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SUIVI DES ACTIVITÉS DE LA CONFÉRENCE EN MATIÈRE DE MÉDIATION

établi par le Bureau Permanent

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REVIEW OF THE ACTIVITIES OF THE CONFERENCE IN REGARD TO MEDIATION

drawn up by the Permanent Bureau

Document préliminaire No 11 à l'intention
du Conseil d'avril 2010 sur les affaires générales et la politique de la Conférence

Preliminary Document No 11 for the attention
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SUIVI DES ACTIVITÉS DE LA CONFÉRENCE EN MATIÈRE DE MÉDIATION

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REVIEW OF THE ACTIVITIES OF THE CONFERENCE IN REGARD TO MEDIATION

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Development of a Guide to Good Practice on Mediation under the 1980 Hague Child Abduction Convention

1. In the Conclusions and Recommendations[1] of March / April 2009, the Council on General Affairs and Policy of the Conference reaffirmed its decision taken at the meeting of April 2008 in relation to the preparation of a Guide to Good Practice on Mediation under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.*

2. Consultations with a group of experts on international family mediation are ongoing. Two studies prepared by the Hague Conference in the past years on cross-border family mediaton provide a basis for the work of the experts: the "Note on the development of mediation, conciliation and similar means to facilitate agreed solutions in transfrontier family disputes concerning children especially in the context of the Hague Convention of 1980", drafted by Sarah Vigers, Former Legal Officer of the Permanent Bureau, Preliminary Document No 5 of October 2006 (available on the website of the Hague Conference at < www.hcch.net > under "Work in Progress" then "Child Abduction") and the "Feasibility Study on Cross-Border Mediation in Family Matters", drawn up by the Permanent Bureau, Preliminary Document No 20 of March 2007 (available on the website of the Hague Conference at < www.hcch.net > under "Work in Progress" then "General Affairs").

3. The experts have been provided with a draft outline of the Guide to Good Practice on Mediation; their comments are expected by April 2010. A Draft Guide will then be discussed with the Group of Experts at a meeting in The Hague to be convened in the second half of 2010. The final draft will be circulated to the Hague Conference Members and other Contracting States to the 1980 Child Abduction Convention and the 1996 Child Protection Convention for comments before its presentation to the Special Commission to review the practical operation of the 1980 and 1996 Hague Conventions at its next meeting in 2011.

[1] Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (31 March – 2 April 2009): "The Council reaffirmed its decision taken at the meeting of April 2008 in relation to cross-border mediation in family matters. It approved the proposal of the Permanent Bureau that the Guide to Good Practice for Mediation in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* be submitted for consultation to Members by the beginning of 2010 and then for approval to the Special Commission to review the practical operation of the 1980 Child Abduction Convention and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* at its next meeting in 2011". Available on the website of the Hague Conference at < www.hcch.net > under "Work in Progress" then "General Affairs".

Working Party on Mediation in the context of the Malta Process

4. Following the Conclusions and Recommendations[2] of the Council on General Affairs and Policy of the Conference of March / April 2009 a Working Party in the context of the Malta Process has been established and commenced its work to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children, which involve State Parties to the 1980 Hague Child Abduction Convention and non-State Parties.

5. The recommendation to establish such a Working Party on Mediation derived from a proposal made by Canada discussed and approved at the Third Malta Conference on Cross-Frontier Family Law Issues held in St. Julian's, Malta in March 2009 (available on the website of the Hague Conference at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars").

6. In June 2009 co-ordination talks between the Permanent Bureau of the Hague Conference and Canada, who agreed to take a leading role in the Working Party's establishment, had brought about the identification, based on demographic factors, of a small group of States to participate in the project. The States invited to designate an expert were six Contracting States to the 1980 Hague Child Abduction Convention, namely Australia, Canada, France, Germany, the United Kingdom and the United States of America, and six non-Contracting States, namely Egypt, India, Jordan, Malaysia, Morocco and Pakistan. In addition to the experts designated by States, a small number of independent mediation experts were invited to join the Working Party. It was decided that the Working Party, which would be co-chaired by Ms Lillian Thomsen, Canada and Mr Justice Jillani, Pakistan, would work initially via conference calls and e-mails and that, only at a later stage, an in-person meeting might be convened. At the same time, all other States involved in the Malta Process, as well as all Members of the Hague Conference, are being kept informed of the progress made by the Working Party and have the possibility to make comments and recommendations at any stage. It is planned that other States may at a later stage be more actively involved in the work and that mediation structures drawn up by the Working Party may be suitable to serve as a model for a wider group of States.

7. The first Working Party conference call, hosted by Canada and held with simultaneous interpretation between English and French, took place on 30 July 2009. Participating in the call were experts from Australia, Canada, Egypt, France, Germany, India, Malaysia, Pakistan, the United Kingdom and the United States of America as well as two independent mediation experts and the Permanent Bureau of the Hague Conference. In preparation for the conference call, a detailed questionnaire on existing mediation structures and services had been circulated to the Working Party members, responses to which are available on the website of the Hague Conference at < www.hcch.net > under "Work in Progress" then "Child Abduction".

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[2] Conclusions and Recommendations adopted by the Council on General Affirs and Policy of the Conference (31 March – 2 April 2009): "… In the context of the Malta Process, and subject to the availability of the necessary resources, the Council authorised the establishment of a Working Party to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children. The Working Party would comprise experts from a number of States involved in the Malta Process, including both States Parties to the 1980 Child Abduction Convention and non-States Parties. It would also include independent experts. The Permanent Bureau will keep Members informed on progress". Available at < www.hcch.net > under "Work in Progress" then "General Affairs".

8. In its first conference call the participants of the Working Party agreed that the establishment of (central) contact points facilitating access to mediation was an essential step towards the setting up of effective mediation structures in their countries. In view of the need for the development of practical mechanisms to ensure rapid, fair and affordable mediation by mediators trained in international family mediation, the Working Party recognised the importance of further discussing issues such as: timeframe, costs, appropriate mediation models, the availability of legal advice to the parties, as well as how to guarantee the adherence to / enforceability of the mediation agreement in both jurisdictions concerned. In this spirit the Working Party members committed themselves to collect information on the issue of enforceability of mediated agreements in their respective jurisdiction as well as to collect some examples of international family disputes mediated in their jurisdiction in the form of case histories, including information on mediation models used in these cases.

9. Following this first Working Party meeting a second questionnaire was drawn up, focussing on the enforceability of mediated agreements, responses to which are also available on the website of the Hague Conference at < www.hcch.net > under “Work in Progress” then “Child Abduction”. Furthermore a form to report case histories was circulated to the Working Party to collect example cases of mediation in international family disputes involving children. It was, however, decided, that the case histories reported by the Working Party members, although anonymised, would be treated as confidential since the facts of the individual cases might make the identification of the concerned families possible.

10. On 29 October 2009, the second Working Party conference call took place, again hosted by Canada and held with simultaneous interpretation between English and French. Participating were experts from Australia, Canada, Egypt, France, Germany, Malaysia, Pakistan, the United Kingdom and the United States of America as well as two independent mediation experts and the Permanent Bureau of the Hague Conference. The Working Party decided to work towards drafting a document on mediation structures including, *inter alia,* access to mediation, the establishment of entry points and the enforceability of mediated agreements should be developed.

11. A third Working Party conference call is envisaged for March or April 2010. For information on the progress made by the Working Party please consult the “Child Abduction Section” of the Hague Conference website at < www.hcch.net >.

12. The Permanent Bureau would like to renew its appreciation of support for this project by Canada and Australia.