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RAPPORT DE LA RÉUNION DU GROUPE DE TRAVAIL DES MEMBRES À COMPOSITION NON LIMITÉE

2 – 3 DÉCEMBRE 2010

établi par le Bureau Permanent

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REPORT OF THE MEETING OF THE OPEN-ENDED WORKING GROUP OF MEMBERS

2-3 DECEMBER 2010

drawn up by the Permanent Bureau

Document préliminaire No 5 de mars 2011 à l'intention du Conseil d'avril 2011 sur les affaires générales et la politique de la Conférence

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Introduction

1. This report summarises the work completed by the open-ended working group of Members of the Hague Conference which met in The Hague, from 2 to 3 December 2010. The group was convened following the invitation of the Council on General Affairs and Policy ("the Council") at its meeting of 7 to 9 April 2010 to the Secretary General,

> "to convene a geographically representative working group of Members to discuss possible improvements in the organisation and working methods of the Council in the context of the amended Statute, as well as strategic issues, including funding, relating to the work of the Organisation. The Council agreed that the working group should remain open to all Members. The Council also agreed that external experts could be invited to advise this working group."[1]

2. The group comprised experts from 23 Members: the "core membership" identified by the Council – Argentina, Australia, Brazil, Canada (Chair), China, Egypt,[2] France, Germany, Japan, Mexico, Russia, South Africa, Switzerland, United Kingdom and United States of America – and, in addition, the European Union,[3] Albania, Belgium, Chile, Czech Republic, India, Netherlands, Philippines, and Spain. No suggestions were made for external experts to advise the group (see the List of Participants, Annex B).

3. At the start of the meeting, the Chair, Mrs Kathryn Sabo, referred to the provisional draft agenda (Annex A) and to the materials prepared by the Permanent Bureau, including a Background Note with its annexes (Annex C). She also referred to the letter of 24 November 2010 of the Swiss National Organ to the Secretary General, suggesting that the group give priority to the following items on the provisional draft agenda:
   - The role of the Council on General Affairs and Policy under the new Statute (Agenda Item V.C);
   - Regulations for the Chair / Vice-Chair(s) of the Council (Item V.F);
   - Need to make changes in the organisation and working methods of the Hague Conference to make its activities more effective (Item I.D); and, that the group draw up a report, and prepare the next meeting of the Council.

   The group agreed to first discuss the items indicated by Switzerland, and with that proviso adopted the agenda.

Proposal to review the role of the Council, strengthen the role of the Chair and examine the need to make changes in the organisation and working methods

*A. The role of the Council under the revised Statute (**Item V.C.** of the Agenda)*

4. It was suggested by some experts that the way the Conference operates today, with a Council that only meets three days per year and a Chair who is only involved during the Council meetings, does not ensure accountability or allow the Permanent Bureau to use the Council as a sounding board. It was suggested that the solution

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[1] See the Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (7-9 April 2010), p. 4, "The operation of the Conference", available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs".
[2] Egypt was unable to attend the meeting.
[3] The European Union delegation stated that the views expressed were those of the European Commission acting as a contact point for the EU, but the issues were not discussed by EU Member States prior to the Working Group meeting.

would be a reinforced Chair who would be available between Council meetings to be consulted on the agenda of the Council, the drafting of conclusions of its meetings, the timing, organisation and preparation of Special Commissions, and as a sounding board for any project undertaken by the Permanent Bureau that may have a political component (*e.g.*, *amicus curiae* briefs). It was proposed that the Chair should be supported by a small group of one or more Vice-Chairs who would serve throughout the year.

5. The experts agreed that an efficient Council was important. Several experts, however, expressed concerns that reinforcing the Chair would not necessarily improve transparency of the Organisation, efficiency of the Council, or accountability of the Permanent Bureau, and that it was unclear how to identify any political component in decisions to be made. The view was also expressed that the Council had all the powers it needs, and that the question was rather how to improve preparation by the experts to the Council in advance of its meetings, and generally to promote more engagement among Members, before adding new structures.

6. The current Chair of the Council explained that presently the Chair does have a mandate to play a role between Council meetings. Consultations between the Chair and the Permanent Bureau have been ongoing throughout the year, as have consultations between the Permanent Bureau and Members. He noted in particular that the Chair was always consulted by the Permanent Bureau on the agenda of the Council, and involved in the drafting of conclusions of the meeting.

- *The **Chair concluded** that there was support for the view that, as a result of the growth of the Conference and its expanding workload, engagement of Members in the work of the Conference had become more problematic, and needed to be strengthened.*

B. Strengthening the role of the Chair

7. With regard to the role of the Chair of the Council, the Chair noted some support for the idea of establishing one or more Vice-Chairs to support the Chair, as "friends of the Chair", along the lines of Annex D proposed by some experts (Annex D): a light structure that should be representative of the different regions and legal systems of the world, and work with the Chair between Council meetings. But she also noted that, in opposition to this idea, concerns were raised with regard to the question of whether the proposal would effectively address the problem of engagement, the possibility that it might add another layer of bureaucracy to the Conference and lead to micro-management, as well as with regard to its legal foundation in light of the Statute – which provides that the Council (as a whole) is "in charge of the operation of the Conference" – and its possible cost aspects.

8. Asked for his views, the Secretary General observed that traditionally the Council on General Affairs and Policy had had a Vice-Chair, and Diplomatic Sessions a Bureau, that was representative of the various regions and systems of the world; there should be no difficulty resuming or formalising these established practices. Regarding the broader question of engagement, he felt that, as the 2001 Price Waterhouse Coopers (PWC) Report had already observed, Members' involvement in strategic decisions of the Conference was essential, and this need had increased as the Conference had become larger and more diverse. He noted that the Permanent Bureau had encouraged Members to consult more with each other and with the Permanent Bureau between Council meetings, including on the future work programme.

