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établi par le Bureau Permanent

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DISCUSSION PAPER ON THE FUTURE OF HAGUE CONFERENCE JUDICIAL TRAINING AND TECHNICAL ASSISTANCE PROGRAMMES

drawn up by the Permanent Bureau

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INTRODUCTION

1. Following the Conclusions and Recommendations of the Council on General Affairs and Policy ("the Council") at its meeting of 5 to 7 April 2011,[1] an open-ended Working Group ("Technical Assistance Working Group") composed of geographically-representative Members of the Hague Conference was convened to address the issues involved in the provision of technical assistance by the Organisation.

2. The Technical Assistance Working Group met in The Hague on 17 and 18 November 2011 and discussed, among other matters, the role of the Hague Conference in providing technical assistance; the priorities both within the Organisation and with respect to providing technical assistance to various States; human resource requirements; funding in relation to technical assistance; and the role of Members, experts and regional offices in providing technical assistance in their respective regions.[2]

3. While recognising the importance of technical assistance in contributing to the ability of many States to more effectively implement and operate Hague Conventions, Working Group experts failed to reach a consensus on some fundamental issues pertaining to the nature, scope, management and funding of technical assistance as provided by the Permanent Bureau.[3] As such, the Working Group concluded that it would be premature to make a recommendation to Council as to the future of technical assistance within the Organisation, but suggested that the Council generally discuss the matter at its next meeting in April 2012.[4]

4. This document is intended to facilitate that discussion by: (1) providing the Council with a brief overview of the evolution of the technical assistance activities of the Permanent Bureau in the context of the strategic directions of the Hague Conference as a whole, and (2) presenting the Council with possibilities regarding future strategic direction(s) that might be considered in relation to the Permanent Bureau's technical assistance programmes.[5]

STRATEGIC DIRECTIONS OF THE HAGUE CONFERENCE[6]

The advent of a Strategic Plan

5. In 2002, in response to the unprecedented growth of the Hague Conference over the past decade – both in terms of the Organisation's expanding and diversifying

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[1] See "Conclusions and Recommendations of the Council on General Affairs and Policy" (2011), para. 11, available on the Hague Conference website < www.hcch.net > under "Work in Progress" then "General Affairs".
[2] For more details on the Technical Assistance Working Group, including the final Report, Conclusions and Recommendations, List of Participants and Background Document, see Prel. Doc. No 3 of February 2012 for the attention of the Council of 2012 on General Affairs and Policy of the Hague Conference ("Prel. Doc. No 3"), available on the Hague Conference website under "Work in Progress" then "General Affairs".
[3] Prel. Doc. No 3, "Conclusions and Recommendations of the Technical Assistance Working Group," Annex 1.
[4] *Ibid*, "Report on the Meeting of the Technical Assistance Working Group," paras 20, 69, 87 and 89.
[5] During the Technical Assistance Working Group, it was suggested that the Hague Conference adopt a Strategic Plan for its technical assistance activities (see Prel. Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," para. 25). This document not only provides options for moving forward with regard to technical assistance, but also addresses this suggestion, particularly in Annex 1. Annex 1 of this document presents a draft long-term Strategic Plan for the Permanent Bureau's Intercountry Adoption Technical Assistance Programme (ICATAP), which constitutes approximately 70% of the Hague Conference's technical assistance work. The draft ICATAP Strategic Plan could serve as a model for the other areas for which the Permanent Bureau offers technical assistance: (i) non-adoption Family Law; (ii) Legal Co-operation and Litigation; and (iii) Commercial and Finance Law.
[6] For a more comprehensive overview of the evolution of the Post-Convention Services provided by the Hague Conference, including technical assistance, see Prel. Doc. No 3, "Background Document to Assist the Working Group Meeting on Technical Assistance," Annex 4.

Membership and the increasing scope of activities undertaken by the Permanent Bureau at the Council's approval – the Strategic Plan of the Hague Conference ("Strategic Plan") was drafted in order to set priorities and consider how best to consolidate and build on the current successes of the Organisation.[7]

6. The need for a Strategic Plan to govern future efforts of the Organisation also stemmed from an increasingly apparent reality consequent to the aforementioned growth: a marked (and growing) gap between the available financial resources of the Hague Conference and the demands placed on its Secretariat.[8] As the Hague Conference confronted new global challenges, including the advent of new technologies; increased regional integration and cross-border movement; the expanding diversity of its target audience; and the increasing relevance of and need for Hague Conventions across the globe, it was forced to make internal adjustments regarding its work programme.

7. Up until the late 1970s,[9] the Hague Conference had been able to concentrate its efforts mainly on the development of new instruments. Over time, however, it had become increasingly necessary for the Organisation – as part of a world far more complex than the one in which it was founded – to devote a substantial part of its resources to the promotion, implementation, support and monitoring of existing Conventions.[10]

New realities

8. As the evolution of the Hague Conference's work programme outpaced the Organisation's financial capacity, the Hague Conference was forced to confront one of two options: increase available resources or decrease the demand placed on the Organisation. Both Conference stakeholders and staff agreed that a reduction of activities (demand) would have a serious, negative and lasting impact on the reputation, relevance, visibility and status of the Organisation. The Strategic Plan notes: "All services provided by the Secretariat are perceived as essential – they form a complete cycle for sound policy development. The only alternative is to increase the resources to match the current demands."[11]

9. Many of the increased demands placed on the Hague Conference were the result of the expansion of the influential and increasingly integral "Post-Convention Services" offered by the Organisation (see para. 7, *supra*).[12] The universally acknowledged value of these services and the increasing use of Hague Conference resources towards their

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[7] For the full text of the Strategic Plan of the Hague Conference, the main directions of which were given unanimous support by Member States at the Commission I meeting of 22 to 24 April 2002 on General Affairs and Policy, see "The Hague Conference on Private International Law Strategic Plan" (2002), available on the Hague Conference website under "About HCCH" then "Strategic Plan".

[8] At the end of 2000, the Chairman of the Netherlands Government Committee on Private International Law and the Secretary General of the Hague Conference commissioned PricewaterhouseCoopers to evaluate the organisation of the Secretariat in light of possibly inadequate resources to support the growing workload of the Permanent Bureau, and to contribute to the further strategic development of the Hague Conference by examining external developments in the immediate context of the Organisation. The final study identified a 30 to 35% resource gap between the demands placed on the Hague Conference and the resources available to carry out these tasks. (See PricewaterhouseCoopers, "The Hague Conference on Private International Law: Resources Deficiencies and Strategic Positioning" (21 May 2001), p. 3, available upon request.)

[9] Monitoring and discussing the implementation and operation of Hague Conventions began with the first Special Commission in 1977, when the Permanent Bureau organised the first Special Commission on the operation of the Hague Service Convention. This highly successful first Special Commission review meeting was the start of a practice that has become an established feature of the Hague Conference and a model for other international and regional organisations.

[10] See "The Hague Conference on Private International Law Strategic Plan," pp. 12-15.

[11] *Ibid*, p. 27.

[12] The PricewaterhouseCoopers report (see note 8, *supra*) expressly noted that a major portion of the resource gap of the Hague Conference at the time related to its provision of Post-Convention Services, identified in the report as the administration, monitoring and support of existing Conventions (PricewaterhouseCoopers, "The Hague Conference on Private International Law: Resource Deficiencies and Strategic Positioning," p. 13). Regarding Post-Convention Services in particular, see note 6, *supra*.

provision resulted in the designation of Post-Convention Services as a core activity of the Organisation, and the subsequent directive within the Strategic Plan to consolidate the provision of Post-Convention Services into the annual budget of the Organisation.[13]

Strategies regarding the provision of technical assistance

10. As more States become Parties to Hague Conventions and / or join the Hague Conference, there is a greater need for targeted assistance for those parties responsible for applying these Conventions in practice, particularly in developing States. By the time of the formalisation of the Strategic Plan of the Hague Conference in 2002, such assistance and co-ordination of assistance on the part of the Hague Conference had become increasingly necessary to aid the effective implementation of Hague Conventions and to promote consistency in their interpretation and application as the Organisation increased in diversity and reach.[14]

11. In order to manage the role of the Hague Conference in providing "technical assistance"[15] the Permanent Bureau was advised both to concentrate its efforts on "initiatives in which National Authorities cannot alone meet their local needs or in which the unique standing and expertise of the Secretariat offers obvious added value" *and* to "adapt a more coherent framework to make possible advanced planning and more regular financing."[16]

12. The creation of the *International Centre for Judicial Studies and Technical Assistance* ("the Centre") within the Permanent Bureau in 2007 aimed to satisfy the directives articulated in the Strategic Plan (see para. 11, *supra*) by enabling a more systematic approach to be taken to the provision of implementation and operation assistance and training. The realisation of the Centre allowed the Permanent Bureau to capitalise on the benefits provided from an internal mechanism that centralised the funding and planning related to the Hague Conference's technical assistance activities.

