AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

Doc. prél. No 1
Prel. Doc. No 1

décembre / December 2009

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

RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DU 31 MARS AU 2 AVRIL 2009

établi par le Bureau Permanent

* * *

REPORT OF THE COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE OF 31 MARCH TO 2 APRIL 2009

drawn up by the Permanent Bureau

Document préliminaire No 1 de décembre 2009 à l'intention du Conseil d'avril 2010 sur les affaires générales et la politique de la Conférence

Preliminary Document No 1 of December 2009 for the attention of the Council of April 2010 on General Affairs and Policy of the Conference

Permanent Bureau | *Bureau Permanent*
6, Scheveningseweg 2517 KT The Hague | *La Haye* The Netherlands | *Pays-Bas*
telephone | *téléphone* +31 (70) 363 3303 fax | *télécopieur* +31 (70) 360 4867
e-mail | *courriel* secretariat@hcch.net website | *site internet* http://www.hcch.net

RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DU 31 MARS AU 2 AVRIL 2009

établi par le Bureau Permanent

* * *

REPORT OF THE COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE OF 31 MARCH TO 2 APRIL 2009

drawn up by the Permanent Bureau

TABLE DES MATIÈRES / TABLE OF CONTENTS

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS 4

CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LE CONSEIL / CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE COUNCIL 13

ORDRE DU JOUR / AGENDA 17

RAPPORTS DE SÉANCE / REPORTS OF MEETING 24

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS

MEMBRES / MEMBERS

AFRIQUE DU SUD / SOUTH AFRICA

Ms Yolande M. DWARIKA, Legal Counsellor, Embassy of the Republic of South Africa, The Hague

ALLEMAGNE / GERMANY

Mr Volkel EBEL, Third Secretary, Embassy of the Federal Republic of Germany, The Hague

Ms Charlotte DENSTORFF, Legal Assistant, Embassy of the Federal Republic of Germany, The Hague

Ms Birgit FRIE, Counsellor, Legal Affairs, Embassy of the Federal Republic of Germany, The Hague

Mr Rolf WAGNER, Ministerialrat, Head of Section for Private International Law, Bundesministerium der Justiz, Berlin

ARGENTINE / ARGENTINA

H. E. Mr Santos GOÑI MARENCO, Ambassador of Argentina, Embassy of Argentina, The Hague

Mr Mario Javier Agustin OYARZÁBAL, Counsellor, Embassy of Argentina, The Hague

Mr Fernando Andrés MARANI, Second Secretary, Embassy of Argentina, The Hague

AUSTRALIE / AUSTRALIA

Ms Catherine FITCH, A/g Assistant Secretary, Administrative Law and Civil Procedure Branch, Attorney-General's Department, Barton

AUTRICHE / AUSTRIA

Mr Robert FUCIK, Director, Department for International Family Law, Ministry of Justice, Vienna

BELGIQUE / BELGIUM

S.E. M. Yves HAESENDONCK, Ambassadeur de Belgique, Ambassade du Royaume de Belgique, La Haye

Mme Bénédicte MAUDOUX, Attaché au Service public fédéral Justice – Direction générale de la Législation et des Libertés et Droits fondamentaux – Office de la coordination en droit européen et international, Bruxelles

Mme Salomé PETTER, Attaché au Service public fédéral Affaires étrangères, Direction générale des Affaires consulaires – Service de la coopération judiciaire internationale, Bruxelles

BRÉSIL / BRAZIL

Mr Antonio Paulo CACHAPUZ DE MEDEIROS, Legal Adviser, Ministry of External Relations, Brasilia

Mr Boni de MORAES SOARES, General Coordinator of International Legal Cooperation, Department of Assets Recovery and International Legal Cooperation, Ministry of Justice, Brasilia

Mr Leandro Antunes MARIOSI, Third Secretary, International Legal Cooperation Division, Ministry of External Relations, Brasilia

BULGARIE / BULGARIA

Ms Elena DOYCHEVA, Head of Department, International cooperation and legal assistance in civil matters, Ministry of Justice, Sofia

Ms Krassimira BESHKOVA, Head of International Private Law Division, Ministry of Foreign Affairs, Sofia

Ms Bilyana BELYAKOVA, State Expert of Department of International cooperation & Legal Assistance in civil matters, Ministry of Justice, Sofia

CANADA

Ms Kathryn SABO, General Counsel, International Private Law Section, Department of Justice, Ottawa

Mr Joël DENIS, Senior Policy Advisor, Consular Policy and Advocacy Bureau, Department of Foreign Affairs and International Trade of Canada, Ottawa

CHILI / CHILE

Mrs Elena BORNAND, Second Secretary, Embassy of Chile, The Hague

CHINE, REPUBLIQUE POPULAIRE DE / CHINA, PEOPLE'S REPUBLIC OF

His Exellency Mr ZHANG Jun, Ambassador of the People's Republic of China, Embassy of the People's Republic of China, The Hague

Mr QI Dahai, Second Secretary, Embassy of the People's Republic of China, The Hague

Ms LIU Xiaoyan, Second Secretary, Embassy of the People's Republic of China, The Hague

CHYPRE / CYPRUS

H.E. Mr James C. DROUSHIOTIS, Ambassador of the Republic of Cyprus, Embassy of Cyprus, The Hague

Mr Michalis KARAGIORGIS, Second Secretary, Embassy of Cyprus, The Hague

Mrs Vasiliki SKLAVOU, Embassy of Cyprus, The Hague

COMMUNAUTE EUROPEENNE / EUROPEAN COMMUNITY
(Présidence du Conseil de l'Union européenne : République tchèque / Presidency of the Council of the European Union: Czech Republic)

M. Fernando R. PAULINO PEREIRA, Responsable Coopération judiciaire, en matière civile et commerciale

Mme Bente SØRENSEN, Administrateur, Unité Coopération judiciaire en matière civile

Ms Salla SAASTAMOINEN, Head of Civil Justice Unit, Directorate Justice, Directorate General Justice, Freedom and Security

Ms Mari AALTO, Seconded National Expert

COREE, REPUBLIQUE DE / KOREA, REPUBLIC OF

Mr Sun Pyo KIM, Counsellor, Embassy of the Republic of Korea, The Hague

CROATIE / CROATIA

Mr Ivan SALOPEK, Third Secretary, Embassy of the Republic of Croatia, The Hague

DANEMARK / DENMARK

Mr Christian NYGARD NISSEN, Adviser, Royal Danish Embassy, The Hague

Mrs Malene MYHRE, Trainee, Royal Danish Embassy, The Hague

ÉGYPTE / EGYPT

Mr Khaled RADY, Counsellor, Embassy of Egypt, The Hague

ÉQUATEUR / ECUADOR

Ms Ruth VASCONEZ, Third Secretary, Embassy of Ecuador, The Hague

ESPAGNE / SPAIN

Mme Alegría BORRÁS, Professeur à l'Université de Barcelone, Barcelone

Mr Jesús LÓPEZ-MEDEL, Ministerio de Justicia, Dirección General de Cooperación Jurídica Internacional, Madrid

Mr Eduardo NARBONA ALGARA, Second Secretary, Embassy of Spain, The Hague

ESTONIE / ESTONIA

Mr Indrek NIKLUS, Head of Private Law Division, Ministry of Justice, Tallinn

Mr Gert AUVÄÄRT, Third Secretary, Embassy of the Republic of Estonia, The Hague

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA

Mr Keith LOKEN, Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State, Washington, D.C.

FINLANDE / FINLAND

Mr Antti T. LEINONEN, Director of Legislation, Ministry of Justice, Helsinki **(Président du Conseil / Chair of the Council)**

Mr Tuomo ANTILA, Counsellor of Legislation, Ministry of Justice, Helsinki

FRANCE

Mme Nicole COCHET, Magistrat, Chargée de mission pour le droit européen et international, Direction des Affaires civiles et du Sceau, Ministère de la Justice, Paris

GÉORGIE / GEORGIA

Mr Giorgi MIKELADZE, Consul, Embassy of Georgia, The Hague

GRECE / GREECE

Mr Spyridon VRELLIS, Professeur de droit international privé à l'Université d'Athènes, Athènes

INDE / INDIA

Mr Narinder SINGH, Joint Secretary, Legal and Treaty Division, Ministry of External Affairs, New Delhi

IRLANDE / IRELAND

Ms Regina TERRY, Principal Officer, Department of Justice, Equality and Law Reform, Dublin

ISRAËL / ISRAEL

Mr Peretz SEGAL, Head of Legal Counsel Department, Ministry of Justice, Jerusalem

ITALIE / ITALY

Ms Danila DIJKEMA, Officer, Legal Affairs, Embassy of Italy, The Hague

JAPON / JAPAN

Mr Hironori WANAMI, First Secretary, Embassy of Japan, The Hague

LETTONIE / LATVIA

Ms Anita ZIKMANE, Head of Civil Law Department, Ministry of Foreign Affairs, RIGA

LUXEMBOURG

Mlle Nancy CARIER, Juriste, Ministère de la Justice, Luxembourg

MALAISIE / MALAYSIA

Excusé / unable to attend

MALTE / MALTA

Ms Carmen BORG, National Focal Point, Family Court, Valletta

MAROC / MOROCCO

M. Riad RAMZI, Premier Conseiller, Ambassade du Maroc, La Haye

MEXIQUE / MEXICO

H.E. Mr Jorge LOMÓNACO, Ambassador of the United Mexican States, Embassy of the United Mexican States, The Hague

Mr Erasmo Alonso LARA CABRERA, Legal Counsel, Embassy of the United Mexican States, The Hague

Mr Johannes Jácome CID, Director for Family Law, Directorate-General of Protection to Mexicans Abroad, Ministry of Foreign Affairs, Mexico City

MONACO

Son Excellence M. José BADIA, Ambassadeur de la Principauté de Monaco, Ambassade de la Principauté de Monaco, Bruxelles

M. Pierre-Henri SETTIMO, Conseiller, Ambassade de la Principauté de Monaco, Bruxelles

NORVÈGE / NORWAY

Ms Anne-Karin NESDAM, Advisor, Legalisation Department, Ministry of Justice and the Police, Oslo

NOUVELLE-ZÉLANDE / NEW ZEALAND

Mr Nick ALDOUS, Research Assistant, Embassy of New Zealand, The Hague

PANAMA

S.E. Mme Mirla PANIZA, Ambassadeur en Mission Spéciale, Ambassade du Panama, Bruxelles

PAYS-BAS / NETHERLANDS

M. A.V.M. STRUYCKEN, Président de la Commission d'Etat néerlandaise de droit international privé, Professeur émérite de droit

Ms Paulien M.M. VAN DER GRINTEN, Counsellor of Legislation, Directorate of Legislation, Department of Private Law, Ministry of Justice, The Hague

Mr Foort VAN OOSTEN, Senior Jurist, Department of Civil Law, Ministry of Justice, The Hague

PÉROU / PERU

Mr Carlos BRICEÑO, Counsellor, Embassy of Peru, The Hague

POLOGNE / POLAND

Mr Andrzej RYNG, Counsellor, Embassy of Poland, The Hague

PORTUGAL

Ms Assunçao CARDOSO REIS, Legal Adviser, Civil Law Unit, International Affairs Department, Direcção-Geral da Política de Justiça, Gabinete de Relações Internacionais, Lisboa

Ms Susana CHABERT, Director, International Affairst Department, Directorate General for future Policy, Direcção-Geral da Política de Justiça, Gabinete de Relações Internacionais, Lisboa

ROUMANIE / ROMANIA

Ms Mioara-Florina PITUT, Second Secretary, Embassy of Romania, The Hague

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD / UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Mrs Vivien ANDREW, Head of Justice Assistance Policy, International Directorate, Ministry of Justice, London

Mr Fergal MADIGAN, Liaison Officer – International Organisations, Embassy of Ireland, The Hague

Mr Paul R. BEAUMONT, Professor of European Union and Private International Law, University of Aberdeen School of Law, Aberdeen

