AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

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

CONCLUSIONS ET RECOMMANDATIONS ET RAPPORT DE LA COMMISSION SPÉCIALE SUR LA MISE EN ŒUVRE DE LA CONVENTION DE 2007 SUR LE RECOUVREMENT DES ALIMENTS ET DU PROTOCOLE DE 2007 SUR LA LOI APPLICABLE AUX OBLIGATIONS ALIMENTAIRES (10-17 NOVEMBRE 2009)

établi par le Bureau Permanent

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CONCLUSIONS AND RECOMMENDATIONS AND REPORT OF THE SPECIAL COMMISSION ON THE IMPLEMENTATION OF THE 2007 CHILD SUPPORT CONVENTION AND OF THE 2007 PROTOCOL ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS (10–17 NOVEMBER 2009)

drawn up by the Permanent Bureau

Document préliminaire No 3A de février 2010 à l'intention du Conseil d'avril 2010 sur les affaires générales et la politique de la Conférence

Preliminary Document No 3A of February 2010 for the attention of the Council of April 2010 on General Affairs and Policy of the Conference

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CONCLUSIONS ET RECOMMANDATIONS ET RAPPORT DE LA COMMISSION SPÉCIALE SUR LA MISE EN ŒUVRE DE LA CONVENTION DE 2007 SUR LE RECOUVREMENT DES ALIMENTS ET DU PROTOCOLE DE 2007 SUR LA LOI APPLICABLE AUX OBLIGATIONS ALIMENTAIRES (10-17 NOVEMBRE 2009)

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CONCLUSIONS AND RECOMMENDATIONS AND REPORT OF THE SPECIAL COMMISSION ON THE IMPLEMENTATION OF THE 2007 CHILD SUPPORT CONVENTION AND OF THE 2007 PROTOCOL ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS (10-17 NOVEMBER 2009)

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CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LA COMMISSION SPÉCIALE

CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SPECIAL COMMISSION

CONCLUSIONS AND RECOMMENDATIONS

ADOPTED BY THE SPECIAL COMMISSION

Implementation of the Convention and Protocol

1. The Special Commission welcomed the progress made in a number of States and in regional organisations, such as the European Community and Mercosur, in preparing for the implementation and ratification of the 2007 Child Support Convention and its Protocol on the Law Applicable to Maintenance Obligations.

2. The Special Commission welcomed the completion and publication of the Explanatory Report on the 2007 Child Support Convention and the Explanatory Report on the Protocol on the Law Applicable to Maintenance Obligations and expressed its gratitude to the *Rapporteurs*, Alegría Borrás, Jennifer Degeling and Andrea Bonomi.

Recommended Forms

3. The Special Commission reviewed, amended and adopted the 12 Recommended Forms which had been prepared by the Forms Working Group. The Recommended Forms will be the subject of "*toilettage*" by the Permanent Bureau prior to their publication by the Hague Conference on Private International Law in accordance with Article 11(4) of the 2007 Child Support Convention.

4. At a reasonable time in advance of a future Special Commission to review the practical operation of the Convention, and after the Convention is in force and States have gained some practical experience in the application of the Convention, a Forms Working Group should be convened to work under the direction of the Permanent Bureau.

5. The Special Commission expressed its gratitude to all the members of the Forms Working Group, past and present, who have contributed to its work since its inception in January 2005.

Practical Handbook for Caseworkers

6. The Permanent Bureau will check the Practical Handbook for Caseworkers under the 2007 Child Support Convention for consistency with the Explanatory Report. It will be amended and finalised taking into account the comments made and the matters raised prior to and during the Special Commission. The revised Practical Handbook will be circulated for comments on the accuracy of the amendments. The Practical Handbook will be kept under review in the light of the experience gained by States in applying the Convention.

7. The Special Commission expressed its gratitude to the Government of Canada and the Government of British Columbia for the secondment of Hannah Roots to the Permanent Bureau, and to the latter for her outstanding work in preparing the Practical Handbook.

Recommended Country Profile Form

8. The Special Commission reviewed, amended and adopted the Recommended Country Profile Form which had been prepared by the Country Profile Sub-Committee. The Country Profile will be circulated for comments on the accuracy of the amendments. The Country Profile will be the subject of "*toilettage*" and a check by the Permanent Bureau to ensure that the points raised during the Special Commission have been accurately incorporated into the text. Once finalised, the Country Profile will be published by the Hague Conference on Private International Law in accordance with Article 57(2) of the 2007 Child Support Convention.

9. The Special Commission expressed its gratitude to all the members of the Country Profile Sub-Committee, past and present, who have contributed to its work since its inception in May 2004.

10. When the Country Profile is finalised, subject to available resources, the electronic version will be completed. The Special Commission expressed its gratitude to Alphinat Inc. for its generosity in developing the electronic version of the Country Profile.

