

**THE PURSUIT OF UNIVERSALITY AS A STRATEGIC OBJECTIVE OF THE
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW AND WAYS TO ACHIEVE IT**

drawn up by the Permanent Bureau

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**LA POURSUITE DE L'UNIVERSALITÉ COMME OBJECTIF STRATÉGIQUE DE LA CONFÉRENCE
DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ ET LES MOYENS D'Y PARVENIR**

établi par le Bureau Permanent

*Preliminary Document No 1 of March 2016 for the attention
of the Council of March 2016 on General Affairs and Policy of the Conference*

*Document préliminaire No 1 de mars 2016 à l'attention
du Conseil de mars 2016 sur les affaires générales et la politique de la Conférence*

A. Introduction

1. At the 2015 meeting of the Council on General Affairs and Policy (Council meeting), Members engaged in a broader discussion concerning the Hague Conference on Private International Law's (HCCH) strive for universality. The Council strongly supported the HCCH's pursuit of universality, and decided to continue these discussions at the 2016 Council meeting.¹

2. The Permanent Bureau has prepared this Preliminary Document in order to aid the continuation of these discussions. It does so by, first, contextualising the term "universality" as used by intergovernmental organisations (IGOs), before, second, canvassing how the HCCH moves towards universality, highlighting the importance of the Organisation's regional presence to attain this goal.

3. The issues canvassed in this Preliminary Document are complex. A general paucity of published systematic discussions regarding the topic is noticeable. Therefore, the Permanent Bureau does not purport to posit definitive views. Rather, it raises issues as conversation starters, with no aspiration for completeness. However, in preparing this Preliminary Document, the Permanent Bureau remained cognisant of the fact that the HCCH's continued move towards universality has not only an organisational aspect; rather, it has much broader ramifications, namely the HCCH's continued and increasingly important contribution to worldwide economic development and the safeguarding of human rights, including through advancing the rule of law.

1. Universality and international organisations – regional and quantitative aspects

4. The term universality has different meanings depending on the context within which it is used. The classic understanding of universality refers to international law as a global system of law, which is of worldwide validity and is binding for all States.² In that sense, universality chiefly concerns formal aspects of international law, including principles such as equal sovereignty of States, peaceful coexistence, co-operation and areas of customary law.³ With respect to IGOs, universality denotes a bundle of features characteristic to such organisations, and that differentiate them from other international organisations, such as those with a regional focus.⁴ Key is the principle of open, comprehensive and universal membership,⁵ and the idea to establish, represent and promote universal or universally accepted policy goals through comprehensive and widely accepted instruments. Activities to pursue universality may be grouped broadly into two categories: those aimed at branching into all geographical regions; and those designed to connect with a maximum number of States. One commentator aptly describes these as the "regional" and the "quantitative aspect" of universality respectively.⁶

¹ See the Conclusions and Recommendations of the 2015 Council Meeting, para. 22. The discussions were embedded in considerations concerning the proposed Africa Strategy. See Prel. Doc. No 6, "Africa Strategy", prepared for the 2015 meeting of the Council on General Affairs and Policy. Members registered their strong support for the Permanent Bureau's initiative to increase the visibility and strengthen the promotion of the activities of the Conference in Africa. See the Conclusions and Recommendations of the 2015 Council meeting, para. 21.

² A. Noellkaemper and R. Jennings, "Universal International Law in a Multicultural World", in M. Bos and I. Brownlie (eds), *Liber Amicorum for the Rt. Hon. Lord Wilberforce* (1987) at 39, 40-41.

³ This Prel. Doc. will not delve into the extensive scholarship on the origins of universality, or its various academic manifestations. It will merely note that, generally, with the creation of the UN Charter, decolonisation efforts, and the end of the Cold War, the universality of international law has become a more tangible (albeit contested) concept. Globalisation further adds to this trend.

⁴ Including organisations such as, for example, the Council of Europe (CoE), the North Atlantic Treaty Organisation (NATO), the African Union (AU), the Association of Southeast Asian Nations (ASEAN), or the Pacific Island Forum (PIF). All these organisations have in common that they do not pursue universality, as they focus on achieving their respective outputs within the region in which they are active and from which they draw their membership.