9. He referred to the informal open-ended groups of Members that had met in the past, and again recently, to deal with pension and budgetary issues. In light of the

experience with these groups, he suggested that a regular informal, open-ended gathering of Members' representatives between Council meetings might assist in achieving better sharing of information, mutual consultation and more efficient preparation of the Council, resulting in more engagement of Members. The meetings of these groups had been informative and creative, and had greatly contributed to the preparation of plenary discussions on budgets and pensions. Moreover, they had been seen as effective, and appreciated as such, by Members. The Liaison Legal Officer for Latin America reported on informal consultations that were now regularly held, including by conference calls, among Latin American Members with a view to preparing Council meetings.

10. Experts concurred that such meetings could be useful in preparation of the Council meetings. It was even suggested that they might reduce the frequency of Council meetings (which, according to Art. 4(1) of the Statute, "shall, in principle, be held annually"). Others felt, however, that this was not evident in view of the link between decision-making on the work programme and the budget, which has to be submitted every year (Art. 10(1) of the Statute). It was stressed that the terms of reference of such meetings should be well-defined and their operation fully transparent.

- *The **Chair concluded** that the idea of a light group of "friends of the Chair", along the lines of the proposal submitted, and the open-ended informal meetings were not mutually exclusive. Both could lead to more engagement and better preparation of the Council. She concluded that both ideas should be submitted to the Council. The format and length of Council meetings could be re-examined in light of the implementation of any of these proposals. She also noted that the link between deciding on the work programme and the budget remained important.*

*C. Regulations for the Chair / Vice-Chair(s) (Item **V.F.** of the Agenda)*

11. Regarding the length of the terms of the Chair and Vice-Chair(s), it was noted that they were currently unspecified. In the past, these officials served during Diplomatic Sessions to direct the discussions on general affairs and policy, as well as the preceding Special Commission meetings to prepare these discussions, thus covering the four-year cycle for the preparation of Conventions (Art. 4(6) of the Statute). The former Chair of the Council served a seven-year term during the period 2000-2006; no Vice-Chair had been elected since 2000.

12. While most experts were of the view that the current practice was satisfactory, some experts felt that more formal regulations for the terms of the Chair and the Vice-Chair(s) were desirable. It was suggested that if one Vice-Chair were elected, s(he) would also be the Chair-elect. It would be important to take into account geographical representation, in particular if more Vice-Chairs were to be elected, and reference was made to United Nations practice, including the possibility to move from one regional group to the next if a regional group could not offer a suitable candidate. Others felt that such a system would not work for the Conference, given the added need to take into account differences between legal systems as well as the technical nature of its work.

- *The **Chair concluded** that while the question of formalising the process of election and the terms of the Council's Chair should be further examined by the Council, there was agreement that the Chair's mandate continued between meetings of the Council. It might be envisaged to define the Chairs' mandate in more precise terms.*

She noted that there was no support for the suggestion that a rapporteur be elected to report on the work of the Council.

D. Working methods

13. There was general agreement that more timely distribution of information and supporting documentation for Council meetings was desirable, also because this would facilitate consultations both within and among Members. The Secretary General recognised the problem and agreed that more timely distribution of documents was needed. He noted, however, that with the current limited staff, producing high quality documents on complex issues in two (or even three) languages was a huge challenge. Nevertheless, the Permanent Bureau was open to suggestions for improvement of the management of the information flow on the activities of the Conference.

14. Several suggestions were made to this effect, including:
    - Prepare shorter and more concise documents;
    - Limit the duplication of information, avoid sharing information orally during the Council that is already provided in the documentation;
    - Increase the use of tables and charts (such as the information provided to the working group on technical assistance[4]);
    - Establish a reporting protocol, with guidelines on prioritisation and length of documents, so that it would be easier for Members to identify relevant information.

15. Suggestions were also made concerning more systematic modes of information, *e.g.*, providing interim reports to Members throughout the year, at least electronically, or a monthly electronic newsletter. It was also noted, however, that the Hague Conference website was already available, with information updated daily on signatures and ratifications, as well as a "News and Events" section, and that this should be better used. The Secretary General expressed the hope that some day funding could be found for an (audiovisual) Intranet facility among National Organs and among Central Authorities under the various Conventions.

- *The **Chair concluded** that there was a common wish to see more concise, perhaps illustrated documents, preferably in electronic form, and to avoid duplication between written and oral presentations. She also noted that there was a wish to receive more detailed information on technical assistance projects. National and Contact Organs and Embassies should be asked if they prefer to continue receiving documentation in paper form, in addition to electronic documents.*[5]

The Working Group then moved on to cover the remaining items of the agenda:

Item I. Short round table session

A. What does the Hague Conference do that it should not do?
B. What should be done that is currently not being done?
C. How should these activities be funded?

16. There was broad agreement that the Conference should continue to act as a "think tank" for the development of private international law. Therefore, working on new normative instruments, and Conventions in particular, would remain an important

[4] See Background Document, para. 23, and its Annex VI –Table of requests for Technical Assistance.
[5] See circular letter L.c. ON No 38(10) of 15 December 2010, *Mode de transmission des communications du Bureau Permanent / Mode of transmission of Permanent Bureau communications.*

priority. But it was also broadly recognised that promotion (Agenda Item III.B), monitoring and review of existing Conventions (Agenda Item III.D), and the other post-Convention activities such as supporting implementation and operation as developed by the Conference (Agenda Item III.E and Annex A) were all vital.

