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DE DROIT INTERNATIONAL PRIVÉ

RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DES 1-3 AVRIL 2008

établi par le Bureau Permanent

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REPORT OF THE COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE OF 1-3 APRIL 2008

drawn up by the Permanent Bureau

Document préliminaire No 1 de mai 2008 à l'intention du Conseil de 2009 sur les affaires générales et la politique de la Conférence

Preliminary Document No 1 of May 2008 for the attention of the Council of 2009 on General Affairs and Policy of the Conference

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RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DES 1-3 AVRIL 2008

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CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LE CONSEIL

CONCLUSIONS ET RECOMMENDATIONS ADOPTED BY THE COUNCIL

RECOMMENDATIONS AND CONCLUSIONS

ADOPTED BY THE COUNCIL

Welcome to new Members

The Council extended a warm welcome to Ecuador and India as new Members of the Hague Conference.

Twenty-First Session

The Council welcomed the adoption by the Twenty-First Session of the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* and of the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*. The Council noted the Recommendations of the Session and recognised the need to organise a Special Commission on the implementation of the instruments, preferably in 2009.

Future work

Cross-border mediation in family matters

The Council invited the Permanent Bureau to continue to follow, and keep Members informed of, developments in respect of cross-border mediation in family matters. The Permanent Bureau is asked to begin work on a Guide to Good Practice on the subject. As a first step, a Guide to Good Practice on the use of mediation in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* should be prepared, to be submitted for consideration at the next meeting of the Special Commission to review the practical operation of that Convention, which is likely to be held in 2011.

Choice of law in international contracts

The Council invited the Permanent Bureau to continue its exploration of this topic concerning international business to business contracts with a view to promoting party autonomy. The Permanent Bureau is asked to explore, in co-operation with relevant international organisations and interested experts, the feasibility of drafting a non-binding instrument, including the specific form that such an instrument might take. The Permanent Bureau is invited to report and, if possible, to make a recommendation as to future action to the Council in 2009.

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

The Council invited the Permanent Bureau to continue to explore mechanisms to improve global access to information on the content of foreign law, including at the litigation stage. The Permanent Bureau is invited to report and, if possible, to make a recommendation as to future action to the Council in 2009.

Proposal submitted by Switzerland for a Protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

The Council decided to reserve for future consideration the feasibility of a Protocol to the 1980 Convention containing auxiliary rules designed to improve the operation of the Convention.

Feasibility of a Protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the international recovery of maintenance in respect of vulnerable persons

Having regard to the Recommendation made by the Twenty-First Session of the Conference, the Council invited the Permanent Bureau to prepare a questionnaire on the feasibility of developing a Protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*. The responses should be submitted to the Special Commission on the implementation of that Convention and a report made to the Council meeting of 2010.

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

The Council invited the Permanent Bureau to continue to explore legal and technical issues related to certain aspects of international migration, in consultation with interested Members and relevant international organisations.

Other topics

The Council invited the Permanent Bureau to continue to follow developments in the following areas –

a) questions of private international law raised by the information society, including electronic commerce;

b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage;

c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;

d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;

e) assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations.

Post-Convention services

The Council once again expressed its support for the broad range of activities currently being carried out by the Permanent Bureau to promote and to ensure the effective implementation and operation of the Hague Conventions, including through the development of regional programmes.

The Council welcomed the activities currently being undertaken by the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions, and in particular the development of the International Centre for Judicial Studies and Technical Assistance, made possible by generous funding through the Supplementary Budget.

The Council reiterated its support for the core activities of the Permanent Bureau in relation to the use and the development of information technology systems in support of Hague Conventions in the areas of legal co-operation and family law.

ORDRE DU JOUR / AGENDA

AGENDA

MEETING OF THE COUNCIL ON
GENERAL AFFAIRS AND POLICY OF THE CONFERENCE

(1-3 April 2008)

The draft Agenda will be treated with some flexibility and may need to be modified in the light of continuing discussions in the Council meeting, in particular concerning the items under future work.

Sessions will normally begin at 9.30 a.m., with the exception of the first day, and end at 6.00 p.m. with the lunch break from 1.00-2.30 p.m. Breaks for coffee will normally be from 11.00 a.m. till 11.15 a.m., and tea from 4.00 p.m. till 4.15 p.m.

Tuesday 1 April 2008, 10.00 a.m.

I. Welcome to new Members of the Hague Conference

II. Follow-up on the results of the Twenty-First Session of the Conference (see Final Act of the Twenty-First Session, 23 November 2007)

1. Part A: Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

   Part B: Protocol on the Law Applicable to Maintenance Obligations.

   Oral remarks by the Secretariat.

2. Part C: Recommendations of the Session.

   Oral remarks by the Secretariat.

III. Future work: new topics

Under this heading there will be a discussion of any new topics which have been, or may be, suggested by the governments, the international organisations or the Permanent Bureau.

3. Cross-border mediation in family matters.

   Discussion on the basis of the questionnaire prepared by the Permanent Bureau (L.c. ON No 29(07) dated 8 October 2007), and of the comments received (see Prel. Doc. No 10).

4. Choice of law in international contracts.

   Discussion on the basis of the questionnaire prepared by the Permanent Bureau (L.c. ON No 6(07) dated 31 January 2007; reminder L.c. ON No 25(07) dated 24 July 2007), and of the comments received (see Prel. Doc. No 5). See also letter from the International Bar Association dated 19 February 2008, "Suggestion for a future project from the IBA Litigation Committee.

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

   Discussion on the basis of the questionnaire prepared by the Permanent Bureau (L.c. ON No 34(07)) dated 30 October 2007, and of the comments received (see Prel. Doc. No 9).

6. Proposal submitted by Switzerland for a Protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

This proposal was communicated to the National and Contact Organs of the Members, all States Parties to the 1980 Convention, and the other States and Organisations that attended the Fifth meeting of the Special Commission to review the operation of the 1980 Convention, for their views (L.c. ON No 35(7), dated 1 November 2007) (see Prel. Doc. No 12).

7. Feasibility of a Protocol to the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the international recovery of maintenance in respect of vulnerable persons.

See Recommendation No 9 by the Twenty-First Session, Final Act, p. 55.

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

The Council on General Affairs and Policy of April 2007 invited the Permanent Bureau to continue its exploration of this topic.

9. Other topics.

In addition, the Council decided to retain the following matters on the Conference's Agenda –

(a) questions of private international law raised by the information society, including electronic commerce;

and, without priority[1] –

(b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage;

(c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;

(d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples (see Prel. Doc. No 11);

(e) assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations.

Wednesday 2 April 2008

IV. Round table on progress made concerning the signature and ratification of and accession to Conventions

10. Conventions adopted by the Twenty-First Session (2007) –

(a) *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance;* and

(b) *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.*

11. Convention adopted by the Twentieth Session (2005) –

[1] See also *Annex A, Topics informally suggested to the Permanent Bureau.*

Convention of 30 June 2005 on Choice of Court Agreements.

12. Convention adopted by the Nineteenth Session (2002) –

Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary.

13. Conventions adopted by the Eighteenth Session (1996) and by the Special Commission with a Diplomatic Character (1999) –

(a) *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;* and

(b) *Convention of 13 January 2000 on the International Protection of Adults*.

14. Conventions adopted by previous Sessions –

The following Conventions are proposed for discussion –

A. With a view to preparing the next Special Commission to review the Conventions on legal and administrative cooperation –

(a) *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents;*

(b) *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*;

(c) *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*;

(d) *Convention of 25 October 1980 on International Access to Justice*;

B. In the light of recent developments at the national and regional levels –

(e) *Convention of 4 May 1971 on the Law Applicable to Traffic Accidents;*

(f) *Convention of 14 March 1978 on the Law Applicable to Agency;*

(g) *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.*

V. Promotion, monitoring, assistance and support of Conventions: Conventions in the areas of commercial and finance law, and on legal co-operation and litigation

15. *Report on the activities on the Conventions on legal co-operation and, in particular,* Apostille*, Service Abroad and the Taking of Evidence (see Final Act, Nineteenth Session, under C.4.*a) *and* b)*; Preparation of the Special Commission to review the operation of these instruments –*

(a) Progress report on the electronic Apostille Pilot Program;

(b) Practical Handbook on the Service Convention: publication in other languages than English and French;

(c) Promotion, education and training, including through the Hague Conference International Centre for Judicial Studies and Technical Assistance.

16. *Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America (see Prel. Doc. No 4).*

VI. Promotion, monitoring, assistance and support of Conventions: Conventions on international protection of children, vulnerable adults, international family and family property relations

17. *Report on the activities in relation to the Conventions of 1980, 1993 and 1996 and, in particular –*

    (a) Follow-up on the Special Commission of October-November 2006 on the practical operation of the International Child Abduction Convention and the implementation of the 1996 Convention, including progress in relation to Guides to Good Practice;

    (b) Progress with the implementation assistance programme for the 1993 Convention and follow-up on the Special Commission of 2005 on the Practical operation of the 1993 Convention, including progress in relation to Guides to Good Practice;

    (c) INCADAT, INCASTAT and iChild; promotion, education and training, including through the Hague Conference International Centre for Judicial Studies and Technical Assistance;

    (d) Promotion, education and training, including through the Hague Conference International Centre for Judicial Studies and Technical Assistance.

18. Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America (see Prel. Doc. No 4).

VII. Future work (cont.)

VIII. Organisation of the work of the Conference

19. The Strategic Plan.

    Report on progress by the Secretariat (see Prel. Doc. No 2).

20. Proposed Budget for Financial Year LIV (1 July 2008 – 30 June 2009).

    Proposed Budget for Financial Year LIV (1 July 2008 – 30 June 2009) and Explanatory Notes (see Prel. Doc. No 7).

21. Supplementary Budget for Financial Year LIV (1 July 2008 – 30 June 2009), Part I Special Projects and Expenses; Part II, The Hague Conference International Centre for Judicial Studies and Technical Assistance.

    Proposed Supplementary Budget for Financial Year LIV (1 July 2008 – 30 June 2009) and Explanatory Notes (see Prel. Doc. No 8)

Thursday 3 April 2008

IX. Co-operation with other international organisations

22. Co-operation with UNCITRAL and UNIDROIT.

    The Secretariat will offer oral remarks.

23. Co-operation with other international organisations.

The Secretariat will offer oral remarks.

X. Celebration of the 115th Anniversary, 18 September 2008

The Secretariat will offer oral remarks.

XI. Conclusions

Annex A

Topics informally suggested to the Permanent Bureau[2] –

- continuation of the Judgments Project, possibly through additional Protocols to the Convention on Choice of Court Agreements, a model law or model (bilateral) agreements;
- development of a practical guide on comparative private international law (on a country-by-country or subject-by-subject basis);
- development of model bilateral agreements to facilitate the implementation of (multilateral) Hague Conventions;
- questions of private international law in relation to intellectual property issues;
- the international recovery of assets relevant to criminal law enforcement as well as to ordinary claims, and which is related to aspects of provisional and protective measures;
- questions in relation to status of children (excluding adoption), in particular recognition of parent-child relationships *(filiation)*;
- Conventions (or model laws) on the law applicable to specific contracts (barter transactions; trading in futures on a stock exchange);
- cross-border regulatory issues: how to preserve, through international co-operation and mutual enforcement, the integrity of the growing variety of regulatory systems in a converging world.

[2] See Prel. Doc. No 20 for the attention of the Nineteenth Session: "Observations concerning the Strategy of the Hague Conference – Observations made by other international organisations and observations made in a personal capacity in response to the Secretary General's letter of 30/31 July 2001" (topics already previously mentioned in the Agenda have been omitted).

RAPPORTS DE SÉANCE / REPORTS OF MEETING

Council on General Affairs and Policy of the Conference (1-3 April 2008)

HccH
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 1

Distribution: by e-mail

MEETING OF TUESDAY 1 APRIL 2008 – MORNING SESSION

The meeting was opened at 10.20 a.m. by Mr Struycken (President of the Netherlands Standing Government Committee on Private International Law).

Mr Struycken emphasised that in his capacity as President of the Netherlands Standing Government Committee his role has become more modest since the new Statute of the Hague Conference came into effect on 1 January 2007.

Mr Struycken observed with great pleasure the presence of the large number of experts, as well as representatives invited from international organisations. He was gladdened by this general enthusiasm brought to the Hague Conference on Private International Law and wished a welcome to all the Members' experts and other representatives in attendance.

He expressed his joy at welcoming the delegation from India in the capacity of new Member of the Hague Conference. Despite great diversity, India is a unified country, and is comprised of more than a billion inhabitants and is marked by centuries of history.

He also rejoiced in welcoming Ecuador as a new Member of the Hague Conference, underlining the unique history of this country.

Mr Struycken proposed that Mr Antti Leinonen (Finland) preside over the Council as Chair. This proposition was unanimously accepted.

The Chair thanked the Council for the confidence it has shown him in entrusting him to chair the Council proceedings for a second year. The Draft Agenda was accepted without comments.

I. WELCOME TO NEW MEMBERS OF THE HAGUE CONFERENCE

The Secretary General welcomed all participants to the Council on General Affairs and Policy of the Conference.