⁵ Compare this with the membership of regional organisations as mentioned above that are open only to members from a particular region or continent. There is broad consensus that currently, no international organisation is truly universal in character. However, there are some IGOs whose membership renders them quasi-universal, if not universal for all intents and purposes. Examples include the United Nations (UN) (193 members and 2 observers); many of its specialised agencies, such as the Food and Agriculture Organization (FAO) (192 members), the United Nations Educational, Scientific and Cultural Organization (UNESCO) (195 members) or the International Civil Aviation Organization (ICAO) (190 members). There are also some (quasi) universal IGOs outside the umbrella of the UN, for example the World Trade Organization (WTO) (162 members).

⁶ S.A. Voitovich, *International Economic Organizations in the International Legal Process* (1995), 28.

5. Some commentators have observed a general trend towards the universalisation of IGOs. While differences among IGOs are significant, and it is difficult to isolate general reasons for this trend, it is possible to identify certain benefits that equally apply to broader groups of IGOs. For IGOs with legislative mandates, they are clustered below. This Preliminary Document juxtaposes these benefits with some of the disadvantages of pursuing universality to provide a more holistic context.

a. Certain benefits of pursuing universality

6. For IGOs with legislative mandates, moving towards universality means a gradual maturation into fora that develop and posit international norms reflective of, and compatible with, a growing number of domestic and regional legal systems that are based on diverse legal traditions. It also allows such IGOs to draw on a progressively more diverse range of actors who can assist in abating cultural, geographical and legal differences. Moreover, by moving towards universality, IGOs can accumulate capabilities that enable them to detect more readily developments that benefit from solutions only IGOs can develop and provide.

7. The IGOs' successful pursuit of universality means that a growing number of their Member States can interact effectively under their respective auspices. This also means that States can use IGOs to cultivate beneficial reciprocal and co-operative relations among and between likeminded members. Moreover, the need for States to conceive and negotiate a multiplicity of bilateral and multilateral agreements declines commensurate with the success of the IGO's instruments.⁷ The flow-on effect is significant efficiency gains for States, which amplify when they avail themselves of the mechanisms that ensure the proper and coherent operation of the instruments. Finally, there are also benefits for individuals because a broader uptake of the IGOs' instruments will result in an increasing number of individuals benefitting from the solutions that these instruments offer.

b. Certain disadvantages of pursuing universality

8. For individual IGOs, the successful pursuit of universality can bring with it the increased need for resources.⁸ In particular, surging requests for information, an enlarged membership, a greater online presence and disparate demands from certain regions, all result in growing demands for financial and human resources, so that the IGO remains capable of meeting the demands.

9. The addition of States representing an increasing number of legal traditions and cultures can have the paradoxical effect that IGOs increasingly create globally agreed instruments that offer minimalist solutions representing a lowest common denominator, but not international best practice. Moreover, there is a risk that IGOs with a growing membership become increasingly slow, with resulting difficulties to react to fast-paced changes, such as those brought about by expanding markets, mass media and the Internet. It has also been noted that States exhibit a certain resistance to a homogenous, globalised set of rules. The reasons for such resistance may be found in the desire to promote differences in their legal systems and gain advantages through regulatory competition, but also in a perceived loss of cultural identity and notions of diminished State sovereignty.⁹

⁷ A prime example to demonstrate the effect of this is the success of the 1961 Hague Apostille Convention. With currently 112 Contracting States the most successful Convention of the HCCH (in terms of numbers of Contracting States), joining this Convention obviates the need to negotiate 6,216 individual bilateral treaties (the number of bilateral treaties is calculated based on the following formula: $[(\text{Contracting States}) \times (\text{Contracting States} - 1)]/2$).

⁸ It seems at least conceivable that, from a certain threshold on, the growth of the IGO may bring with it a level of synergies that could result in an economy of scales for the operation of the organisation, at least with respect to certain aspects of the IGO's work. While it is doubtful that the HCCH is currently close to such threshold, it is also beyond the scope of this paper to investigate this point in detail.