17. The discussion focused on the relatively recent activities consisting in technical assistance to regions and individual countries. The Secretary General related the efforts of the Permanent Bureau, made at the suggestion of several Members, to promote interest in its technical assistance work with Members' development agencies. While these agencies had shown interest, experts noted that the highly focused work of the Conference does not easily fall within these development agencies' broad categories of "developing the rule of law", "promoting good governance", or "capacity building". An expert presentation, "What donors want",[6] showed the changing requirements of, and opportunities for, external funding, in particular for intergovernmental organisations. Output of technical assistance should be SMART: Specific, Measurable, Acceptable, Realistic and Time bound. Partners should be sought at the local level. Organisations such as the Conference faced a challenge in establishing a direct link between the financial input and the results achieved. Creating a special trust fund for funding purposes might be advisable. The Secretary General suggested that a joint meeting be convened of Hague Conference experts and their counterparts in development agencies to examine possibilities of co-operation.

- *The **Chair concluded** that while there was broad support for these activities, even to the extent that they were generally seen as essential, there were issues of prioritisation and (modes of) funding that needed to be addressed by the Council. She noted suggestions,* e.g.*, to the effect that Members might take a more active role in providing technical assistance in their region. The Council would be invited to form a working group to address the issues involved in judicial studies and technical assistance to examine and make recommendations in particular on:*
  - *Priorities*
  - *Human resources requirements,*
  - *(Modes of) funding, and*
  - *Participating role of Members in their regions.*

Item II. Taking stock – and looking ahead

18. The Chair noted that, when in the years 2000-2002 the Strategic Plan for Conference was discussed, there was an acknowledgement that existing Conventions required a great amount of work on the part of the Permanent Bureau to ensure their effective operation. Previously, this aspect had been largely invisible to Members. At the time it was found that there was a 30-35% gap between funding and activities mandated by Members. While in the years that followed progress had been made on the resource front, this was mostly through voluntary funding, and there was a risk that the Hague Conference would fall behind again with respect to the resources available for the work that is mandated.

19. At the same time, in terms of achievements, the Conference developed no less than five global Conventions since 1999. There had been a surge of new Members. Existing Conventions had attracted many more Contracting States and were increasingly labour intensive, in terms of monitoring and support, let alone the need for technical assistance, some of the new States being unfamiliar with the basic notions of private international law. Many new initiatives had seen the light of

[6] By Mr Lex van der Hoeven, Senior Controller, Legal Services, Ministry of Foreign Affairs of the Netherlands.

the day. There had been an economic downturn. There had been greater participation by Spanish-speaking countries – which had led to an increase in use and demand in the Spanish language – a testimony to the success of the work of the Conference in the Latin American region. There were other regional developments in Africa, across the Mediterranean, in the Asia Pacific region, and in the CIS countries. All of these developments were likely to continue in the years ahead.

20. In the discussion that followed, some experts observed that their countries were not party to some of the major Conventions for which post-Convention support, and technical assistance in particular, is provided. As these activities increase, their countries may not benefit as much as others from their contributions to the Hague Conference. They noted that this discrepancy should be taken into account and that the costs of these activities, technical assistance in particular, should be borne by those who benefit from them. Other experts disagreed with this position and countered that all States benefit from these activities. The Secretary General illustrated the challenge: there is little use having the Apostille Convention if Apostilles are not recognised or issued correctly by other States Parties. The same was true for other Conventions.

- *The **Chair concluded** that the working group on technical assistance proposed to the Council could include this aspect in its discussions.*

Item III. Setting priorities – current activities

21. Experts agreed that each of the activities listed in item III of the agenda was important, that they were often interrelated, and that it was difficult to prioritise them. The question was raised as to their relative importance in terms of resource demands. The Deputy Secretary General noted that approximately 30% of the Permanent Bureau's resources went into development of new Conventions and other normative instruments, 10% to promotion activities, 20% to monitoring, 30% to support and technical assistance and another 10% to regional developments and regional presence. He cautioned, however, that it was not always possible to clearly distinguish between these categories because the same activity may serve multiple purposes (*e.g.*, a meeting on monitoring may also serve promotion, or involve some support).

22. Some experts suggested that the Hague Conference should prioritise Conventions according to those that are more active and that respond the best to Members' needs. Each activity should then be applied to these Conventions without prioritisation. In reply, it was pointed out that this was, in fact, what was already largely happening, at the expense of some not so active but potentially useful Conventions.

23. With regard to *A. Development of Conventions and other normative instruments*, it was noted that currently no binding Convention was on the agenda, but instead projects which might not lead to a binding instrument, in particular principles on the law applicable to contracts, and mediation. The Secretary General, while agreeing that no Conventions should be produced without a clear need, suggested that it was important not to lose the Conference's unique know-how in preparing binding Conventions according to the four-year cycle.

24. Experts then turned to guides to good practice relating to existing Conventions. These are not binding instruments (and always included a disclaimer to that effect), but persuasive. They may nevertheless be seen by States as authoritative guidelines. Some experts raised the difficulty for States that were not parties to the Conventions in question to contribute and benefit from such guides.

25. Regarding *B. Promotion of existing Conventions and Membership of the Conference*, it was recalled that this activity reflected Strategic Direction 1 of the Hague Conference.[7] The policy continues to be one of remaining watchful and approaching possible new Members in a considered way. It was pointed out that, since the Hague Conventions were generally (semi-) open to accessions, it was impossible to control the flow of such accessions.