13. The generous grant by the Government of the Netherlands Ministry of Foreign Affairs for a total of 500,000 Euros, to be distributed over a period of four years, in addition to subsequent contributions totalling over 1.7 million Euros[17] by Member States and other entities to the Supplementary Budget of the Hague Conference (created in order to manage the influx of supplemental contributions to the Organisation in the wake of the Netherlands Ministry of Foreign Affairs grant), have enabled the Permanent Bureau – through the Centre and with the support of the Regular Budget[18] – to:

- Provide ongoing administrative, organisational and programming support to the growing number of training and education activities offered by the Secretariat;

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[13] "The Hague Conference on Private International Law Strategic Plan," pp. 34-35.
[14] *Ibid*, p. 35.
[15] The term "technical assistance" was originally adopted to refer to activities related to legal education and training to specific countries or groups of countries, so as to distinguish this type of support from the other Post-Convention Services offered by the Organisation. This phrasing was specifically chosen as such in an attempt to appeal to development aid agencies for the purposes of raising funds for developing States and / or States in transition. However, the choice of the term "technical assistance" was not intended to affect in any way the other post-Convention services that were already being provided by the Permanent Bureau at the time the phrase was adopted. Indeed, the term has presented some difficulty to the Organisation and its Members in light of the vague and development-focused origin of a phrase often used to refer to activities and programmes provided to developed, as well as developing States. As such, consideration has been given to adopting another phrase to describe this work, including "technical co-operation", among others.
[16] "The Hague Conference on Private International Law Strategic Plan," pp. 41-42.
[17] This figure excludes the monetary value of all in-kind contributions. Of the more than 1.7 million Euros received by the Hague Conference Supplementary Budget after the Netherlands Ministry of Foreign Affairs grant came through in 2008, more than 1.2 million Euros has been received from other States, and over 200,000 Euros have been provided by a variety of other organisations and miscellaneous private donors.
[18] As the Centre is staffed by member(s) of the Permanent Bureau, these costs are paid by the Regular Budget of the Organisation. All other technical assistance activities, including the staff costs related to the ICATAP Co-ordinator, are covered by the Supplementary Budget.

- Create and maintain a mechanism for the centralisation of funding and planning with regard to the Conference's technical assistance activities;
- Formalise the "Supplementary Budget" of the Hague Conference, permitting the centralisation of contributions to the Organisation and the separation of these donations from the main annual budget ("Regular Budget") consisting of annual Member dues;
- Strengthen the management of the Supplementary Budget in order to enhance financial reporting and accountability to donors;[19]
- Investigate and pursue external fundraising activities to contribute to closing the resource gap hampering the provision of Post-Convention Services;
- Forge strategic partnerships with other international organisations, non-governmental organisations, academic institutions and other relevant bodies;
- Strengthen and expand the network of experts on Hague Conventions;
- Delegate powers within the Secretariat so as to manage scarce resources in as effective and efficient a manner as possible;
- Develop Convention-specific technical assistance programmes; and
- Form as coherent a framework as possible with regard to the provision of, and funding for, the technical assistance activities of the Hague Conference.

All these efforts were undertaken with the strategic objectives of the Hague Conference, as articulated in the Strategic Plan, in mind.

THE FUTURE OF TECHNICAL ASSISTANCE

14. Since the adoption of the Strategic Plan in 2002, the Hague Conference has made significant achievements in affirming and responding to its mission by increasing the global coverage of the Organisation.[20] The Hague Conference increasingly attracts interest from developing countries and countries with economies in transition. While this development meets the express strategic directives of the Organisation, the consequences in terms of the challenges these countries face when, or after, joining Hague Conventions had not been fully foreseen. As more States join the fold of the Hague Conference, there is increasing need for technical assistance co-ordinated, overseen or directly provided by the Hague Conference.[21]

15. The aforementioned strategic efforts on the part of the Permanent Bureau to "adapt a more coherent framework to make possible advanced planning and more regular financing" (see paras. 10-14, *supra*) – including the creation of the Centre and the formalisation and subsequent division of the Supplementary Budget into Parts I and II (see note 18, *supra*) – have been successful in delegating scarce resources to respond to urgent requests in as effective and efficient a manner as possible,[22] without adverse effect on the legislative and general monitoring functions of the Organisation. However, the current global economic climate and steadily increasing breadth of coverage of the Hague Conference have contributed to a reality where the demand for technical assistance far outweighs the resources at the disposal of the Permanent Bureau and the Centre.

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[19] This included the division of the Supplementary Budget into two branches ("Part I" and "Part II") in order to distinguish the funding for general, special projects (such as electronic databases and translation of documents) from that for the provision of targeted technical assistance (provided only at the specific request of the State or group of States in question).

[20] See "The Hague Conference on Private International Law Strategic Plan," p. 9 (for a description of the mission of the Hague Conference) and p. 30 (for a description of how increasing the global coverage of the Organisation enhances its mission).

[21] This is true for all three areas of the Hague Conference's work programme (International Child Protection, Legal Co-operation and Litigation and Commercial and Finance Law). However, the need for technical assistance related to the Child Protection Conventions, and in particular the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("Intercountry Adoption Convention"), is particularly acute (see note 5, *infra*).

[22] Oftentimes, this means instructing the requesting State to another organisation, expert or relevant body better placed to provide support.

16. With the conclusion of the Netherlands Ministry of Foreign Affairs grant (see para. 13, *supra*) as of 30 June 2012, and given the external funding climate and internal realities of the Organisation, it is an appropriate – and, indeed, critical – occasion for the Hague Conference to take stock of the technical assistance programmes and activities provided by the Permanent Bureau and to carefully consider any future strategic direction(s) it wishes to take with regard to the technical assistance programmes of the Organisation.

17. Because technical assistance activities of the Permanent Bureau operate with the support of its International Centre, it may be useful to include in the examination of the future of the Hague Conference's technical assistance programmes the future of the Centre as an entity itself.[23] Indeed, adequate consideration of future work programmes relating to technical assistance – including the adoption of multi-year strategic plans[24] – is ultimately dependent on the capacity of the Centre to raise funds and effectively and efficiently manage the demand for technical assistance. In any event, it should be noted that a certain degree of flexibility is vital to ensure that when emerging situations requiring technical assistance arise, funds from the Supplementary Budget may be provided for short-term requests.

18. The following three scenarios – (i) retain the status quo; (ii) transition to a semi-autonomous structure; or (iii) create a fully independent entity – are meant to offer the Council an idea of some general options it might consider when discussing the future of the Centre and its Convention-specific technical assistance programmes.

Retain the status quo

19. The Hague Conference's unparalleled expertise, experience and reputation, as well as its global network of experts and authorities and intimate knowledge of diverse legal traditions, allow the Organisation, through its Secretariat, to selectively provide value-added training, support and advice related to the effective implementation and operation of Hague Conventions.

20. The Centre's operation from within the Permanent Bureau[25] thus confers on it a number of advantages in responding to technical assistance requests. The Centre has the potential to mobilise the Hague Conference's worldwide network of experts and to increasingly delegate the provision of technical assistance which is currently provided to a large extent by the Permanent Bureau.

21. Despite the Centre being an integral part of the Permanent Bureau, it retains a certain degree of autonomy from the Secretariat by independently administering the Supplementary Budget; retaining separate representation at Permanent Bureau meetings; making independent financial recommendations; and refraining from participation in the Permanent Bureau's legislative work. The Centre is guided by an Advisory Group consisting of those staff members of the Permanent Bureau who have ultimate responsibility for the Conventions for which technical assistance is provided. All decisions related to the Centre, however, are submitted to the Secretary General of the

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[23] Indeed, Working Group experts acknowledged that any future discussion of external private funding – an important consideration when discussing the future of technical assistance within the Organisation – should likely be discussed in the context of the management and legal structure of the Centre. Pending a detailed future discussion on external private funding, experts were generally not opposed to the Organisation's acceptance of uncontroversial private funding (Prel. Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," paras. 84-87).

