AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

Projet d'ordre du jour – mise à jour
Draft agenda – update

avril / April 2012

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

PROJET D'ORDRE DU JOUR – MISE À JOUR

proposé par le Bureau Permanent

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REVISED DRAFT AGENDA - UPDATE

proposed by the Permanent Bureau

Conseil sur les affaires générales
et la politique de la Conférence d'avril 2012

Council on General Affairs
and Policy of the Conference of April 2012

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DRAFT AGENDA - UPDATE[1]

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

(17–20 April 2012)

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. and end at 6.00 p.m., except for the final day (closure at 1.00 p.m. at the latest). Breaks for coffee will normally be from 11.00 to 11.15 a.m., lunch from 1.00 to 2.30 p.m. and tea from 4.00 to 4.15 p.m.

The discussions on Items III and IV of the draft agenda will be open to Members of the Conference only.

Tuesday 17 April 2012, 9.30 a.m.

I. Short overview of activities since the previous Council meeting (5–7 April 2011)

See Annual Report 2011 – also available on the Hague Conference website < www.hcch.net > under "Publications" – to be completed by oral remarks on work accomplished during the first quarter of 2012. Additional oral comments on the implementation of the Strategic Plan (Final Act, Nineteenth Session, 2002, Part B, Recommendation No 2)

II. Current work

See "Work programme of the Permanent Bureau for the next Financial Year (1 July 2012 – 30 June 2013)", Preliminary Document No 2 – Update prepared by the Permanent Bureau

1. Choice of Law in International Contracts
   See "Choice of law in international contracts: development process of the draft Instrument and future planning", Preliminary Document No 4

2. Report on the Special Commission – Parts I (June 2011) and II (January 2012) – on the practical operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention

3. Preparation of the next Special Commission meeting on the 1961 Apostille Convention (6-9 November 2012)

III. Governance of the Conference and strategic issues

1. Procedure for the future succession of the Secretary General
   See "Future succession of the Secretary General", Preliminary Document No 13, prepared by the Chair of the Council on General Affairs and Policy

2. Continuation of the discussion on the Report, Conclusions and Recommendations of the open-ended Working Group meeting of Members held from 2 to 3 December 2010, in particular on organisation and working methods

[1] The Update essentially concerns the references to Preliminary and Information Documents.

See Preliminary Document No 5 of March 2011, "Report of the meeting of the open-ended Working Group of Members"; see also Working Document No 2 of 7 April 2011, submitted by the Chair, with excerpt of Report of Meeting No 5 (Annex B)

3. Report, Conclusions and Recommendations of the open-ended Working Group on technical assistance (17-18 November 2011)
See "Report on the meeting of the Technical Assistance Working Group (17-18 November 2011)", Preliminary Document No 3; see also "Discussion paper on the future of Hague Conference judicial training and technical assistance programmes", Information Document No 4

[To be continued on Wednesday morning, 18 April 2012]

6.00 p.m. Reception hosted by the Permanent Bureau in the foyer of the Academy Building in honour of William Duncan (who retired on 30 June 2011) and Jennifer Degeling (who is resigning from the Permanent Bureau as of 30 April 2012)

Wednesday 18 April 2012

IV. Governance of the Conference and strategic issues (*continuation of the discussion of Tuesday 17 April 2012)*

V. 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 Members, the international organisations or the Permanent Bureau. See "Work programme of the Permanent Bureau for the next Financial Year (1 July 2012 – 30 June 2013)", *Preliminary Document No 2 – Update prepared by the Permanent Bureau, with comments on some of the topics below*

1. Desirability and feasibility of future work relating to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and to 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*

2. Accessing the content of foreign law and the need for the development of a global instrument in this area
See "Conclusions and Recommendations of the Joint Conference of the European Commission – Hague Conference on Access to Foreign Law in Civil and Commercial Matters, 15-17 February 2012, Brussels, Belgium", Information Document No 10

3. Continuation of the Judgments Project
See "Ongoing work on international litigation and possible continuation of the Judgments Project", Preliminary Document No 5

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

5. Private international law issues surrounding the status of children (excluding adoption), in particular the recognition of parent-child relationships (*filiation*), and concerning international surrogacy arrangements

See "Projects concerning the Children's Conventions, maintenance, adults, cohabitation, status of children and international family relocation – Planning for 2012-2013", Preliminary Document No 6, and "A Preliminary Report on the issues arising from international surrogacy arrangements", Preliminary Document No 10

6. The recognition of foreign civil protection orders
See "Recognition and enforcement of foreign civil protection orders: a preliminary note", Preliminary Document No 7

7. Other topics retained by the Council on the Conference's Agenda:

   a) questions of private international law raised by the information society, including electronic commerce, e-justice and data protection

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

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

   d) 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

[To be continued on Thursday morning, 19 April 2012]

12.00 p.m. Signatures, deposits of instruments of ratification, acceptance or approval of and accession to any Hague Conventions

