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CRÉATION D'UN COMITÉ PERMANENT DE COOPÉRATION ENTRE AUTORITÉS CENTRALES EN VERTU DE LA CONVENTION DE 2007 SUR LE RECOUVREMENT DES ALIMENTS

établi par le Bureau Permanent

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ESTABLISHMENT OF A STANDING CENTRAL AUTHORITY CO-OPERATION COMMITTEE UNDER THE 2007 CHILD SUPPORT CONVENTION

drawn up by the Permanent Bureau

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

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Introduction

1. The Twenty-First Session of the Hague Conference recognised that the Administrative Co-operation Working Group (ACWG) had provided a prototype for the kind of continuing international co-operation and networking which, particularly among the Central Authorities appointed under the new 2007 Child Support Convention, will be needed if the Convention is to be a success. In this respect, the following recommendations were adopted by consensus by the Twenty-First Session:[1]

> "The Twenty-First Session,
>
> [...]
>
> 4. Commends the work of the Administrative Co-operation Working Group, established by the Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance, as well as of its sub-committees on Monitoring and Review and on Country Profiles.
>
> 5. Recommends that the Administrative Co-operation Working Group should on an interim basis continue its work as a forum for discussion of issues of administrative co-operation and that consideration be given by the Council on General Affairs and Policy to the establishment of a standing Central Authority Co-operation Committee."

2. The establishment of a standing Central Authority Co-operation Committee has been discussed and recommended by the Monitoring and Review of the Operation and Implementation of the Convention Sub-Committee of the ACWG since 2004. In the course of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance, the Standing Committee was the subject of two Reports and the subject of a Report for the attention of the Twenty-First Session of the Hague Conference.[2]

3. With a view to preparing for the discussion of this issue by the Council on General Affairs and Policy, the Permanent Bureau drew up a Preliminary Document on the "Establishment of a Standing Central Authority Co-operation Committee under the 2007 Child Support Convention" for the attention of the Special Commission of November 2009 on the Implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations[3] (hereinafter the 2009 Special Commission).

4. In summary, Preliminary Document No 7 of October 2009 provided a description of the ACWG including its membership, goals (work programme), structures, working methods and costs and a proposal for a Standing Central Authority Co-operation Committee including its membership, establishment and functions, work programme (possible agenda), structures, working methods and costs. The proposal was built upon recommendations made by the ACWG in March 2005, June 2006 and October 2007.[4]

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[1] Final Act of the Twenty-First Session of the Hague Conference on Private International Law, The Hague, 23 November 2007, Part C, available on the Hague Conference website at < www.hcch.net > under "Conventions", "All Conventions" then "Convention No 38".

[2] See, *infra*, note 4.

[3] See "Establishment of a Standing Central Authority Co-operation Committee under the 2007 Child Support Convention", Prel. Doc. No 7 of October 2009 for the attention of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations, available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Maintenance Obligations".

[4] The recommendations from the ACWG are set out as Annexes A, B and C to Prel. Doc. No 7 of October 2009, *ibid*.

Summary of the discussions held during the November 2009 Special Commission

5. During a first discussion of the subject, a large number of experts attending the November 2009 Special Commission expressed their support for the creation of a Standing Central Authority Co-operation Committee. However, a small number of experts expressed concern in relation to the proposal found in Preliminary Document No 7.[5] They expressed the wish to obtain more information in relation to the effect of the Standing Committee on the institutional structure of the Organisation, the composition and accessibility of the Committee, its impact on the Regular Budget of the Organisation, the relationship between the Committee, the Special Commission to review the practical operation of the Convention and the Council on General Affairs and Policy of the Conference, and, finally, its impact on other Conventions. As a result of this first discussion, the Permanent Bureau submitted, in the form of a Working Document, a revised and more detailed proposal to the November 2009 Special Commission for the purpose of a second discussion.[6]

6. During a second discussion of the subject, there was a clear consensus within the Special Commission on the usefulness of a Central Co-operation Committee in order to promote the Convention and to assist with its implementation. Several experts expressed their general support for the proposal in Working Document No 15. However, a concern was expressed about the impact that such Committee might have, notably on the Hague Conference and its structures.