⁹ The HCCH experiences all of these challenges and deploys a range of strategies to combat them. The respective strategies are referred to in Part 2 b, "The HCCH's path to success" below.

2. The HCCH and the pursuit of universality, including the establishment of regional presences

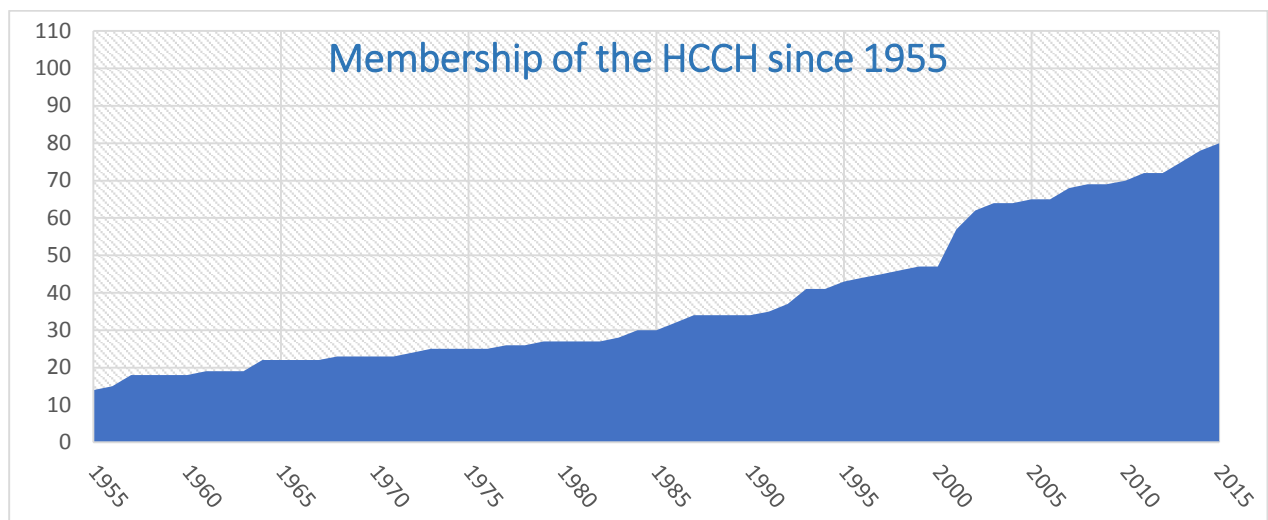
10. The pursuit of universality is of considerable practical importance to the HCCH as it strives towards becoming a truly global organisation that formulates “world laws”.¹⁰ In the Africa Strategy, the Permanent Bureau already posited that this pursuit “strengthens the Organisation and firmly establishes the HCCH as the leading private international law organisation that responds to global needs”. The Africa Strategy also recalled that the pursuit of universality finds its strategic manifestation in the HCCH’s Strategic Plan, as adopted by the Council in April 2002.¹¹ Strategic Direction 1 of the Strategic Plan aims to increase “the global coverage of the Conference” by:

- “enlarging its Membership and the number of States Parties to Hague Conventions”,¹²
- increasing “the global coverage of Membership”;¹³ and
- establishing “physical or representative presence [...] in [the] regions”.¹⁴

11. The pursuit of universality is thus fully in line with the basic purpose of the Organisation, *i.e.*, the “progressive unification of the rules of private international law” (Art. 1 of the Statute).

a. Measurable success

12. Over the past six decades, the HCCH has been successful in all three regards. With respect to growing its membership quantitatively, the following graph is instructive:¹⁵



¹⁰ See “Africa Strategy”, Prel. Doc. No 6 of March 2015 drawn up for the attention of the Council on General Affairs and Policy of March 2015, para. 2, referring to H.G. Schermers, *International Institutional Law*, Vol. 1, 16, in E. Osieke, *Constitutional Law and Practice in the International Labour Organisation* (1985), 50.

¹¹ See “The Hague Conference on Private International Law Strategic Plan”, drawn up by the Permanent Bureau, April 2002, available on the Hague Conference website at < www.hcch.net > under “Governance”, “Other Governance Documents” and “Strategic Plan”.