[24] The realisation of both the three-year ICATAP Strategic Plan (Annex 1) and that of the Supplementary Budget Part II (Prel. Doc. No 9 B for the attention the Council of 2012 on General Affairs and Policy of the Hague Conference, available on the Hague Conference website under "Work in Progress" then "General Affairs") depend exclusively on the ability of the Centre to provide funding to match their demands.

[25] Some experts have expressed concern that the Centre's relationship to the Permanent Bureau has not been properly defined (see Prel Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," para. 64).

Hague Conference for final consideration. The Secretary General is, of course, ultimately accountable to all Members of the Organisation.

22. The Centre's interdependence with the Permanent Bureau, however, may inhibit its ability to secure certain forms of external funding such as large private foundations. As part of the Permanent Bureau, the Centre retains no independent legal personality. Research indicates that this substantially restricts the Centre's fundraising capacity, as donors often require aid recipients to demonstrate that they are an independent legal entity in order to ensure transparency and accountability.[26] Similarly, many private donors are likely to question why an intergovernmental organisation needs funds in addition to those provided by Members. Often, donors look to fund organisations that focus mainly on developing countries and / or entities that primarily provide technical assistance. Unfortunately, the Hague Conference's legislative activities make the Centre less attractive to development aid organisations who might otherwise provide financial assistance, as well as to donors who may require the tax benefits reserved for funding non-profit and non-governmental organisations.

23. While many States have been extremely generous in their contributions, this type of funding is not sufficiently consistent, especially considering the vagaries of the current global economic climate.[27] As it currently stands, the Centre will have difficulty maintaining its level of financing in the coming Financial Year, and will have even more trouble securing additional funds.

24. Since its inception in 2007 and since the appointment of a Director[28] in 2009, the Centre has worked tirelessly to transform the Supplementary Budget from an *ad hoc* source of funds to a mechanism developed for long-term projects with greater transparency and reporting capabilities. The Centre has been able to do so not only because of the support of the Permanent Bureau and the dedicated efforts of its staff, but also due to the generous donation of the Government of the Netherlands and contributions by other Members, States and entities to the Supplementary Budget.[29] However, with the conclusion of the Netherlands grant this year, and given the current economic climate, it will become increasingly difficult – if not impossible – to maintain the type of multi-year, results-based planning the Centre has worked so hard to create under its existing framework.

25. Multi-year funding frameworks with defined strategic goals help prioritise and focus technical assistance, improve communication with potential donors and foster a culture of results. Unpredictable and inadequate funding will necessitate a substantially decreased workload, lead to an inability to strategically plan for the future[30], and result in the loss

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[26] For instance, an independent legal personality is / was a criterion for funding under the: *Pieken in de Delta Programma* (Netherlands Ministry of Economic Affairs & Municipality of The Hague); OECD Factsheet, "Is it Official Development Assistance (ODA)?" OECD Development Assistance Committee (November 2008); Section 501(c)(3) Internal Revenue Code status for tax deductibility within the USA; EU operational grants; and EC Calls for Proposal for Non-State Actors and Local Authorities in Development, among many others.

[27] Several experts at the Technical Assistance Working Group expressed a commitment to continued support of the Supplementary Budget, but acknowledged the difficulty and unpredictability in securing supplemental funding in the current economic climate (see Prel. Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," paras. 81-82).

[28] At present, the Centre has been under the purview of two Directors: Ms Frederike Stikkelbroeck from 2009 to 2011 and Ms Micah Thorner from 2011 to present.

[29] Since 2007 (when the Netherlands announced it would provide the Centre with a grant of 500,000 Euros), contributions (financial and in-kind) have been received from the following Members: Argentina, Australia, Belgium, Canada, China, Colombia, Croatia, the European Union, Finland, France, Germany, Ireland, Italy, Malaysia, Malta, Monaco, Montenegro, Morocco, the Netherlands, Norway, Panama, the Philippines, Qatar, the Republic of Korea, Romania, South Africa, Spain Sweden, Switzerland, the United Kingdom and the United States of America. In addition, financial support has been provided by a handful of non-State entities.

[30] As mentioned in note 23, *supra*, the three-year ICATAP Strategic Plan (Annex 1) is entirely dependent on the availability of human and financial resources that have *not yet been secured*. If no additional resources are made possible by the conclusion of the Netherlands Ministry of Foreign Affairs grant, it will no longer be possible to continue critical, ongoing ICATAP programmes.

of funding for crucial positions[31] as well as an increase in the number of unsatisfied requests for technical assistance.[32] The provision of technical assistance on the part of the Hague Conference will likely revert to an *ad hoc* format with an inability to support many States in need. Indeed, several experts at the Technical Assistance Working Group voiced concern that where an *ad hoc* approach to the provision of technical assistance is present, these activities may become exclusively demand-driven, rather than strategy-driven.[33] The majority of substantive technical assistance projects require resource-intensive support that may need to extend over multiple years in order to be truly successful. While the Centre could theoretically continue to operate in its present form, the reality is that the effectiveness of its current technical assistance programmes will markedly decrease without the ability to secure a steady source of funding.

Transition to a semi-autonomous structure

26. The transition of the Centre into a semi-autonomous body with a greater degree of independence from the Permanent Bureau could be contemplated along a continuum. The Permanent Bureau suggests that the Council consider two scenarios, on somewhat opposite ends of the spectrum: (1) the creation of a Patrons' Committee of qualifying Member States (informal proposal attached as Annex 2) to consult on future strategic directions of the Centre's technical assistance programmes, and / or (2) the gradual conversion of the Centre into a non-profit Foundation designed to attract and provide funding in support of the Hague Conference's technical assistance activities. It should be noted that these scenarios are not mutually exclusive.

27. The Council is advised to consider what other alternatives exist to adapt to the fundraising reality as described above (see paras. 22-25, *supra*). These alternatives might include maintaining the *status quo*.

Establishing a Patrons' Committee[34]

28. Technical assistance confers essential added value to the outcomes of Hague Conference work. Although the importance of technical assistance in providing for successful implementation and operation of Hague Conventions – to the benefit of *all* States Parties – has been widely recognised, there has recently been some disagreement among Members as to whether and to what extent Hague Conference resources should be used to that end.[35] Some Members have therefore suggested that those States that contribute to the Supplementary Budget, as stakeholders, may wish to play a greater role in shaping the focus of the technical assistance programmes to which they contribute.[36]

29. The Centre's work is currently overseen by an Advisory Group of senior Permanent Bureau staff members (see para. 21, *supra*). This Advisory Group has been an important source of advice and oversight, as well as a valuable conduit between the Centre and the rest of the Secretariat. However, given the substantial commitments of members of the Advisory Group to other areas of the Permanent Bureau's work programme, meetings and advice often occur on an *ad hoc* basis.

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[31] Funding for the ICATAP Co-ordinator, the loss of which would have a significant adverse impact on the intercountry adoption work of the Hague Conference, has only been obtained through April 2013.
[32] There are currently 48 outstanding requests for technical assistance from countries all over the world (list provided upon request).
[33] Prel. Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," para. 30.
[34] It should be noted that the creation of a Patrons' Committee and / or a foundation (or similar independent fundraising vehicle) could also be considered as part of the other scenarios discussed in this section.
[35] *Ibid*, paras. 17-20.
[36] *Ibid*, para. 79.

30. The formation of a Patrons' Committee for the Centre – composed of eligible Hague Conference Members[37] *and* members of the current Centre Advisory Group – directly addresses these concerns while providing a necessary space for the development of clearly defined policies and strategies with regard to technical assistance.[38] The Patrons' Committee would not be designed to oversee or approve each Hague Conference / Centre training or assistance activity, but rather to advise on long-term strategies and goals related to the Centre's technical assistance programmes and related resource implications. The Council has long recognised the value of Working Groups in engaging Members in the work of the Hague Conference and determining future directions.[39] Similarly, a Patrons' Committee would not be unlike a more formalised, long-standing Working Group, ultimately accountable to the Council.[40]

31. A Patrons' Committee such as the one proposed ensures that interested Members who have supported targeted training and assistance programmes have an immediate and direct voice in the long term strategic goals of the Organisation and its technical assistance work. It also allows for greater clarity with respect to the role and tasks of the Centre, as well as a permanent, accessible forum for long-term strategic planning and the requisite resources, neither of which can realistically occur without the other. Such a structure recognises the importance of technical assistance to the mission of the Hague Conference while acknowledging that certain States may have a greater interest and / or stake in these activities.