International recovery of maintenance in respect of vulnerable persons

11. The Special Commission recognised the importance of ensuring that vulnerable persons are in a position to benefit from the provisions of the Convention. The Special Commission was of the opinion that the core scope of the Convention already covers a number of categories of maintenance obligations in respect of vulnerable persons. Moreover, the Convention contains sufficient flexibility, particularly within the provisions on scope, to enable States to bring other categories by declaration within the scope of the Convention. The Permanent Bureau should, nevertheless, continue to monitor the situation and, if experience reveals that there exist categories of maintenance obligation towards vulnerable persons which cannot be brought within the scope of the Convention under Article 2(3), or that special rules are needed in respect of vulnerable persons, this should be brought to the attention of the Council on General Affairs and Policy of the Conference.

Administrative co-operation

12. The Special Commission recommends to the Council on General Affairs and Policy of the Conference that it give serious consideration to the merits of establishing a Central Authority Co-operation Working Group as well as the relevant issues, including its potential impact upon the Hague Conference and other Hague Conventions, subject to available resources and overall consideration of the work priority of the Hague Conference.

Implementation Checklist for the 2007 Child Support Convention

13. The Special Commission gave its general support to the work of the Permanent Bureau for its continued assistance to States for the implementation of the Convention. The Special Commission reviewed the Implementation Checklist for the 2007 Child Support Convention prepared by the Permanent Bureau. The Checklist will be reviewed by the Permanent Bureau in the light of the comments received and the discussion during the Special Commission with a view to its publication. The Checklist should be kept under review in the light of the experience gained by States in implementing the Convention.

iSupport Electronic Case Management and Communication System

14. The Special Commission recognised the benefits to be derived from the use of an electronic case management and communication system for the international recovery of maintenance and gave its support in principle to the continuing phased development by the Permanent Bureau of the iSupport system for the 2007 Child Support Convention. Some States expressed an interest in contributing intellectual expertise to the ongoing work of the Permanent Bureau in respect of iSupport.

15. The Permanent Bureau expressed its thanks for the financial and practical assistance already received from States and organisations for the iSupport project. The Special Commission recognised that substantial additional voluntary contributions will be required for the project to advance.

ORDRE DU JOUR / AGENDA

AGENDA

SPECIAL COMMISSION

The Hague, 10 – 17 November 2009

In general it is proposed that the meetings will begin at 9.30 a.m. (except for the first day at 2.00 p.m.) and will end at 6.00 p.m. (except for the last day at 1.00 p.m.). Lunch breaks are from 1.00-2.30 p.m. Coffee breaks will normally be from 11.00-11.15 a.m., and tea breaks from 4.00-4.15 p.m.

Your attention is drawn to the possibility of the Forms Working Group and the Country Profile Sub-Committee meeting on Monday 9 November 2009, prior to the beginning of the plenary meeting of the Special Commission, for a final review of the documents under their respective responsibilities before they are discussed by the Special Commission. A decision to convene these meetings will be taken in early October in the light of the comments received.

The suggested timetable will be followed with a certain degree of flexibility and may need to be modified in the light of progress in the discussions.

Tuesday 10 November 2009

2.00 – 2.30 p.m. **Opening of the Special Commission**

- Opening by Mr Teun Struycken, President of the Netherlands Standing Government Committee on Private International Law
- Election of the Chair of the Special Commission
- Words of welcome by the Secretary General of the Hague Conference on Private International Law
- Remarks by the Deputy Secretary General of the Hague Conference on Private International Law
- Outline of the working methods and draft Agenda, brief explanation of the documentation by the Permanent Bureau
- Adoption of the Agenda
- Information on administrative and social matters by the Permanent Bureau

2.30 – 6.00 p.m. **General "*Tour de table*"**

- Status of implementation of the 2007 Convention and 2007 Protocol in the States and REIO
- Implementing issues / challenge for particular States and REIO

6.00 p.m. Reception hosted by the Permanent Bureau of the Hague Conference on Private International Law in the foyer of the Academy Building

Wednesday 11 November 2009

9.30 a.m. – 1.00 p.m. **Recommended Forms**

- Introduction by the Permanent Bureau and Report
- General comments
- Conclusions concerning the Recommended Forms
- Discussion of future work and priorities of the Forms Working Group

2.30 – 6.00 p.m. **Practical Handbook for Case Workers**

- Introduction by the Permanent Bureau
- General Comments
- Conclusions concerning the Practical Handbook

Thursday 12 November 2009

9.30 a.m. – 1.00 p.m. **Country Profile**

- Introduction by the Permanent Bureau and Report
- General Comments
- Conclusions concerning the Country Profile

2.30 – 6.00 p.m. **Questionnaire concerning vulnerable persons**

- Introduction by the Permanent Bureau and Report
- General Comments

Permanent Administrative Co-operation Working Group and other working structures (*e.g.*, Forms Working Group, Country Profile Sub-Committee, iSupport)

- Introduction by the Permanent Bureau and Report
- General Comments
- Conclusions on a permanent administrative co-operation structure

Friday 13 November 2009

9.30 a.m. – 1.00 p.m. **Implementation Checklist and other implementing issues not covered in the agenda concerning the Convention and Protocol**

- Discussion of issues raised during the consultation

2.30 – 6.00 p.m. **Implementation Checklist and other implementing issues not covered in the agenda concerning the Convention and Protocol (cont.)**

- Discussion of issues raised during the consultation (cont.)