26. Some experts mentioned that Members also had a role here. They could encourage a third State to join a particular Convention rather than conclude a bilateral agreement with that State on the same subject matter, and suggest to that State to join the Conference as a Member.[8]

27. *C. Supporting implementation and operation of existing Conventions*: With few exceptions, experts generally agreed that activities in this field were essential.

28. *D. Monitoring and review of existing Conventions*: It was pointed out that this activity was tailored to each Convention. For example, generally, Conventions on administrative and judicial co-operation required more intense monitoring and review than pure conflict of law Conventions. This was current practice.

29. *E. Regional developments and regional presence*: Several experts supported calls for greater regional development, as a means to reducing costs, assisting in determining the needs of countries in various regions, and tailoring activities to respond to such needs. It was suggested that regional and sub-regional organisations could be involved. The Secretary General noted that this was in line with current policies. He also noted that, as the Conference's Latin American programme demonstrated, regional activities could indeed reduce costs, but still required allocation of basic resources and support from the Hague secretariat.

30. *F. Assistance to, and co-operation with, other international organisations*: The Chair referred to paragraph 34 of the Background Note. Experts agreed that the Conference's normative work extends to assisting with the preparation of new instruments under the auspices of other intergovernmental organisations (*e.g.*, UNCITRAL and UNIDROIT). Such assistance was indeed to be welcomed. It was noted that this should not distract from the Conference's own normative work, and that, since most Members of the Conference were also members of these other international organisations, it was a responsibility of Members to co-ordinate their position in the various organisations.

- *The **Chair concluded** that while the development of new Conventions and other normative instruments should remain a priority, other activities such as promotion of existing Conventions and membership of the Conference, supporting implementation and operation of existing Conventions, and monitoring and review of existing Conventions, were interrelated and also important. The Council might wish to examine more closely the role of regions, and Members in regions, in the activities of the Conference.*

[7] "Strategic Direction 1 – Continue to increase global coverage of the Conference by enlarging its membership and the number of States Parties to Hague Conventions".
[8] On the role of the Spanish language, see *infra* No 39.

Item IV. Resources

A. Generally

31. At the Chair's request, the Secretary General recalled that the Permanent Bureau had originally been established in 1955 as a scientific secretariat, to prepare new Conventions. A second chapter started in the late 1970s, when the first monitoring Special Commissions took place, which had led to a wide range of other activities to support implementation and to ensure consistent application of Conventions. In the last few years, a third chapter had been added, as there had been a surge in technical assistance requests from individual regions and countries. Funding under the regular budget had not followed suit: certain activities to support implementation and ensure consistent application relied on voluntary contributions, and technical assistance programmes[9] depended essentially on such contributions. Over the last decade, the Hague Conference had received approximately 2.9 million Euros in supplementary contributions from governmental and other sources, not counting in-kind contributions. The problem was, however, that these voluntary contributions were usually unpredictable, which made planning, and recruiting staff paid from such contributions, difficult.

32. *(i) Which of the activities are essential (core); which are desirable but not essential?* Experts agreed that the development of new Conventions and other normative instruments was a core activity of the Conference. Most experts also agreed that monitoring and review activities were essential. Many experts were of the view that technical assistance was likewise critical for the correct implementation and application of Conventions and, therefore, core. Some experts, however, considered technical assistance desirable but not a core activity of the Conference. Experts agreed that this discussion on resources strongly overlapped with the previous discussion on setting priorities (Item III). The Chair suggested that the group recommend forming a working group to examine the question of funding in general.

33. *(ii) Is there agreement that core activities need to be funded through the Regular Budget? If not, what are the alternatives?* Several experts agreed that funding of long-term activities – salaries in particular – through the Supplementary Budget was not sustainable. Some experts mentioned that their governments were examining possibilities to contribute on a regular basis to the Supplementary Budget and, indeed, to increase, with other contributors to the "reduced top class" in the UPU scales,[10] their assessed contributions under the Regular Budget. Other experts pointed out that they would currently not be in a position to contribute more to the Conference.

34. *(iii) The role of voluntary contributions (Supplementary Budget) – which directions can be given for such funding?* Experts welcomed the successful efforts to find supplementary funding, including from private sources. With regard to the future, private funding might be something to look into further, but this may itself require additional expertise, resources and time. The Council should provide directions for

[9] In particular "ICATAP", "CPAP", "LCAP", the Assistance Programmes for Inter Country Adoption, Child Protection, and Legal Co-operation, administered through the Permanent Bureau's International Centre for Judicial Studies and Technical Assistance.
[10] See Background Note, Annex I – Taking stock, para. 2.

such funding. The Chair suggested referring the question of directions for funding through voluntary contributions to the future working group on funding.

35. *(iv) How to make a (stronger) case for funding of activities (notably through the International Centre for Judicial Studies and Technical Assistance) aimed at reinforcing the rule of law,* good *governance, and capacity building, from Members' development agencies?* The relevance of "the rule of law" and "good governance" to the work of the Hague Conference was discussed, and the Secretary General explained that characterising the work of the Hague Conference in these terms allowed the organisation to connect with (Members') development agencies. It was agreed that, as explained by the expert's presentation,[11] solutions would need to be SMART, and that some flexibility in characterising the Conference's activities to various donors might be needed.

- *The **Chair concluded** that there was agreement that these issues would need more detailed study and discussion in a working group on funding generally*.