RUSSIE, FÉDÉRATION DE / RUSSIAN FEDERATION

Mr Dmitry A. LOBATCH, Deputy Director, Legal Department, Ministry of Foreign Affairs, Moscow

Mr Maxim MUSIKHIN, First Secretary, Embassy of the Russian Federation, The Hague

Mrs Anna N. KOCHUROVA, Attaché, Legal Department, Ministry of Foreign Affairs, Moscow

SERBIE / SERBIA

Mr Vladimir CVETKOVIĊ, Chargé d'affaires, Embassy of the Republic of Serbia, The Hague

Ms Marina LOZAR, First Secretary, International Legal Department, Ministry of Foreign Affairs, Belgrade

SLOVAQUIE / SLOVAKIA

Mr Miloš HAŤAPKA, Director, Private International Law Division, Ministry of Justice, Bratislava

SLOVÉNIE / SLOVENIA

Ms Romana BERNIK, Head, Department for Civil Law, Ministry of Justice, Ljubljana

Ms Jožica PONGRAC, Counsellor in the Department for International Co-operation, Ministry of Justice, Ljubljana

SUÈDE / SWEDEN

Mr Mikael FORSGREN, Special Adviser, Ministry of Justice, Stockholm

SUISSE / SWITZERLAND

Mme Monique JAMETTI GREINER, Vice-directrice, Domaine de direction Droit privé, Office fédéral de la Justice (OFJ), Berne

M. Michael SCHÖLL, Office fédéral de la Justice (OFJ), Berne

SURINAME

Ms Susan M. DERBY, Counsellor, Embassy of the Republic of Suriname, The Hague

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC
(Présidence du Conseil de l'Union européenne / Presidency of the Council of the European Union)

H.E. Mr Jirí POSPÍSIL, Minister of Justice of the Czech Republic, Ministry of Justice, Prague

H.E. Mr Petr MAREŠ, Ambassador of the Czech Republic, Embassy of the Czech Republic, The Hague

Mr Tomáš BOČEK, Vice Minister for EU and International Affairs, Ministry of Justice, Prague

Mr Jakub SKALNÍK, Counsellor, Deputy Head of Mission, Embassy of the Czech Republic, The Hague

Ms Zuzana FIŠEROVÁ, Director of International Department for Civil Matters, International Department for Civil Matters, Ministry of Justice, Prague

Ms Marta ZAVADILOVÁ, Legal Officer, International Department for Civil Matters, Ministry of Justice, Prague

Mr Petr BŘÍZA, Legal Adviser, Ministry of Justice, Prague

Ms Jitka BRODSKÁ, Third Secretary, Embassy of the Czech Republic, The Hague

Ms Lucie BÍNOVÁ, Legal Officer, International Department for Civil Matters, Ministry of Justice, Prague

Ms Jana HERBOCZKOVÁ, Legal Officer, International Department for Civil Matters, Ministry of Justice, Prague

TURQUIE / TURKEY

Ms Melike BOSUTER, Legal Counsellor, Embassy of Turkey, The Hague

UKRAINE

Ms Mariana BETSA, First Secretary, Embassy of Ukraine, The Hague

URUGUAY

Mr Marcelo Esteban GERONA MORALES, Counsellor, Embassy of Uruguay, The Hague

VENEZUELA

Mr Jorge PETIT, Multilateral and Legal Affairs, Embassy of Venezuela, The Hague

ÉTATS NON MEMBRES INVITÉS / NON-MEMBER STATES INVITED

COLOMBIE / COLOMBIA

Mr Luis Antonio DIMATE, Counsellor, Embassy of Colombia, The Hague

Ms Juliana BOTERO, Head of the Trade, Investment and Tourism Section, Embassy of Colombia, The Hague

COSTA RICA

H.E. Mr Francisco J. AGUILAR-DE BEAUVILLIERS URBINA, Ambassador of the Republic of Costa Rica, Embassy of the Republic of Costa Rica, The Hague

Mr Allan SOLIS-FONSECA, Counsellor, Embassy of the Republic of Costa Rica, The Hague

OBSERVATEURS / OBSERVERS

REPRÉSENTANTS D'ORGANISATIONS INTERGOUVERNEMENTALES / REPRESENTATIVES FOR INTER-GOVERNMENTAL ORGANISATIONS

COMMISSION DES NATIONS UNIES POUR LE DROIT COMMERCIAL INTERNATIONAL (CNUDCI)
UNITED NATIONS COMMISSIONS ON INTERNATIONAL TRADE LAW (UNCITRAL)

Ms Jenny CLIFT, Senior Legal Officer, UNCITRAL, Vienna

COMMISSION INTERNATIONALE DE L'ETAT CIVIL (CIEC) / INTERNATIONAL COMMISSION ON CIVIL STATUS

Mme Joanna SCHMIDT-SZALEWSKI, Secrétaire générale, Commission internationale de l'état civil, Strasbourg

CONSEIL DE L'EUROPE / COUNCIL OF EUROPE

Excusé / unable to attend

INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE (UNIDROIT) / INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

M. José Angelo ESTRELLA FARIA, Secrétaire Général, UNIDROIT, Rome

ORGANISATION MONDIALE DU COMMERCE (OMC) / WORLD TRADE ORGANIZATION (WTO)

Excusé / unable to attend

REPRÉSENTANTS D'ORGANISATIONS NON GOUVERNEMENTALES
REPRESENTATIVES FOR NON-GOVERNMENTAL ORGANISATIONS

ASOCIACIÓN AMERICANA DE DERECHO INTERNACIONAL (ASADIP)

Mrs Beatriz PALLARÉS, Professor at the National University of Littoral, Santa Fe

ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

Excusé / unable to attend

ASSOCIATION INTERNATIONALE DU BARREAU / INTERNATIONAL BAR ASSOCIATION (IBA)

Mr Klaus REICHERT, Co-Chair, International Bar Association Litigation Committee, Dublin

INTER-AMERICAN CHILDREN'S INSTITUTE (IIN)

Excusé / unable to attend

INTERNATIONAL INSOLVENCY INSTITUTE (III)

Excusé / unable to attend

INTERNATIONAL SWAPS & DERIVATIVES ASSOCIATION (ISDA)

Excusé / unable to attend

SECRÉTARIAT / SECRETARIAT

Mr Hans VAN LOON, Secretary General
Mr William DUNCAN, Deputy Secretary General
M. Christophe BERNASCONI, Premier secrétaire
M. Philippe LORTIE, Premier secrétaire
Mrs Marta PERTEGÁS, Secretary
Ms Jennifer DEGELING, Secretary
Ms Marion ELY, Senior Legal Officer
Ms Frederike STIKKELBROECK, Attaché to the Secretary General
Mr Ignacio GOICOECHEA, Liaison Legal Officer for Latin America
Ms Mayela CELIS AGUILAR, Legal Officer
Ms Éphigénie GAGNÉ, Assistant Legal Officer
Ms Juliane HIRSCH, Legal Officer
Ms Eimear LONG, Legal Officer
Ms Laura MARTINEZ-MORA, Intercountry Adoption Co-ordinator
Mlle Ivana RADIĆ, Collaboratrice juridique
M. Nicolas SAUVAGE, Collaborateur juridique
Ms Joanna WELLER, Part-time Legal Officer

SECRÉTAIRES RÉDACTEURS / RECORDING SECRETARIES

Ms Rosehana AMIN, Intern of the Permanent Bureau
Ms Anne P. BODLEY, Lawyer
Mlle Peggy CARLIER, Docteur en droit, Elève-avocat
Mlle Chloé GRENADOU, stagiaire au Bureau Permanent

INTERPRETES / INTERPRETERS

M. Ernesto GONZALEZ
Mme Amaya MORAN
Mme Militza RÜHL
Mme Julia TANNER
M. Christopher TYCZKA
M. Derrick WORSDALE

BUREAU DU SECRETAIRE GENERAL / OFFICE OF THE SECRETARY GENERAL

Mme Céline CHATEAU, Responsable de l'administration
Ms Hélène GUERIN, Administrative Assistant
Mr Stuart HAWKINS, Administrative Assistant for the Adoption Programme
Ms Karin HIMPENS, Financial Officer
Mrs Laura MOLENAAR, Administrative Assistant
Mme Sophie MOLINA, Assistante administrative auprès du Secrétaire général
Ms Anna DE VRIES, Administrative / Human Resources Assistant
Mrs Willy DE ZOETE, Administrative Assistant to the Deputy Secretary General

FONCTIONNAIRES EN DETACHEMENT / OFFICIALS ON SECONDMENT

Ms Hannah ROOTS (Ministry of the attorney General, Province of British Columbia, Canada)
Mr Bill FRITZLEN (Department of State, USA)

STAGIAIRES / INTERNS

Ms Fernanda VIEIRA-CERQUEIRA, PhD Student
Ms Ning ZHAO, PhD Student
Ms Lara SIEVERS, Intern

DOCUMENTS / REPRODUCTION

Mr Willem VAN DER ENDT, General Services Officer
Mr Cor KONING

CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LE CONSEIL

CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE COUNCIL

CONCLUSIONS AND RECOMMENDATIONS

ADOPTED BY THE COUNCIL

Review of activities of the Conference

The Council welcomed the draft Annual Report 2008 with its comprehensive review of the activities of the Conference.

In addition the Council –

a) welcomed the successful outcome of the Special Commission on the practical operation of the Apostille, Service, Evidence and Access to Justice Conventions (2 - 12 February 2009) and took note of its Conclusions and Recommendations;

b) took note of the Conclusions and Recommendations of the Conference on direct judicial communications on family law matters and the development of judicial networks, jointly organised by the European Commission and the Hague Conference (Brussels, 15 - 16 January 2009); and

c) noted the Declaration of the Third Malta Judicial Conference on Cross-Frontier Family Law Issues, hosted by the Government of Malta in collaboration with the Hague Conference (St. Julian's, Malta, 24 – 26 March 2009).

***Signing ceremony of the* Hague Convention of 30 June 2005 on Choice of Court Agreements *and the* Hague Convention of 13 January 2000 on the International Protection of Adults**

The Council witnessed the signing of the *Hague Convention of 30 June 2005 on Choice of Court Agreements* by the European Community and of the *Hague Convention of 13 January 2000 on the International Protection of Adults* by the Czech Republic and Cyprus.

Launch of the Spanish version of the website of the Conference

The Council welcomed the launch, during the meeting, of the Spanish version of the website of the Conference.

Future work

Cross-border mediation in family matters

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.

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.

Choice of law in international contracts

The Council invited the Permanent Bureau to continue its work on promoting party autonomy in the field of international commercial contracts. In particular, the Permanent Bureau was invited to form a Working Group consisting of experts in the fields of private international law, international commercial law and international arbitration law and to facilitate the development of a draft non-binding instrument within this Working Group. The Permanent Bureau will keep Members informed on progress.

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

The Council took note of the extensive exploratory work done by the Permanent Bureau. The Permanent Bureau may convene a Working Party consisting of experts from Members to explore further the feasibility of mechanisms as described in Preliminary Document No 2 of February 2009 with the understanding at this stage that this will not lead to the development of a binding instrument.

Desirability and feasibility of a protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

The Council authorised the Permanent Bureau to engage in preliminary consultations concerning the desirability and feasibility of a protocol to the 1980 Child Abduction Convention containing auxiliary rules to improve the operation of the Convention. The Permanent Bureau should prepare a report on these consultations which should be discussed by the Special Commission to review the practical operation of the 1980 and 1996 Conventions at its next meeting in 2011, on the understanding that any decision on the question of a protocol can only be taken by the Council.

Feasibility of 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

The Council took note of the status of preparation of a questionnaire, the responses to which will be submitted to the Special Commission on the implementation of that Convention and a report made to the Council meeting of 2010.

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

The Council took note of the follow-up report and invited the Permanent Bureau to 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.