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

Under this heading Members will be invited to report on any progress with a view to signing, ratifying or acceding to the following Hague Conventions:

1. The Conventions adopted since the Eighteenth Session (1996):

   a) *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*
   b) *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*
   c) *Convention of 30 June 2005 on Choice of Court Agreements*
   d) *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary*
   e) *Convention of 13 January 2000 on the International Protection of Adults* and
   f) *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*

2. Conventions adopted at earlier Diplomatic Sessions:

   g) *Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions*
   h) *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*

Thursday 19 April 2012

VII. Support, monitoring, and adaptation of Conventions

A. Legal co-operation and litigation

1. Follow up on the Special Commission of 2 to 12 February 2009
   See "Task list and status of implementation of Conclusions and Recommendations adopted by the Special Commission on the practical operation of the Hague Apostille, Service, Taking of Evidence and Access to Justice Conventions (2-12 February 2009) – Update No 2", *Preliminary Document No 11*

2. The e-APP Project (electronic Apostille Project)
   See "Conclusions and Recommendations of the Commemoration of the 50th Anniversary of the Apostille Convention and Third Regional Meeting on the e-APP for Europe Project, 4-5 October 2011, Paris, France", Information Document No 8

B. International protection of children, vulnerable adults, international family and family property relations – remaining issues not discussed under previous items

1. Judicial networking and direct judicial communications

2. Follow-up on the Special Commission of June 2010 on the practical operation of the 1993 Convention (including progress in relation to Guides to Good Practice)

C. Regional activities, International Centre for Judicial Studies and Technical Assistance – remaining issues not discussed under previous items

1. Regional programmes and regional offices
   See "Proposal to establish an Asia Pacific Regional Office for the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China", Information Document No 2

2. Achievements, current developments, and future work programme 2012-2014 of the Centre

3. Funding of the Centre and its activities

VIII. Future work (cont'd)

IX. Information on budgetary and funding matters

1. Oral report on the work of the Pensions / Building Working Group
   See "Note on the 'New Pension Scheme'", Information Document No 6, and "Additional information on the three scenarios for the building at Scheveningseweg 6 (current value of the building and other options for housing the Permanent Bureau)", Information Document No 7

2. Proposed Budget for Financial Year LVIII (1 July 2012 – 30 June 2013)
   See "Draft Budget for Financial Year LVIII (1 July 2012 – 30 June 2013) and Explanatory Notes", Preliminary Document No 8

3. Supplementary Budget for Financial Years LVIII-LX (1 July 2012 – 30 June 2015)

   – Part I: Special Projects and Expenses
     See "Financial Years LVIII-LX (1 July 2012 - 30 June 2015) and Explanatory Notes (Part I)", Preliminary Document No 9 A

   – Part II: International Centre for Judicial Studies and Technical Assistance
     See "Financial Years LVIII-LX (1 July 2012 - 30 June 2015) and Explanatory Notes (Part II)", Preliminary Document No 9 B

Friday 20 April 2012

X. Co-operation with other international organisations

1. Co-operation with UNCITRAL, UNIDROIT, UNICEF and other global organisations
   See "Overview of Conventions and other instruments drawn up under the auspices of UNCITRAL, UNIDROIT and the Hague Conference on Private International Law", Information Document No 1

2. Co-operation with the European Union and other regional organisations

XI. Conclusions and Recommendations

The meeting will end by 1.00 p.m. at the latest.

Annex A

Topics informally suggested to the Permanent Bureau[1]

- 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;
- 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;
- feasibility study on the provision of enhanced legal assistance in particular for categories of cases such as small and / or uncontested claims (suggestion by the Special Commission of 2–12 February 2009).[2]

[1] See Prel. Doc. No 20 of March 2002 for the attention of the Nineteenth Session: "Observations concerning the strategy of the Hague Conference in reply to the Secretary General's letter of 30 / 31 July 2001" (topics already previously mentioned in the agenda have been omitted).
[2] Referred to Annex A by the Council on General Affairs and Policy of March - April 2009.

Annex B

Council on General Affairs and Policy of the Conference (5–7 April 2011)

WORK. DOC. No 2 E

Distribution: 7 April 2011

Submitted by the Chair[1]

Chairs and Vice-Chairs
Draft proposals for inclusion (as Art. 5A)
in the Rules of Procedure of the Hague Conference

Article 5A – Chairs and Vice-Chairs

I. Diplomatic Sessions

Chair and Vice-Chairs

1. a. Plenary meetings of the Diplomatic Sessions shall be chaired by the Chair of the Netherlands Standing Government Committee (Art. 4(5) of the Statute).
   b. The plenary meeting shall, upon the proposal of the Chair, elect one or more Vice-Chairs of the Diplomatic Session as well as the Chairs of the Commissions of the Session.
   c. During Diplomatic Sessions, the Council on General Affairs and Policy shall sit as the Session's Commission on General Affairs and Policy.