B. Specifically

36. *(i) Staffing – legal and administrative staff; career and succession planning.* The Chair referred to paragraph 25 of the Background Note, and stated that staffing under the Regular Budget is limited. The Secretary General identified the following three problems:
    - uncertainty of funding under the Supplementary Budget – 4.1 FTEs are currently funded under the Supplementary Budget;
    - in response to the PWC report, the Permanent Bureau engaged a number of legal officers – however, the conditions of engagement are not ideal and make it difficult to retain legal officers;
    - no funding is available to cover a handover period in the case of retirement of experienced legal staff.

    He also recalled, with gratitude, that Members already contribute to the staffing needs of the Permanent Bureau through secondments and internship programmes.

37. Experts accepted the importance of sustainable human resourcing and the need to match it to the level of work of the Hague Conference, and agreed that the issues would need to be further discussed in more detail. Views differed on the issue of handover periods, which some saw as a major issue that needed to be addressed, but others felt Governments would be reluctant to provide funding for.

38. *(ii) Building – the current building has reached its maximum capacity: possible extension? Move to new building? (NB: the building constitutes the principal asset of the pension fund).* The Chair referred to paragraphs 26 and 27 of the Background Note. First Secretary Christophe Bernasconi explained that the working group on pensions established by the Council of Diplomatic Representatives had agreed to address funding the pension scheme in two steps: first, by implementing a structure; and second, by considering the building. It was suggested that now might be an appropriate time to reconvene the working group on pensions to consider this issue.

39. *(iii) Languages – Spanish as a third (working) language*. A number of experts from Spanish-speaking States, supported by some non-Spanish-speaking States,proposed including funding for simultaneous interpretation and translation for Spanish, now based on voluntary funding, in the Regular Budget. This was

[11] *Supra*, No 17.

justified in light of the high number of Spanish-speaking countries participating in the work of the Conference, and the systematic use of Spanish would benefit the organisation as a whole. Some experts responded to the proposal with caution, noting that there might be other languages which could also be added as working language in light of their widespread use.

40. *(iv) Regional offices – Latin America, Asia Pacific, Africa?* Experts were informed about the costs to the Hague Conference of maintaining the regional office in Latin America. The salary of the Liaison Legal Officer is funded under the Regular Budget, but other operational costs are covered by the Supplementary Budget. The Government of Argentina kindly provides for facilities and the cost of communications for the Liaison Legal Officer in Buenos Aires. A generous offer has been made for a regional office in Hong Kong. At present, the Permanent Bureau is awaiting feedback from States in the Asia Pacific region. The Deputy Secretary General commented that while it was premature at this stage to think about establishing an office in Africa, this did not mean that there is not intense interest in the work of the Hague Conference among States in the region; indeed there is. For the time being, it was suggested by the Deputy Secretary General that the Hague Conference continue its engagement with the region (such as the recent Pretoria seminar, and English and French-speaking seminars on the 1993 Intercountry Adoption Convention).

41. *(v) Investing in new communication means to maintain the networks of National and Contact Organs, (Central)* Authorities*, and courts?* A brief discussion followed with reference to paragraphs 17 to 19 of the Background Note.

- *The Chair* ***concluded*** *that the staffing issues could in part be addressed by the future working group on funding, that the issue of the building would be further discussed by the Working Group on Pensions, and that the issues of languages, regional offices and new communication means should be further examined by the Council.*

Item V. Working methods

42. *A. Need to rethink the established four-year cycle for the development of Conventions as a basis for the operation of the Hague Conference?* The Chair noted that this item had been added to the agenda in light of the fact that no new Conventions were currently on the work programme of the Hague Conference, and referred experts to Annex II of the Strategic Plan. It was agreed that the Statute provides for flexibility in the frequency of Diplomatic Sessions (see Art. 4(6)), and that the four-year cycle is appropriate and will be set in motion once a project for a new Convention is added to the work programme.

43. *B. Programming and budget – the link between the Council on General Affairs and Policy and the Council of Diplomatic Representatives.*The Chair noted recent efforts by the Permanent Bureau to ensure a link between the two processes such that the budget aligns with the demands of the work programme. At present, this involves three-stages:

1. consideration of a draft budget by the Council on General Affairs and Policy (April); immediately followed by
2. review of the draft budget by an informal working group of the Council on Diplomatic Representatives; and
3. approval of the budget by the Council of Diplomatic Representatives (end of June / early July).

A number of experts emphasised the need for Members to co-ordinate internally. For some, there is no issue as the agency responsible for the work programme is

also responsible for the budget (*e.g.*, Ministry of Foreign Affairs). This is not the case for other States.

44. *C. Council on General Affairs and Policy – its role under the new Statute. Frequency of meetings. Reporting by the Permanent Bureau. Alternatives?* – See *supra* Nos 4-10.

45. *D. The Hague Conference's role in assisting sister organisations* – See *supra* No 30.

46. *E. The Hague Conference's role in international / national proceedings concerning Hague Conventions.* The Chair referred to paragraph 35 of the Background Note. Experts exchanged a range of views about whether or not the Permanent Bureau should intervene in national proceedings, particularly in the context of its recent *amicus curiae* brief in the case of *Abbott v. Abbott* before the Supreme Court of the United States of America. The Deputy Secretary General explained that the Permanent Bureau had always exercised extreme caution in such interventions, which remained an ultimate option. The basis for such action was the Permanent Bureau's general mandate to assist in ensuring uniform interpretation of the Hague Conventions, which should be seen against the backdrop of the lack of a uniform interpretation mechanism for Hague Conventions. The risk of divergent rulings on fundamental issues such as the scope of the 1980 Child Abduction Convention could be very serious.