Other topics

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 and e-justice;

b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage;

c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;

d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;

e) assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations.

The Council decided not to include in the work programme of the Conference a feasibility study on the provision of enhanced legal assistance in particular categories of cases, such as small and / or uncontested claims (suggested in Conclusion and Recommendation No 65 of the February 2009 Special Commission on the Apostille, Service, Evidence and Access to Justice Conventions) and to reserve the topic for future consideration.

Post-Convention services

The Council once again expressed its support for the broad range of activities currently being carried out by the Permanent Bureau to promote and to ensure the effective implementation and operation of the Hague Conventions, including through the development of regional programmes.

The Council recognised the additional future work for the Permanent Bureau arising from the Conclusions and Recommendations of the Special Commission on the practical operation of the Apostille, Service, Evidence and Access to Justice Conventions.

The Council welcomed the activities currently being undertaken by the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions, and in particular the development of the International Centre for Judicial Studies and Technical Assistance, made possible by generous funding through the Supplementary Budget.

The Council noted the encouragement given by the Secretary General to Members to enlist the support of their respective development agencies in view of the fact that many projects involve capacity building, promotion of the rule of law and good governance and, moreover, frequently involve countries qualifying as recipients under the ODA (Official Development Assistance) criteria of the OECD.

The Council reiterated its support for the activities of the Permanent Bureau in relation to the use and the development of information technology systems in support of Hague Conventions in the areas of legal co-operation and family law.

Organisation of the work of the Conference

The Council confirmed the continued relevance of the Strategic Directions set out in the Strategic Plan of 2002 (see Prel. Doc. No 5 of March 2009).

The Council invited the Permanent Bureau to initiate renewed discussions of the Organisation's fundamental strategic and budgetary issues.

ORDRE DU JOUR / AGENDA

AGENDA

MEETING OF THE COUNCIL ON
GENERAL AFFAIRS AND POLICY OF THE CONFERENCE

(31 March – 2 April 2009)

The draft Agenda will be treated with some flexibility and may need to be modified in the light of continuing discussions in the Council meeting, in particular concerning the items under future work.

Sessions will normally begin at 9.30 a.m. with a lunch break from 1.00-2.30 p.m., with the exception of the first day which will start at 2.00 p.m., and end at 6.00 p.m. Breaks for coffee will normally be from 11.00 a.m. till 11.15 a.m., and tea from 4.00 p.m. till 4.15 p.m.

Tuesday 31 March 2009, 2.00 p.m.

I. Review of activities since the previous Council meeting (1 – 3 April 2008)

1. Overview of work accomplished in 2008.

   See draft Annual Report 2008 (Prel. Doc. No 12 of March 2009).

2. Overview of work during the first quarter of 2009.

   Report and discussion on the results of:

   - the Special Commission on the Practical Operation of the Hague Apostille, Service, Evidence and Access to Justice Conventions (2 – 12 February 2009) – *see Preliminary Document No 4 of February 2009; oral remarks by the Secretariat*;
   - the Conference on direct judicial communications in family law matters and the development of judicial networks, jointly organised by the European Commission and the Hague Conference (Brussels, 15 - 16 January 2009) – *see Preliminary Document No 3 of February 2009; oral remarks by the Secretariat*;
   - the Third Malta Judicial Conference on Cross-Frontier Family Law Issues (St. Julian's, Malta, 24 – 26 March 2009) – *see Information Document No 2 of March 2009; oral remarks by the Secretariat.*

II. Future work: new topics

Under this heading there will be a discussion of any new topics which have been, or may be, suggested by the governments, the international organisations or the Permanent Bureau. See Preliminary Document No 2 of February 2009 prepared by the Permanent Bureau, with comments on each of the topics below.

3. Cross-border mediation in family matters.

   See the "Feasibility Study on Cross-border Mediation in Family Matters - Responses to the Questionnaire", Preliminary Document No 10 of March 2008, the questionnaire prepared by the Permanent Bureau (L.c. ON No 29(07) dated 8 October 2007) and the comments received.

4. Choice of law in international contracts.

   See "Feasibility study on the choice of law in international contracts – Report on work carried out and suggested work programme for the development of a future instrument", Preliminary Document No 7 of March 2009.

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

See "Accessing the content of foreign law", Preliminary Document No 11 of March 2009.

6. Proposal for a Protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

See also the proposal of Switzerland of August 2007 which was communicated to the National and Contact Organs of the Members, all States Parties to the 1980 Convention, and the other States and Organisations that attended the Fifth Meeting of the Special Commission to review the operation of the 1980 Convention, for their views (L.c. ON No 35(07), dated 1 November 2007); see Preliminary Document No 12 of March 2008.

7. Feasibility of a Protocol to the *Hague Convention 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.

See Recommendation No 9, Final Act, Twenty-First Session, Part C, p. 55.

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

See Preliminary Document No 8 (third follow-up note) of March 2009.

9. Other topics retained by the Council on the Conference's Agenda –

   a) questions of private international law raised by the information society, including electronic commerce;

   b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage; *see Preliminary Document No 8 of May 2000;*

   c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;

   d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples; *see Preliminary Document No 11 of March 2008*;

   e) assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations.

10. Any other topics that may be proposed –[1]

Feasibility study on the provision of enhanced legal assistance in particular for categories of cases such as small and / or uncontested claims (suggestion by the Special Commission of 2 – 12 February 2009).

6.00 p.m. Launch of the Spanish section of the multilingual website of the Hague Conference, followed by a reception hosted by the Permanent Bureau, at the Academy Building.

[1] See also Annex A.

Wednesday 1 April 2009

III. Round table on progress made concerning the signature and ratification of and accession to Conventions; signing of, or depositing instruments of ratification of or accession to Hague Conventions

11. Conventions adopted by the Twenty-First Session (2007) –

    a) *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance;*

    b) *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*.

    Preparations of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention.

12. Convention adopted by the Twentieth Session (2005) –

    Convention of 30 June 2005 on Choice of Court Agreements.

13. Convention adopted by the Nineteenth Session (2002) –

    Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

14. Conventions adopted by the Eighteenth Session (1996) and by the Special Commission of a Diplomatic Character (1999) –

    a) *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;* and

    b) *Convention of 13 January 2000 on the International Protection of Adults*.

15. Conventions adopted by previous Sessions –

    The following Conventions are proposed for discussion –

    a) *Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters;*

    b) *Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.*

IV. Monitoring, adaptation and support of Conventions

A. Conventions in the areas of commercial and finance law, and on legal co-operation and litigation

16. Follow up on the Special Commission of 2 – 12 February 2009 –

    a) Apostille Convention;

    b) Service Convention;

    c) Evidence Convention; and

    d) Access to Justice Convention.

B. Conventions on international protection of children, vulnerable adults, international family and family property relations

17. Report on the activities in relation to the Conventions of 1980, 1993 and 1996 and, in particular –

    a) follow-up on the Special Commission meeting of October-November 2006 on the practical operation of the 1980 Convention and the implementation of the 1996 Convention, including progress in relation to Guides to Good Practice; and planning for the next meeting of the Special Commission in 2011;

    b) preparation of the Special Commission of 2010 on the practical operation of the 1993 Convention, including progress in relation to Guides to Good Practice.

C. General issues

18. Monitoring and support of Conventions through information technology.

19. Judicial networking and direct judicial communications.

V. Regional developments

a) Latin America

b) Asia Pacific

c) Malta Process

d) Africa

e) CIS States

f) Regional presence of the Hague Conference.

VI. Organisation of the work of the Conference

20. International Centre for Judicial Studies and Technical Assistance.

    a) Achievements, current developments and tentative work programme 2009-2012

    b) Funding methods, in particular in respect of countries identified as Official Development Assistance Recipients, in accordance with OECD criteria.

12.30 p.m. Signatures, deposit of instruments of ratification or accession to Conventions, followed by a reception in the Academy Building hosted by the Czech Republic.

VII. Future work (cont'd)

Thursday 2 April 2009

VIII. Organisation of the work of the Conference (cont'd)

21. The Strategic Plan.

    Report on progress by the Secretariat (see Prel. Doc. No 5 of March 2009).

22. Proposed Budget for Financial Year LV (1 July 2009 – 30 June 2010).

Draft Budget for Financial Year LV (1 July 2009 – 30 June 2010) and Explanatory Notes (see Prel. Doc. No 9 of March 2009).

23. Supplementary Budget for Financial Year LV (1 July 2009 – 30 June 2010), Part I Special Projects and Expenses; Part II, the Hague Conference International Centre for Judicial Studies and Technical Assistance.

Draft Supplementary Budget for Financial Year LV (1 July 2009 – 30 June 2010) and Explanatory Notes (see Prel. Doc. No 10 of March 2009).

IX. Co-operation with other international organisations

24. Co-operation with UNCITRAL, UNIDROIT and other global organisations.

25. Co-operation with the European Union and other regional organisations;
oral remarks by the Secretariat.

X. Conclusions

The meeting will end by 5.00 p.m. at the latest.

Annex A

Topics informally suggested to the Permanent Bureau –[1]

- continuation of the Judgments Project, possibly through additional Protocols to the Convention on Choice of Court Agreements, a model law or model (bilateral) agreements;

- development of a practical guide on comparative private international law (on a country-by-country or subject-by-subject basis);

- development of model bilateral agreements to facilitate the implementation of (multilateral) Hague Conventions;

- questions of private international law in relation to intellectual property issues;

- the international recovery of assets relevant to criminal law enforcement as well as to ordinary claims, and which is related to aspects of provisional and protective measures;

- questions in relation to status of children (excluding adoption), in particular recognition of parent-child relationships *(filiation)*;

- conventions (or model laws) on the law applicable to specific contracts (barter transactions; trading in futures on a stock exchange);

- cross-border regulatory issues: how to preserve, through international co-operation and mutual enforcement, the integrity of the growing variety of regulatory systems in a converging world;

- suggestion recently made to the Permanent Bureau: Direct communication scheme in cross-border insolvency cases.

[1] See Prel. Doc. No 20 of March 2002 for the attention of the Nineteenth Session: "Observations concerning the strategy of the Hague Conference in reply to the Secretary General's letter of 30/31 July 2001" (topics already previously mentioned in the Agenda have been omitted).

RAPPORTS DE SÉANCE / REPORTS OF MEETING

Council on General Affairs and Policy of the Conference (31 March – 2 April 2009)

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

REPORT OF MEETING No 1

Distribution: by e-mail

MEETING OF TUESDAY 31 MARCH 2009 – AFTERNOON SESSION

The meeting opened at 2.20 p.m. under the chairmanship of Mr Leinonen (Finland).

The Chair welcomed the experts and looked forward to working with the delegations on the items on the Agenda.

The Secretary General drew the attention of the experts to the draft Annual Report, to Preliminary Document No 2 outlining a possible work programme, and to a new edition that had been distributed to the experts of the collected Hague Conventions. He noted that suggestions made in the Special Commission (2 – 12 February 2009) and arising from the Third Malta Judicial Conference (24 – 26 March 2009) came after preparation of Preliminary Document No 2 and thus were not addressed in the materials.

An expert from Switzerland announced that on 27 March 2009 Switzerland had deposited their instrument of ratification for both 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* and the *Hague Convention of 13 January 2000 on the International Protection of Adults*. The Conventions will enter into force for Switzerland on 1 July 2009.

The Secretary General congratulated Switzerland and encouraged other States to consider accessing to or ratifying the two instruments simultaneously, noting that the systems for protecting persons provided in each were very similar.

The Chair concurred with the Secretary General's recommendation and adopted the Agenda as drafted without comment from the floor.

I. Review of activities since the previous Council meeting (1 – 3 April 2008)

1. Overview of work accomplished in 2008

The Attaché to the Secretary General presented the draft 2008 Annual Report (Prel. Doc. No 12 of March 2009) reiterating the Secretary General's invitation for any comments to be made by 14 April 2009.