The Secretary General added a special word of welcome to Ecuador to its first meeting of the Council, as it became a Member of the Hague Conference shortly before the 21st Session in November 2007. Ecuador participated in this Session which adopted the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* and the *Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*, and is already Party to four other Hague Conventions. He stated that Ecuador is unique in the Americas because it is Party to the 1980 Hague Convention on Child Abduction, the 1993 Hague Convention on Intercountry Adoption and the 1996 Hague Convention on the Protection of Children.

The Secretary General also welcomed India as a new Member of the Hague Conference as of 13 March 2008. He stated that India is a State with 1.14 billion inhabitants and that about 25 million Indians live abroad and keep close connection with their country of origin which gives rise to many private international law issues. The Secretary General extended a special welcome to the representative from India present at the Council meeting, Mr Singh, who was personally key to the Indian decision to join the Hague Conference and to become a Party to other Hague Conventions. India is the 69th Member of the Hague Conference.

The Secretary General also welcomed the heads of international organisations present at the Council, including the head of the *Commission international de l'état civil* (CIEC), of the United Nations Commission on International Trade Law (UNCITRAL), and of the International Institute for the Unification of Private Law (UNIDROIT).

The Secretary General also extended welcome to Mrs Marta Pertegás who joined the Secretariat of the Hague Conference in the capacity of Secretary since 1 February 2008. The Permanent Bureau is very happy and proud to welcome her into its midst.

The Secretary General thanked the Spanish Government whose contributions made it possible to use Spanish as a working language for this meeting of the Council.

He also stated that 2008 is special for the Hague Conference, as it was 115 years ago that the first meeting took place in The Hague in 1893.

Also, 1 April 2008 marks the date that the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* will enter into force in the United States. The Secretary General said that this is a great step for the rights of the many children who will be protected under this instrument.

The Expert from India thanked both Mr Struycken and the Secretary General for their kind words. He mentioned that India had recently joined the Hague Conference largely due to the efforts of the Secretary General over the past years who had spread the word about the work of the Hague Conference and had informed India as to the benefits of Membership. The expert stated that he had also seen for himself the seriousness with which the Conference looks at issues of private international law and resolves international legal problems. He said that India is looking forward to the further support of the Permanent Bureau.

Many experts also welcomed Ecuador and India to the Hague Conference.

II. FOLLOW-UP ON THE RESULTS OF THE TWENTY-FIRST SESSION OF THE CONFERENCE (SEE FINAL ACT OF THE TWENTY-FIRST SESSION, 23 NOVEMBER 2007)

1. Part A: Convention on the International Recovery of Child Support and Other Forms of Family Maintenance / Part B: Protocol on the Law Applicable to Maintenance Obligations

The Deputy Secretary General expressed his pleasure at beginning the agenda of the day for this session in reporting the very positive results of the Twenty-First Session of the Conference. Indeed, the adoption on 23 November 2007 of the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* as well as the *Hague Protocol on the Law Applicable to Maintenance Obligations* marks the culmination of 10 years of preparation and four years of negotiations. He emphasised that these two texts were adopted by consensus without a single vote. The Final Act was signed by 68 States as well as by the European Community. Furthermore, the Convention itself was signed by the United States of America the same day as its adoption.

The Deputy Secretary General noted that this Convention holds the promise of a new era on the subject of international procedures to do with the recovery of maintenance for children and other family members. The Convention's objective was to simplify procedures in this area and to make them accessible, swift, and cost-effective.

The Deputy Secretary General wished to underline certain novel features of this new Convention. He noted first that a great number of very specific and practical questions are regulated by the Convention, such as language requirements, standardised forms and also the exchange of information. Equally, the use of new information technology was envisioned in order to avoid costs and delays generally noted beforehand. More, the Convention was inspired by the best solutions offered by existing Hague Conventions, other regional instruments and, very important, the UN Convention on the Recovery Abroad of Maintenance of 20 June 1956 (the New York Convention). The new Convention thus has the capacity to create a global system of co-operation adapted to the multiplicity of procedures on the topic.

The Deputy Secretary General wished to express all his gratitude to a certain number of people who had greatly contributed to the development of these two instruments: Mr Struycken (the Netherlands), President of the Session, Ms Kurucz (Hungary), President of Commission I; Mr Bonomi (Switzerland), President of Commission II; Ms Doogue (New Zealand), President of the Drafting Committee; Ms Borrás (Spain) and Ms Degeling (Permanent Bureau), *Rapporteurs* charged with the drawing up of the Explanatory Report of the Convention and Mr Bonomi (Switzerland), *Rapporteur* charged with the drawing up of the Explanatory Report on the Protocol.

He indicated that the *Rapporteurs* worked very hard to achieve the Explanatory Report on the Convention and on the Protocol. A first draft of the Reports will likely be submitted to Members for commentary in the beginning of May 2008. He specified that that in the unlikely case where major disagreements emerge in the commentaries, it will be incumbent upon the Bureau of the Session to resolve these issues. He expressed hope that the definitive version of the Reports would be available by September 2008.

2. Part C: Recommendations of the Session

Mr Lortie (First Secretary) noted that as a result of the Twenty-First Session, several recommendations were adopted that gave the Permanent Bureau a very extensive work program. He listed the totality of the recommendations made by the Session and specified that a Special Commission on the implementation of the new Convention must be convened within the next 12 to 18 months after the end of the Session. Furthermore, the Working Group charged with developing draft forms must pursue its work with a view to the adoption of the forms during the future Special Commission and the Country Profile Sub-Committee of the Administrative Cooperation Working Group should do the same for the Country Profile.

He emphasized that supplementary resources (for which he referred to the Supplementary Budget) are called for in order to ensure the pursuit of the projects of the different working groups, notably by way of conference calls. During the negotiations, the relevant fees for conference calls were kindly paid by the United States of America.

Concerning the financing of the next Special Commission, this expense will be covered by the Budget that will be presented to this Council.

He added that it has been envisaged that there should be both a guide as to the implementation of the new Convention and also a handbook on the practical operation of the Convention. With regards to the latter, a request for financing or of secondment of an expert accustomed to working on these topics will be necessary. He specified that one of the objectives of the first guide would be to provide a checklist of items that each State could consult and verify with a view to the implementation of the Convention. He underlined that the Convention is a complex text, providing for a great number of declarations and reservations. Also, it might prove useful for States to make use of practical information furnished by the Permanent Bureau with respect to its long experience on the topic of co-operation between States.

The Deputy Secretary General indicated that the method in establishing a checklist to verify during the implementation of a convention had already been experimented with under the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Such a checklist had in fact been elaborated and examined during the meeting of a Special Commission a year after the entry into force of this Convention. It showed that the creation of such a list was useful to a certain number of States during the implementation of this Convention.

He clarified that it was necessary to make a distinction between this list of points meant for States during the implementation of the Convention, and on the other hand, the drafting of a handbook on its practical operation. This latter document intends to inform persons who work within the authorities or agencies charged with putting the Convention in practice by giving them an interpretation of the Convention that is clear, understandable, and presented in a practical manner.

An expert expressed doubts regarding the project of developing a document with respect to the implementation of the Convention without its entry into force. Given the burden of work that is incumbent upon the Permanent Bureau, it seemed premature and inappropriate, the expert agreed with the development of a checklist with regard to the implementation of the Convention but expressed the view that the implementation of an instrument depends to a great degree on the particularities unique to each State.

On the other hand, two experts were of the opinion that the elaboration of a guide regarding the implementation as well as a handbook on the practical operation of the Convention would be of great use. They noted that these documents should be differentiated from the guides to good practice habitually published by the Permanent Bureau. They also emphasised the importance of a guide on the practical operation of the Convention for States who are not familiar with the procedures. They remarked that such a document would encourage these States to become parties to the Convention.

The Chair noted that, even though one delegation had doubts with respect to the development of a handbook on the practical operation of the Convention, two other delegations expressed that they were in favour of the development of these practical tools and the pursuit of work in support of this new Convention. Taking into account the absence of objections from the delegations, it was fitting to follow the recommendations of the Twenty-First Session and pursue the work envisaged in the Final Act, while taking into account the concerns expressed by one expert.

III. FUTURE WORK: NEW TOPICS

The Chair, by way of introduction to this portion of the agenda, explained how topics were put on the work list of the Hague Conference (by suggestion of Member Governments, by international organisations, or by the Permanent Bureau itself), and detailed that the expert delegates present at the current Council were tasked with selecting which topics should remain on this work list, and which of these projects would be given high priority for more immediate attention.

The Chair also stated that not every item on the "new topics" list was necessarily a "project" of the Hague Conference, but could also be a subject of research in order that the Conference could then act as an interlocutor at topic debates at other venues or organisations. Also, he suggested the idea that perhaps the Council would like to consider for debate whether the time had come for the Conference to embark on "projects" that, contrary to tradition, did not necessarily lead to binding international instruments.

Finally, the Chair finished by stating that he welcomed a lively, open debate on the prioritisation of the future work of the Conference, and stated that the written comments and submissions by Members previous to the Council Meeting were treated on par with and as important as the present oral comments.

3. Cross-border mediation in family matters

The Deputy Secretary General indicated that the present document for the attention of the Council, Preliminary Document No 10, was in addition to a previous document, Preliminary Document No 20 of March 2007, "Feasibility study on cross-border mediation in family matters". Preliminary Document No 10 contains the responses from 10 States, the European Community, and from non-governmental organisations that play a role in cross-border mediation in family matters. It also has an addendum with responses from Monaco, the United States of America and Israel.

As to future work on this topic, some ways forward were put forth in Preliminary Document No 20, as possible options for further consideration by Members. First, the Secretariat could keep Members informed "of developments in the mediation of cross-border disputes concerning contact and abduction," according to a mandate already given by the 2006 Special Commission. Also, the Permanent Bureau could continue work regarding the question as to whether the lack of a fully comprehensive regime of private international law concerning agreements in the family law area gives rise to any practical disadvantages or impediments for the mediation process such as would justify the development of an instrument. Thirdly, the Permanent Bureau could carry out further consultations with Members in order to explore the desirability of developing an instrument designed to improve the flow of information and to provide for closer cooperation between States in this area. Lastly, the Permanent Bureau could conduct further consultations in relation to issues of confidentiality, accreditation and the development of a Guide to Good Practice in the area of cross-border family mediation.

A number of experts indicated that they welcomed the continuing work of the Permanent Bureau as well as further co-operation on this topic between Members of the Organisation. A number of experts also spoke strongly in support of some sort of Guide to Good Practice in this area. There was disagreement among experts about the present demand for a global instrument in this area, although several experts felt that there was a compelling need for a binding global instrument to protect minors or to ensure that there was legal security for those involved in cross-border mediation in the area of family law.

The Chair summarised the discussion of experts by stating that he perceived a clear mandate for the Permanent Bureau to continue to study this issue and that this topic should be maintained on the work list. The Permanent Bureau should follow developments in this field and inform Members of these developments. The idea of a Guide to Good Practice also found support. The only issue of diverging views was whether there should be a mid-term aim of developing a binding instrument, but in the light of the discussion it did not seem that there was an overwhelming short-term need for the development of such an instrument.

4. Choice of law in international contracts

Mr Lortie (First Secretary) stated that discussions in 2006 had led to the development of a questionnaire to examine the practical need for the development of an instrument concerning choice of law in international contracts. With responses received from 21 Member States in 2007, the Permanent Bureau was invited to circulate again the questionnaire. Responses to this questionnaire, which are reported in Preliminary Document No 5 and two addenda, include responses from 35 Members, from stakeholders in the international business community and from stakeholders in the field of international commercial arbitration. He also referred to the letter from the IBA, circulated as Information Document No 2.

Mr Lortie detailed that this topic was proposed two years ago through UNIDROIT and UNCITRAL. These organisations reported that many of their Member States did not have laws that clearly enshrined the principles of party autonomy and were thus interested in a global instrument that may do so. The Permanent Bureau was tasked with preparing a feasibility study, which could take the form of a convention, a model law, a legislative guide or principles.

From Permanent Bureau research, it seems that party autonomy is a widely shared principle in Member States but with notable exceptions in some Latin American and African countries. As to the policy views expressed by Members of the Organisation in the questionnaire, two-thirds of responding Members stated that such an instrument would be useful, binding or non-binding, with a slight preference expressed for a non-binding instrument.

In terms of a non-binding instrument, Mr Lortie suggested that some options could include: a model law (without a guide, which could be used by legislators or incorporated by reference by parties into their contract, thus be used by courts and arbitration tribunals for the interpretation of such contracts); a legislative guide (useful to legislatures); a Guide to Good Practice (perhaps most valuable to parties); or a set of principles like those developed by UNIDROIT, with features incorporating all of the above options.

Mr Lortie stated that the Hague Conference does not have experience in developing some of these instruments, and would thus likely have to turn to sister organisations to assist in such a project. Mr Lortie further suggested that the Permanent Bureau may possibly wish to start with expert groups on this matter, rather than working initially with Special Commission meetings, because of the nature of such a project.