Saturday 14 and Sunday 15 November 2009

Open for possible Working Group Meetings

Monday 16 November 2009

9.30 a.m. – 1.00 p.m. **Draft Business Plan for the Development of iSupport**

- Introduction by the Permanent Bureau and presentations
- General Comments
- Setting-up Working Groups on:
  - functional requirements
  - technical requirements
  - secured communications
  - electronic fund transfers
  - funding and tender

2.30 – 6.00 p.m. **Implementation Checklist and other implementing issues not covered in the agenda concerning the Convention and Protocol (cont.)**

- Discussion of issues raised during the consultation (cont.)

Other business

Tuesday 17 November 2009

9.30 a.m. – 1.00 p.m. **Conclusion of the Special Commission**

- Adoption of the Recommended Forms
- Adoption of the Country Profile
- Approval of the Practical Handbook
- Recommendation on a permanent administrative co-operation structure
- Adoption of Conclusions and Recommendations

RAPPORT / REPORT

REPORT

I. Introductory Remarks

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

2. Mr Struycken underlined the importance of the new 2007 Child Support Convention and its Protocol.[1] He outlined the aims of this Special Commission, *i.e.*, to adopt the recommended forms and the country profile which have been the subject of dedicated work for a number of years, to establish a framework for permanent co-operation between Central Authorities, discuss the implementation of an electronic case management system and the extension of the Convention, by way of an additional protocol, to vulnerable persons.

3. Mr Struycken proposed Ms Doogue (New Zealand) as the Chair of the Special Commission and she was duly elected as such by acclaim.

4. Mr Duncan (Deputy Secretary General) highlighted how promising the project of establishing a new system of international child support is and affirmed that this Special Commission was about producing results and would be highly technical but that the broader aims of the Convention should not be forgotten, *i.e.*, to establish an effective and accessible procedure for those groups of persons who deserve the support of the international community.

II. General Remarks on the Implementation of the Convention and Protocol

5. It was reported that the process of ratification of the Convention within the European Union (EU)[2] is well underway, and that the plan was for the EU to ratify it under its exclusive competence and thus bind its Member States. As regards the Protocol within the EU, it was noted that negotiations on its adoption are nearly concluded and that rapid ratification will follow. It was highlighted that the EU would like to extend the scope of the Convention to all family relationships so as to be similar to the EU regulation in this area.

6. Experts from several delegations reported on the progress of the procedure of ratification or adoption in their respective States. Countries with a federal system noted the need for implementing measures at several levels. Several experts indicated that their States have established working groups to consider the incorporation of the Convention into their own laws.

7. It was reported that a translation of the Convention and the Protocol into German had been developed in a partnership between Switzerland, Germany and Austria, facilitating deliberations within both the EU and German speaking countries, and encouraging collaboration between these countries.

8. It was indicated that Brazil has been very active in promoting the Convention, particularly in the context of Mercosur. An important conference on the Convention took place in September 2008. Part of the budget of the Brazilian Ministry of Justice has been devoted to the recovery of maintenance obligations.

9. The Chair and Mr Lortie (First Secretary) welcomed the good news reported by the experts, hoping that this will serve as an example and help promote the Convention.

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[1] *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, hereinafter "the Convention", and *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*, hereinafter "the Protocol".

[2] Since the meeting of the Special Commission the Lisbon Treaty has entered into force. It provides that the European Union replaces the European Community.

10. Mr Lortie (First Secretary) requested a brief discussion of States' initial reactions to key implementing issues. These implementing issues might include, *inter alia*: 1) whether the potential simultaneous representation, by a given Central Authority, of both the debtor and the creditor constitutes a conflict of interest; 2) declarations relating to the scope of the Convention, with the suggestion that a template for these declarations should be developed to ensure their consistency; 3) how legal insurance relates to the scheme of free legal assistance established by Articles 14, 15 and 17 of the Convention; and 4) the fact that some States might need additional support from the Permanent Bureau to implement the Convention after the Special Commission meeting, and whether it would be possible to create a list of experts who could provide advice, gratuitously or otherwise.

11. One expert proposed having a Central Authority divided into several units or departments to avoid conflicts of interest, while another expert described the experience of the expert's country and stressed the importance of adequate training in this issue.

12. An observer from the National Child Support Enforcement Association (NCSEA) outlined the various courses offered by this NGO. The observer stressed the variety of parties who might be interested in this training: judges, lawyers, teachers, and even social workers and parents themselves. Training strategies include seminars, templates and user guides, which are available on the Internet or on CD.

13. Several experts highlighted the problems of interpretation of the Convention that have become apparent to the EU Member States as they attempt to co-ordinate their position. The main area identified where there is potential for misinterpretation was the extent of the connection between a party and Central Authority that is required by the Convention.

14. Several experts considered the suggestion of a template for declarations relating to the scope of the Convention premature given that the implications of the Convention are still under consideration. The Chair urged the Permanent Bureau to continue consultations on this matter.