47. He pointed out that the Permanent Bureau's decision to submit its *amicus* brief in this particular case was based on the following criteria:
    - the importance of the issues raised in terms of ensuring international consistency in the interpretation of, in this case, the 1980 Child Abduction Convention;
    - the *amicus* brief only addresses questions of law, not of fact;
    - there is a clear basis to intervene – *i.e.*, whether the question is clearly answered by the Convention or the subsequent practice of States as evidenced in the conclusions and recommendations of a Special Commission;
    - none of the States Parties concerned object to the intervention by the Permanent Bureau; and
    - there are no other effective ways to deal with the particular issue.

48. With respect to the practice of such interventions more generally, experts agreed on the need for a cautious approach. While views for and against the Permanent Bureau engaging in this kind of activity were expressed, the discussion generally centred on the need and possible mechanisms for consultation of Members prior to such intervention. Experts acknowledged the tight timeframes often involved in submitting *amicus* briefs, and that it would be unrealistic to submit a proposed *amicus* brief to the annual meeting of the Council for consultation. It was suggested that the proposed "Friends of the Chair" informal group could be an appropriate forum for this.

- *The* ***Chair concluded*** *that while the submission of* amicus curiae *briefs may be, in exceptional circumstances, a useful activity for the Permanent Bureau to pursue, the Council should consider further the need, and possible mechanisms, for prior consultation with Members, taking into account the applicable tight timeframes.*

49. *F. Regulations for Chair / Vice-Chair(s) of Council on General Affairs and Policy?* – See *supra* Nos 11-12.

A N N E X E S

A N N E X E / A N N E X A

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

Strategic directions and working methods of the Hague Conference on Private International Law

Provisional draft agenda proposed by the Chair

2-3 December 2010

NOTE

This draft agenda will be treated with flexibility and may need to be modified in light of the discussions of the Working Group.

It is proposed that the sessions will last from 9.30 a.m. to 1.00 p.m. and from 2.30 to 6.00 p.m. with lunch breaks from 1.00 to 2.30 p.m. and breaks for coffee and tea normally from 11.00 to 11.15 a.m. and from 4.00 to 4.15 p.m.

I. Short round table session addressing four basic questions –

A. What does the Hague Conference currently do that it should not do?
B. What should be done that is currently not being done?
C. How to fund its activities?
D. Is there a need to make changes in the organisation and working methods of the Conference to make its activities more effective?

II. Taking stock – and looking ahead –

Where does the Hague Conference stand in terms of its Strategic Plan (2002) as reviewed annually by the Council on General Affairs and Policy, based on the recommendations by the Group of Ambassadors (2000) and the PricewaterhouseCoopers Report (2002): what has been achieved? What requires further attention? What trends exist in the external environment that affect its activities? Where should the Conference stand in 2020?

III. Setting priorities – current activities –

A. Development of new Conventions and other normative instruments;
B. Promotion of existing Conventions and Membership of the Conference;
C. Supporting implementation and operation of existing Conventions;[1]
D. Monitoring and review of existing Conventions;
E. Regional developments and regional presence;
F. Assistance to, and co-operation with, other international organisations (see also V.D. *infra*).

[1] For a more detailed description, see Annex A, p. iii.

IV. Resources –

A. Generally

(i) Which of the activities are essential (core); which are desirable but not essential?
(ii) Is there agreement that core activities need to be funded through the Regular Budget? If not, what are the alternatives?
(iii) The role of voluntary contributions (Supplementary Budget) – which directions can be given for such funding?
(iv) How to make a (stronger) case for funding of activities (notably through the International Centre for Judicial Studies and Technical Assistance) aimed at reinforcing the rule of law, good governance, and capacity building, from Members' development agencies?

B. Specifically

(i) Staffing – legal and administrative staff; career and succession planning;
(ii) Building – the current building has reached its maximum capacity: possible extension? Move to new building? (NB: the building constitutes the principal asset of the pension fund);
(iii) Languages – Spanish as a third (working) language;
(iv) Regional offices – Latin America, Asia Pacific, Africa?
(v) Investing in new communication means to maintain the networks of National and Contact Organs, (Central) Authorities, and courts?

V. Working methods –

A. Need to rethink the established four-year cycle for the development of Conventions as a basis for the operation of the Hague Conference?
B. Programming and budget – the link between the Council on General Affairs and Policy and the Council of Diplomatic Representatives;
C. Council on General Affairs and Policy – its role under the new Statute. Frequency of meetings. Reporting by the Permanent Bureau. Alternatives?
D. The Hague Conference's role in assisting sister organisations;
E. The Hague Conference's role in international / national proceedings concerning Hague Conventions;
F. Regulations for Chair / Vice-Chair(s) of Council on General Affairs and Policy?