Recommendation of the November 2009 Special Commission to the Council on General Affairs and Policy of the Conference

7. On 17 November 2009, the Special Commission adopted the following recommendation in relation to the establishment of a standing Central Authority Co-operation Committee:

> "12. The Special Commission recommends to the Council on General Affairs and Policy of the Conference that it give serious consideration to the merits of establishing a Central Authority Co-operation Working Group as well as the relevant issues, including its potential impact upon the Hague Conference and other Hague Conventions, subject to available resources and overall consideration of the work priority of the Hague Conference."[7]

Recommendation of the Permanent Bureau to the Council on General Affairs and Policy of the Conference

8. The Permanent Bureau recommends to the Council that consideration of establishing formally a Central Authority Co-operation Working Group be deferred until the time when there is a sufficient number of Central Authorities designated under the 2007 Child Support Convention.

9. In the interim, the Permanent Bureau recommends that the ACWG continue its work as a forum for discussion of issues of administrative co-operation as was recommended by the Twenty-First Session of the Conference in November 2007. In other words, the Working Group would not be established as a permanent body within the Hague Conference and its status would remain broadly the same.

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[5] See paras 18-27 of Prel. Doc. No 7 (*op. cit.* note 3).
[6] See Work. Doc. No 15 of 16 November 2009, reproduced as Annex A.
[7] See the Conclusions and Recommendations of the Special Commission on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations (10 - 17 November 2009), available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Maintenance Obligations".

10. The ACWG would continue to operate under the direction of the Permanent Bureau and would in this way be ultimately accountable to the Council on General Affairs and Policy of the Conference. Once the Special Commission to review the practical operation of the Convention has been convened under Article 54 of the Convention, it is recommended that the ACWG should operate under its direction, and on the basis of continuing close co-operation with the Permanent Bureau, and in this way would be accountable to the Council. The ACWG would be primarily a networking body. It would have no power to make binding decisions. Initially the ACWG would be a forum for the exchange of information and ideas concerning practical aspects of becoming a Party to the 2007 Convention. Later the ACWG would become also a forum for networking between Central Authorities under the 2007 Convention for discussing issues of administrative co-operation and sharing experience and good practices. It is recommended that the membership of the ACWG be the same as suggested in paragraph 18 of Working Document No 15 of 16 November 2009.[8]

11. It is suggested that the structures and working methods be as described in paragraphs 21 to 26 of Working Document No 15 of 16 November 2009.[9] The administrative assistance required for the ACWG and the costs associated with conference call facilities would be subject to available resources.

12. The Permanent Bureau understands that some States may not be in a position to attend teleconference calls because of the prohibitive costs associated with long-distance calls. However, it feels that it is better than offering no networking possibilities between meetings of the Special Commission to review the practical operation of the Convention especially to those States which could not attend the November 2009 Special Commission but that could afford the costs associated with long-distance calls.

[8] *Op. cit.* note 6.
[9] *Ibid*.

ANNEX A

Special Commission on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations (10 – 17 November 2009)

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WORK. DOC. No 15 E

Distribution: 16 November 2009

Proposal for a Central Authority Co-operation Committee
(Amended extract from Preliminary Document No 7 of October 2009)

1. The establishment of a Central Authority Co-operation Committee has been discussed and recommended by the Monitoring and Review of the Operation and Implementation of the Convention Sub-Committee of the ACWG since 2004. In the course of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance, the Committee was the subject of two Reports.[1] It was also the subject of a Report for the attention of the Twenty-First Session of the Hague Conference.[2]

2. The idea of a standing committee was well received by the Diplomatic Session, as reflected in the above Recommendation. During the discussion, the point was made that such a committee should be accountable to a permanent body of the Organisation, such as the Council on General Affairs and Policy of the Hague Conference, rather than a Special Commission to review the practical operation of the 2007 Convention that would only meet every four or five years.

3. Building on the work and discussions over several years, the main elements constituting a Central Authority Co-operation Committee could be as follows:

Membership

4. Entitlement to membership of the Committee initially would be all States or Regional Economic Integration Organisation (REIO) that participated in the development of the 2007 Child Support Convention and its Protocol as well as any other State considering becoming a Party to the Convention. The Permanent Bureau would continue to coordinate support and participate[3] in the work of the Committee.