2. Overview of work during the first quarter of 2009

The Chair introduced the item on the work of the Permanent Bureau in the first three months of 2009.

Mr Bernasconi (First Secretary) reported on the Special Commission on the practical operation of the Hague Apostille, Service, Evidence and Access to Justice Conventions (2 – 12 February 2009) (Prel. Doc. No 4 of February 2009). He relayed that the Special Commission was attended by 203 experts from 64 States, comprising an increase of more than 75% from

previous SpecialCommissions and representing an increasing number of States Parties and the importance of the Conventions. Mr Bernasconi pointed to the 198 responses received to the four questionnaires sent out ahead of the Special Commission noting positively that a wealth of information had been provided. He felt the Special Commission had been a significant success with practical discussions on issues relating to the operation of the four Conventions which had resulted in 100 Conclusions and Recommendations. In summary the Commission had thought it a priority to develop a practical handbook on the Apostille Convention and that it was important to continue the e-APP programme; encouraged the use of modern technologies and looked to further development of existing handbooks with regard to the Service and Evidence Conventions; and suggested, in Conclusion and Recommendation No 65, subject to consideration by the Council, that a feasibility study be prepared on the provision of legal assistance in some cases such as with small and / or uncontested claims.

Mr Bernasconi clarified that the implementation of these Conclusions and Recommendations required resources. He extended the Permanent Bureau's gratitude to the United States of America for a six-month secondment of Mr Bill Fritzlen (starting date to be confirmed) focused on the Conclusions and Recommendations from the Special Commission, and noted that the Permanent Bureau would welcome additional secondments. In spite of the very positive results from the Special Commission, the Permanent Bureau felt that in the future it would be more productive not to consider all four Conventions at one time.

An expert supported the suggestions made by Mr Bernasconi but felt the feasibility study was less of a priority. Another expert queried whether the Conclusions and Recommendations drawn by the Special Commission did not encroach upon the role of the Council by suggesting a programme of work that was theirs to decide.

The Secretary General concurred with the expert that it was the role of the Council to decide the programme of work and offered that any recommendation tending toward this was made only as a suggestion for the Council's consideration.

Mr Lara Cabrera (Mexico – Chair of the February 2009 Special Commission) endorsed the programme of work on the four Conventions and reassured the Council that care had been taken in the course of the Special Commission not to touch upon the mandates of other parties.

The Chair concluded that it was appropriate to consider limiting future Special Commissions to less than four Conventions. He assessed that the proposals on future work relating to the Apostille, Service and Evidence Conventions appeared to be uncontested, while the feasibility study prompted by the study of the Access to Justice Convention was thought to be less of a priority. He introduced the next topic, namely the conference on direct judicial communications on family law matters and the development of judicial networks organised by the European Commission and the Hague Conference (15 – 16 January 2009) (Prel. Doc. No 3 of February 2009).

Mr Lortie (First Secretary) recalled that this Conference was organised to facilitate direct communication between judges in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Convention) and to draw up general principles on this matter. The Conference brought together over 140 judges and experts from 54 States most Party to the 1980 Convention; in the past two years the international Hague network of judges had doubled to more than 40 judges from 25 jurisdictions with seven judges from Latin America appointed in the last 12 months. He recalled the importance of encouraging the development of such networks particularly as in some States there was no legal foundation for direct judicial communication otherwise. Mr Lortie closed in saying that the idea was to continue working on general principles and to present these at the next Special Commission on the 1980 Convention to take place in 2011.

A number of experts expressed their support for the work achieved through this Conference on direct judicial communications.

The Chair introduced the next topic on the Third Malta Judicial Conference on Cross-Frontier Family Law Issues (24 – 26 March 2009) (Info. Doc. No 2 of March 2009).

The Deputy Secretary General recalled that the purpose of the Conference was to facilitate dialogue between, on the one hand, States Parties to the 1980 Convention and, on the other, States not Party to the Convention whose legal systems were based on, or inspired by, Shariah law. This dialogue was aimed at determining how to secure cross-frontier rights of contact in cases of abductions, including cross-border co-operation in these issues. The Conference was attended by 24 States, including new States such as India, Bangladesh, Israel, Qatar, Oman, Switzerland and representatives from international and non-governmental organisations. The high level of the participants also contributed to making it valuable, noting that a basic problem was that legal co-operation between certain States in these areas was either non-existent or not working well with great difficulties faced *inter alia* for the return of or access to children. Thanks went to a number of Member States for their financial support including the United Kingdom, Germany, Canada, the United States of America, the Netherlands and Sweden, as well as to the host country Malta.

The Conference resulted in a third Malta Declaration. Of this, paragraph 7 was notable and emanated from experts from Canada regarding the development of mediation services. The Deputy Secretary General thought it was a successful Conference in terms of improving relationships and understanding between the jurisdictions involved and in creating a wider appreciation of the potential benefits of the Hague Conventions of 1980 and 1996. It will be followed by further initiatives, including a smaller conference in Oman later this year and another possible meeting in Morocco in 2010.

A number of experts endorsed the Malta Conference recommendations relayed by the Deputy Secretary General.

The Secretary General echoed what the Deputy Secretary General had said and expressed the Permanent Bureau's thanks to the governments that had made this Conference possible, in particular the Government of Malta which had generously hosted the Conference and actively supported it at the highest level. He was encouraged by the progress made in recognition of the Hague Conference's work.

II. Future work: new topics

The Secretary General introduced Preliminary Document No 2 with an overview of the importance, on the one hand, of new instruments and on post-Convention services and, on the other, an activity now taking up approximately 70% of the Permanent Bureau's time. While both were necessary to the work of the Hague Conference, it was for the Council to decide the appropriate balance between these activities and to consider future directions. The Secretary General expressed his gratitude for financial assistance received through the Supplementary Budget supporting initiatives such as the International Centre for Judicial Studies and Technical Assistance and recalling that the resource projections did not include the Conclusions from the February 2009 Special Commission or from the Malta Conference.

3. Cross-border mediation in family matters

The Deputy Secretary General reported on the work on a feasibility study on cross-border mediation in family matters (Prel. Doc. No 10 of March 2009) and noted that the Permanent Bureau had already prepared two studies in this area, one relating to the 1980 Convention and the other to cross-border mediation in family matters undertaken at the request of the Council in April 2007 and presented at the 2008 Council meeting. Two decisions were taken at this meeting: first, that the Permanent Bureau continue to follow developments in the area, which it has been doing; second, that it start work on a Guide to Good Practice relating to the 1980 Convention. In this the Permanent Bureau aimed to consult with experts in international family mediation as to the contents of the Guide. Member and Contracting States would be further consulted in preparation of the Guide.

An expert supported the development of the Guide as a priority over other projects, and felt the process should involve both Hague Conference Members and non-Member States. Two experts thought a broader approach to mediation in family disputes generally was preferable to focusing on the 1980 Convention. A fourth expert noted it was important to identify obstacles to cross-border mediation particularly under the 1980 Convention and stressed the importance of calling upon qualified mediators as well as of training and the establishment of a database toward concluding an agreement that would be recognised and supported by States. A fifth expert felt the Guide should be relevant to all States even where they had different cross-border mediation procedures and that it should be descriptive rather than prescriptive.

Another expert presented an outline of an instrument on mediation in cross-border family disputes for consideration by the Council. A further expert responded that he thought it was premature to draft a new Convention but that a Guide to Good Practice would have practical uses. He thought that a well-drafted guide would cover issues relating to the 1996 Convention and others as well even if experts had raised concerns about restricting the Guide to the 1980 Convention. He also encouraged Member States to dedicate more resources to mediation. Two other experts supported these comments, in particular the development of a guide on cross-border disputes in family matters.

The Chair found clear support for the proposals made in Preliminary Document No 2 at paragraph 31, even if in future years this work progressed even further.

The Deputy Secretary General relayed that participants in the Malta discussions had expressed frustration at dealing with this type of case in the absence of legal instruments, or effective frameworks for co-operation. He was in favour of building workable structures, including that contained in the proposal by Canada toward facilitating access to mediation services in the near future. The Deputy Secretary General relayed the importance of establishing a working group of experts from both Member and non-Member States to put a practical programme in place. He thought that the expert group focusing on the 1980 Convention would inevitably confront legal issues relevant to international family mediation more generally.

An expert from Canada discussed the proposal made by experts from Canada at the Malta Conference. She referred to paragraph 7 of the Malta Declaration which described the system of mediation envisaged, noting that the objective was to give legal effect to agreements reached in the context of mediation via a simple mechanism. The expert envisioned a working party operating on three tracks: first, the collection of information from countries that had participated in the Malta Process; second, an educational component identifying different approaches and sharing experiences; and third, putting the structures themselves in place.

The Deputy Secretary General relayed that the Permanent Bureau had experience with the question of mediation and that a further instrument in this area may ultimately need to be developed. If the purpose was to look at mediation generally, then the Malta proposal came within the Permanent Bureau's mandate. In this case the question was that of resources and that it would be important to identify sufficient funding to get both Member and non-Member States together on this issue.

The Secretary General felt there was no problem concerning the Permanent Bureau's mandate in this area.

Several experts supported the mediation initiatives although they relayed concerns about finding the necessary resources to realise the project. One expert felt the project was of sufficient importance to be a priority even vis-à-vis other projects already identified.

The Chair felt there was a consensus that the project was important and that the Hague Conference should be involved but that the question of resources would have to be considered. He noted the wish expressed by a number of experts that non-Member States

participate in the process. He next introduced the topic on choice of law in international contracts looking to the development of a further instrument (Prel. Doc. No 7 of March 2009).

4. Choice of law in international contracts

Ms Pertegás (Secretary) reported on the work of the Permanent Bureau on choice of law in international contracts including the involvement of a group of experts, which work would be presented to a future Special Commission. She felt that the project, stemming from a Recommendation of the Council on General Affairs and Policy of the Conference of 2008, would contribute to legal certainty in economic matters and form a corollary to the 2005 *Convention on Choice of Court Agreements*. The mandate was to work on a non-binding instrument promoting respect for party autonomy in choice of law. Stakeholders such as the International Bar Association (IBA), International Chamber of Commerce (ICC), UNCITRAL and UNIDROIT had been consulted. She noted that it was the first time the Hague Conference would be involved in creating a non-binding instrument.

An expert from Argentina relayed that his State had reconsidered its position and supported the proposal as to the non-binding format and the objectives of the instrument. He thought however that it should exclude certain consumer and employment contracts and focus solely on "business-to-business" agreements. He supported convening a group of experts as the best method in preparing the draft.

An expert expressed her doubts as to the appropriateness of the Hague Conference developing a "soft law" instrument. A number of other experts thought, however, that a non-binding instrument was preferable as it would be difficult to make such an instrument binding.

Some experts expressed the wish for a transparent process in the preparation of this instrument. Two experts proposed that there be regular updates so that all had the opportunity to contribute in this area.

A representative for the International Bar Association (IBA) relayed the very significant interest of practitioners in this area and supported the initiative. A representative for the Latin American Association of Private International Law (ASADIP) concurred.

Ms Pertegás (Secretary) relayed that the Bureau appreciated the importance of finding solutions that are acceptable in the different parts of the world. She indicated that the Bureau would provide experts with an opportunity to comment on the best methodologies to be followed in this project.

The meeting closed at 6.05 p.m.

Immediately following the meeting, a small ceremony was held to launch the Spanish version of the Hague Conference website by Ms Borrás (Spain).

Council on General Affairs and Policy of the Conference (31 March – 2 April 2009)

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

REPORT OF MEETING No 2

Distribution: by e-mail

MEETING OF WEDNESDAY 1 APRIL 2008 – MORNING SESSION

The meeting was opened at 9.35 a.m. by Mr Leinonen (Finland).