III. Recommended Forms

1. Introduction of the Topic

15. For this topic experts' attention was directed to "Forms Working Group Report", Preliminary Document No 2A, "Forms Working Group Recommended Forms", Preliminary Document No 2B, "Compilation of Comments on Preliminary Documents Nos 2A, 2B, 3, 4, 5 and 6" and Preliminary Document No 9 (pp. 4-20 specifically).[3]

16. Mr Lortie (First Secretary) expressed gratitude to the LBIO (the authority responsible for recovery of maintenance in the Netherlands) for its contribution which enabled Preliminary Documents Nos 2A and 2B to be available in Spanish. Mr Lortie thanked delegations for their comments.

17. Ms Svantesson (co-Chair of the Forms Working Group) explained that the Forms Working Group was established in 2005 and had over 30 conference calls, coordinated by the Permanent Bureau. The Group comprises representatives from States of civil and common law traditions and judicial and administrative systems. She outlined that these

[3] "Forms Working Group Report", Prel. Doc. No 2A of July 2009, "Forms Working Group Recommended Forms", Prel. Doc. 2B of July 2009, and "Compilation of Comments on Preliminary Documents Nos 2A, 2B, 3, 4, 5 and 6", Prel. Doc. No 9 of November 2009, all for the attention of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations are available on the website of the Hague Conference at < www.hcch.net > under "Work in Progress" and "Maintenance Obligations".

forms may reduce the need for translation, unify practice, and facilitate rapid communication and future electronic communication.

18. Ms Haynes (co-Chair of the Forms Working Group) explained that there were four main application forms to cover all of the nine different applications envisioned by the Convention (after Art. 10(1) and 10(2)). She noted that all forms use tick boxes to reduce translation costs. All follow the text of the Convention and all forms share a similar structure. To facilitate electronic transmission all forms use medium neutral language and no signature is required in conformity with the Convention. Instead the Recommended Forms use an attestation system.

19. The ensuing substantive discussion of forms was guided by several Working Documents prepared by the Forms Working Group which took into account comments contained in Preliminary Document No 9 and comments which arose in discussion and review of the forms by experts during the Special Commission. All 12 amended Recommended Forms (the 4 main application forms including their respective Status Report Forms and annexes) prepared by the Forms Working Group, taking into account comments of experts, were adopted by consensus by the end of multi-day discussions at the Special Commission. The Recommended Forms will be the subject of "*toilettage*" by the Permanent Bureau prior to their publication by the Hague Conference in accordance with Article 11(4) of the 2007 Child Support Convention.

2. Substantive Discussion of Form Content

20. The forms were reviewed and amended to make certain that they followed the Convention text as closely as possible and to ensure there was consistent wording among the forms. Below is a summary of the most important details from Special Commission expert discussion which did not pertain to consistency and accuracy of wording and language.

21. A new section 4.3 entitled "Information that may assist with the location of the respondent" was added to the **Application for Recognition or Recognition and Enforcement** and the **Application for Modification of a Decision** forms. The section includes a field for a "Personal identification number" and a field for "Any other information that may assist with the location of the respondent". Experts agreed that it was important to feature such information prominently, as it could be crucial in helping to locate a respondent, whether a creditor or debtor (as the two forms can be used for both creditors and debtors).

22. Also regarding the **Application for Recognition or Recognition and Enforcement** and other application forms, a number of experts drew attention to the fact that their national procedure requires the signature of the applicant for all applications in order to ensure respect for the consent of the applicant. Rather than modifying the form, an expert suggested that the last tick box of the form should be considered mandatory before transmission. Other experts considered that this feature offered an adequate response to the signature issue. Mr Lortie (First Secretary) also proposed that the authority can transmit additionally by post a copy of a power of attorney signed by the applicant in the absence of the signature of the applicant on the form.

23. Regarding the **Abstract of a Decision** form, experts added new section 3.8 ("Decision Results From") to better indicate the type of proceedings ("Divorce or legal separation, Parentage establishment proceeding", etc.) from which maintenance decision resulted. A section 5.1.3 was added to provide for terms of payment of retroactive maintenance awards. Section 5.3 was added to provide for maintenance payments directed to a public body. An expert also introduced changes that added a tick box in sections 6 and 7 to provide for maintenance payments and interest that arise by operation of law.

24. Regarding the **Statement of Proper Notice** form, several experts suggested adding a new footnote under the first tick box of section 5 ("Proper notice to the respondent") to take into account the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (hereinafter "the Service Convention"). After discussion, a footnote was added that neutrally referenced a certificate of service "issued under domestic law or, where appropriate, a certificate issued under an international instrument", which could include the Service Convention.

25. The **Statement of Enforceability of a Decision** form was adopted as presented in Preliminary Document No 2B.

26. Regarding the **Status of Application Report– Article 12** forms, at the suggestion of experts from Switzerland, it was agreed to make the form, under section 4, more precise in relation to documents attached (declarations, registrations, or decisions) as to whether they were being transmitted for information only or if they were to be or had been served. The wording was tailored to accommodate States who may not necessarily have mandatory service or notification under domestic law, and also States where service or notification is required under domestic law.

