement actions or the establishment of a decision. One possible solution could be to include in all applications an indication to the effect that the applicant authorises the Central Authority of the requested State to act on his or her behalf in judicial or administrative proceedings or before other authorities. Country profiles could indicate whether the Central Authority is acting on behalf of the applicant. An additional provision that could read “an indication that the Central Authority of the requested State can act on behalf of the applicant before competent authorities” could be included in Article 11 – Option 1, as an additional element to be included in an application. If so, Article 39 concerning power of attorney, which is still between brackets, could be deleted.

###### *c) Article 12(2) - Application sent on behalf and with the consent of the applicant*

25. With regard to the attestation included at the end of each Application,<sup>21</sup> the Working Group is of the view that Article 12 should be amended. The first sentence of Article 12(2) could read as follows “The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit on behalf of and with the consent of the applicant the application to the Central Authority of the requested State”.

###### *d) Article 12(9) – At least 3 months to produce additional documents or information*

26. The Working Group is of the view that the period of 3 months should be expressed differently. As it now reads it is not clear when this periods ends. Therefore it is not clear when the Central Authority may decide that it will no longer process the application. The Working Group suggests that additional documents or information be produced “within a period of 3 months” rather than “within a period of at least 3 months”.

###### *e) Article 37(3)*

27. The Working Group is of the view that the rules for non-disclosure of information provided for under Article 37 may be insufficiently clear. It is not certain whether paragraph 3 of the Article provides enough flexibility. The Working Group suggests the following wording “Nothing in this provision shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under this Convention”.

<sup>20</sup> See, Prel. Doc. No 17 of May 2006, supra, note 1, at paragraph 14, for additional information on this form.

<sup>21</sup> See, supra, paragraph 10.

## 2. Status of the Forms – Mandatory or Recommended Forms

### a) *Transmittal Form (Art. 12(2))*

28. The Working Group strongly supports the existing consensus (as reflected in the text of the revised Preliminary Draft Convention) that the Transmittal Form should be mandatory. The use of this form will streamline the process of applications. At a glance the caseworker will know that it is dealing with an application under the Hague Convention. Furthermore, the form clearly identifies the only attachments under the Convention that can accompany an Application for Recognition or Recognition and Enforcement thus ensuring regular application of the Convention. As the language of that form strictly follows the language of the Convention it is unlikely to need amendment unless substantive parts of the Convention are also amended.

### b) *Acknowledgment Form (Art. 12(3))*

29. For the same reasons, the Working Group is also of the view that the Acknowledgment Form should be mandatory. The Acknowledgment Form implements Article 12(8) (*i.e.* refusal to process an application) and parts of Article 12(9) (*i.e.* the possibility for the requested Central Authority to seek additional documents or information from the requesting Central Authority).

### c) *Abstract of a Decision (Art. 21(2))*

30. The Working Group is not proposing that the Abstract of a Decision be mandatory for the States that make a declaration under Article 21(2). The Abstract would be set out in an Annex to the Convention for the States that may want to use it. The Working Group is of the view that this is probably the form that will assist most in reducing costs of translations and ensuring the swift processing of applications. As the Abstract would not be mandatory, it could be amended from time to time by Special Commissions. In that respect, the amendment of the Abstract may not need to follow the amendment procedure set out in Article 49.

### d) *Other forms*

31. The Working Group understands that the amendment of mandatory forms annexed to a Convention equates the amendment of a Convention and for a number of States it implies complex parliamentary procedures. Furthermore, the Working Group understands that for some States of monist tradition the use of mandatory applications would intrude too far into domestic law. Finally, the Working Group realises that many of the forms have to adapt to the different laws of the Contracting States. As a result, such forms may need regular adjustments. Nevertheless, for all the reasons explained in this Report,<sup>22</sup> the Working Group is of the view that all the other forms set out in the Annex to this Report should ideally be adopted as recommended forms during the November 2007 Diplomatic Session. Their inclusion in the Final Act of the Diplomatic Session would ensure their publication for the purpose of Article 11(4) thus facilitating the rapid implementation of the Convention for all the States that want to become party to it.<sup>23</sup> Doing so will also assist ensuring that only one single set of forms will be used for the Convention thus alleviating duplication of work and efforts and the resulting confusion.<sup>24</sup>

<sup>22</sup> See in particular paragraph 1 above.

<sup>23</sup> This would also assist the Permanent Bureau advancing the development of the iSupport system, *supra*, paragraph 1.

<sup>24</sup> It is to be noted that a Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled (Art. 12(8)). Therefore, the forms *per se* developed by the Working Group would have to be processed as their information and documentary requirements meet the requirements of the Convention. The only way to reserve the process of specific forms between two States would be to enter an agreement to that effect under Article 45.