5. Accessing the content of foreign law and the need for the development of a global instrument

Mr Lortie (First Secretary) noted that the topic of access to foreign law has been on the Council's Agenda following the suggestion of a feasibility study in 2006. He explained that following a meeting of experts held in February 2007, the Hague Conference came to the conclusion that it was not possible to unify the treatment of foreign law. On the basis of this premise, the Permanent Bureau prepared a questionnaire to ascertain the needs and practical difficulties of States to access the content of foreign law. Based on the results of this questionnaire, the Permanent Bureau was commissioned to further explore the mechanisms to access the content of foreign law.

In light of these findings, he recalled that in October 2008 experts convened in The Hague to discuss the availability of online legal information in domestic law. These discussions took place in a context different to that in 1968 when the London Convention was adopted. The Internet has now placed access to both domestic law and foreign law on a quasi-equal footing.

The experts to the October 2008 meeting came at their own expense which illustrates the great interest in the subject. The recent conferences in this area of law further demonstrate the ongoing discussions in this matter. A European Directive also intends to facilitate the exchange of information within the institutions that participate in the legislative processes within the European Union.

Mr Lortie explained that from the experts' meeting, it was identified that two entities provide access to foreign law. The first were governments who disseminate law through legislation, regulation, case law and academic opinion. The second, legal information institutes that provide information on domestic law. There was a wide representation from these legal information institutes at the October 2008 experts' meeting and they produced the guiding principles available in the annex to Preliminary Document No 11 A. These guiding principles are to be considered in the development of a future instrument should the Council decide to proceed with it.

He noted that it had been established that up to 25% of the issues dealt with by judges under the London Convention might be resolved through the free access to online legislation. He advised that combining free access to law together with a co-operation mechanism, such as the one established in the Council of Europe, would be beneficial. He added that there is currently no harmonised approach to the access of foreign law and encouraged countries to move in that particular direction.

Experts at the October 2008 meeting had stressed some key points which included the integrity of information made available, the protection of personal information especially in family law cases and on a technical aspect and that an open format and meta-information should be made available to ensure the accuracy and authority of the foreign law relied upon.

These conclusions suggest that further exploration of the issue is required, whether in the form of a binding instrument or an alternative framework.

Additionally, Mr Lortie noted that if the Council were to agree to pursue this matter it would have to agree on a clear mandate for negotiations. It would also require a precise formulation of the objectives of such an endeavour.

Mr Bernasconi (First Secretary) added that while the issue of access to foreign law should remain on the Agenda, it would be useful if such an endeavour encompasses the three points enumerated in Preliminary Document No 11 A. He explained that it would not be appropriate to confine an instrument to only one of these elements as they each respond to a specific need.

The first point concerned access to online legal information on foreign law. He noted that in most developed States, access to legal information was a fundamentally private initiative. As such, any progress in this respect should not be restricted by the implementation of a rigid framework that would fetter future development. There should instead be an identification of good practice and quality criteria practiced by these private institutions.

Secondly, he noted that there was room for improving the global system for administrative and / or judicial co-operation. The statistics reveal that there is a lack of use of the existing London and Montevideo Conventions. It was found that the delay in response and the lack of precision in the information led to the underutilisation of these Conventions.

Thirdly, he highlighted the need for an international network of experts to facilitate the efficacy of the administrative / judicial co-operation with regard to complex legal questions. This is crucial since the administrative and / or judicial co-operation is reaching its limits especially in cases of international insolvency and international succession.

Mr Bernasconi expressed that the Council needs to bear in mind a broader picture when dealing with the issue of access to foreign law. Additionally, a clear consensus on all three components needs to be reached when dealing with this issue.

The Chair recognised the possibility of arriving at a binding instrument as opposed to previous suggestions for a soft law instrument. He called for remarks for a potential binding instrument in this area and more importantly what its content should include.

Some experts supported the initiative of the Permanent Bureau and acknowledged the need for the harmonisation of the access to foreign law to provide judges who apply such law as much ease of access as possible.

One expert was in favour of a binding instrument for a co-operation mechanism. She recognised the opportunity to create such an international instrument as existing Conventions were not functioning ideally. As to the uniformity of the publication of information on databases, the expert explained that whether a binding instrument or guidelines will suffice is to be determined at a later stage.

Another expert agreed that a binding instrument should be adopted and that specific attention as to the online access of foreign law is of paramount importance.

However, other experts disagreed and opposed the initiative for a binding instrument.

An expert indicated that there was already a tremendous amount of information available online. The expert stated that it was not the role of the Hague Conference to develop standards for reliability and authority of the content of foreign law. Further, the expert suggested that there could be self-regulation as online legal information is provided by commercial bodies. In particular, the expert noted that common law courts would be reluctant to respond to requests by other States to prove foreign law as the burden of proof falls on the litigating party seeking to apply it.

Another expert expressed his willingness for a co-operative mechanism that would include the participation / involvement of private bodies such as institutions or bar associations. Additionally, the expert noted that a binding instrument to provide access to foreign law is unsuitable for his State's federal structure, based on complex common law legal tradition, limited resources and concerns of liability in the provision of legal information.

Generally, the dissenting experts queried the cost and benefit of initiating a regime to promote access to foreign law. Given the limited resources and other priorities of both the States and the Permanent Bureau, a binding instrument does not seem to be a feasible option.

An expert suggested a compromise in developing a set of guidelines rather than an international convention. He suggested looking to the existing Hague Conventions, for instance in International Child Abduction and the accompanying INCADAT database. Piloting on an existing programme would allow for an examination of the project on a limited scope before wider decisions could be made.

In particular, an expert from the European Community (EC) recognised concerns raised by the dissenting States and highlighted the EC's ongoing progress in promoting access to foreign law within its Member States. In light of comparative studies carried out in the EU, the expert offered to share her experiences with the Permanent Bureau and other States the results of those studies. She added that in the EC, the European Judicial Network in Civil and Commercial Matters served as a contact point to access foreign law within the Member States.

The Secretary General noted the divergent common law and civil law views but suggested that they might diminish in the future for two reasons. First, courts will increasingly want to ascertain foreign law with more international instruments requiring the application of different laws. Secondly, the experts' meeting in October 2008 revealed that private institutions themselves, whether based in common law or civil law jurisdictions, suggested that more co-ordinated standards need to be observed. He emphasised the need for a binding instrument to ensure a stable mechanism exists to respond to a judge's request for foreign law. Also, the Secretary General explained that if the Permanent Bureau is expected to follow up on its work, it would need the support of a binding instrument.

The Chair noted that there was strong disagreement on the need for a binding instrument at this stage or for the Permanent Bureau to invest its resources towards such an initiative. However, the access of foreign law should not be dropped from the Agenda as the issues might change in the future. The Chair stated that the final decision should only be taken after further discussion on other projects on the Agenda.

6. Proposal for a protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

The Deputy Secretary General noted that the initial idea of a protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ("1980 Convention") proposed by Switzerland was considered in 2008. He explained that experts were of the opinion that the implementation of 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* ("1996 Convention") would resolve many of the issues that a protocol would try to address. As a result, the 2008 Council had reserved the need for a protocol to the 1980 Convention.

He suggested that with the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* now complete, together with the important progress made in implementing the 1996 Convention, the Permanent Bureau should now begin the process of considering the feasibility of a protocol. The feasibility study will entail a careful and measured approach and will include consultation with experts, Contracting States and Members to address specific concerns. The Permanent Bureau would establish at the outset whether there would be consensus to embark on a protocol. A report on the consultations could be

presented at the next meeting of the Special Commission to review the practical operation of the 1980 Convention due to take place in 2011.

Some experts opposed the suggestion of a protocol and expressed the view that the issue should be set aside. It was stated that efforts should be directed at promoting the ratification of the 1996 Convention and to allow States to devote their resources towards its implementation.

One particular expert stated that when the possibility of a protocol was put before the local governments in her federal State, the general consensus was that time should be given for the 1996 Convention to work.

Several experts echoed this view and added that the 1996 Convention would rectify issues a protocol intended to address. These experts were of the view that there are other outstanding issues to be dealt with and a protocol for the 1980 Convention is not a priority.

Other experts were willing to compromise and allow for the Permanent Bureau to explore the need for a protocol if there was first a feasibility study to ascertain its utility and if a cautious and focussed approach is employed.

A particular expert expressed his support for a protocol and explained that the Permanent Bureau would only be embarking on a preliminary analysis which he felt was already necessary in preparation for the 2011 Special Commission. He added that having studied the issue, he was of the opinion that the 1996 Convention does not necessarily address all the issues not covered by the 1980 Convention. For instance, he explained that the safe return of a child is based on mutual trust even if there appeared to be some risk of harm to the child upon return. The expert suggested that a protocol may assure judges in trying to deal with such difficult issues.

Another expert went so far as to suggest that the 1980 Convention addresses issues which are now irrelevant and would in time be replaced by the 1996 Convention. As such, a protocol is necessary to address the concrete problems under the 1980 Convention.

The Deputy Secretary General clarified that the essence of the Permanent Bureau's proposal is for the commencement of a consultation process. Following which, a preliminary report would be produced and then discussed among experts at the 2011 Special Commission. If experts felt that a protocol is necessary, their recommendation would be put before the next Council to decide whether the issue should be on the Hague Conference's Agenda. Only upon approval by the Council would the Permanent Bureau then commence the process of drafting a protocol. A negotiating process with formal notice given to Contracting States of the 1980 Convention would then follow.

The Deputy Secretary General clarified that the Special Commission will not have the mandate to direct the Permanent Bureau to commence work on a protocol. Rather, it will merely explore whether a protocol is feasible and give advice to the Council.

The Deputy Secretary General also addressed earlier comments and stated firmly that the 1980 Convention is still fit for purpose and it continues to provide a clear legal structure to aid parents and children seeking redress in difficult situations. He also mentioned that there is broad satisfaction with the operation of the 1980 Convention and a number of States are preparing to ratify the Convention.

The Chair summarised the discussions of experts by stating that there is generally broad support in the Permanent Bureau taking steps to assess the need for a protocol. He noted that there were some States that felt that the Hague Conference should not invest its limited resources in this area.

He also recognised that one State in particular wished to move forward with a protocol and that it appears that, at least provisionally, the item will remain on the Council's next Agenda with time reserved for it at the Special Commission in 2011.

7. Feasibility of a protocol to the Hague Child Support Convention in respect of vulnerable persons

By way of background, Mr Lortie (First Secretary) referred the Council to the Minutes of the Council on General Affairs and Policy of the Conference of May 2008 found in Preliminary Document No 1, pages 36-37. He hoped that a questionnaire which was currently being prepared would be circulated by the end of April 2009 with a return date of summer 2009, in time for the Special Commission later this year.

Most experts expressed a willingness to support a questionnaire as it did not require too much of the Permanent Bureau's resources. However this general consensus was tempered by concerns of the viability and priority of such a protocol.

As a matter of priority, some experts stated that efforts should be focussed on ratification of the Convention.

One expert mentioned that internal work towards his country's ratification of the Convention is well underway, while another noted that research regarding suitability of the Convention is fairly advanced and the Convention may be signed soon.

The Chair noted the continued support for the work undertaken by the Permanent Bureau for the coming year on this issue.

8. Application of certain private international law techniques to international migration

The Secretary General recalled the third follow-up note on the issue found in Preliminary Document No 8 and noted that the application of certain private international law techniques to aspects of international migration has been discussed with international organisations and other relevant parties. He stated that there are no governance structures that deal satisfactorily with international migration despite the work of the United Nations with its *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990). The Secretary General explained that the Hague Conference had accumulated a considerable experience in developing governance for people on the move.

It is a crucial question. The need to address issues in international migration is illustrated by tragedies faced by migrant workers travelling in search of employment. Additionally, discussions with the UN Special Representative for Migration, Mr Sutherland, indicated the need for a framework for co-operation.

The Secretary General noted that in the European Union, Member States remained sovereign with regard to decisions of which migrants to admit and for how long, and yet the European Community had developed promising co-operative arrangements with certain countries of origin. The need for a more global mechanism to facilitate the orderly movement of migrants for purposes of circular or temporary migration, licensing of agents and facilitating remittances would become increasingly necessary. The challenge is to provide an international framework but to still preserve the sovereignty of States.