The Bureau

2. a. The Chair, the Vice-Chairs, and the Chairs of the Commissions, shall, together with the *Rapporteurs* and Chairs of Drafting Committees, constitute its Bureau.
   b. The Bureau shall assist the Chair of the Diplomatic Session in conducting the meeting.

II. Council of Diplomatic Representatives

3. The Council of Diplomatic Representatives shall be chaired by the Minister of Foreign Affairs of the Kingdom of the Netherlands (Art. 10(3) of the Statute).[2]

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[1] Updated version of Work. Doc. No 1, distributed on 6 April 2011.
[2] See the Regulations on Budgetary Matters adopted on 4 November 1994.

III. Council on General Affairs and Policy

Chair and Vice-Chairs

4. a. The Council on General Affairs and Policy (Art. 4(1) of the Statute – hereinafter: the Council) shall be chaired by a delegate or expert of a Member elected by the plenary meeting of the Diplomatic Sessions or, in the interval between Diplomatic Sessions, by the Council, in either case upon the proposal of the Chair of the Diplomatic Session.
   b. The Council shall, upon the proposal of its Chair, elect one [or more] Vice-Chair[s]. [The Chair and the Vice-Chair[s] shall be drawn from different geographic regions.] [The Chair and the Vice-Chair[s] may not be succeeded by a Chair or by [a] Vice-Chair[s] from the same region.]
   c. The Vice-Chair[s] shall assist the Chair in conducting and preparing the meetings of the Council, ensuring continuity between its meetings as necessary, and executing other specific tasks delegated by the Council.

Terms of office

5. a. The term of office of the Chair and Vice-Chair[s] of the Council is from one Diplomatic Session to the next, with a maximum of four years.

Alternative wording

[5. a. The term of office of the Chair of the Council is from one Diplomatic Session to the next Session, with a maximum of four years. The maximum term of office of the Vice-Chair[s] is two years.]

   b. The term of office may be renewed.
   c. Officials elected by the Council to replace the Chair, or [a] Vice-Chair[s], shall complete their predecessor's term.

IV. Special Commissions

6. a. Special Commissions (Art. 8 of the Statute) shall be chaired by an expert of a Member elected by the Special Commission upon the proposal of the Chair of the Diplomatic Session.
   b. The Special Commission shall, upon the proposal of the Chair of the Special Commission, elect one or more Vice-Chairs.
   c. The Chair and Vice-Chairs of the Special Commission shall constitute its Bureau.
   d. The Bureau shall assist the Chair in conducting the Special Commission.

Excerpt of Report of Meeting No 5 [of Council 2011]

XII. Conclusions

Current work

Governance of the Council

The Chair referred to Work Document No 3 on draft Conclusions and Recommendations and recalled that no consensus had been reached earlier on paragraph 11 nor the related proposal to insert a new Article 5A into the Rules of Procedure of the Hague Conference (as set out in Work Document No 2). Moving forward, two situations are foreseeable; either consensus is reached, or no consensus is reached and the issue is back on the agenda for the 2012 Council. He hoped that a consensus would be reached, as evolution is needed, and the vast majority of experts at the earlier session were in favour of the election of a single Vice-Chair.

A number of experts recalled that they preferred for a single Vice-Chair to be elected, and thus the bracketed text in the first sentence of paragraph 4 *b)* of draft Article 5A should be deleted. This would enhance transparency at the same time as avoiding bureaucracy. The Chair and the Vice-Chair would need to be neutral and act in the interest of the Members of the Conference. The question of engagement would also need to be addressed in this debate as the two issues are inextricably linked.

Some experts nevertheless supported the idea of maintaining flexibility and expressed no preference on the number of Vice-Chairs to be elected. Accordingly, the bracketed text in the first sentence of paragraph 4 *b)* should be retained.

One expert considered that the second sentence of paragraph 4 *b)* is unnecessary. However, several experts considered it important to specify that "the Chair and the Vice-Chair[s] shall be drawn from different geographic regions" but queried how the different regions should be defined.

Certain experts indicated their preference for this debate to be deferred until 2012, using Work Document No 2 and Preliminary Document No 5 as a basis for future discussions. A cautious approach is preferred and more time is needed to examine this question which relates to issues of governance, transparency and engagement.

One expert expressed opposition to the idea of deferring discussions due to the risk that time will be lost in conducting long and difficult debates.

Another expert considered that these issues should be addressed during intermediate meetings which could be convened between Council meetings.

The Chair concluded the debate by noting that in the absence of consensus on this issue, paragraph 11 would be deleted from the draft Conclusions and Recommendations.[3]

[3] Para. 11 of the draft Conclusions and Recommendations read as follows: "[The Council agreed that there was a need to clarify the procedure for appointing the Chair and Vice-Chair(s) of the Council and other organs of the Conference, and accordingly decided to amend the Rules of Procedure (see Annex).]" The Annex referred to in the quoted text is not reproduced here.