An expert expressed reservations with regard to this project. This Expert emphasised the importance of the principle of party autonomy and feared that work on this subject may limit this principle.

A representative from the International Chamber of Commerce (ICC) indicated his support for the pursuit of work undertaken by the Permanent Bureau on this subject. He underlined the extreme utility that such an instrument would have for arbitrators and added that on the subject of business law, foreseeability is preferable to flexibility. Nonetheless, taking into account the work undertaken by the European Community, only a non-binding instrument could be envisaged. Finally, the International Chamber of Commerce is prepared to give all possible support to the Permanent Bureau of the Hague Conference for work undertaken on this subject.

The Secretary of the United Nations Commission on International Trade Law (UNCITRAL) noted that questions of private international law on the subject of choice of law by parties are very numerous and continue to give rise to many international discussions. He was therefore entirely favourable to the pursuit of work on this topic by the Hague Conference. He noted that even if questions of choice of law are generally regulated in a satisfactory way by internal law, such work by the Permanent Bureau was definitely pertinent in the context of international commercial trade and transactions, which are more and more numerous. Concerning the form of such an instrument to be adopted, he suggested that a treaty may be too rigid and difficult to implement, but a mere guide would no doubt be insufficient. Further, the new instrument should provide approaches to deal with the interpretation of existing texts and could inspire projects of national legal modernisation in this area. He regarded that the authority of the Hague Conference would confer a satisfactory force to an adopted text in what ever form. Convinced that the elicitation of principles on the topic would be of great utility, he indicated that UNCITRAL would follow this work with much interest and would be absolutely disposed to support this work with its experience.

A representative of the International Bar Association (IBA) presented the communication made by the International Bar Association Litigation Committee in respect to the elaboration of principles applicable to conflict of laws on the topic of contracts, of torts and rights in real property (Info. Doc. No 2). He indicated that this communication resulted from a number of contacts between the IBA and UNCITRAL and that questions raised by the choice of law by parties constituted a recurrent theme in their discussions. He emphasised the great importance of setting out an authoritative instrument on the subject, and suggested that the adopted text take the form of principles. He did not find it necessary to limit the scope of application of the current work to contracts. Questions relative to extra-contractual liability could also be addressed in subsequent work. Finally, he reiterated an offer of support of the IBA for subsequent work of the Permanent Bureau on this topic.

An expert from the European Community indicated that the European Community has nearly adopted a regulation on the law applicable to contractual obligations which is of universal application ("Rome I"). In the light of this experience, the expert thought that if the Hague Conference was to undertake the adoption of a binding instrument on this topic, this would likely only take place after many long and difficult negotiations. The European Community was still not of a clear view with regard to the form of a non-binding instrument that would be suitable to adopt under the auspices of the Hague Conference. It suggested that it would be useful to benefit from the experience of UNCITRAL and UNIDROIT on the subject.

Two other experts expressed that they were in favour of the adoption of a non-binding instrument dealing with the choice of law matters applicable to international contracts.

The Chair concluded that at present the extent of work envisaged by the Hague Conference would be limited to contractual obligations only. Even though opinions were expressed in favour of the pursuit of this work, numerous questions that were identified in Preliminary Document No 5 remain and must be resolved so that the Permanent Bureau can make precise determinations about the dimensions of such a project. He proposed to continue discussions in the course of the afternoon.

The meeting closed at 1.10 p.m.

Council on General Affairs and Policy of the Conference (1-3 April 2008)

HccH
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 2

Distribution: by e-mail

MEETING OF TUESDAY 1 APRIL 2008 – AFTERNOON SESSION

The meeting opened at 2.50 p.m. under the Chairmanship of Mr Leinonen (Finland).

The Chair suggested that the experts continue the discussion from the morning session in relation to future work on choice of law in international contracts. He emphasised that further debate was necessary on the scope of the topic in order to lay the foundation for further work. He drew some conclusions, however, based on the experts' morning interventions.

He first noted that, though a small number of experts had questions and concerns, there was broad consensus on the value of the topic, adding that there also appeared to be consensus on the non-binding nature of the instrument. In addition, he observed that a few experts were also concerned that beginning any work on a non-binding instrument would be a departure from the Hague Conference's historical trend towards developing binding instruments. The Chair suggested that it would be wise to consider the soft-law angle and perhaps liaise with sister organisations with related expertise, pending approval of further discussions and work on the topic.

After providing an overview of the morning session's outcomes, he queried whether they should further define the scope of the topic for the Hague Conference's work programme, observing that there appeared to be consensus on the need to have choice of law in international contracts but raising the possibility of extending the scope to, for example, tort and property. He confirmed that a starting point was to protect party autonomy, and that the scope of application would focus on business-to-business contracts. He stressed that this was his personal sense of the outcomes of the discussion and asked if any experts disagreed with these premises.

One expert took the floor with a question on how party autonomy would work through an international instrument. The Chair clarified that it would ensure that States accepting such an instrument's guidance would also adhere to the principle of party autonomy, in the event that they do not already do so through domestic law.

Mr Bernasconi (First Secretary) queried whether, in view of the morning discussions, the title of the project might not more appropriately refer to the promotion of party autonomy, rather than its preservation, in business-to-business contractual relations. The Chair suggested that the wording of the title would have to be considered later and that the question at hand was how the Hague Conference should focus and extend the scope of its discussions on the topic for the following day.

Returning to an expert's concerns about the need for a non-binding instrument on party autonomy, the Secretary General clarified that if a company, registered in a State which includes the principle of party autonomy in its domestic law and having negotiated a contract on the basis of a law designated by the parties, was sued in a State which did not, it could face a serious problem. He suggested that the focus should be on business-to-business contractual relations in view of the problems businesses were facing already in a globalising world, a position which found support from another expert.

The Chair suggested that the Conference end its debate on topic 4 of the Agenda and continue with the following item.

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

Mr Bernasconi (First Secretary) referred the experts to Preliminary Documents Nos 9A and 9B and the related addendum and annexes. He stressed that the most important outcome of the study was the limited number of requests under the *European Convention of 7 June 1968 on Information on Foreign Law* (the "London Convention") and *Inter-American Convention of 8 May 1979 on Proof of and Information on Foreign Law* (the "Montevideo Convention"), with an average of 9 requests per year and an average response time of 12 weeks. He added that half of the responding States were satisfied with the operation of the London and Montevideo Conventions, whereas half said that matters could be improved, particularly in relation to time delays and their operation in complex litigation. He noted that a majority of States expected an increase in the number of requests for general information on domestic legislation, and that, very interestingly, a majority provided information outside of the treaty regimes through informal channels.

Mr Bernasconi turned to the analysis of access to information at the litigation stage, but emphasised that statistical uncertainty remained regarding these figures due to a 40% response rate. He first stressed that a small number of States required the application of foreign law in litigation. He also noted that most States did not appear to support a new instrument, but queried whether the data told the whole story and if the situation might not in fact change over time. For example, emerging conflicts of laws rules may affect the need to access foreign law in future. He explained that in environmental damage cases, it may be difficult for victims to make a successful claim if they do not understand relevant foreign law or understand how it might be applied in a specific case .

He observed that, most importantly, there is a lot of activity in this field related to electronic databases of foreign law and access to foreign legislation through the Internet. He stressed that a clear majority of responding States were using such resources, adding that it would be in the Conference's interest to be involved in these developments. He concluded by suggesting that, at this time, there did not appear to be support for a specific instrument on access to foreign laws but access through the Internet and electronic technologies should be encouraged.

Mr Lortie (First Secretary) confirmed Mr Bernasconi's observations, adding that lack of awareness of the London and Montevideo Conventions may be having an impact on their success. In seeking an explanation as to the small number of requests under those Conventions, he suggested that additional data be sought from private practitioners and the judiciary. He raised, in that respect, the issue of how lawyers work in commercial practice, observing that many may be hesitant to apply laws that they are not familiar with or not equipped to deal with, for example by hiring the services of an outside expert. He indicated in that respect that many insurance schemes would not cover lawyers for mandates that go beyond their expertise. He also added that many private practitioners make certain that the law they choose for such transactions coincide with the chosen forum for legal predictability and certainty reasons. Thus it appeared that lawyers are proactive in their dealings with foreign law. He added that under existing instruments, such as the *Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations*, often the law applicable to a dispute would coincide with the forum, notably in cases involving weaker parties, again providing a possible reason for the small number of cases where foreign law is applied. He clarified, however, that for family law (divorce, child protection, maintenance, etc.), access to experts on foreign law may be more relevant because the applicable law rules are different in that context. He mentioned that the Permanent Bureau was addressing this matter through country profiles for the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* and possibly for other Conventions in the future.

Mr Lortie then turned to the electronic tools available to practitioners and judges including databases of foreign legislation, such as the Global Legal Information Network (GLIN) (Library of Congress) which allows the user to search for the legislation of 26 countries in 13 languages. However, he stressed that these databases only give access to foreign legislation but do not assist practitioners in its application. He concluded by noting that the Permanent Bureau could eventually assess the possibilities for providing general access to foreign legislation and associated costs.

The Chair confirmed that the Permanent Bureau found the level of application of foreign laws to civil litigation to be low, which raised the question to what extend further work in this area was necessary. He noted that both Mr Bernasconi and Mr Lortie discussed specific instruments, which raised the additional question of whether these instruments were adequate and whether an additional instrument was necessary. He suggested that the Hague Conference could further explore this area with the objective of enhancing access to foreign legislation at low cost.

An Expert of the European Community emphasised the importance of access to foreign legislation through multilingual databases, such as EUR-Lex. The Expert stressed that the European Community welcomed international co-operation on this matter while recognising that a global mechanism would be ambitious. The representative concluded by noting that the European Community supported the Permanent Bureau's preparatory work on this matter and would support additional efforts towards a new global instrument.

Several experts expressed their support for continued efforts in this area, including flexible instruments or, for some, the possibility of an international mechanism, and emphasised the importance of access to foreign legislation in their home jurisdictions. One expert contrasted access to application of foreign legislation and stressed that the Permanent Bureau should also review this issue. Support was expressed for Internet-based databases though some experts expressed reservations about the quality or accuracy of the information or the security of the access. For example, on the issue of accuracy, some experts observed that court decisions may sometimes have an impact on the legislation which may not be accurately reflected in a legislation database.

A representative of the International Chamber of Commerce (ICC) observed that two situations normally arise involving the application of foreign laws. First, he noted that many practitioners, before choosing or refusing a certain law, will need to see the text or a summary, which can often be obtained through the Internet. He stressed that the real problems arise, however, when a foreign law must be applied, for example, in relation to a contract where there may be considerable risk involved and the exact meaning of the law is necessary. He concluded that it may be possible and would be preferable to get advice on the law in question from the best expert on that law but that most practitioners will still want full access to the text in question.

A representative of the International Bar Association (IBA) observed that the issue of the application of laws other than those of the forum arises all the time. He expressed his agreement with the representative of the International Chamber of Commerce, *i.e.*, it is important to obtain the advice of a lawyer with expertise related to the foreign legislation in question.

The Secretary of the United Nations Commission on International Trade Law (UNCITRAL) confirmed that several organisations, involved with the harmonisation of laws, are addressing the issue under discussion. He noted that UNCITRAL receives requests all the time regarding arbitration laws in different jurisdictions. He confirmed that substantial resources would be needed to ensure that electronic resources are accurate, and that governments may have concerns about their liability for the accuracy of such information. He added that solutions may be found outside the governmental and intergovernmental spheres, *e.g.*, through such electronic resources as GLIN.

The Secretary General highlighted a theme of the three previous representatives' comments, namely, that the need for access to laws outside those of the forum is growing. This confirmed the Permanent Bureau's findings, which also concluded that this process is occurring outside traditional treaty structures through informal bilateral channels. He queried whether the blossoming of electronic resources unrelated to existing instruments, such as GLIN and

EUR-Lex, confirmed the need for the informal bilateral approach, or underlined the need for a new multilateral instrument. The Secretary General observed that the London Convention is forty years old and based on a paper world that is increasingly replaced by electronic communication. He added that neither the London Convention nor the Montevideo Convention has a review mechanism and, therefore, work on them to incorporate database and Internet technologies would be difficult. He called for further study on the matter and outlined the rough contours of a new possible multinational instrument: one like the London Convention but with Central Authorities that may refer questions regarding access to foreign law, for example, to international legal institutes such as those in the Netherlands and Switzerland. He added that consideration will need to be given to the availability of databases in different languages with reliable translations, and to ensuring that the information is up to date. He suggested that this could perhaps be achieved through an accreditation system.

The Chair suggested that the floor would agree with the Secretary General's call for further study of the matter. However, he added that there did not appear to be consensus on beginning work on a new international instrument, particularly in view of the data collected by the Permanent Bureau. Nevertheless, he confirmed that an eye needed to be kept on this matter and that, for the time being, access to foreign laws through electronic resources and databases should be encouraged and enhanced in a reliable, practical manner. The Chair confirmed that a distinction needed to be maintained between accessing foreign law and applying it in specific cases, but that it would be unrealistic to expect the development any time soon of a reliable, low-cost foreign law information system that could be used in litigation.