27. Regarding the **Application for Enforcement of a Decision made or Recognised in the Requested State** form the possibility of a public body making an application for enforcement was included under section 2.

28. Regarding the **Application for Establishment of a Decision** form, it was agreed to add a new section 7 in order to specify the type of maintenance sought by the applicant and the frequency of payments. A new tick box was also added under section 3.1, entitled "Parentage is established or presumed", in order to give additional potentially helpful information to the requested State, which has the possibility of proceeding on the basis of this information within the frame of its relevant domestic law.

29. Regarding the **Status of Application Report – Article 12 (Application for Establishment of a Decision)** form, the methods for establishing parentage were better addressed, providing specifically for genetic testing, under section 4.2.

30. Regarding the **Financial Circumstances** form, an expert considered that the addition of the tick box "Other member of the household" in an amended version of items II(C) and III(C) on the form was worded too broadly because it could include persons who do not contribute to the costs of the household. The Chair directed the Forms Working Group, in co-operation with the Permanent Bureau, to reflect on a formulation that makes clear that only persons contributing to the household should be taken into consideration. Also, "Life insurance and buy-back value" was added as an asset to the debtor on the form under item IV(A).

31. In the absence of other remarks, the Chair concluded that all the Recommended Forms were adopted. She warmly thanked the members of the Forms Working Group for their years of hard work. She acknowledged that the comprehensive nature of these forms represents a great achievement.

3. Discussion of Future Work on Recommended Forms

32. Mr Lortie (First Secretary) drew the experts' attention to future work which could be envisaged by the Forms Working Group.[4] He noted five forms which might be particularly useful to develop: form to locate the debtor (Art. 6(2) *b)*); form regarding the automatic

[4] See Prel. Doc. No 2A, p. 11, *supra* note 3.

adjustment by indexation (Art. 25(1) *e)*); request for specific measures (Art. 7); model power of attorney (Art. 42); and form to provide assistance in establishing parentage (Art. 6(2) *h)*). He suggested that a package of forms could be presented at a future Special Commission on the practical operation of the Convention.

33. The Chair introduced a proposal by the Permanent Bureau to the effect that the Forms Working Group should be directed to consider the creation of the above forms in the first instance.

34. Several experts indicated that it might be more effective to focus on promoting the accession to the Convention of a broader range of States and postpone the development of any further forms until the Convention has actually come into force. However, several experts felt that the momentum of the Forms Working Group should continue given the expertise that is available and the length of time it takes to develop these forms.

35. The Chair concluded that this matter should be reconsidered before the next Special Commission, at which point there will be some guidance available based on practical experience.

IV. Practical Handbook for Caseworkers

36. Experts' attention was directed to the "Draft Practical Handbook for Caseworkers Under the 2007 Child Support Convention", Preliminary Document No 4,[5] and "Compilation of Comments on Preliminary Documents Nos 2A, 2B, 3, 4, 5 and 6", Preliminary Document No 9 (pp. 38-75 and Addenda Nos 1, 2 and 3 specifically).[6]

37. All experts and observers that spoke joined the Chair and the Permanent Bureau in thanking Mrs Roots for drafting the Practical Handbook, as well as the Government of Canada and the Province of British Columbia for their support.

38. Mrs Roots stressed that the Practical Handbook is aimed at caseworkers rather than lawyers and legal scholars, to whom the Explanatory Report is addressed. She also noted that it was always the intention that States supplement the Practical Handbook with an explanation of their domestic system. She highlighted the fact that the Practical Handbook takes a very pragmatic approach but attempts to stay faithful to the spirit and aim of the Convention. She suggested that this was achieved by incorporating language directly from the Convention.

39. Mrs Roots, along with a number of experts and observers, the Chair and the Permanent Bureau emphasised the fact that the Practical Handbook is a work in progress that will continue to evolve as time goes by and welcomed feedback.

40. An expert suggested that the Practical Handbook should contain more on amicable solutions. Several experts stated that they agree, in principle, that amicable solutions are useful but raised the question of which stage of the application procedure is most appropriate for their use.

41. Several experts intimated that the potential for using the Service Convention and the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (hereinafter "the Evidence Convention") in conjunction with the Child

[5] "Draft Practical Handbook for Caseworkers under the 2007 Child Support Convention", Prel. Doc. No 4 of August 2009 for the attention of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations is available on the website of the Hague Conference at: < www.hcch.net > under "Work in Progress" and "Maintenance Obligations".
[6] *Ibid*, *supra* note 3.

Support Convention should feature more prominently in the Practical Handbook. Another expert indicated that it was not necessary to over-emphasise these Conventions because whether or not to use them is an issue for individual States. Another expert suggested that it might be appropriate to include in the Practical Handbook reference to Article 52 of the Child Support Convention, which gives States the possibility to use more effective methods, whether under various international instruments or under domestic law. The Chair directed Mrs Roots to identify in the Practical Handbook where the Service and Evidence Conventions might be relevant and noted that States where formal service of documents is not required under domestic law could delete reference to these Conventions in their national version of the Practical Handbook.

