

Conclusions and Recommendations

adopted by the Council

Review of activities of the Conference

1. The Council welcomed the activities of the Conference carried out by the Permanent Bureau since the last Council meeting (5-7 April 2011).

Ceremonies for signing and ratifying of certain Hague Conventions

2. The Council witnessed the deposit by the Ambassador of the Czech Republic of the instrument of ratification of the *Convention of 13 January 2000 on the International Protection of Adults*; and the signing by the Ambassador of Serbia of the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*.

Current work

Choice of Law in International Contracts

3. The Council welcomed the work undertaken by the Working Group, notably the "Draft Hague Principles on Choice of Law in International Commercial Contracts" as well as the accompanying Report and the Policy Document prepared by the Working Group.

4. The Council decided to establish a Special Commission to discuss the proposals of the Working Group and make recommendations as to future steps to be undertaken, including the decision to be taken on the form of the non-binding instrument and the process through which the commentary shall be completed. The Special Commission shall be convened before the end of 2012.

Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

5. The Council welcomed the successful outcome of Parts I and II of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention and took note of the Conclusions and Recommendations of the Special Commission.

6. The Council decided to establish a Working Group, composed of a broad range of experts, including judges, Central Authorities and cross-disciplinary experts, to develop a Guide to Good Practice on the interpretation and application of Article 13(1) *b*) of the 1980 Child Abduction Convention, with a component to provide guidance specifically directed to judicial authorities.

7. The Council also decided to establish an Experts' Group to carry out further exploratory research on cross-border recognition and enforcement of agreements reached in the course of international child disputes, including those reached through mediation, taking into account the implementation and use of the 1996 Convention. Such work shall comprise the identification of the nature and extent of the legal and practical problems, including jurisdictional issues, and evaluation of the benefit of a new instrument, whether binding or non-binding, in this area.

8. The Council supported the further work and acknowledged that should there be a need to prioritise resources, work on the Guide to Good Practice would receive preference.

Working Party on Mediation in the context of the Malta Process

9. The Council welcomed the Report of the Working Party on Mediation in the context of the Malta Process, as presented by the Co-Chairs, Justice Jillani of Pakistan and Mr William Crosbie of Canada, as well as the direction for future work outlined by the Co-Chairs. The Council agreed that the Working Party continue its work on the implementation of mediation structures, with the expectation of a further report on progress to the Council in 2013.

Governance of the Conference

10. The Council agreed that there was a need to clarify the procedure for appointing the Chairs and Vice-Chairs of the organs of the Conference, and accordingly decided to amend the Rules of Procedure (see Annex).

Future succession of the Secretary General

11. The Council noted that the Secretary General will reach the age of retirement in April 2013. The Council supported the procedure for the succession as presented by the Chair of the Council. Accordingly, the Council decided to establish a Selection Committee, which seeks to represent different parts of the world, also taking into account other criteria, to conduct the selection process with a view to presenting the candidate to the Netherlands Standing Government Committee on Private International Law by the end of January 2013. The Selection Committee shall:

- a) draft a profile of the ideal candidate and circulate it to Members for comments;
- b) have a vacancy announcement widely publicised;
- c) receive and assess the applications;
- d) interview candidates insofar as necessary;
- e) select by consensus the most qualified candidate, inform the Council about the selected candidate, and present him / her to the Standing Government Committee.

The term of office shall be a renewable five-year term.

Direction of the work of the Conference relating to technical assistance

12. The Council mandated a Working Group to develop a strategic framework for technical assistance and post-Convention services provided by the Conference and to make recommendations to the Council in this regard. In light of the Conference's mandate and the directions set out in the Organisation's Strategic Plan, the strategic framework should address the following:

- a) the nature and extent of such technical assistance and post-Convention services;
- b) the short, medium and long-term strategic objectives;
- c) selection criteria;
- d) prioritisation criteria;
- e) effectiveness assessment indicators; and

f) financing matters directly pertaining to the above elements.

13. The Council accepted the Chair's proposal that the Working Group would be composed of the following Members: Argentina, Australia, Canada, China, France, Germany, India, Japan, the Netherlands, the Russian Federation, South Africa, Spain, Switzerland, and the United States of America. The Council agreed that longer term funding issues must be discussed as a second step.