¹² *Ibid.*, 30.

¹³ *Ibid.*

¹⁴ *Ibid.*, 31.

¹⁵ Since 2000, the Organisation gained 33 new Members, which are distributed as follows: 11 new Members in Asia; 10 in Europe; 5 in Africa; 4 in South America; 2 in North America; and 1 in Oceania.

13. The following maps, showing the geographical location of the HCCH's Members in 1955, 1985 and 2015, visualise this development:

1955



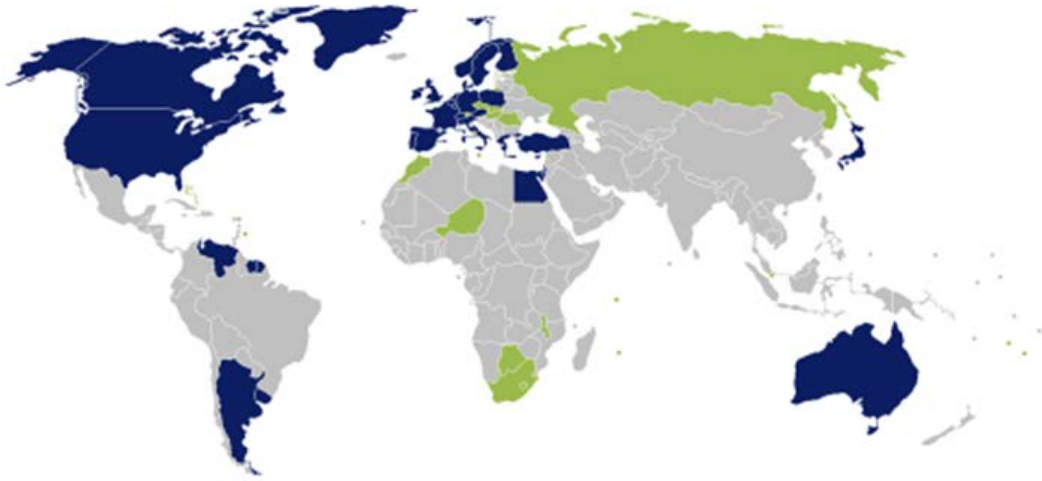
16. Boundaries and the map are based upon data used in the UN Geographical System. The number of States reflect the Period as reported in the Questionnaire (Q.19). Further details are given in many official correspondence messages.

1985



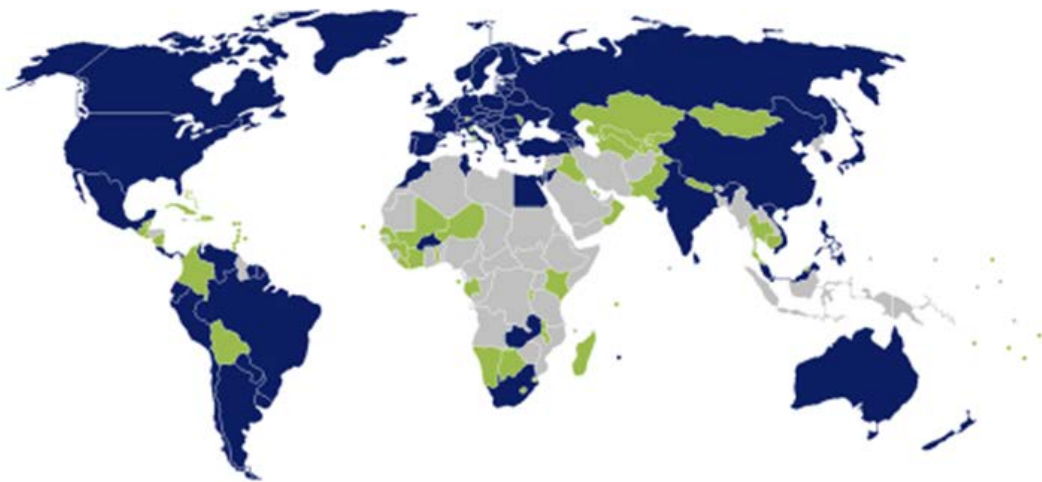
16. Boundaries and the map are based upon data used in the UN Geographical System. The number of States reflect the Period as reported in the Questionnaire (Q.19). Further details are given in many official correspondence messages.