32. Ultimately, the establishment of a Patrons' Committee would incur many benefits for the technical assistance programmes of the Hague Conference – including greater transparency and accountability – while exhausting few resources. By engaging in the long-term development of collective, strategic goals for the Centre, a Patrons' Committee would help ensure that the Hague Conference remains in a position to offer technical assistance with the active involvement of Members, experts and the Permanent Bureau in the delivery of such programmes.

The Centre as a Foundation[41]

33. The work of the Centre to date has been funded by the generous voluntary contributions of Members and other entities to the Supplementary Budget of the Hague Conference.[42] While Members and experts have identified the importance of stable and reliable funding streams to the success of the Centre's technical assistance programmes, they have noted that the current economic climate makes these kinds of financial contributions inherently unpredictable.[43]

34. Successful grant applications are a likely steady source of project funds, but are very lengthy and labour intensive processes. Further, donors often require aid recipients to demonstrate that they are an independent legal entity in order to ensure transparency and accountability (see para. 22, *supra*). The ability to be competitive for this type of

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[37] See Annex 2 of this document for a suggestion of criteria under which eligibility for the Patrons' Committee might be determined.

[38] Experts have articulated the need for a more clearly defined policy on technical assistance (See Prel. Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," para. 22).

[39] See "Conclusions and Recommendations of the Council on General Affairs and Policy" (2011), para. 10.

[40] Meetings would also likely occur on a more informal basis, through the use of video-conferencing, conference calls, etc.

[41] See note 34, *supra.* Without establishing the Centre itself as a Foundation, one could imagine the establishment of one or more foundation(s) as (a) *special purpose vehicle(s)* to specifically attract funding from sources that need or prefer to provide their funding to this type of entity. Such (a) foundation(s) would thus offer an *additional* model for funding, while direct contributions to the Centre (whether as an integral part of the Permanent Bureau or as a semi-autonomous structure) would still be possible.

[42] Since 1999, more than 2.9 million Euros have been contributed to the Supplementary Budget of the Hague Conference.

[43] See Prel. Doc. No 3, "Report of the Meeting of the Technical Assistance Working Group," paras. 81-82.

funding – including that from private foundations, associations, development aid agencies, corporate sponsors and individuals, among others – is necessary if the Centre is to continue to offer results-based, value-added technical assistance in the absence of predictable direct contributions from Members. As such, the adaptation of the structure of the Centre to a model that satisfies the qualifications for a non-profit Foundation registered under Dutch law is potentially critical to its success.[44]

35. A transition to the independent and transparent governance structure needed to gain non-profit status under Dutch (or other) law would require the Hague Conference to attribute greater decision making power to the Centre as an entity in and of itself. This would involve formulating a clearer definition of the Centre's activities and the tasks and focus of those who are involved in the execution of its programmes, as well the establishment of a separate Board of Governors for the Centre. Collectively, the Board of Governors would hold general responsibility for decisions concerning the Centre's strategic direction, ensure financial and other resources and provide oversight. Members of the Board would likely be Members of the Hague Conference and / or members of the Permanent Bureau, in addition to persons identified from the Organisation's global network of experts. The Board might also simply be composed of the Patrons' Committee as outlined above (see paras. 28-32, *supra)*.

36. The exact relationship between the Hague Conference and a structurally semi-independent Centre designed to secure needed financing, including how the Board of Governors would be formed and appointed, would need to be articulated in the latter's constitution and pre-approved by the Council. Effectively, this means the Centre would be entrusted with greater decision-making responsibility, but would remain ultimately accountable to Members of the Hague Conference as a whole. A separate and transparent governance structure thus exposes additional avenues for the funding of technical assistance but does not preclude the Centre and its activities from remaining an integral part of the Hague Conference. States may contribute to the Centre, but will no longer assume the burden of providing steady funding.[45]

37. Other intergovernmental organisations have explored similar models in the past, *e.g.* UNIDROIT's Uniform Law Foundation, created in 1996 in order to promote and procure funding for activities that UNIDROIT considers to be particularly meritorious, but which it cannot fund from its regular budget.[46]

38. Altering the formal configuration of the Centre so that it is eligible for non-profit status under Dutch law would provide a means to secure funding without disrupting the quality and type of technical assistance currently provided, or the critical link that exists between the Permanent Bureau and the Centre. In this regard, a "semi-autonomous" Centre in the form of a Foundation would retain the oversight, direct link to and high-quality reputation of the Hague Conference, while allowing the Permanent Bureau itself to focus more fully on the scientific and legislative aspects of its work and technical assistance to achieve greater success through the procurement of long-term, stable funding.

Create a fully independent entity

39. While a semi-autonomous Centre would remain within the purview of the Organisation, a completely independent entity would comprise both a distinct legal personality and governing structure. As such, it would not be subject to the review and

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[44] Experts have agreed that the question of private funding may be closely related to the possibility of a (semi) independent Centre (see Prel. Doc. No 3, "Report on the Meeting of the Technical Assistance Working Group," paras. 67-69 and 85).

[45] In addition, the Regular Budget of the Hague Conference would get reimbursed for related costs, *i.e.* staff costs.

[46] See the UNIDROIT Foundation Brochure, available at < http://www.unidroit-foundation.org/pdfs/brochure.pdf >.

influence of the Hague Conference itself. Nor would there necessarily exist an on-going dialogue between the Hague Conference and the Centre.

40. A fully independent entity would require its own governance structure and budget. The new entity could take the form of an NGO or Foundation, with a Governing Board that would likely consist of international experts and stakeholders (or their representatives). The relationship and link between the Hague Conference and the new entity would need to be clearly defined upon separation. While the exact structure and makeup of this Governing Board could theoretically take various forms, in order for the Centre to continue to provide value-added services, it would need to retain a diverse range of high profile and international members able to properly guide its overall professional direction and technical assistance activities.

41. An fully independent entity will also need to be responsible for its own fundraising, and it may be unreasonable to expect the leading legal practitioners one might hope to attract to the Board (on a largely part-time / pro bono basis) to also assume responsibility for fundraising initiatives. The difficulty and scope of this task may therefore require the creation of an honorary Board of Patrons (or something similar) to take responsibility for generating sustainable financing. While the Centre's current structure as an integral part of the Permanent Bureau has created certain fundraising difficulties,[47] it is likely that a completely independent body, lacking the cachet and connections that being part of the Hague Conference confers, will also struggle to attract new funds.

42. It is important to bear in mind the many synergies that would be lost were the Centre to detach from the Permanent Bureau entirely. As such, a complete separation of the Centre from the Permanent Bureau will not only impact both the Hague Conference and the Centre on a financial level, but also on a practical level.

43. While an independent Centre may absolve the Hague Conference of its current specific technical assistance responsibilities, it would extinguish the stream of benefits to both the Permanent Bureau and the Hague Conference (*i.e.,* Members and Contracting States) obtained through the Centre's technical assistance programmes.[48] For example, staying abreast of developments pertaining to the Hague Conventions in individual jurisdictions as a result of providing training or other targeted assistance influences the Organisation's work programme, ensures problems are resolved correctly and consistently and provides the Organisation with current, first-hand information on the practical impact of Hague Conference work. This interdependent relationship is continually acknowledged in the Strategic Plan and is important both for the success of technical assistance programmes and the success of the Permanent Bureau's scientific and legislative work.[49]

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[47] See para. 22, *supra.*

[48] It should be noted that the International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) was launched in 1997 by International Social Service (ISS) specifically in response to the views expressed by the Council that such an entity should exist to address the need for international training to address issues of child abandonment, placement, support to families of origin (nuclear and extended) and the respect of children placed in foster care and in institutions consistent with relevant multilateral Conventions. The launch of this entity has not eclipsed the need for assistance from the Hague Conference. It might therefore serve as an example of what might result if the Hague Conference no longer co-ordinated technical assistance for the 1993 Intercountry Adoption Convention, *i.e.*, an independent organisation might instead focus more generally on the social science aspects of intercountry adoption rather than the legal issues directly tied to the Convention.