Some experts dissented with the opinion of the Secretary General and expressed doubts as to the necessity of such an instrument. They recognised the importance of the issues raised, especially to countries with large migratory populations, but raised concerns of a global mechanism attempting to regulate international migration. This would impinge on a sovereign State's right to implement its migration policy and formulation of domestic law in this area.

An expert referred the Permanent Bureau to the Basel Council Guidelines and the World Bank's co-ordinating efforts to implement those recommendations and stated that he did not support the retention of this item in the Agenda in light of these existing frameworks.

Additionally, another expert stated that although private law issues arise with respect to remittances between the host State and country of origin, such issues have not been sufficiently identified. Where they have been identified, the expert expressed difficulty in seeing how the Hague Conference could address them with private international law solutions.

These experts submitted that it was not a primary issue to be dealt with by the Permanent Bureau. However, they were willing for the Permanent Bureau to explore it further if its resources allowed for it to do so.

An expert suggested that the Hague Conference is better placed to provide assistance instead to other organisations.

However, other experts were in strong favour of the Permanent Bureau's continued work in this area, as it was highly relevant to their respective countries. They therefore wished for the issue to remain on the Agenda.

An expert stated that the issue of international migration should be explored from a technical viewpoint, rather than a political one. This would ensure that a sovereign State's right to develop national policy does not become an obstacle to developing law in this area.

One expert offered to share his State's bilateral experiences to aid discussions where legal and technical issues are concerned. This included a protocol it had signed with another State which provides for various co-operation measures.

Concurring with the view that it was important for the Hague Conference to work on this issue, another expert referred the Council to Preliminary Document No 8 which enumerates possible forms of international co-operation. He expressed the need to address structural issues like circular migration in order to promote social and economic development.

After the interventions, the Chair noted that while there were other interventions to be heard, it was time for the signatures to a number of instruments.

The meeting closed at 12.30 p.m.

Signing ceremony of the *Hague Convention on Choice of Court Agreements* and the *Hague Convention on the International Protection of Adults*

The Council witnessed the signing of the *Hague Convention of 30 June 2005 on Choice of Court Agreements* on behalf of the European Community by His Excellency Mr Jirí Pospíšil, Minister of Justice of the Czech Republic.

This was followed by the signing of the *Hague Convention of 13 January 2000 on the International Protection of Adults* on behalf of the Czech Republic by His Excellency Mr Jirí Pospíšil, Minister of Justice and for Cyprus by His Excellency Mr James C. Droushiotis, Ambassador of the Republic of Cyprus in The Hague.

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

REPORT OF MEETING No 3

Distribution: by e-mail

MEETING OF WEDNESDAY 1 APRIL 2009 – AFTERNOON SESSION

The meeting opened at 2.30 p.m. under the chairmanship of Mr Leinonen (Finland).

II. Future work: new topics (cont'd)

8. Application of certain private international law techniques to aspects of international migration (cont'd)

Several experts thought it important that this topic stay on the Agenda of the Permanent Bureau.

The Chair summarised the debate noting that some experts wished to retain the question on the Agenda while others found it to be less of a priority. He felt that the topic should remain on the Permanent Bureau's Agenda to allow it to remain involved with international migration issues with a view to revisiting the question at the 2010 meeting

9. Other topics retained by the Council on the Conference's Agenda

a) Questions of private international law raised by the information society, including electronic commerce

Mr Lortie (First Secretary) presented the work of the Permanent Bureau in this area. He noted the importance of the practical element in the Permanent Bureau's work involving the maintenance of databases and other tools such as iChild and INCADAT. He felt the topic should remain on the Agenda and that the use of modern technologies should be encouraged in promoting judicial and administrative co-operation and with regard to e-justice.

One expert offered its view that it was appropriate to the mandate of the Hague Conference to broaden this topic.

The Chair agreed with this proposal and recommended that the title of this topic be reviewed.

b) The conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage; Preliminary Document No 8 of May 2000

Mr Bernasconi (First Secretary) opened consideration of this topic noting that the Permanent Bureau had not attended meetings or produced any notes in this area in recent years and that the extent of their involvement had been to maintain contacts with experts in the field. He recommended that the 2000 Note on this question be updated.

Several experts thought it unnecessary to update the Note and felt the topic should be stricken from the Agenda in order not to overburden the Permanent Bureau. Other experts were of the view that the topic should remain on the Agenda even if they concurred that

updating the Note was unnecessary. One expert conveyed her concerns about finding sufficient resources for the project.

The Chair concluded that there was support for keeping the topic on the Agenda but not for updating the 2000 Note. As such the Permanent Bureau would be able to remain involved in the issue where its expertise was solicited.

c) Jurisdiction, and recognition and enforcement of decisions in matters of succession upon death

The Secretary General recalled that so far only one State had ratified this Convention which had given satisfaction to that State and noted that the European Community was currently preparing an instrument on this question that would be applicable to most of its 27 Member States. Further work by the Conference could be considered once this instrument was completed.

The Chair determined that the topic should remain on the Agenda even though no resources were expended on it.

d) Jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples; Preliminary Document No 11 of March 2008

The Deputy Secretary General relayed that, since the 2008 Note on the subject of domestic and private international law, there had not been much change. However, he pointed to the increase in the numbers of unmarried couples and legislation recognising this, but problems arising from the absence of a uniform system internationally on civil status.

The Chair, further to the expression of different viewpoints expressed by the experts, proposed that the question be retained on the Agenda but without priority and invited the States to revisit the issue in 2010.

e) Assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations

Mr Bernasconi (First Secretary) recommended that the Permanent Bureau continue to follow the work of UNIDROIT and other organisations in the area of securities.

Several experts supported this proposal and affirmed that the topic should remain on the Agenda.

The Chair felt that the topic should remain on the Agenda so that the Permanent Bureau could continue to work with different international organisations on the question of securities.

10. Any other topics that may be proposed

Ms Pertegás (Secretary) recommended preparing a feasibility study on the question of legal aid particularly relating to small and / or uncontested claims as had been proposed by the Special Commission of February 2009. Extending legal aid regimes to foreigners would give migrants the same access to the courts as nationals of the person's State of habitual residence.

One expert was in favour of preparing the study but wished to remain cautious as to the resources necessary to realise the project. Two experts were not in favour of undertaking the feasibility study.

As the proposal was not supported by all experts, the Chair recommended that the feasibility study be included in the list appearing in Annex A.

An expert from Australia proposed including the issue of child trafficking in the context of the 1993 Hague Adoption Convention on the list of topics to be considered at the 2010 Special Commission.

The Chair invited the experts to contact the Permanent Bureau with their suggestions on this question and encouraged Australia to look to bilateral discussions on the topic.

An expert from Israel also proposed that the topic of surrogate parenthood be included as a topic for consideration.

Topics informally suggested to the Permanent Bureau (Annex A)

An expert thought that questions of private international law relating to intellectual property could be stricken from Annex A.

III. Round-table on progress made concerning the signature and ratification of and accession to Conventions; signing of, or depositing instruments of ratification of or accession to Hague Conventions

11. Conventions adopted by the Twenty-First Session (2007)

a) Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

b) Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

The Chair opened discussion on whether there had been progress on this topic since the last Council meeting particularly in signing or ratifying the Conventions.

Experts from Argentina, Mexico, Norway and the United States of America announced that their States were taking positive steps to implement the Convention in their countries.

An expert from the European Community announced that it had adopted a regulation on maintenance obligations in December 2008 inspired by the Hague Convention with the 2007 Protocol currently under consideration with the Council of Ministers following which it would go to parliament to be discussed.

Preparations of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention

Mr Lortie (First Secretary) reported that preparations for the Convention and Protocol were underway aiming at a Special Commission for November 2009. The Special Commission would adopt a country profile and recommended forms that had been endorsed at the Diplomatic Session in November 2007 which forms were under review at the Permanent Bureau and related to which a Working Group would be convened in May 2009. He noted that a considerable amount of work had been done on a draft Practical Handbook for caseworkers under the Child Support Convention with thanks to the Government of British Columbia (Canada) for the secondment of Ms Hannah Roots. The Guide was expected to be ready in April 2009 and would be reviewed by a group of experts in June 2009 and sent to the States for their views in August 2009. Other items for discussion included the possible future standing of the Central Authority Co-operation Committee, and the electronic case management communication system (Info. Doc. No 4).

12. Convention adopted by the Twentieth Session (2005)

Convention of 30 June 2005 on Choice of Court Agreements

The Chair moved to the Choice of Court Convention recalling that the European Community had signed the Convention earlier that day. There were no interventions from the floor.

13. Convention adopted by the Nineteenth Session (2002)

Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary

An expert from Switzerland announced that his country was introducing a new legal system on securities starting January 2010 and would be ratifying the Securities Convention with effect from that date. In the event they were the only party to ratify the Convention, a provision had been made in their law to cross-reference the Convention but he stressed the importance of developing uniform conflicts rules in this area.

An expert from Mexico and an expert from the United States of America each reported that their Governments were considering the Convention with a view to implementing it.

14. Conventions adopted by the Eighteenth Session (1996) and by the Special Commission of a Diplomatic Character (1999)

a) Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

b) Convention of 13 January 2000 on the International Protection of Adults

An expert from Finland relayed that Finland had signed the 2000 Convention last year and that the instrument of ratification was expected to be presented to its Parliament by the end of 2009.

An expert from Canada encouraged the preparation of guides to good practice believing that the sooner they were available, the easier it would be for States to move forward in signing and ratifying the Conventions.

An expert from Germany relayed that the 1996 Convention was with its Parliament and that they hoped to finalise the steps for ratification this summer, and that the 2000 Convention was already in force in Germany.

An expert from the United States of America reiterated that his country is actively considering the 1996 Convention with a view to fitting in with its domestic law.

An expert from Greece indicated that they had convened a committee to compare both Conventions with regard to its laws and hoped that this work would be completed shortly.

An expert from Ireland informed that legislation to enable ratification of the 2000 Convention had already been published in draft form after signing the instrument last year, and indicated that the 1996 Convention would be ready for ratification next year.

An expert from Austria relayed that serious preparations for ratification of the 2000 Convention this year and the 1996 Convention next year were underway.

An expert from the United Kingdom informed that the 2000 Convention had been ratified by the United Kingdom some time ago, but that an extension of its territorial scope was being considered. The United Kingdom intended to meet the deadline set within the European Community for ratification of the 1996 Convention.

The Deputy Secretary General relayed that the Permanent Bureau had prepared a 1996 Convention checklist which they expected to distribute the next day and which had been given to attendees of the Malta Conference.

15. Conventions adopted by previous Sessions

The following Conventions are proposed for discussion:

a) Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

b) Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters

The Secretary General, recalling the tradition of the Council to promote Conventions adopted by previous Sessions, introduced the 1971 Hague Convention and its Protocol. This was done to remind Members that the work done on judgments did not end with the Choice of Court Convention.

An expert from the United Kingdom recalled the good work done in the 1960s on that Convention and urged States to implement the Choice of Court Convention with the possibility of revisiting the work done on judgments.

An expert from the Netherlands recalled from the discussions in the 1990s that it was not anticipated that the Convention would be widely adopted. However, there had been wide agreement that further study should be made. He recommended reopening the topic on ways to move this question forward.

The Chair noted that the project was included in Annex A to the Agenda which meant it could be revisited at any time.

IV. Monitoring, adaptation and support of the Conventions

A. Conventions in the areas of commercial and finance law, and on legal co-operation and litigation

16. Follow-up on the Special Commission of 2 – 12 February 2009

a) Apostille Convention

b) Service Convention

c) Evidence Convention

d) Access to Justice Convention

Mr Bernasconi (First Secretary) relayed that some of the 100 Special Commission Conclusions and Recommendations looked to the States for further steps such as to issue Apostilles, and to reduce declarations in particular on Article 23 of the Evidence Convention on pre-trial issues. He looked forward to receiving information from the States Parties.