1985



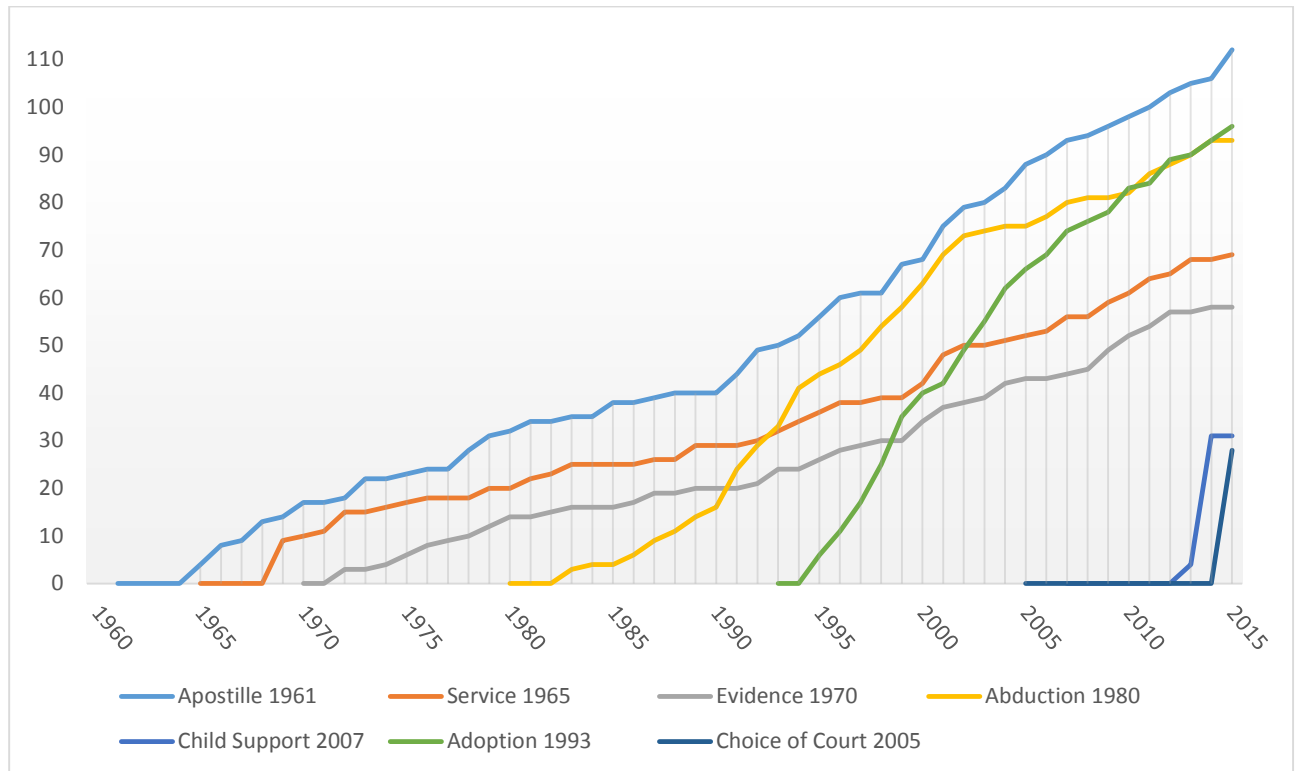
18. Boundaries on the map are based upon those used in the UN Geographical System. The number of Base units in the territories included in the December 1990 Report should be taken as their administrative boundaries.

2015



18. Boundaries on the map are based upon those used in the UN Geographical System. The number of Base units in the territories included in the December 1990 Report should be taken as their administrative boundaries.

15. Finally, the following graph envisions the growing number of States Parties to Hague Conventions, thus demonstrating how effective the HCCH's efforts are in ensuring its instruments' wide acceptance:



b. The HCCH's path to success

16. The HCCH's achievements measure well against Strategic Direction 1, with the Organisation having grown by using a range of means aimed at moving towards universality, while at the same time successfully deploying strategies to combat some of this pursuit's disadvantages.