[49] The Strategic Plan notes that in order for the Hague Conference to continue to operate at its maximum capacity and to produce and maintain Conventions of global relevance, all components of its work programme – including assistance, education and training; provision of information and publications; and other activities of related to the products and services of the Hague Conference – would need to function efficiently, effectively and *in co-operation* with one another (See, *e.g.,* "The Hague Conference on Private International Law Strategic Plan," Annex II, pp. 51-57).

CONCLUSION

44. The Hague Conference brings a global network of experts, a diversity of legal traditions, unparalleled expertise, a worldwide reputation and high quality advice and assistance to States that turn to the Permanent Bureau for help and guidance pertaining to the proper implementation and operation of Hague Conventions. Such training and assistance has proven highly valuable to receiving States but is very resource-intensive. In light of the decline in consistent, long-term funding for these activities throughout the current difficult economic climate, the Council on General Affairs and Policy must therefore determine whether and how technical assistance should play a role in the Organisation's future.

45. In light of the priorities of Members, the Council must therefore decide the best way to move forward given the interdependent nature of the Hague Conference's goals and objectives compared with the value and benefit of its technical assistance programmes.

A N N E X E S

INTERCOUNTRY ADOPTION TECHNICAL ASSISTANCE PROGRAMME (ICATAP) STRATEGIC PLAN 2012-2015

1. In the last decade the Hague Conference has witnessed an unprecedented and rapid growth in the number of States Parties to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("1993 Hague Intercountry Adoption Convention" or the "Convention"). At the moment there are 86 States Parties to the Convention, 58 being Members of the Hague Conference and 28 that are not Members of the organisation. In addition, three other States have signed the Convention but not ratified, two of them being non-Members of the organisation.

2. Continued rapid growth of the number of contracting States can be expected and the Hague Conference would like to note in this regard that since 2007 the United Nations Committee on the Rights of the Child has recommended to some 30 additional States (mostly non-Members of the Hague Conference) to join the Convention.[1]

3. Currently most of the non-Member States Parties to this Convention are States of origin where adoptable children reside. The Convention depends for its proper operation on close co-operation between States of origin and receiving States. The responsibilities of States of origin in terms of ensuring their part of the implementation and operation of the Convention are important. However, experience shows that in many cases their governments lack the requisite infrastructure, expertise or experience to properly implement or operate this Convention, and have turned to the Hague Conference for assistance.

4. Through its Regular Budget, the Permanent Bureau has, for many years, undertaken the review and monitoring of the Convention's practical operation including promotional activities, and has also regularly provided advice and support to requesting countries on a wide range of issues related to general implementation and operation of the Convention. More recently, through its Supplementary Budget, the Permanent Bureau has provided, on request, more extensive technical assistance to targeted States (or groups of States) specifically related to the implementation and application of the Convention (ICATAP).

1. THE SPECIFICITY OF THE 1993 HAGUE CONVENTION: THE NEED OF HAVING, AT LEAST, A NOMINAL CHILD PROTECTION SYSTEM IN PLACE

5. In order to implement the safeguards of the 1993 Hague Intercountry Adoption Convention adequately and to ensure that the requirements of the Convention are met, there is a need to have a judicial and administrative system in place that work properly. In addition, the Central Authority, public bodies and accredited bodies have to function appropriately under the Convention. If these basic requirements are not fulfilled, the co-operation between States of origin and receiving States is at risk. States of origin are frequently turning to the Permanent Bureau to request assistance with drafting and reviewing implementing legislation, providing assistance to set up and train Central Authorities and other activities mentioned below.

6. Beyond this, there is a need to have a child protection system in place with at least basic services and resources. If this is not the case, it is very difficult to implement the

[1] For example, in 2011, the Committee on the Rights of the Child recommended to five States that they join the 1993 Hague Intercountry Adoption Convention: Egypt, Laos, Republic of Korea, Singapore, and Ukraine.

principle of subsidiarity of intercountry adoptions as required in Article 4 of the Convention and expressed in the Preamble. "Subsidiarity" means that States Parties to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the State of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. Intercountry adoption serves the child's best interests if it provides a loving permanent family for a child in need of a home. Intercountry adoption is one of a range of care options which may be open to children in need of a family.[2]

7. The Permanent Bureau does not have the mandate, expertise or resources to improve child protection systems as a whole, but may give advice on the importance of the subsidiarity principle and provide technical assistance in regard to adoption, and on its practical application as part of the implementation of the Convention.

8. Therefore, when providing any technical assistance to any State there is a need to work closely with the child protection authorities, international organisations such as UNICEF and NGOs in order to ensure that adoption is one of the possible options and not "the only" option.

2. OBJECTIVES OF ICATAP

9. The purpose of technical assistance provided by the Hague Conference is to assist States in the implementation of the 1993 Hague Intercountry Adoption Convention, with a view to its effective and consistent operation. Technical assistance may include, in particular[3]:

- assistance in developing and in reviewing implementation legislation and regulations;
- providing advice on the creation and functions of Central Authorities and other Competent Authorities;
- providing training and other operational assistance to Authorities and other relevant actors;
- help in developing the tools to achieve the above activities, by means of diagnostic visits, the use of external consultants, partnerships with other organisations, etc;
- providing judges with relevant training, information and opportunities for informal exchanges; and
- providing information and advice to States considering ratification or accession to assist their decision making and other factors relevant to effective implementation.

3. WHO BENEFITS FROM ICATAP?

10. Technical assistance in regard to the 1993 Hague Intercountry Adoption Convention is usually provided to States of origin where adoptable children reside. The State of origin, and children and families residing in that State, benefit directly from successful technical

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[2] See "*The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice*, Guide No 1", Hague Conference on Private International Law, Family Law, 2008. Available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" and "Guides to Good Practice", para. 47.

[3] See Conclusions and Recommendations of the Working Group on Technical Assistance, 17-18 November 2011.

assistance. In addition, all States Parties that work and co-operate in adoption matters with that particular State benefit through having safe adoptions by their adoptive parents.

11. Indirectly, all States Parties to the Convention, which by operation of law should recognise adoptions certified as having been made in accordance with the Convention (Art. 23), will be beneficiaries. Moreover, because the reputation of the Convention depends not only on its intrinsic quality but also on the quality of its implementation, all Members of the Hague Conference will ultimately benefit.

12. States that can benefit from ICATAP have different levels of development, and different political and social situations. The aim of ICATAP, subject to available resources, is to assist a selected number of States with different needs, different levels of implication for the ICATAP and different degrees in the difficulty for achieving results. First of all, ICATAP aims at improving the situation in States with major problems in relation to intercountry adoption (abduction, sale or trafficking in children for intercountry adoption). Secondly, ICATAP aims at improving the implementation of the Convention in States with bad practices and / or illegal practices. Thirdly, ICATAP will work with States that can become a new "target" of intercountry adoptions. Finally, ICATAP will also provide limited assistance to States with good practices that could in the future serve as a model to other States and, for example, provide twinning arrangements.

4. CURRENT CRITERIA FOR CONSIDERING ICATAP REQUESTS

13. In addition to the general criteria applied by the Permanent Bureau for considering requests for technical assistance[4], in the case of States with good practices which can be a potential model in the future, ICATAP takes into account the following criteria for considering requests for technical assistance:

a) the State is / will be a model for other ones and the assistance provided through ICATAP will help achieve this objective;
b) the fact that the State in question has been able through the years to improve the implementation of the principle of subsidiarity (decrease in intercountry adoptions, while increase of the number of domestic adoptions);
c) the limited assistance (time and resources) that it is needed to be provided; and
d) the fact that it engages itself to provide assistance to other States.

14. In the case of States with difficult situation in relation with intercountry adoption, among others, ICATAP takes into account:

a) the number of the intercountry adoptions (there is a need to work with States that have a relevant number of adoptions in proportion to the number of inhabitants) or States that are now the new "target" of intercountry adoption;
b) the number of receiving States that a State requesting assistance is collaborating with;
c) the prevalence of the abduction, sale or trafficking in children for intercountry adoption in the State requesting assistance;

[4] *Ibid*. These criteria are: an official request has been received from the State(s) concerned with a commitment to co-operate fully with the Hague Conference in receiving assistance; the request fits into the long-term strategy and the goals of the Hague Conference; the Hague Conference is the only and / or best entity to provide the assistance; it is reasonable to fulfil the request in light of the current Hague Conference work programme; the number of people and / or States affected by fulfilling the request; the interest and support expressed by other Contracting States; the financial resources required; the feasibility and likelihood of success in light of relevant social, political, and economic factors; willingness in the State concerned to consider the benefits of broader involvement in the Hague Conference.

d) the prevalence of other illicit practices;
e) the possibility of co-ordinating with a group of "friendly" States that would support the technical assistance in co-operation with the Hague Conference; and
f) whether the assistance is supported and / or encouraged by UNICEF and other reputable NGOs in that State.