6. Proposal submitted by Switzerland for a Protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

The Deputy Secretary General briefly provided some background to the draft Protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ("1980 Convention") proposed by the Swiss delegation. During the 2006 Special Commission meeting on the 1980 Convention (October-November 2006), the possibility was raised on the development of a Protocol consisting, on the one hand, of a clarification of the obligations of States Parties under Article 21 and, on the other hand, clarification regarding co-ordination of the 1980 Convention with 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* ("1996 Convention"). The draft Protocol proposed by the Swiss expert appeared to largely address this last point. Nevertheless, it was agreed during the 2006 Special Commission on the 1980 Convention that priority should be given to efforts to implement the 1996 Convention. The draft Protocol was circulated in November 2007 to Members of the Organisation, as well as other States and intergovernmental and non-governmental organisations participating in the 2006 Special Commission, with the objective of discussing it during the present Council on General Affairs and Policy of the Conference. Preliminary Document No 12 included the responses of 12 Member States and the European Community, and Addendum No 1 included observations from Spain and the Special Administrative Region of Hong Kong (People's Republic of China).

The Expert from Switzerland recalled that the Swiss delegation had proposed revisiting the 1980 Convention in 2006 because it appeared, despite its merits and strengths, to be out of date. Concerns related to revision of the Convention, expressed by some experts from other States, guided the development of the Swiss proposal for a draft Protocol. In view of the observations in Preliminary Document No 12, the Swiss expert noted that these same concerns persisted. Nevertheless, the question of protective measures in the case of child abductions must be discussed since it posed serious difficulties in Switzerland. The expert stated that the Swiss authorities were certain to soon ratify the 1996 Convention. Despite this ratification, the relationship between the two instruments still required clarification to the extent necessary to ensure that States having ratified the two Conventions in question may apply the 1996 Convention within the framework of a procedure under the 1980 Convention. The Swiss expert invited other experts to propose improvements to the draft, and expressed the wish for the topic to at least be considered as a priority to be addressed at a later stage.

The Chair noted that, at this stage, it still remained to be determined whether it was appropriate to pursue the matter of an additional Protocol to the 1980 Convention.

An expert from Canada indicated that they did not intend to support this subject as a priority as it would be better to focus on the ratification and application of the 1996 Convention. For the moment, several methods exist for responding to the difficulties raised (non-binding measures, guides to good practice, mediation, etc.). The expert clarified that priority should be given to new ratifications and implementation of the 1996 Convention. The expert therefore requested that the issue wait until the 1996 Convention had been widely applied.

An expert of the European Community noted that they could only support a feasibility study on the questions raised by the Swiss expert. The Member States of the European Community were preparing collectively to ratify the 1996 Convention in the interest of the European Community. Concerning the contents of the draft Protocol, Article 2 does not have added value as Article 7 *c)* of the 1980 Convention already provides that Central Authorities must co-operate to ensure the voluntary return of the child or an amicable solution. In addition, Article 4 of the draft Protocol is called into question by a fundamental objective under Community law according to which the courts of the habitual residence of the child, before his or her abduction, must always have the last word on parental responsibility. Thus negotiations are possible concerning the draft Protocol but they must not change the main provisions of the 1980 Convention, which maintain a delicate balance. Finally, the representative noted that, in relation to the negotiations which took place for the development of the 1996 Convention, they did not consider how it could jeopardize the appropriate application of the 1980 Convention.

Several other experts supported the position of the expert from Canada and the representative from the European Community, and suggested that following the current work programme of the Special Commissions on the functioning of the 1980 Convention was necessary and sufficient.

In response to the other experts' comments, the Swiss Expert stressed that an important number of recommendations made by each of the recent Special Commissions showed that the 1980 Convention needed to be improved, and that this could only be done by decision at the level of the Council on General Affairs. According to the Swiss expert, a decision on such improvements was not possible by Special Commissions to review the practical operation of Conventions. Moreover, the proposed draft was not intended to go against Community law. Finally, the expert suggested compromise was possible and that this could be limited to a feasibility study.

The Deputy Secretary General congratulated the Swiss delegation for the future ratification of the 1996 Convention and recalled that the Permanent Bureau was currently editing a Guide to Good Practice that would include a chapter on the relationship between the two Conventions in question. To further assure the Swiss expert, the Deputy Secretary General clarified that work was also being carried out on the question of transborder parental contacts, and that the 1980 Convention provided for amicable solutions in the event of child abduction.

The Chair recognised that the majority of experts proposed further study on certain aspects of the draft Protocol. The Chair proposed that the draft Protocol remain on the work programme but not as a priority. In addition, the Chair confirmed that the Members' efforts in relation to ratification of the 1996 Convention must be strengthened, and that the next two years would be highly important as there would be a number of important ratifications. Finally, the Chair invited the experts to consider the question of engaging the Permanent Bureau in this work at a later stage.

7. Feasibility of a Protocol to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance to deal with the international recovery of maintenance in respect of vulnerable persons

The Chair confirmed that this topic must be raised in line with Recommendation No 9 of the Twenty-first Session (Final Act, p. 55).

Mr Lortie (First Secretary) reminded the experts of two critical questions which were the subject of difficult negotiations during the Twenty-first Session: effective access to justice on the one hand, and the procedures on an application for recognition and enforcement of decisions on the other. At a late stage, a third question on vulnerable persons was added to the first two

questions. According to some States, the rules of the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* ("2007 Convention") should have been applicable on a mandatory basis to maintenance for vulnerable persons. However, other States were not ready to accept this proposal without examining the impact of this inclusion on the text of the Convention. There was not enough time to do so; which explains the Recommendation No 9 of the Twenty-first Session. If the development of a new Protocol was proposed, it would be necessary to propose in the first place a feasibility study on the need for a Protocol alongside the Convention and, if the need existed, it would be necessary to question the types of maintenance obligations, in addition to maintenance obligations arising from a family relationship, that the Protocol must cover and which additional special rules for vulnerable persons it would need to provide for. This study could be carried out quickly by the Permanent Bureau.

The Chair invited the experts to reflect on the level of priority for a feasibility study on the development of this new Protocol.

Two experts stated that priority must be given to ratification of the 2007 Convention before the development of a new Protocol to it. The question of the need for a new Protocol could be currently posed only after the application of the Convention by the States that had ratified it.

Several experts from Latin America recalled that the need for specific provisions on obligations towards vulnerable persons had been actively debated during the Twenty-first Session. They were very committed to a certain regime on this matter due to the notion of vulnerable persons with which they were familiar in their internal law. These experts worked in particular through MERCOSUR in order to advance this matter. Further to this, they strongly supported a feasibility study by the Permanent Bureau.

The Chair concluded that several experts wished to add this subject to the Hague Conference's work programme. However, certain experts expressed some hesitation when it came to assigning it a priority. Nevertheless, the Chair decided on a compromise consisting of the inclusion of the subject in the work programme of the Hague Conference, but without priority. The Chair therefore stated that the question of a new Protocol on maintenance obligations towards vulnerable persons would be included in the work programme of the Hague Conference in line with the agreement reached during the Twenty-first Session.

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

The Secretary General recalled that the April 2007 Council on General Affairs and Policy of the Conference invited the Permanent Bureau to carry out research on this subject and added that this had resulted in Preliminary Document No 6. The original note of 2006 has stimulated reflection on whether certain techniques developed by the Hague Conference could also be used in matters of international migration. To the extent that the reflection consisted of such legal techniques, there was no question of encroaching in the political domain, and the work of the Hague Conference would therefore ensure respect for State sovereignty.

The objective is to support the effectiveness of co-operation in this matter and, in particular, to avoid the development of multiple, separate forms of co-operation while pooling expertise and capacity in order to meet increasing migration in particular temporary and circular migration, in the years to come. Some regional experiences already exist and one day the need may arise to elevate co-operation on international migration to a global level.

The meeting closed at 6.00 p.m.

Council on General Affairs and Policy of the Conference (1-3 April 2008)

HccH
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 3

Distribution: by e-mail

MEETING OF TUESDAY 2 APRIL 2008 – MORNING SESSION

The meeting convened at 9.35 a.m. under the Chairmanship of Mr Leinonen (Finland).

8. The application of certain private international law techniques to aspects of international migration (continuing discussions)

The Chair noted that this topic had been introduced at the previous sitting and invited participants to share their points of view on the subject.

The experts were unanimous in emphasising the excellent quality and the usefulness of Preliminary Document No 6 prepared by the Permanent Bureau. They also thanked the Secretary General for his oral presentation at the preceding sitting.

Numerous experts recognised that the questions raised by international migration concern a sensitive subject, which is also of increasing importance. A certain number of experts reiterated their strong support in favour of maintaining this subject on the work list of the Permanent Bureau. Several experts also stated that the documentation already prepared by the Permanent Bureau on this subject will be useful and sufficient in the ambit of establishing their own legislation and in the conclusion of bilateral accords on the topic. Other experts indicated that they were favourable to a wider co-operation on this issue and stated that it would be useful to be able to benefit from the special expertise and experience of the Permanent Bureau.

An expert related the difficulties encountered by his State in the role of country of origin as well as a receiving country of international migrants. He would be very pleased to share this experience, and would also appreciate hearing experiences of other States on the subject.

Nevertheless a number of experts expressed doubts about keeping this question on the work list of the Hague Conference. Several judged that it reached into a domain that was eminently political, relevant to the sovereignty of States. They noted the distinction between the political aspects of migration and the techniques of management of the effects of this migration, but questioned how to employ this distinction practically. Also, several experts thought that such a subject was outside of the mandate conferred upon the Hague Conference.

The Secretary General observed that the approach adopted in the Preliminary Document accents only certain features of international migration. He noted also that problems relative to migration are on-going and produce effects on international maintenance obligations, family relations, and the abduction of children. These questions concern much of the work of the Hague Conference.

The Secretary General reminded that the report published in 2005 by the Global Commission on International Migration also pointed to the crucial lack of co-operation on the international and national levels on this subject. The only options presently available for States are on the one hand, the *United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)* of 18 December 1990 that is only ratified by States of origin, but not by any receiving States (for the probable reason that it covers too much ground) or alternatively, the possibility to reinforce the powers of existing international bodies in this field. These options do not seem totally satisfactory. It seems that some tangible solutions could be found in the techniques of co-operation developed by the Hague Conference and it would be regrettable not to take advantage of the Conference's experience and knowledge to tangibly assist in the management of problems posed by this topic. It may be suitable to develop a "Hague model" that could be effectuated in another venue, such as the United Nations in cooperation with the Hague Conference. In the meantime, it seemed to him important to maintain this subject on the work list of the Conference.

The Chair observed that there was great interest from the delegations regarding questions of international migration. It seemed to him that the discussions were slightly less controversial than those of preceding years. He concluded in favour of keeping this subject on the list of possible work projects for the Conference, notably in co-operation with other organisations. The Chair thought, however, that it might be useful to reach agreement as to methods to follow.

9. Other topics

The Chair commented that it is the task of the present Council to decide whether any of the subjects under this heading should have particular priority or if any should be dropped from the list. The Chair also clarified that all topics, from (a) to (e), are listed with no particular priority according to the decisions of the 2007 Council meeting.

(a) Questions of private international law raised by the information society, including electronic commerce

Mr Bernasconi (First Secretary) indicated that this is a subject of broad application to the work of the Hague Conference. The topic is very important both for existing individual information technology projects at the Hague Conference (such as INCADAT, INCASTAT, iChild, iSupport and the e-APP project) and also as a reminder that conventions should be drafted in a way that is technologically neutral. The Hague Conference also deals with various organisations and has attended various meetings and negotiations in this field. He suggested that this subject should remain on the agenda as an "enduring reminder," informing all the work of the Hague Conference, but it does not need to be given particular priority.

Mr Lortie (First Secretary) reported that the Hague Conference had worked in close consultation with the United Nations Commission on Trade Law (UNCITRAL) in development of the Maintenance Convention of 2007 in order to ensure that its text would be medium and technology neutral. In this context, UNCITRAL also invited the Permanent Bureau to an experts meeting last year on issues of authentication and other information technology developments. This meeting was very useful as international experts present allowed the Permanent Bureau to learn about global needs and norms in this area.

As there were no comments from experts on this matter, the Chair concluded that this item would remain on the Hague Conference's work list as a non-priority item.

(b) The conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage

Mr Bernasconi (First Secretary) stated that this topic has been on the Hague Conference agenda since 1993. The last comprehensive study carried out on this topic by the Permanent Bureau was in 2000, and Mr Bernasconi suggested that it may be time to update this study. He reported that keeping this item on the agenda has led to the participation of the Permanent

Bureau in a number of projects and discussions in the international realm on this topic. The Permanent Bureau actively took part in a 2006 International Law Association conference concerning the transnational enforcement of environmental law. He expressed great satisfaction that a provision suggested by the Permanent Bureau in its 2000 Report was exactly followed in the final Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"). Further, the Permanent Bureau was invited to assist the United Nations Environment Program (UNEP) project in developing aspects of the *Cartagena Protocol on Biosafety to the Convention on Biological Diversity*. The working group finally did not adopt the idea to provide operational private international law rules with respect to cross-border damage caused by Living Modified Organisms (LMOs), and had instead opted for an enabling rule for States, such that they could develop their own private international law rules. Mr Bernasconi sees this as unfortunate and suggested that if resources allow the Permanent Bureau could develop at least some model suggestions for states under the aforementioned enabling clause.