VI. Conclusions

Annex A

Setting priorities – Current activities

Examples of activities supporting implementation and operation of existing Conventions

(i) Treaty administration
(ii) Development of tools
- Maintaining the Hague Conference website
- Explanatory Reports, Proceedings (*Actes et documents*)
- Guides to Good Practice and Practical Handbooks
- Databases (INCADAT, INCASTAT, ICASTAT)
- IT support systems (iChild, iSupport)

(iii) Adaptation of existing Conventions (*e.g.*, to electronic environment, e-APP)
(iv) Maintaining global networks
- National and Contact Organs
- (Central) administrative Authorities
- Contact Judges
- Judges' Newsletter

(v) Problem solving
(vi) Responding to individual requests from:
- States
- Individuals

(vii) Technical assistance, including legal advice to states
(viii) Training and judicial education

A N N E X E / A N N E X B

GROUPE DE TRAVAIL DES MEMBRES
WORKING GROUP OF MEMBERS

Liste des participants
List of participants

2-3 décembre / December 2010

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

Réunion du Groupe de travail des Membres

* * *

Meeting of the Working Group of Members

2-3 décembre – 2010 – 2-3 December

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Final list of participants

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A N N E X E / A N N E X C

STRATÉGIE / STRATEGY

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

décembre / December 2010

DOCUMENT D'INFORMATION POUR ASSISTER LE GROUPE DE TRAVAIL DANS SA RÉUNION DU 2 ET 3 DÉCEMBRE 2010

établi par le Bureau Permanent

* * *

BACKGROUND DOCUMENT TO ASSIST THE WORKING GROUP MEETING, 2-3 DECEMBER 2010

drawn up by the Permanent Bureau

Document établi à l'intention du Groupe de travail
(réunion du 2 et 3 décembre 2010)

Document drawn up for the attention of the Working Group
(meeting of 2 and 3 December 2010)

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Background document prepared by the Permanent Bureau to assist the Working Group meeting, 2-3 December 2010

Introduction

1. At its meeting of 7 to 9 April 2010, the Council on General Affairs and Policy –

> "[…] invited the Secretary General to convene a geographically representative working group of Members to discuss possible improvements in the organisation and working methods of the Council in the context of the amended Statute, as well as strategic issues, including funding, relating to the work of the Organisation. The Council agreed that the working group should remain open to all Members. The Council also agreed that external experts could be invited to advise this working group.
>
> The Council agreed that the working group should submit a report to the 2011 Council meeting.
>
> The Council accepted the Chair's proposal that the following would constitute the core membership of the working group: Argentina, Australia, Brazil, Canada (Chair), China, Egypt, France, Germany, Japan, Mexico, Russia, South Africa, Switzerland, United Kingdom and the United States of America.
>
> The Council agreed that the Chair of the Council on General Affairs and Policy and the President of the Netherlands Standing Government Committee would also be members of the working group."[1]

2. It may be helpful to recall the in-depth reflection process on the Organisation and its working methods in which the Conference engaged a decade ago, which provided the basis for a wide range of initiatives and reforms undertaken over the past decade, including, eventually, the amendment of the Statute of the Organisation in 2007.

3. At the 2000 annual meeting of the Council of Diplomatic Representatives (the organ competent for financial matters under Art. 10 of the Statute), the Secretary General suggested that an informal group of Ambassadors be formed to assist the Permanent Bureau in developing a strategy for the future so as to assure the financial and human resources necessary for the Organisation to operate most effectively. This was agreed, and the Informal Group of Ambassadors of Member States was first convened in 2000 under the chairmanship of H.E. Mr H. Reimann, the Ambassador of Switzerland to the Kingdom of the Netherlands, and produced a report with suggestions for strategic action.[2]

4. This was the start for further reflections which involved discussions during the Special Commission on General Affairs meeting of May 2000, and an extensive research study and evaluation (including consultation with a number of experienced and knowledgeable persons in government, the academic world, the private sector, and other international organisations and within the NGO sector): "The Hague Conference on Private International Law: Resource Deficiencies and Strategic Positioning", prepared by PricewaterhouseCoopers (hereinafter "PWC Report") and published in March 2002.[3]

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[1] See "Report of the Council on General Affairs and Policy of the Conference of 7 to 9 April 2010", Prel. Doc. No 1 of September 2010 for the attention of the Council of April 2011 on General Affairs and Policy of the Conference, Conclusions and Recommendations, p. 18. Available on the Hague Conference website at < www.hcch.net >, under "Work in Progress" then "General Affairs".

[2] See "The Hague Conference on Private International Law on the Eve of the New Millennium: Some Concrete Suggestions for Strategic Action proposed by the Informal Group of Ambassadors of the Council of Diplomatic Representatives", summary of the discussions of the Group, prepared by the Chairman, Prel. Doc. No 2 of March 2000 for the attention of the Special Commission of May 2000 on General Affairs and Policy of the Conference, *Proceedings of the Nineteenth Session*, Tome I, *Miscellaneous matters*, pp. 67-76.

[3] Prel. Doc. No 19 of March 2002 for the attention of Commission I (General Affairs and Policy of the Conference) of the XIXth Diplomatic Session – April 2002, *ibid.*, pp. 119-135.

5. This was followed by the drawing up of a Strategic Plan,[4] and discussions in Commission I on General Affairs and Policy of the Nineteenth Diplomatic Session of the Conference in June 2001 and April 2002, culminating in the following decisions of the Nineteenth Session pertaining to the role of the Special Commission on General Affairs and Policy of the Conference and the organisation of the work of the Conference –

> "1. *a)* Decides that the Special Commission on General Affairs and Policy of the Conference shall be convened with greater frequency than to date, in principle at least every two years;
>
> *b)* Invites the Secretary General to convene meetings of this Special Commission, as necessary;
>
> *c)* Authorises the Special Commission to take decisions on matters relating to General Affairs and Policy of the Conference.
>
> 2. *a)* Welcomes the Strategic Plan prepared by the Permanent Bureau, submitted to the Member States in March 2002, and supports its main directions, in particular the linking as outlined in the Strategic Plan between the decision process on the work programme of the Conference and that on the budget;
>
> *b)* Decides that the implementation of the Strategic Plan shall be reviewed on a regular basis and that, depending on the outcome of such reviews, the Strategic Plan as a whole be reviewed on a four year basis."[5]

6. The above Decision under 1 was immediately implemented: starting in April 2003, meetings of the Special Commission on General Affairs and Policy have been held annually. At each of its meetings, the Special Commission – since 2007 the Council – has reviewed an update of the implementation of the Strategic Plan. So far, no wish to review the Strategic Plan as a whole (Decision 2 b) above) has been expressed.