42. An expert indicated that paragraph 210 of the Practical Handbook would be an appropriate place to refer to the fact that, according to Article 43(2), a State may seek to recover costs from the unsuccessful party (to strike a balance over the issue of recovering costs in manifestly unfounded actions). Another expert commented that it would be beneficial if the debtor was aware of this possibility in advance. The Chair directed Mrs Roots to ensure reference to this Article is made at an appropriate place in the Practical Handbook.

43. Several experts discussed direct requests to competent authorities under Article 37 and emphasised the need for clarification in the Practical Handbook of the situations where this operates. An expert explained that the claimant should be free to choose whether or not to make a direct request.

44. There was some debate between some experts over the understanding in the Practical Handbook of Article 20(5) of the Child Support Convention. Both sets of experts acknowledge the divergent interpretations of this Article and recalled that the Explanatory Report leaves the matter of interpretation open. One expert suggested using the text from the Convention rather than siding with any particular interpretation. One expert indicated that some explanation of the divergent interpretations would have to be included beyond a mere reference to the Explanatory Report. The Chair was hopeful that an acceptable solution could be found and directed Mrs Roots to review the language in the Practical Handbook.

45. An expert proposed to divide the manual into two – one part dealing with child support only and the other part dealing with other forms of family maintenance. In his estimation, such a solution, which is equally applicable to the standardised forms, would be beneficial for those countries that are only interested in child support claims.

46. Another expert expressed a desire to revisit the vocabulary relating to the extension of the scope of the Convention and the comments of the EU on this issue. He noted that the term “vulnerable persons” is inappropriate because the current scope of the text already covers the protection of vulnerable persons such as children and spouses seeking child support. He asked Mrs Roots to reflect on this question.

47. Mr Lortie (First Secretary) detailed the upcoming work on the Practical Handbook. He explained that Mrs Roots will complete a new version of the Practical Handbook, revised in the light of the work of the Special Commission, and if necessary will seek additional information from experts who have made written comments.

48. All the experts approved the Practical Handbook, subject to the amendments that were discussed and the caveat that it is not the finished product.

V. Recommended Country Profile Form

1. Introduction of the Topic

49. For this topic the experts' attention was drawn to the "Draft Country Profile – 2007 Child Support Convention", Preliminary Document No 3,[7] and to the compilation of experts' comments in Preliminary Document No 9 (pp. 22-36 specifically).[8]

50. Mr Lortie (First Secretary) thanked the delegation of the United States of America for their assistance in producing the Spanish version of this document.

51. Ms Boulay-Bramley (Co-Chair of the Country Profile Sub-Committee) noted that the Sub-Committee comprised representatives from States of civil and common law traditions, judicial and administrative systems, and federal and unified States. She mentioned that the Sub-Committee had communicated by e-mail and conference call and had held two meetings (Ottawa, Canada (2006) and London, United Kingdom (2007)) sponsored by the Department of Justice of Canada. She outlined that the intention of the Sub-Committee was to develop a standardised Country Profile in order to facilitate updates and to overcome language barriers.

52. Ms Barkley (Co-Chair of the Country Profile Sub-Committee) explained that the tick boxes are used in order to reduce costs and time and to alleviate language barriers. The Sub-Committee attempted to use the same terminology as the Convention. Ms Barkley was deeply satisfied that the Sub-Committee had received 74 comments on the Draft Country Profile.

53. Mr Lortie (First Secretary) presented the electronic version of the Draft Country Profile which was prepared for the Diplomatic Session in 2007, in order to demonstrate to new experts that it is user friendly. The technology was proposed by Alphinat and allows the transformation of a pdf document into an html format coupled with a database, which greatly facilitates the updating of information.

2. Substantive Discussion of the Draft Country Profile

54. The form was generally amended to ensure internal consistency, consistency between language versions, and consistency between the Country Profile, the Practical Handbook and the Convention text. Below is a summary of the most important points regarding substantive changes to the Draft Country Profile form as a result of the Special Commission.

55. An expert suggested that as the current Draft Country Profile is limited to the core scope of the Convention and that this should be mentioned in the document. Appropriate wording was added to the Foreword of the Country Profile. It was decided later during the Special Commission to develop an "extended" Country Profile building on the "core" Country Profile to cover other forms of family maintenance.

56. A proposal was accepted to add a question, falling under section 4 of Stage 1.I of the form, regarding the specific function of the Central Authority mentioned in Article 6(1) *b)* of the Convention. The question asks how the institution of proceedings in respect of applications under Chapter III are initiated or facilitated in the relevant State, whether by a Central Authority or otherwise.

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[7] "Draft Country Profile – 2007 Child Support Convention," Prel. Doc. No 3 of August 2009 for the attention of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations is available on the website of the Hague Conference at: < www.hcch.net > under "Work in Progress" and "Maintenance Obligations".
[8] *Ibid, supra* note 3.