One expert reported that the Permanent Bureau's work on this topic in other venues had benefited her State and said that it was important that the Hague Conference remain visible and continue to contribute to this field.

The Chair summarised discussion on this topic to state that the status quo would be maintained with respect to this item.

(c) Jurisdiction and recognition and enforcement of decisions in matters of succession upon death

The Secretary General referred experts to Working Document No 1 submitted by Australia on this topic.

The Secretary General noted that the private international law of successions was an important but also complex field. He noted that Hague Conference archives indicate almost a century of involvement in this field, and he detailed the three modern Conventions concerning testamentary dispositions (1961), trusts (1985) and law applicable to succession (1989). The first Convention was a very successful instrument. The second continues to attract new contracting States, including recently Switzerland. The last Convention mentioned has not yet entered into force but has served as a model for the law of several national jurisdictions.

The Secretary General reported that the European Community is working on efforts to deal with the whole area of successions. The Permanent Bureau is following these developments to see if it is possible to find some solutions that could be used at the global level.

Mr Lortie (First Secretary) indicated that this was another important item to retain on the agenda in order for the Permanent Bureau to participate in other discussions that are on-going in this area such as those taking place within the European Community. He said that he hoped that mutual exchanges with the European Community would continue in the future on this topic.

An expert from the European Community reported that the European Commission has a plan to adopt, between now and the end of 2009, an initiative proposal on the topics of applicable law, jurisdiction, recognition and enforcement and the possibility of having a European Registry of wills. The expert thanked the Permanent Bureau for its contributions.

(d) Jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples (see Prel. Doc. No 11)

The Deputy Secretary General indicated that this subject has been on the Permanent Bureau agenda for over 20 years without priority. Preliminary Document No 11 is an effort to bring research concerning developments in internal and international private law in this area up to date. He thanked Ms Harnois (former Legal Officer) and Ms Hirsch (Legal Officer) for the important work they had done in preparing this document.

The content of this Report shows the great rapidity of developments in this area. For instance, there are now more than 30 jurisdictions that have legislated for a registered partnership or similar system. There was also the recent Convention on the Recognition of Registered Partnerships, which was adopted by Member States of the International Commission on Civil Status (ICCS) in March 2007.

The Deputy Secretary General offered three remarks he deemed important. First, the number of persons involved in some type of informal partnership runs into the hundreds of thousands globally. Also, the number of jurisdictions which are bringing in new legal institutions like registered partnerships is growing. Last, the practical difficulties arising from the absence of a unified private international law approach in this area are becoming much more prevalent.

Ms Hirsch (Legal Officer) presented a topical case-study regarding legal problems that a cross-border couple under an informal partnership scheme may encounter due to the rapid developments and differences in respective national laws.

A large number of experts commented on this topic and most indicated their great interest in the topic and their support for the Permanent Bureau to continue to follow developments in this area. A number of experts indicated that the time was not ripe to develop an instrument. One expert suggested that the Hague Conference might conceive of a third "middle" priority category where this issue could fall.

The Secretary General of from the International Commission on Civil Status (ICCS) commented that many of the practical difficulties noted in the Permanent Bureau Report (Prel. Doc. No 11) are resolved under the recent *ICCS Convention on the Recognition of Registered Partnerships*. He gave several examples and suggested that if there were to be a new document drafted by the Permanent Bureau on this topic, the text of the ICCS Convention should be annexed.

The Deputy Secretary General said that the Permanent Bureau looks forward to continuing consultation and discussion with bodies such as the ICCS.

The Chair summarised discussion on this topic by stating that although politically sensitive, it is a subject of growing importance. There seemed to be a clear underlying understanding that discussions have not yet reached the stage where serious work on an instrument is realistic. The topic will be retained on the agenda, but not accorded priority.

(e) Assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations

Mr Bernasconi (First Secretary) reported that this subject was added to the agenda in order to permit the Permanent Bureau to follow the important work on the topic led by UNIDROIT. The objective was thus to assure that the new instrument being developed by UNIDROIT would not come into conflict with the *Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary*. It would be useful for the Permanent Bureau to be present at the next Diplomatic Session of UNIDROIT on this topic. He seized this opportunity to present best wishes for the success of the UNIDROIT project.

The Secretary General of the International Institution for the Unification of Private Law (UNIDROIT) thanked the Permanent Bureau for its support, which was highly appreciated. He noted that during the negotiations conducted for the adoption of the Hague Securities Convention, the necessity for a regime addressing questions of substantive law relating to securities on a global scale appeared necessary. He confirmed that the UNIDROIT convention project deals with questions of substantive law but leaves in tact the regulations pertaining to conflict of laws. A Diplomatic Session for this project would take place next September hosted by the Swiss Government.

IV. ROUND TABLE ON PROGRESS MADE CONCERNING THE SIGNATURE AND RATIFICATION OF AND ACCESSION TO CONVENTIONS

10. Conventions adopted by the Twenty-First Session (2007): Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance / Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

An expert from the United States of America informed the Council that it was presently preparing materials in order to seek Senate approval of this Convention for ratification. An expert from the European Community reported that the European Community was actively working to make it possible to sign and ratify these two instruments.

11. Convention adopted by the Twentieth Session (2005): Convention of 30 June 2005 on Choice of Court Agreements

The Chair noted that since the relevant Diplomatic Session, one State, Mexico, had acceded to this Convention.

An expert from Canada reported that the Federal Government of Canada was currently working to enable Canada to sign and ratify the Convention. An expert from the United States of America reported that its government is presently seeking approval of the President to sign the Convention. An expert from the European Community reported that the European Community has just completed an impact study on this Convention which had positive results that support signature and ratification. Its signature is anticipated in the course of 2008. An expert from Argentina reported that this Convention formed one of three Hague Conventions that are presently a ratification priority for Argentina.

The representative from the International Chamber of Commerce (ICC) confirmed the full support of the ICC for this Convention. The representative stated that he was convinced that this Convention will become a very important instrument in the facilitation of international trade and urged ratification.

Mrs Pertegás (Secretary) notified all participants at the Council that she would be the member of the Permanent Bureau charged with carrying out the follow-up to this instrument and that she was at the disposal of experts and Members of the Organisation for any information and assistance they may need regarding this Convention.

12. Convention adopted by the Nineteenth Session (2002): Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary

Mr Bernasconi (First Secretary) reported that the Permanent Bureau follows developments in support of this Convention. He mentioned the two excellent seminars of the previous year organised by Peru and by Colombia. He reminded that the Permanent Bureau is at the disposition of States and of the European Community for all assistance in regard to this Convention.

Mr Bernasconi informed further that Mauritius has indicated the desire to become a Party to the Convention. This development is particularly interesting because Mauritius is currently reforming its financial law and is becoming an important financial centre for the Pacific region. He warmly thanked the International Swaps and Derivatives Association (ISDA) for its help in this regard.

An expert form Mexico indicated that his government has undertaken consultations concerning the eventual signature and ratification of the Securities Convention. An expert from the European Community reported that discussions are underway with the Council on the question of its signature and ratification of this Convention. An expert from the United States of America was happy to report that this Convention is a priority for his Government and that a document is being prepared for Senate approval of the ratification of this Convention.

13. Conventions adopted by the Eighteenth Session (1996) and by the Special Commission with a Diplomatic Character (1999): (a) 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 / *(b)* Convention of 13 January 2000 on the International Protection of Adults

An expert from Canada reported that these two Conventions were viewed with high priority for implementation in Canada. An expert from the United States of America reported that a decision had been made to work towards the signature and ratification of the 1996 Convention. Negotiations with states concerning the 2000 Convention are underway. An expert from the United Kingdom stated that the 2000 Convention had already been implemented in parts of the United Kingdom, and that he hoped that it would apply in all of the United Kingdom within several years. Experts from Norway, Argentina and Sweden reported that the signature and ratification of the 1996 Convention were underway in their States. An expert from Finland reported that Finland intended to sign the 2000 Convention in the course of the year and was working actively for its ratification. An expert from France reported that ratification of the 2000 Convention would take place in September. An expert from the European Community reported that it considered the 1996 Convention of utmost importance and reported that, in the interests of the European Community, its state members which are not yet parties to this Convention will individually ratify it in the near future. An expert from Venezuela reported that it was completing initial work concerning the 1996 Convention, and that it hoped that this year there would be positive news concerning accession to this instrument.

14. Conventions adopted by previous Sessions

A. With a view to preparing the next Special Commission to review the Conventions on legal and administrative co-operation:

(a) *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*; (b) *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*; (c) *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*; (d) *Convention of 25 October 1980 on International Access to Justice*

Mr Bernasconi (First Secretary) presented Ms Marquis (Legal Officer) from Canada, who has recently joined the Permanent Bureau team responsible for these Conventions. Her post is dependent on the Supplementary Budget. The team benefits also from the presence of Ms Justice, the first stagiaire under the Peter Nygh program, and also of Ms Celis Aguilar (Legal Officer), member of the Permanent Bureau for several years.

Mr Bernasconi offered a general perspective on the status of these Conventions. Moldova, Korea and also Sao Tome and Principe are the last States to have joined the list of Contracting States of the Apostille Convention, which raises the total number of Parties to 93. He noted that despite its age, the Apostille Convention (1961) continues to attract new States (a total of 29 since 1 January 2000). This success reflects the essential role filled by this Convention. However, the great number of Apostilles issued around the world each day requires important efforts in order to assure cohesion in the application of the Convention. Concerning the Service Convention, the last contracting States were Albania, India, and Monaco. The Evidence Convention entered into force in India in 2007.

Mr Bernasconi emphasised the important workload of the Permanent Bureau within the frame of these Conventions. More than 240 requests for information were addressed to the Permanent Bureau in the course of the last 12 months. There are not sufficient resources to address these demands, and thus the Permanent Bureau has to make the regrettable decision to no longer respond to requests, except those coming from governments and their officials.

Mr Bernasconi indicated that a Special Commission on the functioning of these four Conventions would take place at The Hague from 10-20 November 2008. The last Special Commission was held in 2003 and foresaw a meeting every five years. This is the first time that the practical

functioning of the Access to Justice Convention will be examined. Concerning the Apostille Convention: 1) it will be proposed that a permanent workgroup be formed under the Special Commission, which will watch over the uniform implementation of the Convention; 2) it will be suggested to investigate whether to extend the scope of the Convention to include the exceptions of Article 1(3) *b)* regarding administrative documents which concern commercial or customs operations; 3) significantly more attention will be devoted to the e-APP (Pilot Program for Electronic Apostilles). Concerning the Evidence Convention, there is only one crucial point tabled bearing on the utility of videoconferences. It would also be advisable to investigate the adequacy of this instrument to current needs. The Service Convention raises no difficulties and it would be suitable just to go further on the issue of electronic service. Finally, information will be gathered concerning the application of the Convention regarding access to justice.

Mr Bernasconi finished by indicating that a special fund has been earmarked in the Supplementary Budget in order to permit less developed States to participate in this Special Commission by providing them with some financial aid for the travel costs of experts from seven States: Costa Rica, the Dominican Republic, El Salvador, Georgia, Madagascar, Uzbekistan and Viet Nam.

An expert from Chile reported that an impact study is underway concerning the eventual joining of Chile to the Apostille Convention. An expert from Macedonia reported that his country was in the process of ratification of several of these Conventions, as well as the 1993 protection of children and intercountry adoption Convention. An expert from Peru reported that Peru was in the process of signing and ratifying the Apostille Convention.

B. *In light of recent developments at the national and regional levels: (e)* Convention of 4 May 1971 on the Law Applicable to Traffic Accidents*; (f)* Convention of 14 March 1978 on the Law Applicable to Agency*; (g)* Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition

The Secretary General specified that these three Conventions were included on the agenda because they need to be re-examined in light of recent developments. The European Regulations, "Rome I" and "Rome II," on contractual and non-contractual obligations, respectively, affect the 1978 and 1971 Hague Convention referenced above. The Rome II Regulation freezes all subsequent ratification to the 1971 Convention by State Members of the European Community. Further, the Rome I Regulation, does the same to the 1978 Convention, but overlaps only partially with the 1978 Convention Nonetheless these Hague instruments are still very effective, and it is important to think carefully about their future before concluding that they would be no longer useful in light of these developments. Finally, he noted that there have been important developments with regard to the 1985 Trust Convention. Switzerland had ratified this Convention and the laws adopted in several countries (Belgium, France and Luxembourg) were inspired by this Convention.

An expert from the European Community thanked the Secretary General for his comments. He confirmed that consequent to the adoption of the Rome I and Rome II Regulations, the subject matter discussed has been assumed under the exclusive competence of the European Community. He indicated that the Council of Ministers would soon give a policy statement with respect to the ratification of certain Hague Conference Conventions.