B. Conventions on international protection of children, vulnerable adults, international family and family property relations

17. Report on the activities in relation to the Conventions of 1980, 1993 and 1996 and, in particular

a) Follow-up on the Special Commission meeting of October-November 2006 on the practical operation of the 1980 Convention and the implementation of the 1996 Convention, including progress in relation to Guides to Good Practice; and planning for the next meeting of the Special Commission in 2011

The Deputy Secretary General referred to Preliminary Document No 6 and to the Annual Report. He noted that there were already four Guides to Good Practice relating to the 1980 and 1996 Conventions. A text on enforcing return judgments was nearly in its final form and would be sent to experts and then to all Contracting States for review. He referred again to

the 1996 Convention checklist, and reported that a Handbook on the operation of the Convention was proceeding with a view to publication by the end of the year. He relayed that the Permanent Bureau was already beginning preparations for the review of the 1980 and 1996 Conventions at the 2011 Commission.

b) Preparation of the Special Commission of 2010 on the practical operation of the 1993 Convention, including progress in relation to Guides to Good Practice

Ms Degeling (Secretary) presented plans for the 2010 Special Commission to review the Adoption Convention following on from the 2005 Commission which had been attended by 250 experts from 66 countries. She expected even greater interest in 2010 given the remarkable growth of the Convention. Ms Degeling noted that, since 2005, a majority of countries in the Convention were "countries of origin" and that this had an impact on the Permanent Bureau's resources as developing countries were often in need of support implementing the Convention. This had resulted in a technical assistance programme and the hiring of an Adoption Programme Co-ordinator.

She noted in other developments that organisations frequently recommended that States sign the Convention and solicit Hague Conference technical assistance, which leads to an increasing amount of work for the Permanent Bureau. The Permanent Bureau had in 2008 produced its Guide to Good Practice on this topic. Another significant development was the joining of the Convention by the United States of America which was the largest receiving country in the world and whose support for the Convention principles and the technical assistance programme had changed the dynamics of intercountry adoption globally. Lastly, she referred to the additional work ahead relating to pre- and post-adoption services and the problems of intra-family adoptions.

Ms Degeling responded to a question from an expert relaying that the guides and other resources were widely available in printed and electronic format, but that more could be done.

The Deputy Secretary General responded to the expert from the Netherlands that assistance from the States was important toward getting the guides into the right hands and pointing to the biannual Judges' Newsletter which also goes to Central Authorities and other key operators under the Conventions counting thousands of judges and experts.

C. General issues

18. Monitoring and support of Conventions through information technology

Mr Lortie (First Secretary) introduced Preliminary Document No 12 and emphasised that the most important tool supporting the Conventions was the Hague Conference website now available in Spanish as well. The Permanent Bureau planned to implement an automatic notification to all Central Authorities periodically reminding them to inform the Permanent Bureau of changes in contact details, and an automatic notification to National Organs and Central Authorities concerning news of the Conventions such as new ratifications and signatures.

On other electronic tools he announced improvements were being made to the INCADAT site, and that there would be a new version of INCASTAT, available to all Central Authorities under the 1980 Abduction Convention. Information Document No 4 provided information regarding the iSupport system. He further called for funding in the Supplementary Budget for the electronic version of the country profile for the Child Support Convention.

19. Judicial networking and direct judicial communications

Mr Bernasconi (First Secretary) relayed that the e-APP was initiated by the Permanent Bureau of the Hague Conference and the United States of America's National Notary Association during the Council in 2006. He particularly expressed his gratitude to Spain for its presentation on the e-APP programme during the 2009 Special Commission. He extended an invitation to attend the Fifth International Forum on the electronic Apostille Pilot Program (e-APP) and Digital Authentication in London to be held in June 2009 as part of the annual meeting of the Council of the International Union of Notaries (UINL).

Mr Lortie (First Secretary) responded to a question from an expert and announced that the Permanent Bureau planned to review the INCADAT site towards identifying missing cases and providing full texts where these were available.

V. Regional developments

a) Latin America

The Liaison Legal Officer for Latin America reported that the model law on procedures for the Abduction Convention had been well received by Latin American States, two of which had sent draft laws to their congresses based on the model law and with at least five States currently working on draft laws and using the model law as a main source. The Dominican Republic had already passed legislation; as to the judges network, there were now 14 States with a network judge, most formally designated by the Supreme Court of those nations.

b) Asia Pacific

Ms Degeling (Secretary) reported on the Third Asia Pacific Regional Conference of September 2008 jointly organised by the Government of the Hong Kong Special Administrative Region and the Hague Conference. The Conference was attended by almost 200 participants from 27 countries, with thanks to the Government of the Hong Kong Special Administrative Region for its generous support. The aim of the conference was to promote the work of the Hague Conference and to raise the Organisation's profile in the region.

c) Malta Process

Previously discussed.

d) Africa

The Adoption Programme Co-ordinator relayed that the Permanent Bureau was preparing a seminar for 10 African countries in June 2009 to examine the 1993 Convention and the challenges facing its implementation in African countries.

e) CIS States

Ms Degeling (Secretary) reported on the seminar in Kiev in November 2008, organised jointly by the Organization for Security and Co-operation in Europe (OSCE) and Ukraine. She was pleased to relay that Ukraine had prepared some implementing legislation for the Adoption Convention and that the government supported joining.

Mr Bernasconi (First Secretary) added that the Permanent Bureau participated in a meeting in Georgia on the judicial co-operation Conventions that was organised by the German Foundation for International Legal Co-operation. He added that there had been a request for training from Belarus on judicial co-operation and family law issues to which the Permanent Bureau had responded and was awaiting further communication.

f) Regional presence of the Hague Conference

The Secretary General emphasised that the work of the Liaison Legal Officer for Latin America, as well as the active participation by members of the Permanent Bureau in regional judicial and other conferences, had proven to be crucial for a better knowledge and understanding of the Hague Conference and its work. Further to offers of support from the Governments of Argentina and the Hong Kong Special Administrative Region, the Permanent Bureau was exploring ways to support the Liaison Officer position in Latin America through a regional office and to explore the possibility of opening a regional office for the Asia Pacific region. Any such arrangements would have to be in principle without additional cost to the Regular Budget. Members would be consulted on any seat agreements that might be concluded.

The Chair gave a brief summary of the provisional conclusions from the meeting and indicated that they would be distributed the next morning for review and adoption.

The meeting closed at 6.15 p.m.

Council on General Affairs and Policy of the Conference (31 March – 2 April 2009)

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

REPORT OF MEETING No 4

Distribution: by e-mail

MEETING OF THURSDAY 2 APRIL 2009 – MORNING SESSION

The meeting was opened at 9.35 a.m. under the chairmanship of Mr Leinonen (Finland).

The Chair noted that he had omitted one item on the agenda and suggested that experts continue the discussion in Part IV of the agenda on general issues regarding direct judicial communication (Part C) before the Council considers Part VI of the agenda dealing with organisation of the work of the Conference.

19. Judicial networking and direct judicial communications

Mr Lortie (First Secretary) referred to the joint EC-HCCH Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks in Brussels of January 2009. He noted that the Permanent Bureau intends to pursue development of direct communication within the judicial network and, further, to extend the consultation to other individuals interested in this issue. Such individuals would include representatives of States and other persons conversant with these issues (*e.g.*, judges dealing with the administration of insolvency matters). Additionally, he noted that the assistance of UNCITRAL in relation to the UNCITRAL Model Law on Cross-Border Insolvency and its working group that meets regularly in Vienna will be helpful.

He explained that judges at the Brussels Conference expressed their desire to extend the network to include judges who have not been formally designated or even judges whose countries are not party to the Hague Conventions. It was also suggested to develop a list of Hague Conventions (particularly on the protection of children) for which judges would be competent to entertain judicial communications.

The judges also proposed that the Permanent Bureau develop a secured website for the international judicial network which would provide more general details about the judges beyond their function and the court they belong to (for instance their phone and fax numbers and e-mail address). The website would additionally provide access to a secured forum to facilitate communication between judges. This has been supported particularly by judges from Latin America.

Mr Lortie mentioned that the Supplementary Budget contains a section on the provision of this Internet service for judges.

VI. Organisation of the work of the Conference

20. International Centre for Judicial Studies and Technical Assistance

The Chair referred to the Hague Conference's International Centre for Judicial Studies and Technical Assistance ("the Centre") and invited the Permanent Bureau to address the Council on its achievements, current developments and tentative work programme.

a) Achievements, current developments and tentative work programme 2009 – 2012

The Adoption Programme Co-ordinator noted that under the Intercountry Adoption Technical Assistance Programme (ICATAP) the Permanent Bureau was able to provide assistance to Members / countries that wished to ratify / accede to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("1993 Convention"). This programme commenced in 2006 and was initially funded by the Netherlands and subsequently received contributions from Australia and the United States of America.

She explained that the assistance programme develops in two stages. The first through assistance in helping the country prepare to accede to or ratify the 1993 Convention and ensuring that national legislation is in accordance with its international obligations. The second stage involves in-country training in conjunction with bodies like UNICEF.

She referred the Council to Preliminary Document No 12 which illustrates the situation in Guatemala and also alluded to an annual report by its Central Authority. In 2007, the Permanent Bureau provided legal assistance which led to the effective operation of the 1993 Convention. Subsequently in 2008, the focus was on capacity-building and training with the assistance of the Central Authorities of Chile, Colombia and the United States of America.

She further noted that since Guatemala implemented the 1993 Convention, the authentication of adoption by notaries public was no longer possible. In 2008, there were only 197 children declared adoptable under the new Convention vis-à-vis the 5,000 recorded in 2005 as well as 2006 and 8,000 in 2007. She explained that the Guatemalan Central Authority has been working directly with pregnant mothers, and this has reduced the number of women giving their babies up for adoption after childbirth. In 2009, the Hague Conference continues to work with the Central Authority to ensure that problems that afflicted the country in the past do not resurface.

Ms Degeling similarly updated the Council on efforts in Cambodia, another pilot country under ICATAP. She noted that Cambodia ratified the 1993 Convention on 1 August 2007. Subsequently in 2008, the Minister for Social Affairs contacted the Hague Conference and formally requested its technical assistance. The Permanent Bureau decided that it would render such assistance with the help of an adoption consultant.

Ms Degeling noted that the problems affecting Cambodia differed from those in Guatemala as they are slightly more complex. She explained that there was difficulty in ascertaining the origin of adoptable children. As a result, both the Permanent Bureau and the consultant assisted in the development of a Central Authority with regard to the adoption of children. The work done was conducted in close co-operation with UNICEF which has been an excellent partner. The Permanent Bureau continues to work closely with both UNICEF as well as receiving countries (to adoption) to improve the situation. She mentioned the recommendations that have been made based on the report of the adoption consultant which were sent to the Prime Minister of Cambodia.

Ms Degeling also noted that the Permanent Bureau has established a small working group to implement improvements and recommendations. Although the adoption law still remains to be passed by the National Assembly, the Permanent Bureau continues to offer its support for future efforts concerning implementation.

An expert expressed his thanks to the Permanent Bureau on the work done.

b) Funding methods, in particular in respect of countries identified as Official Development Assistance Recipients, in accordance with OECD criteria

The Secretary General stated that the issue of funding methods is on the Agenda with a view to raising awareness. As the Hague Conference expands its work into different parts of the world, it consequently encounters different legal traditions, characterised by a lack of infrastructure

and understanding of how to implement Conventions or set up Central Authorities. These issues present themselves in regions like Latin America, Asia, Africa and within the Commonwealth of Independent States.

He noted that private international law is now encompassing work which includes capacity building, constitutional governance and rules of law. As an example, the Secretary General recalled the issue of preventing thousands of children in Guatemala from being adopted in an irregular manner, which he characterised as a very considerable humanitarian success made possible by a huge common effort to implement the 1993 Hague Adoption Convention in Guatemala.