5. FUNDING

15. When the majority of the criteria listed above are fulfilled, requests for technical assistance can only be undertaken if there are funds available to do so. The Conference's (regular) budget does not provide directly for such funding. Therefore, additional voluntary contributions are essential for the Hague Conference to employ an ICATAP Co-ordinator and provide such assistance.

16. Until the present time, the Secretary responsible for the work programme of the Conference in respect of the 1993 Hague Intercountry Adoption Convention has overseen both "the adoption portfolio" under the Regular Budget and the activities of the ICATAP under the Supplementary Budget. The day to day management of ICATAP activities was undertaken by the ICATAP Co-ordinator. The Secretary responsible for adoption matters monitored and contributed to ICATAP and the ICATAP Co-ordinator also participated in the implementation of the 1993 Hague Intercountry Adoption Convention general working programme under the Regular Budget.[5] This interrelation of activities is done for the benefit of the adoption programme in general and is inevitable with such a small team.

6. MEASURING THE SUCCESS OF ICATAP

17. The nature of intercountry adoption is such that there are always some risks. The ultimate goal of ICATAP is to help countries minimise those risks by having the most effective safeguards possible in place. ICATAP's success is therefore ultimately measurable by the improved safety of intercountry adoptions.

18. However, it is very difficult to measure the success of the ICATAP as it is not directly linked to achieving a number of intercountry adoptions or the number of States Parties to the Convention. In addition, the fact that the implementation of the Convention depends as well on the operation of the national child protection systems, the level of efficiency of such systems also affect, positively or negatively, the envisaged achievements of the ICATAP programme.

19. Despite these difficulties, some examples for measuring ICATAP's success are described below:

ACTION	RESULT
Provide legal assistance in developing and in reviewing implementation legislation and regulations	Approval of the domestic legislation, including the major recommendations made by the ICATAP
Provide advice on the creation and functions of Central Authorities and other Competent Authorities	Central Authority and competent authorities appropriate set up
Provide training and other operational assistance to Authorities and other relevant actors	Central Authority and other authorities given training
Help develop the tools to realise the above activities	Publication and dissemination of tools

[5] See Circular L.c. ON No 8(12) regarding the resignation of Secretary Jennifer Degeling.

Provide judges with relevant training, information and opportunities for informal exchanges	Judges trained and meetings taking place
Information and advice to States considering ratification or accession to assist their decision making and other factors relevant to effective implementation	Signature / ratification or accession to the 1993 Convention after the provision of ICATAP Signature / ratification to allow better preparation to implement the Convention

7. STRATEGIES IN THE PAST (2007- 2011): PILOT STATES AND OTHER STATES

20. When ICATAP was first created in 2007, the aim was to develop a pilot programme for two States (in different regions) that had serious issues in relation to adoptions such as abduction, sale or trafficking in children for intercountry adoption and / or that were working to overcome their challenges. The States chosen were Guatemala for Latin America and Kenya for Africa. Finally as the co-operation with Kenya proved to be more difficult than expected to organise, it was decided that the Hague Conference would instead focus its efforts in Asia. Cambodia was therefore selected as the second pilot programme State.

21. Resources from the Permanent Bureau have therefore been focused in these countries to conduct finding missions, provide assistance with draft legislation, employ consultants working in the State for several months, conduct training seminars and hold discussions with authorities and international organisations present in the State (mainly UNICEF).

22. In each case, a detailed technical assistance plan was developed, with the assistance of UNICEF. The plan set the programme goals, activities, timelines and budget.

23. Both in Guatemala and Cambodia, assistance was provided with the support a group of Hague Conference Member States who were particularly interested in ensuring proper implementation and operation of the Convention in the pilot programme States.[6]

24. In addition, technical assistance was provided to other States, but on a smaller scale, *i.e.*, one week missions to work with the relevant authorities on draft legislation to implement the Convention, judicial training, training of Central Authorities and participation in seminars and other activities. This was the case in Kazakhstan, Madagascar, Mexico, Namibia, Nepal and Zambia. Exceptionally in some cases more than one mission was carried out (Chile, Kenya).

25. Finally the Permanent Bureau, at the request of States, provides advice or comments relating to implementing legislation, without any need for any specific mission or travelling. Such assistance, which can be quite valuable, is nevertheless time consuming, and puts a substantial burden on the small staff of the Permanent Bureau. Providing such advice or comments was regularly done in the past as post-Convention support for the implementation of the Convention. However, with the development of ICATAP, this activity is also considered to be technical assistance.

[6] For information on the achievements made in these States and other States where ICATAP was provided since 2007, please refer to the Annual Reports, available on the website of the Hague Conference at < www.hcch.net > under "Publications" and "Annual Reports".

26. Where technical assistance has been requested by a State, the first step is often to examine and comment on draft legislation as a part of preparing for a larger mission. In this context, this activity could be considered technical assistance. However, a request for advice and comments on draft legislation may also be made without a request of technical assistance and in these cases, it may be considered as post-Convention support for implementation of the Convention. This example illustrates the difficulty making the distinction between general post-Convention support and technical assistance.

8. STRATEGIES FOR THE FUTURE (2012-2015)

27. The strategies mentioned below are aimed to guide the selection of States with which the Permanent Bureau will be working. However, the future of ICATAP beyond 31 December 2012 will depend on the availability of human and financial resources, both for the Permanent Bureau staff (ICATAP Co-ordinator) and for in-State activities. As announced by Circular L.c. ON No 8(12) of the Permanent Bureau regarding the resignation of Secretary Jennifer Degeling, if there are no additional resources made available, it will be not possible to continue ICATAP activities.

28. The following general strategies can be mentioned:

- ICATAP resources depend on voluntary contributions from States which differ a lot from year to year. Therefore it is proposed to have a flexible work plan that permits to adapt the work taking into account the needs of the different States and the resources available at any particular moment.
- Therefore, it is suggested to work with only one "main" State at a time which will require a higher degree of involvement of the Permanent Bureau ICATAP team and resources over a longer period of time with a view to accommodate in a considered way smaller projects, on a short term basis, and to maintain the capacity to address the occasional crises.
- Consequently, subject to the level of work required of the "main" State and the resources available, ICATAP could be developed in other States through smaller ICATAP projects (see below, "follow up" State and "limited assistance"). The number of such States where ICATAP could be developed will depend on the resources available and the support from other organizations (*i.e.* UNICEF). This approach will allow organising the work load properly and responding to unexpected events more easily as the involvement with such States can easily be adapted.
- To provide technical assistance to States with good practices in different regions of the world with a view for these States to provide leadership within their own region. These States can be a "model" and share their practices and provide assistance to other States in the same region. As the "model" States will already have many good practices, the assistance that they will receive will be limited in time and resources.

Strategy 1: MAIN STATE
Working with one (exceptionally two) "main" State

29. For the period 2012 – 2015, the objective would be to continue to work with one "main" State per year. In many cases the "main State" will have a very complex situation and might need a considerable amount of resources and assistance. Therefore, the engagement of the Permanent Bureau with such States should be limited to one State at a time (depending on resources).

30. Just in exceptional cases (for example when there is not much activity in the "main State"), the Permanent Bureau could work with a second State. The level of assistance is not always linear because it depends on political and social factors in the State itself. Activity in one State may be such that it allows the opportunity to invest more time and resources in another one.

31. In the past Guatemala was a "main State" in 2007 – 2009; Cambodia was a "main State" in 2008 – 2011.

Strategy 2: FOLLOW UP STATE
Following up the work done with previous "main States"

32. In order to ensure the success of the implementation of the 1993 Hague Intercountry Adoption Convention in States that have previously received assistance as "main States", the Permanent Bureau envisions subsequently following up with these States to the extent that resources permit.