The meeting closed at 1.00 p.m.

Council on General Affairs and Policy of the Conference (1-3 April 2008)

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HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 4

Distribution: by e-mail

MEETING OF WEDNESDAY 2 APRIL 2008 – AFTERNOON SESSION

The meeting opened at 2.45 p.m. under the Chairmanship of Mr Leinonen (Finland).

The Chair invited the experts to jointly discuss the topics under Agenda items V and VI.

V. PROMOTION, MONITORING, ASSISTANCE AND SUPPORT OF CONVENTIONS: CONVENTIONS IN THE AREAS OF COMMERCIAL AND FINANCE LAW, AND ON LEGAL CO-OPERATION AND LITIGATION

15. Report on the activities on the Conventions on legal co-operation and, in particular, Apostille, Service Abroad and the Taking of Evidence; Preparation of the Special Commission to review the operation of these instruments

(a) Progress report on the electronic Apostille Pilot Programme

Mr Bernasconi (First Secretary) brought clarification to this topic. Firstly, he noted that it was necessary to encourage competent authorities to use modern technology for sending electronic apostilles. Second, competent authorities should use open-source software for registering electronic and paper apostilles. Certain States already possess electronic registers for apostilles. Other States are equally able to send electronic apostilles. The Conference congratulated these States for their efforts towards the advancement of the Apostille Pilot Program ("e-APP"). The fundamental objectives of the e-APP are the efficient execution of apostilles and the fight against fraud, which is more difficult to commit with electronic apostilles than with paper ones. Several other States are currently developing their electronic apostille systems. Other States are showing great interest in the programme. Finally, numerous discussions are taking place on how to develop the programme.

(b) Practical Handbook on the Service Convention: publication in other languages than English and French

Mr Bernasconi (First Secretary) observed that the Practical Handbook on the Service Convention has been met with great success, particularly because it is being translated as desired by the Members. The Russian translation is already available, the Portuguese and Chinese translations will be available soon, and a Spanish translation is under way. The Permanent Bureau warmly thanked the Member States that financed these translation projects. It was further noted that Ukraine and Romania are also contemplating translations. It is therefore possible to state that the Practical Handbook is being widely used, and that the Permanent Bureau certainly welcomes new translations of it.

(c) Promotion, education, and training, including through the Hague Conference International Centre for Judicial Studies and Technical Assistance

Mr Bernasconi (First Secretary) addressed in particular an upcoming seminar on the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* as well as the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* in Russia, and thanked Canada and Finland for assisting with its development. Two seminars took place in Kiev on the same Conventions. Mr Bernasconi added that the Permanent Bureau was planning a programme of seminars directed towards the Commonwealth of Independent States, and will also direct efforts towards countries in Asia that are interested in these issues.

16. Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America

Agenda item 16 was discussed under item 18 in order to address the Permanent Bureau's overall regional developments.

VI. PROMOTION, MONITORING, ASSISTANCE AND SUPPORT OF CONVENTIONS: CONVENTIONS ON INTERNATIONAL PROTECTION OF CHILDREN, VULNERABLE ADULTS, INTERNATIONAL FAMILY AND FAMILY PROPERTY RELATIONS

17. Report on the activities in relation to the Conventions of 1980, 1993 and 1996

(a) Follow-up on the Special Commission of October-November 2006 on the practical operation of the International Child Abduction Convention and the implementation of the 1996 Convention, including progress in relation to Guides to Good Practice

The Deputy Secretary General first of all observed that more than 50% of the efforts currently undertaken by the Permanent Bureau relate to the implementation of the Conventions. These tasks were composed of two large components, including the development of seminars as well as the effective application of the Conventions, particularly through INCADAT, INCASTAT and iChild. The Special Commission of October-November 2006 gave a number of recommendations that created additional tasks for the Permanent Bureau. Regarding the preparation of guides to good practice, the one on trans-border parental contacts would be published in the middle of the year. The guide on the enforcement of return orders under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ("1980 Convention") required more time due to the need for several consultations with State authorities, etc., on various topics. In order to better consider priorities, it is necessary to recall that the Permanent Bureau is currently mandated to develop six guides. At the moment, the Bureau is working on four of them.

Concerning judicial communication and the network of judges, the Special Commission of October-November 2006 addressed at length the development of a Hague network, especially for the application of the 1980 Convention but also for the establishment of rules and principles applicable to relations between judges. Further to these efforts, a number of judges will attend a meeting of experts in July 2008.

The Deputy Secretary General announced that a joint conference, organized by The Hague Conference and the European Commission, will be held in January 2009 on direct judicial communications in family matters and on the development of judicial networks.

Finally, in respect of the 1980 Convention, the Special Commission considered the development of a country profile. The Permanent Bureau's objective is to submit concrete results on this, as well as on standard forms for the request of the return of a child, by 2010.

(b) Progress with the implementation assistance programme for the 1993 Convention and follow-up on the Special Commission of 2005 on the practical operation of the 1993 Convention, including progress in relation to Guides to Good Practice

Concerning the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* ("1993 Convention"), Ms Degeling (Principal Legal Officer) first noted the important and growing number of ratifications, which underlines the need to continue current programmes. These include, firstly, the development of a guide to good practices that will probably be published in summer 2008; secondly, a guide to good practices

on accreditation; and thirdly, good use of available statistics on matters of adoption (in collaboration with International Social Service and Unicef).

Ms Martínez-Mora (Adoption Coordination Officer) provided details on the Hague Conference International Centre for Judicial Studies and Technical Assistance, in matters of international adoption. Support has been given as a priority to the adaptation of internal law in view of the provisions of the 1993 Convention, and to increasing the effectiveness of child protection measures and the training of international adoption specialists. Currently the pilot States are Guatemala, where a lot of progress has been made, and Kenya, where the Permanent Bureau has had to limit its activities due to the recent political events in that country.

(c) INCADAT, INCASTAT and iChild; promotion, education and training, including through the Hague Conference International Centre for Judicial Studies and Technical Assistance

Mr Lortie (First Secretary) recalled Preliminary Document No 3 of 2006 on technology development, and reminded the experts of the conclusions of the 2006 and 2007 meetings of the Council on General Affairs and Policy of the Conference. These conclusions notably addressed the need to consider allocating resources for the Permanent Bureau to support this work. INCADAT, in place since 2004, is now in the regular budget; nevertheless, INCASTAT, ICASTAT, iChild, iSupport and the e-APP remain in the supplementary budget. It is important to ensure that these information systems are accessible to all Parties to the 1980 Convention, which requires financing.

In order to provide more information about these systems, Ms Hirsch (Legal Officer) gave a detailed report on the latest developments on the INCADAT database and stressed the interest expressed by a number of States (including States not Party to the 1980 Convention) in its use and development. In view of its success, Ms Hirsch queried to what extent it would be appropriate to consider using similar databases for other Conventions.

Concerning INCASTAT and iChild, Ms Radic (Legal Officer) described INCASTAT as a statistical database that was more efficient than paper and which permitted States Parties to the 1980 Child Abduction Convention direct access to an updated set of statistics. Concerning iChild, this new electronic case management system is designed for Central Authorities, and an improved version of the system is already being used by four; the Permanent Bureau is waiting for their feedback.

Mr Lortie (First Secretary) added that considerable financial support would be required for the development of the iSupport electronic case management and communication system under the 2007 Maintenance Convention. He indicated that functional requirements for the system were almost ready as they rest in great part on the standard forms and country profile developed for the Diplomatic Session but still required indispensable efforts. He indicated that the new Maintenance instruments called for IT solutions. In fact, based on statistics from some developed States that are Members of the Organisation for Economic Co-operation and Development (OECD), it appears that one cross-border request is anticipated for every 1,000 residents. This signifies, in the context of the Hague Conference with its 69 Members, some three million requests in the mid to long term future. An efficient and reliable information system will be indispensable.

With a view to completing this global look at co-operation in family matters, Ms Alexandre (Legal Officer) described the added value of the *Judges' Newsletter* on child protection. This post-Conventions service allows judges to obtain crucial information on the concrete implementation of the Conventions and establishes a true dialogue between legal systems, for which the Conference will continue to develop its support.

(d) Promotion, education and training, including through the Hague Conference International Centre for Judicial Studies and Technical Assistance

The Secretary General gave an overview and confirmed that this was only the tip of the iceberg. Requests for assistance from Members and non-Members were considerable. This required, without a doubt, the further development of the Hague Conference's International Centre for Judicial Studies and Technical Assistance and the need for considerable funds which have been evaluated to be up to 2,700,000 Euros, for all seven projects under its umbrella, as described in the annex to Preliminary Document No 4.

In response to the set of reports presented by the Permanent Bureau, several delegations congratulated them on the important work they carried out around the world and expressed support for their activities. In view of the amount of work carried out, an expert proposed that evaluations be used with the objective of making their work more effective, and from the point of view of the budget and developing their activities.

18. Report on regional expansion and development, including Report by the Legal Liaison Officer for Latin America

Concerning regional co-operation, Mr Goicoechea (Liaison Legal Officer for Latin America) underlined the growing interest in judicial co-operation in Latin America. The seminars that have already taken place demonstrated the motivation of the senior judges of several States to develop this co-operation. Concerning the international abduction of children, some fundamental issues were raised during recent conferences. Judges from 13 countries reflected on the future establishment of a judges' network. The important work carried out by MERCOSUR on this matter was also discussed.

Concerning the Asia-Pacific region, Ms Degeling (Principal Legal Officer) discussed the significant opportunities offered by conferences in the region (particularly for the smaller States). Following previous gatherings in Malaysia and Australia, a third Asia-Pacific Conference will take place this year in Hong Kong.

Further to these regional developments, the Deputy Secretary General discussed the development of the Malta Process, which focuses on dialogue among judges from States with legal traditions influenced by Islamic law and from Parties to the 1980 Convention. The next venue will most likely again be Malta. The necessary funds for the development of the Malta Process are laid out in the annex to Preliminary Document No 4.

Concerning the African region, the Deputy Secretary General expressed his desire to see support for seminars and conferences on the continent with the objective of raising awareness of the potential of the Hague Conventions and the necessity of future administrative co-operation regarding children. This objective will be realized through a future conference which will take place in Johannesburg in October 2008. It will be necessary to allocate funds for this, particularly to ensure the presence of experts from other parts of Africa (see Prel. Doc. No 4, Annex, p. 38).

Mr Lortie (First Secretary) noted the success of the first judicial seminar among francophone African States, which took place in August 2007. Strong interest was expressed by Supreme Court judges in these States and by their governments. Another seminar is planned for 2009.

The Chair concluded on the fact that the effective work by the Permanent Bureau was considerable and that its administrative capacity was surprising. He encouraged the Permanent Bureau in its approach, which would certainly be included in the conclusions of the Council on General Affairs and Policy of the Conference.

VII. FUTURE WORK (CONT.)

The Chair suggested that the Council now turn to the activities of the Permanent Bureau in coming years, and its use of financial and human resources. He confirmed that, so far, there were no proposals for any of the agenda items under the topic of "Future work" to be dropped.

The Chair proposed, after consultations with the Permanent Bureau, that the Council proceed with Agenda item VII in a flexible way that would allow the Bureau to arrange its day-to-day work and priorities while allowing for the Conference to have a transparent understanding of the

topics it would be investing its resources in. He underlined that, at this point in time, there was no direction to the Permanent Bureau on the table in relation to starting preparations for a convention or other international instrument.

To structure the discussions under this item of the Agenda, the Chair proposed the following three categories:

1. priority topics under which the Conference is clearly working towards an international convention or other instrument; however, the Chair pointed out that there did not appear to be priority items on the current agenda;

2. topics under which the Permanent Bureau must take concrete action:
   a) for example, feasibility studies, questionnaires, expert groups, etc.
   b) the Chair proposed listing these topics and providing guidance in the conclusions as to concrete actions and timelines; and

3. topics retained on the agenda but where no action is called for, for example:
   a) the Permanent Bureau could follow developments under these topics
   b) the Permanent Bureau could take part in conferences and workshops organised by sister organisations related to these topics.

The Chair stressed that the first category would not be relevant this week because no priority items in this sense appeared to be on the agenda. He suggested, however, that the Council should provide a list of actions with timelines to the Permanent Bureau under the second category, in its conclusions. He further proposed going through the topics under Agenda item VII one by one, and that the experts could comment if they disagreed on the way forward for any one of these items.

The Chair turned to the first topic under "Future work" – cross-border mediation in family matters – and suggested that the Council direct the Permanent Bureau to prepare the first part of a guide to good practices for the 1980 Convention for the Special Commission dealing with this Convention in 2010.

Several experts raised concerns about the substance of the proposal and the Chair's procedure for Agenda item VII. On matters of substance, one expert asserted that an international instrument may be necessary for clarifying jurisdiction, applicable law and enforcement law in relation to cross-border mediation of family law while another questioned the need for another feasibility study.

The Chair recalled that there was no support for an instrument at this time, based on earlier discussions, and clarified that a guide to good practices would not be a feasibility study and would bring the Conference further along on this matter. In support of the Chair, an expert stressed that starting with a guide to good practice for the 1980 Convention did not preclude a broader project, such as preparations towards drafting an instrument, at a later time. Another expert stressed that preparations towards an international instrument would be too heavy a burden on the Conference at this time.