17. Broadly, the means deployed aim at increasing the visibility of the Organisation and its instruments. They include promotion in relevant bilateral and multilateral fora, including conferences, symposia, seminars and workshops; the production of publications in languages of target countries; the development of Convention-specific databases; and the identification and deployment of "HCCH champions" who promote the virtues of the Organisation and its instruments. Moreover, the HCCH also deploys means that seek to improve the effective operation of the Organisation's instruments, including a range of post-Convention services and assistance, such as targeted and tailored educational services to aid in the effective implementation and interpretation of Hague Conventions.

18. Further, the HCCH has been successful in developing and promulgating instruments that encapsulate international best practice, while avoiding minimalist solutions representing a lowest common denominator.¹⁶ The Organisation did so by demonstrating organisational discipline that encourages Members to negotiate willingly and open-mindedly, while at the same time, not only exposing the common interests of the parties, but also gradually raising those common interests.¹⁷ Incidentally, these approaches, which nurture buy-in by negotiation parties, are also apt to assuage (1) the desire of individual States to pursue agendas that foster regulatory competition, and (2) the fear of losing cultural identity and sovereignty. Finally, the

¹⁶ The 2015 *Hague Principles on Choice of Law in International Commercial Contracts* are a good example of the development and acceptance of principles that represent international best practice concerning the choice of law with respect to a certain category of contracts (*i.e.*, international commercial contracts). Similarly, the 2007 Hague Child Support Convention is based on international best practice in this area.

¹⁷ See, for example, B. Reinalda & B. Verbeek (eds), *Autonomous Policy Making by International Organisations* (1998), 65-69.

Organisation's decision-making processes, which are based on consensus rather than on voting procedures, further amplify the success of these approaches.¹⁸

19. Importantly, within the limited resources of the HCCH, the means must be, and are, deployed dynamically and contextually.¹⁹ This allows the Organisation to react to current geographic and political developments and to form focal points for particular States, regions, but also instruments. Crucial to identifying and developing focal points is good insight into, and knowledge of, needs and requirements.

20. Traditionally, the Permanent Bureau has had and maintained, but also grown and honed, some capabilities in this regard, including through fact-finding missions, close co-operation with government officials and extensive personal networks. However, with its geographical expansion, additional strategies were needed to ensure that the Permanent Bureau's capabilities grew commensurate with the increasing diversification the Organisation experienced. These strategies were also needed to maintain the efficient operation of the HCCH.

c. *Regional presences*

21. One strategy has been the deepening of the Organisation's roots within the various regions, including more recently through the establishment of regional offices. Regional offices are widely used by IGOs with significant or quasi-universal reach, and are crucial to accommodating both the unity of the organisation and the diversity of its reach and work.²⁰

22. Identified in the Strategic Plan as the third means to achieve universality, the HCCH opened its first Regional Office in Buenos Aires, Argentina, in 2005;²¹ seven years later, the second Regional Office opened in Hong Kong. Both Regional Offices are emanations, and thus part, of the Permanent Bureau. While both necessarily enjoy a level of appropriate administrative independence, they both report to the Secretary General of the HCCH.

23. Both Regional Offices are successful in embedding in their respective region. Their geographical location means a clearly visible presence of the HCCH in that region, making them an integral part of the HCCH's targeted actions to promote the Organisation and its instruments. Moreover, the regional offices collect important regional input that relevantly informs various aspects of the HCCH's work. Their well-informed insight into, and local knowledge of, regional specifics significantly increases the effectiveness of the Permanent Bureau's activities.

¹⁸ R.Z. Lawrence, "International Organisations: The Challenge of Aligning Mission, Means and Legitimacy" (2008) 31(11) *The World Economy* 1455, 1559.

¹⁹ This includes, for example, assessing missions and projects remaining cognisant of, for example, the need, the likelihood of success, and the greatest benefit to the Member and the Organisation. See, for example, R.Z. Lawrence, *ibid.*, 1455, 1466.