32. Should it not be possible (*e.g.* for reasons of time) for the Diplomatic Session to adopt some or all of the recommended forms for inclusion in the Final Act, the Forms Committee requests that the Diplomatic Session –

- 1) gives its general endorsement to the forms set out in Preliminary Document No 31-B, in particular with regard to their uniform structure,
- 2) recommends further consideration, with a view to adoption, of the forms at a Special Commission meeting to be convened at the earliest opportunity under Article 48.

*e) Modifications suggested to Article 49 – Amendments of forms*

33. As the Convention would include mandatory and recommended forms, the Working Group is of the view that a different procedure, in addition to the one provided for in Article 49, should be set out in the Convention for the development of new recommended forms, the amendment of existing recommended forms and their adoption, from time to time, during Special Commissions or maybe even outside Special Commissions.

## **V - FUTURE WORK**

34. The Working Group has made a list of possible future work to be undertaken on a priority and non priority basis. The Working Group suggests the development of the following items:

### **1. Priority**

- Practical Handbook on the use of Forms
- Model decision
- Form to locate the debtor (Art. 6(2) *b*)
- Statement of arrears and / or amounts due and paid statement (Art. 21(1) *d*)
- Form regarding the automatic adjustment by indexation (Art. 21(1) *e*)
- Free legal assistance forms: (1) application and (2) certificate regarding free legal assistance granted (Art. 21(1) *f*)

### **2. Non-priority**

- Request for specific measures (Art. 7)
- Statements of enforceability with respect to authentic instruments as well as private agreements (Art. 26(2) *b*)
- Document establishing that the conditions of Article 33(2) are fulfilled and that benefits have been provided to the creditor (Art. 33(4))

**Annexe 1**

**Accusé de reception en vertu de l'article 12(3)**

\* \* \*

**Annex 1**

**Acknowledgement Form under Article 12(3)**

## Acknowledgement Form under Article 12(3)

### CONFIDENTIALITY AND PERSONAL INFORMATION PROTECTION NOTICE

*Personal information gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such information shall ensure its confidentiality, in accordance with the law of its State.*

*An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 37.*

*A determination of non-disclosure has been made by a Central Authority in accordance with Article 37.*

<b>1. Requested Central Authority</b>  <b>a. Address</b>  <b>b. Telephone number</b>  <b>c. Fax number</b>  <b>d. E-mail</b>  <b>e. Reference number</b>	<b>2. Contact person in requested State</b>  <b>a. Address (if different)</b>  <b>b. Telephone number (if different)</b>  <b>c. Fax number (if different)</b>  <b>d. E-mail (if different)</b>  <b>e. Language(s)</b>
--	---

**3. Requesting Central Authority** \_\_\_\_\_  
**Contact person** \_\_\_\_\_  
**Address** \_\_\_\_\_  
 \_\_\_\_\_

**4. The requested Central Authority acknowledges receipt on \_\_\_\_\_ (dd/mm/yyyy) of the Transmittal Form from the requesting Central Authority (reference number \_\_\_\_\_); dated \_\_\_\_\_ (dd/mm/yyyy) concerning the following application under:**

- Article 10(1) a) – recognition or recognition and enforcement of a decision**
- Article 10(1) b) – enforcement of a decision made or recognised in the requested State**
- Article 10(1) c) – establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage**
- Article 10(1) d) – establishment of a decision in the requested State where recognition and enforcement of a decision is not possible or is refused because of the lack of a basis for recognition and enforcement under Article 17 or on the grounds specified in Article 19 b) or e)**
- Article 10(1) e) – modification of a decision made in the requested State**
- Article 10(1) f) – modification of a decision made in a State other than the requested State**
- Article 10(2) a) – modification of a decision made in the requested State**
- Article 10(2) b) – modification of a decision made in a State other than the requested State**

Family name(s) of applicant: \_\_\_\_\_

Family name(s) of the person(s) for whom  
maintenance is sought or payable: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Family name(s) of debtor: \_\_\_\_\_

**5. Initial steps taken by the requested Central Authority:**

- The file is complete and is under consideration
  - See attached Status of Application Report
  - Status of Application Report will follow
- Please provide the following additional information and / or documentation:

\_\_\_\_\_  
\_\_\_\_\_

- The requested Central Authority refuses to process this application as it is manifest that the requirements of the Convention are not fulfilled (Article 12(8)). The reasons:
  - Are set out in an attached document
  - Will be set out in a document to follow

The requested Central Authority requests that the requesting Central Authority inform it of any change in the status of the application.

Name : \_\_\_\_\_ (in block letters) Date: \_\_\_\_\_

Authorised representative of the Central Authority (dd/mm/yyyy)