On matters of procedure, the Chair addressed several experts' concerns about the proposed structure for debating Agenda item VII. One expert stressed that a written draft for their review would greatly facilitate getting through a complicated procedure for this agenda item. Another observed that there did not appear to be any topics for which there was great enthusiasm and, indeed, in some cases experts had significant concerns about proposed activities, for example, feasibility studies. Regarding prioritisation of topics, the expert queried whether some topics such as securities held by an intermediary were less of a priority than cross-border mediation of family matters or a Protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* with regard to vulnerable persons. The Chair clarified that his proposal was less about prioritising rather than categorising

the Permanent Bureau's upcoming work according to the abovementioned categories. Another expert confirmed her delegation's support for the Chair by outlining and expressing agreement with this proposed structure for the Agenda topic.

An expert from the European Community expressed surprise that the Chair had not categorised a review of the Permanent Bureau's activities according to priority, particularly because they had suggested a few. The Expert suggested that each topic be presented, that the experts indicate whether they assented or not to the package, and then a determination could be made on whether the Permanent Bureau had the resources to carry out the proposed activities or not.

In response to this intervention and earlier ones, the Chair reiterated that the proposed exercise entailed reviewing each topic under Agenda item VII, and discussing proposed activities and timelines for the Permanent Bureau which were based on compromise from the earlier discussions. This would obviate the need to categorise the topics by priority and also ensure that he could incorporate any changes requested by the experts into the draft document for their review the following morning. Their conclusions would then be provided to the Permanent Bureau to guide it in the coming years. The Chair added that the issue of resources had already been incorporated into the proposed activities and timelines based on consultations with the Permanent Bureau.

The Chair then turned to the second topic – choice of law in international contracts – noting that it was clear that its scope would be limited to business-to-business contracts and that it would have as a starting assumption the promotion of party autonomy. Based on earlier discussions, he proposed that the Permanent Bureau continue exploring this topic, including the most feasible "soft law" instrument, with the objective of starting preparations on such an instrument next year. He also proposed that the Permanent Bureau explore how it would undertake such preparations to develop a "soft law" instrument, in consultation with relevant sister organisations, and report to the Council on both matters by next April for further action.

The Chair turned to the third topic – accessing the content of foreign law and the need for the development of a global instrument. There were comments related to the substance of this topic and again on the procedure for Agenda item VII.

On substance, several experts expressed their support for continued work on this topic and practical improvements to improve access.

The Chair noted that there seemed to be no broad support for an international instrument in view of the data collected by the Permanent Bureau. He proposed that the Permanent Bureau would continue to explore mechanisms for facilitating general access to foreign law, in co-operation with other interested organisations such as the International Bar Association and the International Chamber of Commerce. He also proposed that the Council request the Permanent Bureau to double-check its data on requests for foreign law and convene an expert group to explore the subject, and to report back to the Council in 2009. The Chair emphasised that it was incumbent on the Conference to proceed carefully because any proposed development of a "soft law" mechanism would be a departure from its tradition of hard law instruments.

An expert from the European Community noted the Community's strong support for work on this topic, and added that access by judges to foreign laws should also be considered. The Expert noted that two other priorities for the European Community were cross-border mediation in family disputes and choice of law in international contracts.

The Chair clarified that there would not be priorities in the Council's conclusions for the Permanent Bureau, but accepted the representative's comments as confirmation of his earlier proposals. He added that the Permanent Bureau could explore access by judges to foreign laws generally, but that they should not rely on such access for cases at the litigation stage, on which several observers and experts expressed strong views against.

On procedure, an expert queried whether they were being asked to endorse the Chair's proposed descriptions of what the Permanent Bureau should do in the coming years.

The Chair clarified that he was trying to present a compromise and ideas, based on earlier discussions, on further action for the Permanent Bureau. He stated that he was inviting experts to comment on these proposals directly and to inform him if they were inappropriate. In response to another expert's intervention, the Chair revisited the issue of categorisation of topics under Agenda item VII, stressing that labelling some as unripe for preparations towards an international instrument did not preclude re-categorising them as ripe in future.

The Chair turned to the fourth topic – the Swiss proposal for a Protocol to the 1980 Convention – and underlined that there was consensus on not touching the 1980 Convention's rules. He proposed that the Council recommend that the Permanent Bureau prepare a feasibility study on matters raised in the draft Protocol and on other matters arising between the 1980 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* ("1996 Convention"). He added that the recommendation could possibly include a questionnaire to Members and a report to the Special Commission in 2010.

An expert from the European Community stated that the Community supported a feasibility study on this topic.

A few experts, however, expressed concerns about the burden the Chair's recommendations would place on the Permanent Bureau's financial and human resources, and suggested that priority should be given to promoting the 1996 Convention. They added that further action on this topic could be addressed by the next Special Commission or the next Special Commission dealing especially with this Convention.

The Expert from Switzerland noted that it was seemingly a delicate matter to put the draft Protocol on the same footing with three other topics of a certain priority (mediation, choice of law, and access). Nevertheless, the Expert queried whether the notion of a feasibility study could be kept on the table for now, and reviewed with the basket of recommendations tomorrow, in view of the support that it had received from some experts and the European Community. The expert also queried whether the date of completion of such a study, as well as the matter of a Special Commission dealing with this topic, could be left open.

The Chair turned to the fifth topic – feasibility of a Protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the international recovery of maintenance in respect of vulnerable persons – which was recommended by the Twenty-first Diplomatic Session of the Conference in its Final Act (23 November 2007). Because this was a recommendation by the Diplomatic Session, the Chair proposed that the Council invite the Permanent Bureau to draft a short questionnaire and compilation of answers, and provide the entire document to the Special Commission in 2009 for review. He added that the Council could then eventually return to this issue and recommend any further actions if necessary.

An expert queried whether the questionnaire and answer exercise was in fact a feasibility study.

The Chair replied that a feasibility study normally included an assessment of the questionnaire and responses and required more resources.

The Deputy Secretary General added that the main purpose of a questionnaire was to serve as a comparative law survey to see how maintenance obligations for vulnerable adults were treated in legal systems around the world.

The Chair turned to the sixth topic under Agenda item VII — the application of certain private international law techniques to aspects of international migration – and observed that there was broad support from the experts for continuing exploration on this topic. He clarified that such exploration would not touch domestic policy; rather, it would only address legal and technical issues. He proposed that the Council include in its conclusions to the Permanent Bureau a recommendation to explore the legal and technical issues related to international migration in consultation with Members and relevant international organisations. He did not propose any specific actions or timelines.

An expert expressed scepticism that a global instrument would be possible in this area or that it was possible to separate policy from technical and legal issues, but nevertheless confirmed his delegation's support for the recommendation.

The Chair turned to the rest of the topics (listed under Agenda item 9) and confirmed that there was consensus that nothing should be struck from the Agenda. He added that only the topic of unmarried couples received significant attention. He proposed that the Council recommend that the Permanent Bureau follow developments in this area but take no particular actions. He acknowledged that some experts had concerns about this topic, but suggested that it remained on the Agenda for further discussion the following morning.

An expert suggested that perhaps there was room for the Permanent Bureau to carry out a questionnaire on the issue of unmarried couples. This idea could be discussed the following morning. The expert also suggested that the list under Agenda item 9 could perhaps be micro-prioritised in view of how they impact the Permanent Bureau's other non-legislative activities which the Members of the Organisation support.

The Chair concluded by noting that draft conclusions would be on the table the following morning on the basis of the Council's discussions and compromises.

The meeting closed at 6.10 p.m.

Council on General Affairs and Policy of the Conference (1-3 April 2008)

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HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

REPORT OF MEETING No 5

Distribution: by e-mail

MEETING OF WEDNESDAY 3 APRIL 2008 – MORNING SESSION

The meeting was opened at 9.35 a.m. under the Chairmanship of Mr Antti Leinonen (Finland).

VII. ORGANISATION OF THE WORK OF THE CONFERENCE

19. Strategic Plan

Mr Lortie (First Secretary) drew participants' attention to Preliminary Document No 2, the Hague Conference's Strategic Plan Update.

Concerning Strategic Direction 1, "Increasing the global coverage of the Conference," Mr Lortie reported a number of important developments. First, the number of Hague Conference Members is now at 69. Second, the global coverage of Hague Conventions continues apace. There are now 128 States in all parts of the world that are Contracting States to one or more Hague Conventions. There have been a number of very successful regional events and programs (concerning the French-speaking African region, the Asia Pacific region and Latin America in particular) undertaken by the Hague Conference, as well as the establishment of special funds to allow the participation of experts from less-developed States. Third, there is increasing global visibility of the Hague Conference through its website as well as through the visits of members of the Permanent Bureau to more than 35 States over the last year. In the past 12 months the Hague Conference has also received interns or seconded officials from seven States. Finally, very successful press coverage has been achieved by the international media both generally concerning the Hague Conference and regarding the new 2007 Maintenance Convention.

Under Strategic Direction 2, "being selective relative to projects undertaken by the Conference and consolidating post-Convention work", Mr Lortie reported that this included such endeavours as plans for Special Commissions, a large number of Guides to Good Practice and Practical Handbooks, the Judge's Newsletter, and the publication of the Proceedings of the Nineteenth Session. Concerning the topic of "legal education, training and technical assistance," the Permanent Bureau continues its work in assisting with international judicial seminars and conferences in a large number of regions. In addition, partnerships with States, governmental and non-governmental organisations, and with academic and research institutes, continue to be developed. Mr Lortie reported that the Hague Conference had received, under the Supplementary Budget, funding from Argentina, Australia, Canada, China, Croatia, Finland, France, Netherlands, New Zealand, Monaco, Spain, United Kingdom and the United States of America. He also mentioned a secondment of a State official that was arranged with Canada since September 2005, as well as the support from Argentina of the Latin-American Program by providing office facilities to the Liaison Legal Officer.

Under Strategic Direction 3, "enhancing working methods and reducing costs by providing flexibility in the development project," Mr Lortie reported that the Permanent Bureau continues to complete aspects of its work using conference-call, video-conferencing and internet methods (see Prel. Doc. No 2, p. 8).

Under Strategic Direction 4, "increasing communication and co-operation with other international organisations," Mr Lortie briefly reported continued efforts to modernise the Hague Conference's website in order that bilingual usage and also access to documents in non-official languages of the Hague Conference are facilitated. He also reported that the Permanent Bureau has co-operated with over 50 international / transnational governmental organisations and international non-governmental organisations over the last 12 months.

Under Strategic Direction 5, "enhancing the management of internal information," Mr Lortie reported that the Permanent Bureau continues to do very important work in order to increase corporate memory, consolidate the filing system, enhance the maintenance of the library and improve the use of appropriate computer and digital technology. These measures should allow saving a considerable amount of time and resources.

Finally, under Strategic Direction 6, concerning making the Hague Conference "decision process more transparent and informed" in relation to its financing, Mr Lortie directed participants' attention to the various documents (Prel. Docs. Nos 3, 7 and 8) prepared by the Permanent Bureau, which specifically detail budgeting needs and plans, as well as to the Secretary General's on-going study to stabilise the pension situation of the Hague Conference.

One expert suggested that it may be time, possibly at next year's Council meeting, to update or assess these strategic guidelines, particularly concerning the division of work between the development of new treaties and the monitoring and promotion of present instruments, as the main strategic guidelines have not been updated for several years.

The Secretary General commented that the Permanent Bureau would welcome all feedback from Members on this topic, and suggested that it may benefit from future discussion. He reported that today, in terms of resources, work relative to post-conventional services is as important as the work done towards the development of new instruments. He also noted that a large proportion of post-convention work is accomplished thanks to the generosity of States who contribute to the Supplementary Budget.

20-21. Proposed Budget / Supplementary Budget for Financial Year LIV (1 July 2008 – 30 June 2009)

The Chair reminded that the Proposed Budget and the Supplementary Budget are provided at the Council meeting mainly for informational purposes, as the final decision on the Budgets is made at the Council of Diplomatic Representatives which will convene at the beginning of the summer.

The Secretary General first emphasised the importance of the Supplementary Budget for the functioning of the Hague Conference. A 2001 study from PricewaterhouseCoopers indeed detailed a 35% resource gap in funding for Hague Conference activities. The Hague Conference has worked hard to reduce this resource gap, but the demand for Hague Conference projects and services (notably post-convention work) continues to increase at the same time. The Supplementary Budget, which is based on voluntary contributions, provides several full-time employees who are therefore only on temporary contracts, and who contribute much to Hague Conference core work. Such a situation is not considered satisfactory.

The new Proposed Budget provides for the most immediate needs of the Permanent Bureau, which require the addition of one person to the regular administrative staff in order to help with human resources and with the translation work, so that the Hague Conference can continue to provide quality bilingual materials to its Members. There has also been an increase in some staff members' salaries, to assist in family expenses and to provide several staff members with slight promotions. The Secretary General reported that the overall increase in the Proposed Budget is 5.9%, which is reduced to a 2.12% increase per unit because of the addition of new Members to the Hague Conference.