²⁰ Many IGOs use regional offices (ROs). Examples include: the International Organisation for Migration (IOM), which maintains ROs for the European Economic Area EEA; the EU and NATO in Brussels, Belgium; and for West and Central Africa. The European Investment Bank (EIB) maintains a number of ROs both in EU and non-EU countries. The ICAO maintains ROs in 8 defined global regions, including in Bangkok, Thailand, for the Asia and Pacific Region; Cairo, Egypt, for the Middle East; and Paris, France, for the European and North Atlantic Region. The FAO maintains ROs for Africa in Accra, Ghana; for Asia and the Pacific, in Bangkok, Thailand; for Europe and Central Asia, in Budapest, Hungary; for Latin America and the Caribbean, in Santiago, Chile; and for the Near East, in Cairo, Egypt. The FAO also maintains sub-regional offices, such as the Sub-regional Offices for Central Africa, in Libreville, Gabon; and for Central America, in Panama City, Panama. The Office of the United Nations High Commissioner for Human Rights (OHCHR) maintains ROs in Chile and Panama. The World Health Organization (WHO) maintains ROs in each region, including for example, for Africa in Brazzaville, Republic of Congo; for Europe in Copenhagen, Denmark; and for South-East Asia in New Delhi, India.

²¹ For more information concerning the origin of the Regional Office in Latin America, see the report of the activities of the Latin American office (2005-2011) (Info. Doc. No 3 of April 2012 for the attention of the Council on General Affairs and Policy of April 2012).

24. The following overview is a brief outline of the kind of benefits the establishment of two regional offices have:

Primary benefits of using ROs	Secondary benefits of using ROs
Better ability to build trust in the regions	The HCCH speaks with the voice of the region — the voice of the region is heard at the HCCH
	Identification of, and better reaction to, regional specifics (cultural, political, legal)
	Identification and better use of issues linkages
Increase the efficiency of the HCCH	Easier development and maintenance of institutional networks
	Simplification of organisational decision-making through improved regional co-ordination (easier path towards consensus, more efficient conduct of governance meetings)
	Ability to compensate organisational efficiency deficits that are the result of the Organisation's increased global reach
Effective use of the multiplier effect	Ability to fine-tune regional activities with a view to having better regional input and to achieving greater impact within a region
	Greater ability to shape the Organisation's narrative to target regional identity
Improve the agility of the HCCH	Optimise the HCCH's adaptability to regional specifics and developments
Increased homogeneity among the regions	
Promote the internal cohesion of the HCCH	

25. The HCCH as a whole benefits greatly from the work of its existing Regional Offices, including in accelerating the HCCH's move towards universality.

B. Conclusion

26. IGOs with a global mandate pursue universality; the HCCH is no different in that regard. The Organisation's governing Statute mandates the pursuit of universality and Members have repeatedly confirmed that universality is an important goal for the HCCH.

27. To achieve this goal, the Organisation deploys a range of means. Since mid-2000, this includes the establishment and use of Regional Offices to strengthen the Organisation's regional presence. Since their opening, the Regional Offices have made a formidable contribution towards the growth of the HCCH. They are essential to increasing the HCCH's visibility in the regions; they are crucial to amplifying its sensitivity for cultural and legal specificities within the regions; they are an important transmitter for the regions' voices at the HCCH. The Regional Offices allow the HCCH to make decisions that are informed by the regions in which they are situated. By using Regional Offices, the Organisation's multilateral instruments become credible and legitimate reflections of regional priorities.

28. On that basis, Council is invited to:

- confirm the HCCH's pursuit of universality as a central tenet of the Organisation's operational strategy;
- recognise the excellent service both Regional Offices have already provided in the HCCH's efforts to pursue universality;
- confirm the importance existing regional offices already play, and future regional offices will play, to the HCCH's pursuit of universality;
- acknowledge, without deciding the issue, that in the future, Council will discuss the opening of further regional offices, including in Africa and the Middle East; and
- reiterate its strong support for the Permanent Bureau's initiative to increase the visibility and strengthen the promotion of the activities of the HCCH in Africa.