57. It was agreed to add two new sections to the form after Stage 1.I.4 and after Stage 1.II.5 referencing Articles 14 and 57(1) *c)* of the Convention, regarding how applicants are provided with effective access to procedures within a State, whether through free legal assistance or through other procedures.

58. In the light of expert proposals, references were added at various sections under Stage 1.I.5 where it could be indicated to which international instruments a State is a Contracting Party including the 1954 Hague Convention on civil procedure and the Evidence Convention regarding measures for the obtaining of documentary or other evidence abroad, assistance in establishing parentage, and for service abroad of documents.

59. To take into account maintenance arrangements, new sections, 1B and 2B, were added under Stage 1.II., concerning "Applications for Recognition or Recognition and Enforcement of a Maintenance Arrangement" (Art. 30 of the Convention), and "Applications for Enforcement of a Maintenance Arrangement Made or Recognized" in the given State (Arts 30(2) and 10(1) *b)* of the Convention), respectively.

60. Under Stage 1.II. 3 to 5, sections were added that would allow an indication of the various applicable law regimes that could apply to a maintenance claim, including rules which may apply in accordance with various international instruments (2007 Child Support Protocol, the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*, the *Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children*), or other factors.

61. It was proposed and accepted that two new tick boxes be added within Stage 1.II.3.g, to provide further means by which an applicant can prove that an obligation to provide maintenance exists ("Applicant provides an affidavit / attestation that the debtor is a parent of the child"; and "Applicant provides an affidavit / attestation that the applicant has care and control of the child").

62. A new tick box was added at Stage 1.II.4.e, concerning circumstances where an application for modification of child maintenance can be made under the law of a given State, in cases where the change of situation relates to the holder of parental responsibility.

63. Another heading was added under Stage 1.III, concerning information as to which authority/ies are competent to make decisions on maintenance, judicial or administrative. An accompanying tick box was also added, "Decisions of the above mentioned administrative authority always meet the requirements of Article 19(3)", thought necessary in light of Articles 57(1) *e)* and 25(1) *b)* of the Convention. Also, section 2 under Stage 1.III was deleted, as experts noted that this part of the Country Profile would be dependent on whether a country has extended the scope of the Convention under Article 2.

64. A new section was added under Stage 2.I, "General Information", regarding the possibility for direct requests to competent authorities within a State.

65. An expert voiced a general concern that claims for spousal maintenance, ancillary to a child support claim, not be excluded as is implied by certain parts of the Country Profile.

66. Finally, several experts suggested that the general use of the term "sub-unit" of a given State be replaced with "territorial unit", which was considered more neutral.

67. The Chair concluded that there was general endorsement of the Country Profile, subject to "*toilettage*" being undertaken by the Permanent Bureau and a final check by

States to ensure that the points raised have been addressed. Several experts and the Chair expressed their gratitude for the Country Profile Working Group's hard work.

VI. International Recovery of Maintenance in Respect of Vulnerable Persons

68. Please refer to Preliminary Document No 3C of January 2010 for the attention of the Council of April 2010 on General Affairs and Policy of the Conference, ("Feasibility of Developing a Protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the International Recovery of Maintenance in Respect of Vulnerable Persons") for a summary of the meeting discussion and conclusions on this topic.

VII. Administrative Co-operation

69. Please refer to Preliminary Document No 3B of January 2010 for the attention of the Council of April 2010 on General Affairs and Policy of the Conference, "Establishment of a Standing Central Authority Co-operation Committee Under the 2007 Child Support Convention" for a summary of the meeting discussion and conclusions on this topic.

VIII. Implementation Checklist for the 2007 Child Support Convention

70. The experts were directed to the relevant documentation for this agenda item, including "Draft Implementation Checklist – 2007 Child Support Convention", Preliminary Document No 6,[9] and Preliminary Document No 9 (pp. 79-82 and Addenda Nos 3 and 4 specifically).[10]

71. Mr Lortie (First Secretary) introduced the draft Implementation Checklist prepared by the Permanent Bureau and thanked the delegations who had provided comments on the draft. He explained that the Implementation Checklist intends to be short and user-friendly. It was developed following experience gained through the preparation of the Implementation Checklist for the 1996 Hague Convention,[11] and the Guide to Good Practice – Implementation under the 1980 Hague Convention.[12] Mr Lortie explained that the Implementation Checklist is not intended to be comprehensive but to assist States which need assistance as they consider implementation of the Convention.

72. An expert drew attention to the first tick box concerning the location of the debtor or creditor,[13] suggesting that the language used did not accurately reflect the Convention which does not contain an obligation (Art. 6(2) *b)*). The expert further suggested that the text implies that the Central Authority must always be involved whereas another body could be charged with helping to locate the person. The Chair suggested in response to the first concern that for greater clarity the word "necessary" in the first tick box was substituted by the word "appropriate", as a preliminary suggestion to finding workable and accurate language.

