

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.