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

14. The Council warmly endorsed the 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. The Council noted with gratitude that funding for the Office's operation was now ensured for an initial period of three years. The future directions and the question of the financial sustainability of the Office beyond this initial period will be decided by Council in light of a comprehensive evaluation.

Future work

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

15. The Council took note of the Conclusions and Recommendations of the European Commission – Hague Conference Joint Conference on Access to Foreign Law in Civil and Commercial Matters held in Brussels, Belgium in February 2012. The Council decided that the Permanent Bureau should continue monitoring developments but not take any further steps in this area at this point.

Continuation of the Judgments Project

16. The Council welcomed the exploratory work conducted by the Experts' Group and its Conclusions and Recommendations on possible future work.

17. The Council acknowledged that in working towards a future instrument, it will be important to begin by working on an agreed core of essential provisions. Consistent with that acknowledgement, the Council decided to establish a Working Group whose initial task shall be to prepare proposals for consideration by a Special Commission in relation to provisions for inclusion in a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters.

18. The Council acknowledged that the desirability and feasibility of making provisions in relation to matters of jurisdiction (including parallel proceedings) in this or another future instrument require further study and discussion. The Council invited the Experts' Group to reconvene in order to consider and make recommendations on these matters.

19. The Permanent Bureau will report regularly to the Council on progress on this work, which will maintain oversight of the work.

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

20. The Council accepted that the Permanent Bureau would continue to explore, in consultation with interested Members and relevant international organisations, the potential value of using certain private international law techniques in the context of international migration.

Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements

21. The Council welcomed the preliminary report drawn up by the Permanent Bureau and mandated that the Permanent Bureau continue the current work under the 2011 Council mandate and further prepare and distribute a Questionnaire in order to obtain more detailed information regarding the extent and nature of the private international law issues being encountered in relation to international surrogacy arrangements, as well as in relation to legal parentage or "*filiation*" more broadly. The Questionnaire shall seek views on the needs to be addressed and approaches to be taken. The Permanent Bureau is invited to present its final Report to the Council in 2014.

Recognition and enforcement of foreign civil protection orders: A Preliminary Note

22. The Council decided that the Permanent Bureau should circulate a Questionnaire to Members in order to assess the need and feasibility of an instrument in this area, and to obtain further information on existing legislation. The Permanent Bureau shall report to the Council in 2013.

Other topics

23. The Council invited the Permanent Bureau to continue to follow developments in the following areas:

- a) questions of private international law raised by the information society, including electronic commerce, 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) conflict of laws issues relating to the enforceability of close-out netting provisions, taking into account in particular the work undertaken by other international organisations.

24. The Council decided to delete from the Agenda of the Conference the topics dealing with the assessment and analysis of transnational legal issues relating to indirectly held securities and security interests.

Post-Convention services and activities

25. The Council welcomed the preparatory work in relation to the meeting in November 2012 of the Special Commission on the practical operation of the Apostille Convention, in particular the completion of a *Draft Handbook on the Practical Operation of the Apostille Convention*. The Council welcomed the developments in the field of the electronic Apostille Program (e-APP).

26. The Council agreed that work be undertaken with a view to preparing the next Special Commission on the practical operation of the Service and Evidence Conventions. The timing of this Special Commission meeting, as well as the possible inclusion of the review of the Access to Justice Convention on its agenda, will be decided by the Council in 2013.

27. The Council noted the endorsement of the *Emerging Guidance and General Principles for Judicial Communications* by the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions (Part I) and invited their wide dissemination.

28. In relation to the 1993 Intercountry Adoption Convention, the Council noted the significant progress made on *Accreditation and adoption accredited bodies: general principles and Guide to Good Practice* as well as the preparations for the informal Experts' Group on financial aspects of intercountry adoption. The Council noted the importance of technical assistance in relation to the implementation of the 1993 Intercountry Adoption Convention and the lack of funding to continue the position of the Adoption Technical Assistance Programme Coordinator.

29. The Council welcomed the achievements of the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions.

Annex

Amendments of Article 5A of 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).

III. Council on General Affairs and Policy

Chair and Vice-Chair

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 Vice-Chair. The Chair and the Vice-Chair shall be drawn from different geographic regions.
- c. The Vice-Chair 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 the Vice-Chair of the Council is from one Diplomatic Session to the next, with a maximum of four years.
- b. The term of office may be renewed.
- c. Officials elected by the Council to replace the Chair, or the Vice-Chair, 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.