The Supplementary Budget, under Part I, provides for such projects as practical handbooks and databases, the translation and interpretation into Spanish, and a Special Fund to allow some States lacking resources to participate at the Special Commission on the practical operation of the Hague Apostille, Evidence, Service and International Access to Justice Conventions of November 2008.

Part II of the Supplementary Budget deals with the activities of the Hague Conference International Centre for Judicial Studies and Technical Assistance. The States that would be receiving assistance for their judges to participate have all been identified by the Development Assistance Committee of the Organization for Economic Co-operation and Development as Official Development Assistance (ODA) recipients (with the exception of Russia). Thus, the Secretary General noted that experts could submit requests for funding in this area to their home governments under development aid portfolios. The Secretary General emphasised that in many countries with few resources, vis-à-vis the Hague Conventions, many judges and other authorities have to be educated from scratch on the issues involved, and much work is needed in education and training areas. The Secretary General reminded that this is both for the benefit of the recipient countries, but also for donor countries who more and more need co-operation with legal systems in all parts of the world.

A number of experts stated their government policy would be to insist on a zero nominal growth budget for the funding of international organisations. A number of other experts stated that given the clear and reasonable explanations provided by the Permanent Bureau and the fact that, given inflation, there is near 0% growth to the Budget, their governments would likely find the Proposed Budget very reasonable, or they would work with their financial departments to explain the reasonable nature of the Proposed Budget. A number of experts further stated that their governments may be in favour of giving a contribution to the Supplementary Budget for development aid or otherwise.

An expert from Spain reported that his government continues to be interested in providing contributions so that Spanish can be used as a working language at the Hague Conference.

The Secretary General thanked the experts for their comments and said that he was heartened that some experts, in light of developments, were prepared to make an extra effort to seek funding for the work of the Hague Conference.

The Secretary General tabled the issue of designating one additional Secretary in the Permanent Bureau, which was previously communicated to Members through a circular letter of 26 March 2008. The Secretary General specified that giving the staff member the title of Secretary would allow for diplomatic status, and would make it easier for this person to deal with diplomatic matters with States regarding important work concerning Hague Conventions. Under Article 5(3) of the Statute of the Hague Conference on Private International Law, an increase in the number of Secretaries at the Permanent Bureau can only take place after consultation with the Council. After the exchange of information subsequent to questions and remarks from several experts, the Secretary General clarified that the change of status would not affect the Proposed Budget or have any other long-term financial consequences. He added that the matter was primarily a question of enhancing the efficacy of the activities of a staff member rather than of his or her promotion per se.

No objection having been raised, the Chair noted that the proposal was accepted, subject to review of the financial aspects by the Council of Diplomatic Representatives.

IX. CO-OPERATION WITH OTHER INTERNATIONAL ORGANISATIONS

22-23. Co-operation with UNICITRAL and UNIDROIT / Co-operation with other international organisations

The Secretary General noted that while it was impossible to give an exhaustive account of activities under this heading, the significant co-operation over the last several years of the Hague Conference with the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) should be highlighted.

The Secretary General gave a brief overview of co-operation with the United Nations, including excellent contacts with the United Nations Secretariat, the United Nations Environmental Program (UNEP), the International Civil Aviation Organization (ICAO), the United Nations Committee on the Rights of the Child (UNCRC), the United Nations High Commissioner for Refugees (UNHCR), and number of other prominent United Nations agencies.

He also reported significant interchanges with *Mercado Común del Sur (Mercosur)* and other organisations in Latin America, as well as the increasing importance of Hague Conference co-operation with the Association of Southeast Asian Nations (ASEAN).

He also mentioned connections with the International Association of Women Judges (IAWJ), and mentioned the International Chamber of Commerce (ICC), the International Bar Association (IBA) and the International Swaps and Derivatives Association (ISDA).

The Secretary General of UNIDROIT reported the increasingly routine collaboration of the "three sister" organisations of UNICITRAL, UNIDROIT and the Hague Conference, which also now includes more and more core co-operation. The three organisations have regular meetings in order to co-ordinate efforts and give input on various projects. Consultation also takes place with other organisations such as the World Bank and the International Monetary Fund. He reported that there was also a plan to begin regular meetings with the Organisation for Economic Co-operation and Development (OECD) on current topics of private international law. Finally, he reported that the three sister organisations are currently working on a project to produce what they hope will be a very useful practical guide that will give an "eagle's perspective" on the various organisations' work in the field of secured transactions.

XI. CONCLUSIONS

The Chair presented his proposed Conclusions and Recommendations (Work. Doc. No 2) to the Council and invited participants to intervene as he went through the length of the recommended conclusions one-by-one. He indicated that in the absence of comments, the text would be adopted as written. On the other hand, comments which were purely on the level of language or linguistic usage should be transmitted to the Permanent Bureau at a later date.

Welcome to new Members

The paragraph relevant to the welcome of new Members did not raise any comments.

Twenty-First Session

One expert wished to know if the meetings of the working groups charged with the task of developing Country Profiles and Forms were taken into account in the text and, if this were the case, if these meetings would take place before or during the Special Commission meeting.

The Deputy Secretary General responded that in the Final Act of the Twenty-First Session, it was recommended that the two working groups continue their allotted tasks with a view to their subsequent examination by the Special Commission. It was therefore not necessary to make reference to this plan in the Conclusions and Recommendations of the Council since the latter confirmed the Recommendations of the Twenty-First Session.

Future Work

The Chair indicated that the headings for the future work topics were identical to those on the Draft Agenda of the Council meeting. The content of the paragraphs reflect as accurately as possible the discussions on these different subjects. No priority is conferred on any one of the subjects and no topic had been designated as a legislative project under development.

Some experts confirmed the absence of priority among all of the enumerated subjects. One expert proposed to insert a *chapeau* at the beginning of this section to clarify any doubts as to whether there may be priority as to any topic of future work.

The Chair remarked that he thought that it was not necessary to insert an introductory *chapeau* but rather proposed, in order to avoid all ambiguity, that the enumeration be replaced by dashes.

- *Cross-border mediation in family matters*

An expert stated that he found it regrettable that future work relating to cross-border mediation in family matters would be limited to that concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. He thought that questions relative to mediation in family matters should be contemplated for all of the Hague Conventions.

The Chair responded that the ambit of the 1980 Convention on Child Abduction constitutes only a first stage of work on this topic.

The Deputy Secretary General reassured the expert by confirming to him that the entirety of the context of private international law in which problems linked to mediation appear will be taken into consideration in the work of the Permanent Bureau. He reaffirmed that all questions relative to applicable law and to the recognition and enforcement of judgments will remain foremost concerns.

- *Choice of law in international contracts*

The Chair drew participants' attention to the insertion of the phrase "if possible" in the last sentence of this paragraph. This insertion was aimed at emphasising that the elaboration of a detailed recommendation on this topic will depend on available resources.

One expert wondered whether it was a good idea to limit the feasibility study to only a non-binding instrument on this topic.

The Chair indicated that during discussions the experts were divided on this question. Thus, it was decided to constrain the study to a non-binding instrument. However, he noted that this does not predetermine the possibility of considering a binding instrument at a later date.

A number of experts recalled that, for the time being, the study of this item should only bear on international contracts between businesses. Thus they considered that the proposed phrasing did not clearly reflect this position. Several suggestions for editing were given.

The Chair noted the support of several experts in favour of the formulation suggested by the Expert from Switzerland and discussion was concluded with the following modification: "The Council invited the Permanent Bureau to continue its exploration of this topic concerning international business-to-business contracts with a view to promoting party autonomy."

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

The Chair reminded the participants of the preceding discussion under the "choice of law in international contracts" heading, concerning the use of the expression "if possible" in the last paragraph to indicate that work would be subject to available resources.

An expert from the United States of America said that he hoped, in inviting the Permanent Bureau to "explore" mechanisms, this would include the possibility of conducting a meeting of experts.

The Chair responded that this formulation would leave a great deal of latitude open to the Permanent Bureau to determine the most appropriate method to use in its exploration of this topic. This could indeed include a meeting of experts.

An expert from the European Community underlined how important this topic was for his delegation. He hoped that the close link that was made between the availability of resources and the tasks of the Permanent Bureau under this topic will be applied to all the listed subjects. He proposed also to modify the text of the first sentence in order to read "information on foreign law, including at the litigation stage" and to replace the word "promote" with "improve."

Experts from Canada and Switzerland indicated that they were not opposed to this proposition even if they were not as keen on this topic.

The Secretary General confirmed that the carrying out of experts meetings would not be possible for all of the listed subjects, due to limited resources. He approved the proposed change and proposed also to add "continue" in front of "explore." On the other hand, he clarified that if the mandate of the Permanent Bureau is not limited to information of a general nature, the burden of work will be heavier.

The Chair indicated that the first sentence of the paragraph would now read as follows: "The Council invited the Permanent Bureau to continue to explore mechanisms to improve global access to information on the content of foreign law, including at the litigation stage."

- *Proposal submitted by Switzerland for a Protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

The Expert from Switzerland suggested that two essential points were missing from this paragraph: first, the idea that the Protocol should not interfere with the 1980 Hague Convention, and second, a recognition of the connection, intended by a large number of experts, with experiences under the operation of 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*. She read her proposal.

An expert from the European Community supported the proposal of the expert from Switzerland, with a small modification.

Similarly, an expert from Canada said that she would accept the two changes in a spirit of compromise.

Experts from Argentina, Brazil and Israel stated that they were opposed to the proposal of the expert from Switzerland.

Searching for a compromise solution, the Chair proposed a new formulation.

However, the Expert from Switzerland preferred that the original version of this recommendation, reserving the possibility to reopen this theme next year.

The Chair thanked the expert from Switzerland. The text proposed in Working Document No 2 was maintained.

- *Feasibility of a Protocol to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance to deal with the international recovery of maintenance in respect of vulnerable persons*

The proposed paragraph was accepted without comment.

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

Experts from Belgium and from the European Community indicated that this subject was accepted by their delegations out of a spirit of compromise.

This paragraph was accepted as proposed.

Other topics

The Chair clarified that, concerning the enumerated subjects under this heading, the Permanent Bureau is only invited to continue to update its documentation.

One expert thought that the inclusion on this the topic of "d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples" did not adequately reflect the notable change of tenor at the current Council meeting vis-à-vis this topic.

The Chair noted that effectively the discussions were less controversial on this subject than previously. Nevertheless, he thought that experts who pronounced themselves in firm disagreement with this subject in previous years had not judged it useful to express this sentiment again this year.

The experts were again divided concerning the proposal as to whether the subject d) should appear before the heading "Other topics" and thus the Chair concluded to keep the list entitled "Other topics" as proposed in Work Document No 2.

Post-Convention Services

The Chair noted that the formulation used in the last paragraph was very similar to that adopted the year before. The paragraph was accepted without commentary.

Working Document No 3 – Proposal of the Delegations of Argentina, Brazil, Chile, Costa Rica, Mexico and Venezuela

An expert from Venezuela presented Working Document No 3 that proposed to warmly thank the Spanish Government for its help in the use of Spanish as a working language, and inviting the Permanent Bureau to continue to encourage such initiatives.

After interventions from several experts, the Secretary General confirmed that there was no doubt that the Council was most grateful to the Spanish Government, for their contributions in favour of the utilisation of Spanish as a working language. He reminded the experts, that on other occasions, other governments had also contributed financially to making the use of Spanish possible. The United States of America had funded the use of Spanish during the Special Commissions to prepare the maintenance instruments. Similarly, the Diplomatic Session of November 2007 was paid in full by the Dutch Government, which included the use of Spanish. He also reassured the Spanish-speaking delegations that the Permanent Bureau is conscious of the necessity to provide documentation in Spanish. Rather than include this proposal in the Conclusions, he proposed to reflect its essence in the Report of the Council meeting as well as in a letter addressed to the Spanish Government. [This letter was sent on 14 April 2008, note from the Permanent Bureau].

X. CELEBRATION OF THE 115TH ANNIVERSARY, 18 SEPTEMBER 2008

The Secretary General recalled that in 1893 the first meeting of the Hague Conference on Private International Law was held, presided over by Tobias Asser. On the occasion of this 115th anniversary, the Permanent Bureau is planning to hold a celebration on 18 September 2008. As this event coincides with France's ratification of the *Hague Convention of 13 January 2000 on the International Protection of Adults* during its presidency of the European Community, the French Minister of Justice, Madame Dati, will come to The Hague for the occasion. The Secretary General hopes that this ceremony will encourage other States to come to deposit their instruments in order to become Party to this important Convention and possibly to other conventions. The Permanent Bureau continues its preparations for the programme of the ceremony.

Several experts congratulated the Chair for the excellent quality of his work and the manner in which he facilitated the meeting discussions.

The Chair thanked the participants for their efforts as well as those of the Permanent Bureau for its work accomplished in preparation for this Council meeting. He also thanked the administrative staff and the language interpreters working at the meeting.

The meeting closed at 2.00 p.m.