33. The level of follow-up assistance may vary from communication with the State authorities and seeking information from partner organisations in the State of origin (low level of activity, *e.g.* Guatemala in 2011) to a more consistent form of follow-up assistance, *e.g.*, with the continuation of visits, co-ordination through the same consultant and will require more involvement (higher level of activity, *e.g.*, plan for Nepal in 2012).

Strategy 3: MODEL STATE
Working with States that can be a model for other States in the region (future "horizontal co-operation")

34. Assistance should also be provided to some States that could easily become a model for other States and could offer its co-operation in the future. Model States would be, among others, States with a long history of adoption, that have elaborated legislative frameworks, with effective communication between competent authorities, and which have the availability of personnel to train. Model States will require punctual support from ICATAP to revise and improve their existing good practices, and to better prepare for horizontal co-operation with other States in the future.

35. The Permanent Bureau hopes to continue relying on model States to provide training in co-ordination with the Permanent Bureau to other States which require assistance. This strategy involves limited resources from the Permanent Bureau because the model State will ideally be able to provide a majority of the assistance.

36. States that have already served as model States in the past have been Chile and the Philippines. Potential model States could be Vietnam and Burkina Faso.

37. ICATAP funds are needed to cover expenses to first better train and support model States and then for enabling a model State to provide technical assistance to other States.

Strategy 4: LIMITED ASSISTANCE
Providing limited assistance (usually "one time" mission) to certain States

38. Providing assistance with drafting and reviewing implementing legislation can be done via electronic communication, without any expenses associated with travel. This type of assistance would normally take one to two weeks depending on the length of the legal text. This was the case for Panama in 2010 and Ecuador in 2011.

39. In addition, 2 to 5 days missions are carried out to provide training to Central Authorities and other competent authorities to explain key principles of the Convention as well as useful practical operation measures. These missions facilitate widespread understanding of the Convention among government officials and legal professionals. In many cases this is at the request of UNICEF or a diplomatic post of a receiving State which can cover the trip and *per diem* costs. This was the case for Madagascar in 2010 and Kazakhstan in 2011.

40. In many cases, States that receive "limited technical assistance" may be in need of a follow-up visit in subsequent years to ensure that the assistance provided has a lasting effect.

9. RESOURCES

41. In order to implement ICATAP, the Permanent Bureau needs human resources (1 full-time experienced lawyer, who will be the ICATAP Co-ordinator, as a minimum) and financial resources to cover in-State activities. The resources for in-State activities are provided by States, UNICEF or other organisations. In the case of "one time assistance" financial support is often provided by UNICEF or other partner organisations.

42. Regarding staffing, if the adoption team has, for example, 2 lawyers and part-time (50%) administrative support, the work time of one of the lawyers will be devoted fully to regular Budget activities and the other lawyer will be the ICATAP Co-ordinator. Administrative work can be completed with the part-time administrative assistant.

43. Given the above scenario, the following chart provides an example of how the time of the ICATAP Co-ordinator (an experienced lawyer financed through the Supplementary Budget) would be spent for one year:

YEAR	STATES	REGION	ACTIVITY	WORKING TIME	COMMENTS
Main State	1 State		ICATAP developed in the State, through the involvement of both PB in "set-up" stages and external consultants Close monitoring from the PB	4 months / person work	Only 1 State per year at the same time.
Follow up States	3 States		Follow up of previous ICATAP work Possibility of developing more activities if "main State" allows	3 months / person work	External experts for many of the in-State activities
Model State	1 State		One time mission to deal with a specific request of training	2 weeks / person work	External experts
Limited assistance	1 State		One time mission including promotion of the 1993 Convention and training	3 weeks / person work	External experts for some of the in-State activities

Specialised seminar[7]	1 Seminar		Training of a large group of States	3 months / person work	
TOTAL				Approx. **11 months / person work year**[8]	

10. ICATAP STRATEGIC PLAN FOR 2012

44. For 2012, the adoption team is composed by 3 lawyers (4 during the 4 first months). The distribution of work of the team can be summarised as follows:

- 1 lawyer: 4 months under the regular Budget carrying Regular Budget activities.
- 1 lawyer: 4 months ICATAP Co-ordinator; 8 months Regular Budget activities.
- 1 lawyer: 50% Regular Budget activities and 50% ICATAP.
- 1 lawyer (2012 secondment): 50% Regular Budget activities and 50% ICATAP.

45. The proposed tentative activities and targeted States for 2012 are the following:

2012	STATE	REGION	ACTIVITY	WORKING TIME	COMMENTS
Main State	Haiti	America / Caribbean	ICATAP developed in the State, through external consultants Close monitoring from the PB	2½ months / person work	External expert for most of the in-State activities
Follow up States	Guatemala Cambodia Nepal	America / Asia	Follow up of previous ICATAP Specific 1 time 1 week mission Possibility of developing more activities if "main State" allows (*e.g.* training, hiring an external expert & developing tools)	2½ months / person work	External experts for in-State activities for some States
Model State	Chile		One time mission to deal with a specific request of training	1 week / person work	External expert for in-State activities
Limited assistance	Mozambique Namibia Madagascar Vietnam Belarus <u>or</u> Kazakhstan	Africa / Asia / CIS	One time mission including promotion of the 1993 Convention and training	3 months / person work	External experts for some in-State activities Mozambique and Namibia activities financed by UNICEF Madagascar activity might be financed by a diplomatic post

[7] Specialised seminars for several States can be considered as general post Convention activities. However, as they have to be financed by the Supplementary Budget, they are mentioned here.
[8] Approximate estimations. As there is a need to take into account the holidays, only 11 months are counted per year.

Specialised seminar	Francophone seminar	Africa	Training of a large group of States	3 months / person work	
TOTAL				Approx. **11 months / person work**	

11. PROVISIONAL ICATAP PLANS DEPENDING ON RESOUCES FROM 1 JANUARY 2013 – 30 JUNE 2015

46. The future of ICATAP beyond 31 December 2012 will depend on the availability of human and financial resources, in particular, funds for an ICATAP Co-ordinator and for in-State activities.

47. As explained in Circular L.c. ON No 8(12) of the Permanent Bureau regarding the resignation of Secretary Jennifer Degeling, the current ICATAP Co-ordinator will take responsibility for the adoption portfolio from May 2012 and will be paid under the Regular Budget. The position of ICATAP Co-ordinator may cease at the end of 2012 if salary funds are not provided under the Supplementary Budget. It is not possible for the manager of the adoption portfolio to cover all the Regular Budget activities and ICATAP coordination activities together. [9]

48. For a better understanding of the financial implications of this programme, please see Preliminary Document No 9 B of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy, for Financial Years 2012 / 2013 to 2014 / 2015.

49. A provisional plan of the possible activities and States involved that could be developed by the ICATAP Co-ordinator is presented in detail below. Note that the targeted States and activities are subject to change as a result of constantly evolving social, political and financial circumstances in these States as well as other reasons that may affect the provision of technical assistance.

Second Semester of Financial year 1 January to 30 June 2013 (6 months)

50. The adoption team will be composed of a Principal Legal Officer and 50% administrative staff under the Regular Budget. Both of these positions are guaranteed and would mainly work on Regular Budget activities.

51. If there is the possibility to employ an ICATAP Co-ordinator (1 extra experienced Legal Officer), the adoption team could be reinforced first of all in order to prepare the Fourth Special Commission (2014 or beginning 2015, *i.e.* Regular Budget activity) and, if time allows, this person could work on ICATAP activities for the equivalent of a maximum of 50% of his or her working time.

[9] See Prel. Doc. No 6 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference, Annex 1 A.

Jan- June 2013	STATE	REGION	ACTIVITY	WORKING TIME	COMMENTS
Main State					Preparation of Fourth SC Reduce activities – no new State
Follow up States	Haiti Nepal Belarus or Kazakhstan	America / Caribbean / Asia / CIS	Follow up of previous ICATAP Training and developing tools	1 month / person work	Most of the in-State activities carried by external experts
Model State					Preparation of Fourth SC and Specialised seminar Reduce activities in other States
Limited assistance					Idem
Specialised seminar	Anglophone seminar	Africa	Training of a large group of States	2 months / person work	Preparation of seminar to be held July or September 2013
TOTAL				Approx. **3 months / person work**	

Financial Year 1 July 2013 – 30 June 2014

52. The adoption team will be composed of a Principal Legal Officer and 50% administrative staff under the Regular Budget. Both of these positions are guaranteed and would mainly work on Regular Budget activities.