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[1] "Report of the Administrative Co-operation Working Group of the Special Commission of April 2005 on the International Recovery of Child Support and other Forms of Family Maintenance", Prel. Doc. No 15 of March 2005 for the attention of the Special Commission of April 2005 on the International Recovery of Child Support and other Forms of Family Maintenance, prepared by the Administrative Co-operation Working Group which met in November 2004 and January, February and March 2005, "Report of the Monitoring and Review of the Operation and Implementation of the Convention Sub-Committee", p. 52, paras 4-14 (see Annex A for an extract of the Report); "Report of the Administrative Co-operation Working Group of the Special Commission of June 2006 on the International Recovery of Child Support and other Forms of Family Maintenance", Prel. Doc. No 19 of June 2006 for the attention of the Special Commission of June 2006 on the International Recovery of Child Support and other Forms of Family Maintenance, prepared by the Administrative Co-operation Working Group which met in November 2005 and January and May 2006, "Report of the Monitoring and Review of the Operation and Implementation of the Convention Sub-Committee", p. 11, paras 12-19 (see Annex B for an extract of the Report).

[2] Prel. Doc. No 34 of October 2007, *op. cit.* note 3, p. 9, paras 21-27 (see Annex C for an extract of the Report).

[3] Including through the Centre for Judicial Studies and Technical Assistance of the Hague Conference.

Establishment and Functions

5. Authorisation for the Committee to begin its work should be sought from the Council on General Affairs and Policy of the Hague Conference. The Council would, before giving such authorisation, consider any resource implications. The Committee would operate initially under the direction of the Permanent Bureau and would in this way be ultimately accountable to the Council on General Affairs and Policy of the Conference. Once the Special Commission to review the practical operation of the Convention has been convened under Article 54 of the Convention, it is recommended that the Central Authority Co-operation Committee should operate under its direction, and on the basis of continuing close co-operation with the Permanent Bureau, and in this way would be accountable to the Council. The Committee would be primarily a networking body. It would have no power to make binding decisions but could from time to time make recommendations to the Special Commission on the Practical Operation of the 2007 Child Support Convention.

1. Primary functions – Networking

a) Initially the Committee would be a forum for the exchange of information and ideas concerning practical aspects of implementing the 2007 Convention; and,

b) Later the Committee would become also a forum for networking between Central Authorities under the 2007 Convention for discussing issues of administrative co-operation and sharing experience and good practices.

2. Other functions – Working with the Permanent Bureau by

a) Providing feedback and making observations on the implementation and practical operation of the 2007 Convention, including assistance in the gathering of statistics and case law;

b) Providing assistance to the Permanent Bureau in the work of supporting implementation and monitoring and review of the practical operation of the Convention.

Work Programme – Agenda

6. Main agenda items to be discussed between meetings of the Special Commission would be in line with the above mandate. Specific agenda items for meetings of the Committee would be developed by the co-convenors in consultation with the Permanent Bureau.

Structures

7. The Committee would be structured as a working group, and decisions would be reached by consensus. The Committee would be led by co-convenors each representing a different region. The Committee would designate its own co-convenors. Members of the Permanent Bureau would serve as facilitators.

8. It is suggested that within this Committee there could eventually be developed regional sub-committees. For example, regions which have a common language or legal culture could develop their own networking committees, from which representatives could participate in meetings or conference calls of the larger Committee.

9. Sub-committees could also be utilised in order to focus on priority topics identified as such by the Committee or the Special Commission.

Working Methods

10. The Committee would meet primarily through conference calls and communicate by way of e-mails and listserv between meetings of the Special Commission. With regard to languages, a cost effective and pragmatic approach should be followed as was done for the ACWG. Sub-committees would meet in the same way.

11. Where a country would have more than one delegate attending a meeting, as a general rule only one person per delegation would be allowed to take the floor.

12. Minutes of meetings would be circulated for comments after each meeting and adopted during the next meeting.

Costs

13. A detailed estimate of projected costs should be prepared by the Permanent Bureau for consideration by the Council on General Affairs and Policy of the Conference and the Council of Diplomatic Representatives.

Recommendation

14. It is proposed that the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations make a recommendation to the Council on General Affairs and Policy to authorise a Central Authority Co-operation Committee, to begin work in accordance with the terms and conditions described in the present document, and subject to satisfactory arrangements being made in respect of budgetary matters.