73. Another expert drew the experts' attention to the proposal to insert a reference to "the Central Authority", also under the first tick box concerning the location of the debtor

[9] "Draft Implementation Checklist – 2007 Child Support Convention", Prel. Doc. No 6 of September 2009 for the attention of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations is available on the website of the Hague Conference at: < www.hcch.net > under "Work in Progress" and "Maintenance Obligations".
[10] *Ibid*, *supra* note 3.
[11] *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*.
[12] *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.
[13] Prel. Doc. No 6, p. 10, *supra* note 9.

or creditor, after the word "directly".[14] He clarified that this proposal was intended to take account of the fact that transmitted information can be very sensitive.

74. The Chair directed the Permanent Bureau to take into account the additional matters raised by experts and invited the Permanent Bureau to amend the Checklist with regard to the comments in the relevant parts of Preliminary Document No 9 and Addenda Nos 3 and 4.

IX. iSupport Electronic Case Management and Communication System

75. For this topic, the experts' attention was drawn to the "Draft Business Plan for the Development of iSupport", Preliminary Document No 5,[15] and comments provided by Malaysia and Norway[16] and the EU.[17]

76. Mr Lortie (First Secretary) reminded experts that the Preamble to the Convention encourages the use of information technologies. He explained that the idea of iSupport is to develop a technology system which serves as a bridge between States; for those who already have a system and for those who do not. He stated that the Permanent Bureau has been working with experts from the information technology industry to draft a business plan for the development of iSupport. If the plan is supported in principle three areas have been identified where working groups might be established. Firstly, there is the issue of functional requirements, where the majority of work has already been accomplished with the Recommended Forms, the Practical Handbook and the Country Profile. Secondly, technical requirements, where intellectual contributions from States would be greatly appreciated so as to benefit from the experience gained with systems which already exist. Thirdly, financial issues about which Mr Lortie noted that funding for the project would be sought through the Supplementary Budget and through grants.

77. There were several presentations of existing case management systems, including statistics provided by Norway, the Australian case management system, three systems which operate in the United States of America (with a note that the United States of America was ready to share free of charge, the first of these systems, the Model Tribal System IV D, with States who do not yet have an automated system), the electronic case management system used in British Columbia, Canada, and the electronic system for dealing with payments used by the German Institute for youth human services and family law (DIJUF).

78. Mr Lortie (First Secretary) presented a mock-up of the iSupport system, which was prepared for the Diplomatic Session in November 2007.[18] He emphasised that one of the benefits of the iSupport system is that it will alleviate translation issues.

79. Mr Lortie (First Secretary) recognised the presence of observers from the information technology industry, including from Alphinat Inc., Groupe LGS Inc. (IBM), Oracle Corporation and Worldreach Software Corporation. Alphinat contributed to the development of the electronic version of the Country Profile and Worldreach contributed to the development of the iChild case management system.

80. The Chair highlighted the multiple advantages resulting from Internet-based communications, the possibility for secure online communications; the benefits of a multilingual case management system; the ability to provide instructions to banks for cross-border transactions; and the development of statistics.

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[14] See Prel. Doc. No 9, Addendum No 4, para. 4, *supra* note 3.
[15] "Draft Business Plan for the Development of iSupport", Prel. Doc. No 5 of September 2009 for the attention of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations is available on the website of the Hague Conference at: < www.hcch.net > under "Work in Progress" and "Maintenance Obligations".
[16] Prel. Doc. No 9, p. 77, *supra* note 3.
[17] *Ibid,* Addendum No 3 and Corrigendum No 1.
[18] Prel. Doc. No 5, Annex C*, supra* note 16.

81. Several experts thanked the experts and observers for their presentations and expressed general support for the continued development of iSupport. Several experts recognised that the final decision rests with the Council on General Affairs and Policy of the Conference and will be subject to the availability of necessary funds under the Supplementary Budget.

82. In response to an expert's question requesting additional clarification as to the methodologies of the potential Working Groups, Mr Lortie (First Secretary) proposed that initially only two Working Groups would be established to work on the functional and technical requirements of iSupport. It is envisaged that these Working Groups would meet by conference calls, coordinated by the Permanent Bureau. He suggested that the work of these Working Groups would be a useful first step as it could give a more accurate understanding of the costs of the project. He added that the Working Groups could draft a report for the Council on General Affairs and Policy of the Conference perhaps in the Spring of 2011.

83. The Chair acknowledged that there was significant support for ongoing consultations with States regarding their domestic electronic case management systems, and for the development of working groups co-ordinated by the Permanent Bureau.

X. Final Remarks

84. The Chair concluded that the Special Commission had been highly effective. It had facilitated the adoption of the Recommended Forms, the Country Profile, the Practical Handbook and the Implementation Checklist. It had also supported the continued development of iSupport. In so doing, the Special Commission had facilitated the modernity of this Convention and its prospective implementation and promotion. The Chair noted that it had been a great privilege to work with the delegations. She thanked the support staff of the Permanent Bureau and the interpreters for their hard work.

85. Several experts thanked the Chair for her excellent work and noted that it had been a pleasure to work under her direction. Several experts also expressed their gratitude to the members of the Working Groups who had worked so tirelessly and successfully, to the members of the Permanent Bureau for their excellent work, and to the interpreters.