53. If there is the possibility to employ an ICATAP Co-ordinator (1 extra experienced Legal Officer), the adoption team could be reinforced first of all in order to continue to prepare the Fourth Special Commission (2014 or beginning 2015, *i.e.* Regular Budget activity) and, if time allows, this person could work on ICATAP activities for the equivalent of a maximum of 50% of his or her working time.

July 2013 June 2014	STATE	REGION	ACTIVITY	WORKING TIME	COMMENTS
Main State					Preparation of Fourth SC Reduce activities – no new State
Follow up States	Haiti Nepal	America / Asia	Follow up of previous ICATAP Training and developing tools	2 months /person work	External experts for most of the in-State activities
Model State	Burkina Faso	Africa	Follow up on the implementation of the 1993 Convention, identification of good practices and challenges, and training of different actors	1 month / person of work	PB staff and/or external expert
Limited assistance	Namibia Mozambique	Africa	One time mission including promotion of the 1993 Convention and training	1 month / person work	Activities in co-operation with UNICEF offices

Specialised seminar	Anglophone seminar	Africa	Training of a large group of States	2 month / person work	Seminar to be held July or September 2013
TOTAL				Approx. **6 months person work**	

Financial Year 1 July 2014 – 30 June 2015

54. The adoption team will be composed of a Principal Legal Officer and 50% administrative staff under the Regular Budget. Both of these positions are guaranteed and would mainly work on Regular Budget activities.

55. If there is the possibility to employ an ICATAP Co-ordinator (1 extra experienced Legal Officer), the adoption team could be reinforced first of all in order to prepare or follow up the Fourth Special Commission (2014 or beginning 2015, *i.e.* Regular Budget activity) and, if time allows, this person could work on ICATAP activities for the equivalent of a maximum of 60 - 85% of his or her working time depending if on the timing of the Special Commission.

July 2014 June 2015	**STATE**	**REGION**	**ACTIVITY**	**WORKING TIME**	**COMMENTS**
Main State		Africa	Large ICATAP developed in the State, through an external consultant Close monitoring from the PB		If the 4th SC takes place in 2014, ICATAP could be offered to a new Main State (*i.e*,. Ethiopia) for 3 months / person work
Follow up States	Haiti Kenya Namibia or Mozambique	America / Africa	Follow up of previous ICATAP Training and developing tools	4 months / person work	External experts for some in-State activities
Model State	Vietnam	Asia	Follow up on the implementation of the 1993 Convention, identification of good practices and challenges, and training of different actors	1 month / person work	External expert
Limited assistance	Azerbaijan or Kirgizstan	CIS	One time mission including promotion of the 1993 Convention and training Revising domestic legislation from The Hague before the mission	2 months / person work	External experts for some in-State activities If resources and time allow, both States, if not only one
TOTAL				Approx. **7 months / person work**	

PROPOSAL FOR A PATRONS' COMMITTEE[1] FOR THE INTERNATIONAL CENTRE FOR JUDICIAL STUDIES AND TECHNICAL ASSISTANCE

Currently, the Hague Conference International Centre for Judicial Studies and Technical Assistance (the "Centre"). is responsible for managing technical assistance and legal training programmes carried out by the Permanent Bureau of the Hague Conference on Private International Law ("Hague Conference").These technical assistance activities are in most cases performed in co-operation with specialised international organisations such as UNICEF. The Centre is an integral part of the Permanent Bureau but depends for the funding of its projects essentially on extra-budgetary voluntary contributions.

Technical assistance confers essential added-value to the outcomes of Hague Conference work. Many Members feel that technical assistance provided by the Hague Conference is essential for the proper implementation and operation of Hague Conventions. At the same time, however, there is some disagreement among Members as to whether and to what extent the Organisation's resources should be used for these activities. As a result, this proposal has been developed to enable Members who wish to support technical assistance provided by the Organisation the ability to play a fundamental role in the objectives and goals of this work.

The following criteria have been developed as a tentative approach to the creation of a Patrons' Committee for the Centre. As the Centre administers all voluntary contributions received by the Hague Conference and is responsible for managing its technical assistance and legal training programmes, this proposal is meant to suggest one concrete approach to establishing a Patrons' Committee comprised of experts from eligible Hague Conference Members who could collectively advise the Centre on long term strategic goals and ensure that technical assistance and training programmes continue to be offered by the Hague Conference.

Purpose

In order to give Hague Conference Members a voice in the strategic direction and objectives of the technical assistance and training activities they fund via contributions to the Hague Conference Supplementary Budget,[2] the aim of the proposed Patrons' Committee is to exploit donor synergies and ensure the continuance of technical assistance and training programmes, which are fundamental to the proper implementation and operation of the Hague Conventions. Furthermore, the Patrons' Committee aims to provide additional support and recommendations to the Centre in order to enhance the impact of its work. The goal is to allow those with the largest stake and greatest interest in the successful operation of such programmes to have a more significant impact on how and to what extent technical assistance programmes are executed and offered in the future.

With regard to the above, possible eligibility criteria for participation in the Patrons' Committee is set forth below.

[1] The title of "Patrons' Committee" is subject to the views of Members and may be modified subject to the views expressed at the Council on General Affairs and Policy in April 2012. For example, the group may be called a "Members' Technical Assistance Advisory Board" or "Centre Financial Advisory Committee", among many others. The current title is, in other words, meant as merely a suggestion and may be changed in accordance with the views of Members.

[2] The Supplementary Budget is the Budget from which Hague Conference technical assistance and training programmes are funded.

Eligibility Criteria

The following criteria could be the basis for defining which Members of the Hague Conference would be eligible to participate in the work of the Patrons' Committee:

- Hague Conference Members which have contributed to the Organisation's Supplementary Budget on at least two separate occasions within the immediately preceding past 3 years (this may take the form of voluntary financial contributions or the secondment of experts) and:
    - The aggregate total of all voluntary contributions from Members assigned 15 or more units by the Universal Postal Union (UPC)[3] must equal or exceed 45,000 EUR within the relevant 3-year period.[4]
    - The aggregate total of all voluntary contributions from Members assigned fewer than 15 units according to the UPC equals or exceeds the Member's number of UPC units multiplied by 3,000 Euros within the relevant 3-year period.[5]
- Funds must be received in the Organisation's Supplementary Budget account in order to be considered when determining a Member's eligibility to participate in the Patrons' Committee.
- In-kind contributions will be included in the calculation of a Member's aggregate contribution based on an estimated monetary value assigned by the Director of the Centre when determining whether a Member qualifies.
- The composition of the Patrons' Committee for the coming year will be determined on or around 1 August of each year and will have immediate effect. A Member deemed eligible will retain its eligibility for one full calendar year. The Director of the Centre will be responsible for making annual eligibility determinations.
- States deemed eligible for Patrons' Committee membership may not be more than two years in arrears with their annual Regular Budget contribution to the Organisation.

Governance

In addition to the potential criteria for Membership set forth above, the operation and governance of the Patrons' Committee could also limit participation of eligible Members to no more than two designated representatives at any given time.

The Patrons' Committee could also include: 1) the Director of the Centre; and 2) the Permanent Bureau Advisory Board of the Centre. The Secretary General of the Hague Conference could act as a moderator and Chair of the Committee. The Director of the Centre could act as Reporter of the meetings.

Meetings could be convened by any Patrons' Committee member. Decisions of the Patrons' Committee would provide guidance to the Centre's activities. Its work product (including Conclusions and Recommendations) could be made available to the Council on General Affairs and Policy ("Council") for further consideration.

Guidance presented by the Patrons' Committee to the Council might be developed based on the approval of a simple majority of a to-be-determined quorum of Patrons' Committee participants. All such decisions, could however, also clearly indicate the views of all participants.

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[3] The Universal Postal Union scale is the mechanism also used to calculate Hague Conference annual Member contributions to the Regular Budget.
[4] The amount of 45,000 Euros was set as the minimum contribution for these States in light of the amount that would be required for States with smaller economies to qualify.
[5] For example, a Member State assigned one unit in accordance with the UPC scale would be eligible for the Patrons' Committee if the State contributed a total 3,000 Euros or more from two or more contributions in the immediately preceding three years.

Every effort would be made to conduct deliberations and meetings in the most cost-effective manner possible. This could involve, among other things, the use of conference calls, video-conferencing and other electronic tools to conduct Committee business.