The Secretary General recognised the generous contribution of the Government of the Netherlands but noted it was seed money. He stressed that projects will not be able to be implemented without further funds. He gratefully noted contributions by the United States of America and Australia that have made important sums available, and in particular the Spanish Government with regard to the use of the Spanish language in the work of the Hague Conference.

The Secretary General called for Members to identify experts in their respective countries that dealt with development aid as an avenue for more funds. He stressed that developmental co-operation is a new area in private international law that needs to be developed as they create useful structures.

Several experts noted that they have had discussions with their respective ministries to identify more areas to procure funding and will continue to provide support and contributions. They also expressed their willingness to share their experiences and encouraged other States to do so as well.

Other experts noted the utility in the Permanent Bureau's preparation of documents which detail the various budgets as they will be better able to convince their respective governments with this information.

An expert from Germany stated that after consultations within his government, his State will be contributing 20,000 Euros to the International Centre for Judicial Studies and Technical Assistance.

The Secretary General expressed his gratitude on behalf of the Hague Conference and said that he was heartened to see that his requests were being heard. Notably, he explained that money received will be considered as contributions under the ODA criteria of the OECD. The money will go to countries for developmental projects on capacity building and rule of governance.

21. The strategic plan

The Chair referred to Preliminary Document No 5 which reports on the progress of the strategic directions.

Mr Lortie (First Secretary) stated that the strategic plan adopted is still appropriate for the business of the Conference and goes toward increasing the global coverage of the Conference. He noted that India has now accepted the Statute while Costa Rica, Zambia and Colombia still need to do so although they have been admitted. The Hague Conference is consolidating its presence in various regions, namely in Latin America and with the possibility of an Asia-Pacific Office in Hong Kong.

Mr Lortie also canvassed important facets of the work of the Hague Conference. They include the numerous seminars that the Organisation has taken part in, the *Collection of Conventions (1951 – 2009)*, post-Convention services, ongoing feasibility studies and work on seven Guides to Good Practice for future release, e-justice tools, the publishing of the *Proceedings of the Twentieth Session*, information management (including the reform and digitalisation of the internal archive system based on Optical Character Recognition (OCR) technology) and the publishing of *The Judges' Newsletter*.

In addition, Mr Lortie listed the names of countries who financially contributed to these projects.

He also drew the Council's attention to the space constraints at the Permanent Bureau, which is now able only to accommodate four interns at any one time as opposed to the eight usually taken in. He stated that the summer internship programme previously received two interns from New York University and one other from Georgetown University. However, due to lack of space, the Hague Conference was unable to renew its internship programme with Georgetown University.

An expert noted that the Permanent Bureau was keeping the Council well informed with its strategic plan. She addressed the increasing membership of the Hague Conference particularly seen at the end of the last century and congratulated the Permanent Bureau for its efforts in this respect.

The Chair thanked the expert for the comments and invited the Secretary General to discuss the proposed Budget as listed in the agenda.

22. Proposed budget for 1 July 2009 – 30 June 2010

The Secretary General stated that the draft Budget will be submitted in July 2009 to the Council of Diplomatic Representatives under the chairmanship of the Minister of Foreign Affairs of the Netherlands (see Prel. Doc. No 9). He recognised the work of Ms Himpens (the Permanent Bureau's Financial Officer) that has greatly assisted with the management of the different budgets of the Hague Conference.

He identified the ever increasing workload of the Hague Conference (see Prel. Doc. No 2, p. 4) with gaps in legal staff remaining urgent. It consequently implies the need for administrative and linguistic staff.

He noted that two key full-time posts are being funded under the Supplementary Budget. He stated that this was undesirable as it was unstable from one year to the next.

In light of these needs, the Hague Conference would require a 3% increase in the budget per unit of contribution from Member States. He explained that the increase was modest in relation to the work to be carried out by the Hague Conference.

23. Supplementary Budget for 1 July 2009 – 30 June 2010

Addressing the Supplementary Budget, the Secretary General noted that the information relating to the budget was meant to be informative and not for the Council to make a decision on. He explained that it was divided into two parts. Part I deals with special projects and expenses while Part II relates to the International Centre for Judicial Studies and Technical Assistance.

The Deputy Secretary General noted that this was the ninth year that a Supplementary Budget is proposed. The funds received under this budget are crucial for the development of post-Convention work. In relation to Part I of the Budget, it contributes to translation of Guides to Good Practice, iChild, INCADAT, INCASTAT and iSupport, which will require further funds as the latter is still in its nascent stages. He added that costs also arose from translation and financially supporting experts from developing countries and countries in transition to attend the next Special Commission on the implementation of the Child Support Convention.

The Chair noted that projects cannot be realised without both the Regular Budget and additionally the Supplementary Budget.

Most experts agreed with the Regular Budget. They stated that it was reasonable and noted that the proposals were well justified in light of the work expected from the Permanent Bureau, which has increasingly taken on an implementation role, in addition to its legislative work.

The experts also noted that the proposals in each budget were transparent and ran efficiently.

However, some experts expressed concerns regarding the Budget. Several stated that their countries adopted a zero nominal growth policy with regard to contributions to international organisations. It was stressed, however, that that was not a reflection of the value placed in the work of the Hague Conference.

An expert understood that the Supplementary Budget is meant to reflect divergence of Member States' opinions on what they regarded as core or ancillary activities. She also noted that it was put in place to allow for incremental improvement in the Regular Budget, which in 1999 was assessed as needing to increase by 30% in order to make up the 30% gap that existed between the resources needed for the activities of the Permanent Bureau and the resources effectively allocated. However, she expressed concern that the Hague Conference might be regressing to its position back in 1999 of relying on the voluntary contribution of a Supplementary Budget to fund its activities. This is not sustainable. Additionally, she stated that the recurring issue of space constraints, the difficult problem of the pension scheme and succession issues have to be tackled and thought through, sooner rather than later.

Another expert suggested that the Permanent Bureau host an informal budget meeting as it did previously since it will be a useful forum for discussion.

Other experts concurred with this suggestion. It was also generally noted that although the Council is not charged with approving the budget, the Council would examine the proposals in the Supplementary Budget carefully with a view to continue supporting the work of the Hague Conference.

One expert addressed the pension issue. He presented the conclusions drawn up by the Working Group which specially convened at the Hague Conference to address this issue. He noted that, in 40 years, 40% of the budget of the Conference will be devoted to the payment of staff pensions. The Working Group suggested adopting a funding by capitalisation payment scheme.

The expert explained that such a move would equip the Hague Conference with a pension system that was common to international standards. It was important to undertake such a move at this stage for three reasons. First, these obligations should be confronted now rather than leaving Members to deal with them at a future stage. Secondly, funding will be required to institute the new system and proper information will be required prior to implementation to prevent an expectation gap by staff members of the amount of their respective pensions upon its enforcement. Such a process takes time. Lastly, it was important to address the issue so that staff at the Permanent Bureau will be able to continue with their work untroubled.

Several experts concurred with the view that such structural issues need to be addressed as soon as possible.

An expert noted that this would be an opportunity for the Hague Conference to recalibrate its budget for the future and identify more positive budget areas in line with its exponential growth.

An expert expressed misgivings on the pension scheme and the Hague Conference's hiring of an additional legal officer but recognised that these issues were to be discussed on a bilateral basis.

One expert suggested that the Hague Conference should confine itself to achieving the minimum necessary in its projects rather than pursuing each and every objective. Additionally, she stated that cost-cutting measures like producing more focussed documents to reduce voluminous documentation and conducting less meetings will help.

On a side note, an expert mentioned that *The Judges' Newsletter on the International Protection of Children* has not been issued for about a year. He noted that if this publication is to make an impact on its constituency, it has to be issued more regularly.

The Secretary General stated that he was encouraged by experts' comments and concrete proposals. He particularly recognised the leadership by the expert that initiated discussions on the Supplementary Budget. He identified her leadership as a necessary element in the future growth of the Hague Conference. Additionally, he noted the comments on *The Judge's Newsletter* and other suggestions on ways to reduce work to the essential. He recalled that work was ongoing in respect of the pensions issue.

Further, he concurred with the view that funding needed to be discussed. He referred to the budget review conducted by PriceWaterhouseCoopers in 1999 which had identified a 35% deficit in the Budget, 5% of which could be addressed with improved efficiency. An effort has been made to address this 30% deficit but expanding growth has caused greater need for funding.

The Secretary General also said that he will consider the suggestion for an informal meeting.

IX. Co-operation with other international organisations

24. Co-operation with UNCITRAL and UNIDROIT

The Secretary General noted the Hague Conference's continued co-operation with UNCITRAL and UNIDROIT and referred to Information Document No 1, which gives a thematic overview of Conventions and other instruments drawn up under the auspices of UNCITRAL, UNIDROIT and the Hague Conference.

1. UNCITRAL

A representative of UNCITRAL expressed her support for the Permanent Bureau's project on choice of law in international contracts. She recognised that the project related to contracts but noted its wider impact.

She noted that there has been some consultation between the Hague Conference and UNCITRAL on choice of law issues as well as the existing UNCITRAL Model Law on International Commercial Arbitration (1985).

She also addressed the issue of direct judicial communication generally and how it relates to cross-border insolvency cases. She stated that since 1994 there have been numerous multi-judicial colloquia relating to cross-border insolvency and referred to the coming Eighth Conference in Vancouver in June 2009 being held in conjunction with INSOL and the World Bank. She explained that the colloquium will be looking at the use of guidelines in agreements as well as reviewing draft recommendations to promote direct judicial communication in cross-border insolvency proceedings.

She also noted the synergy of general principles for judicial communication in family law that could be applied in insolvency.

She recalled work on security interests in intellectual property rights and thanked the Hague Conference for its continuing involvement.

2. UNIDROIT

The Secretary General of UNIDROIT also commented on the project on choice of law in international contracts. He stated that party autonomy is widely upheld and that even countries that have maintained reservations in choice of law have become increasingly open to it. He stated that a body of principles would be of great practical value and would make possible the choice of *UNIDROIT's Principles of International Commercial Contracts* ("UNIDROIT Principles") as an applicable law to the contract.

He invited the Permanent Bureau to utilise instruments such as the UNIDROIT Principles or the 1987 *UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works* as supplementary rules. He noted that parties will benefit greatly from the incorporation of uniform law instruments into their contract.

He suggested that the UNIDROIT Principles could be incorporated not only when parties choose the Principles as the applicable law but also when there is an absence of a choice of law clause (by default-subsidiary rule).

Additionally, he invited the Permanent Bureau to consider the incorporation of regional instruments beyond its geographical application as the applicable law.

He expressed UNIDROIT's continued support of the Hague Conference's work and mentioned that the UNIDROIT Convention on Intermediate Securities exemplifies the co-operation between the two organisations.

3. Discussion

An expert noted that although her country is a Member of the Hague Conference, UNCITRAL and UNIDROIT, she stated that it was necessary to bear in mind that the identity of membership across the three organisations and their objectives are not the same. Nonetheless, she recognised the value of the expertise found in each organisation and encouraged that other States take advantage of it.

She also noted that Information Document No 1 is a useful step in grouping the instruments of organisations by subject matter.

Another expert stated that the great proliferation of legal instruments of both a binding and non-binding nature tended to create legal uncertainty. He noted however that co-ordination between the Hague Conference and other international organisations will counter this effect by harmonising the legal instruments they jointly work on.

Conclusions and Recommendations

The draft Conclusions and Recommendations prepared by the Chair (Work. Doc. No 2) were examined by the Council and agreed upon with small modifications as reflected in the final version. The Permanent Bureau was charged with stylistic and linguistic revision of the text

In conclusion, the Chair thanked the experts, the staff of the Permanent Bureau and the interpreters.

In turn, experts expressed appreciation of the Chair's effective leadership and thanked the Permanent Bureau for its organisational work and documentation.

The meeting closed at 2.22 p.m.