7. The PWC Report presented three main findings –

1. Tasks and resources of the Secretariat (Permanent Bureau) do not match;
2. Closure of the resource gap is necessary to maintain quality and position; and
3. Decisions need to be made regarding the future strategic position of the Hague Conference and its Permanent Bureau.

Since the publication of the PWC Report, significant efforts have been made jointly by the Members of the Hague Conference and the Permanent Bureau to achieve a better match of tasks and resources, and to set priorities. The Strategic Plan set out directions providing useful parameters to evaluate achievements and remaining concerns. In this regard it is worth noting that, during the past decade, important and partly unforeseen changes have occurred (i) in the structure and working methods of the Organisation (the admission of the European Union and related changes to the Statute, consensus instead of voting), (ii) in the composition of the Organisation (as a result of the structural changes and substantial growth in membership), and (iii) in the Conference's external environment – all of which should also be taken into account in an overall assessment of where the Organisation currently stands and where it should or could go.

8. **Annex I** contains a stock-taking, in summary form, of achievements in terms of the strategic directions adopted in the Strategic Plan.

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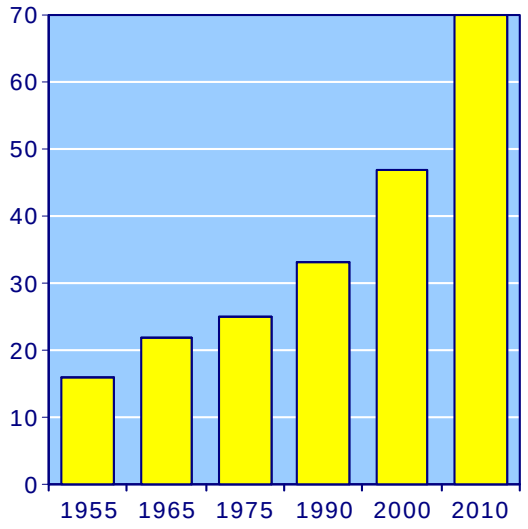
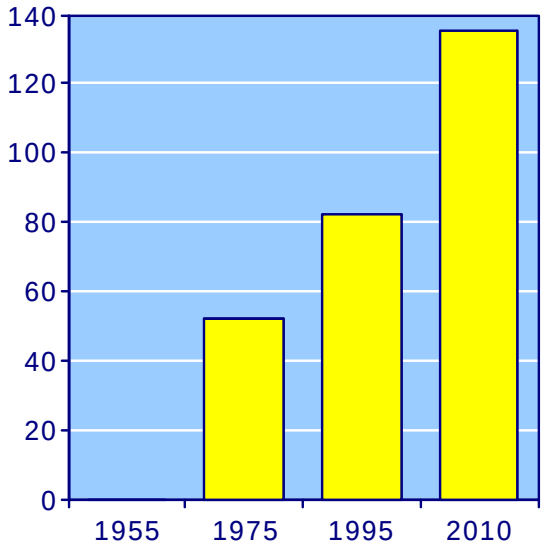
[4] See "The Hague Conference on Private International Law – Strategic Plan", drawn up by the Permanent Bureau, Prel. Doc. No 21B of March 2002 revised, *ibid.*, pp. 165-211. Also available on the Hague Conference website at: < www.hcch.net >, under "About HCCH" then "Strategic Plan".
[5] Final Act, Part B, *ibid.*, p. 45.

Growth in membership since 1955



Number of States party to at least one Hague Convention



I. Current trends and likely future developments

9. Looking back over the past decade, a number of important developments have occurred in the environment in which the Hague Conference operates. They are likely to continue affecting this environment in the years ahead. Four of these would seem to be the following: (1) globalisation; (2) regional integration; (3) digitalisation of information and communication; and (4) growing impact of diversity in legal traditions. Of course, members of the Working Group may have their own views; in any event, a short discussion on current trends and likely future developments may be useful.

A. Globalisation

10. The growing interdependence of economies, societies and people worldwide received a strong impetus following the collapse of the Berlin Wall in 1989. This event not only marked the end of the Cold War but also the opening up of the possibility for millions of people east of the wall – and indeed elsewhere in the world – to join global, regional, and economic activities and institutions. Its consequences became very visible during the past decade with the eastward extension of the European Union,[6] and of the Conference, as the Russian Federation, Belarus, Georgia, Lithuania (all in 2001), Ukraine (in 2003), as well as a number of other States, including emerging States, joined the Conference and its Conventions.

11. The principal driving force of this growing interdependence has been private initiative: expanding markets, growing mobility and sharing of information through the mass media and the Internet, made possible by continuing technological developments. The increasing mobility of people and the expanding reach of economic and other activities across international borders are causing an exponential increase in the number and complexity of cross-border legal issues in the civil and commercial law field throughout the world.

12. This calls for a response in terms of more co-ordination, communication and co-operation among different legal systems, whose civil and commercial substantive and procedural laws continue to be diverse – a legal diversity that is becoming ever more challenging in the daily lives of individuals, families, and companies and other entities. Private international law, which addresses this diversity, is moving from the fringes to the centre of many people's lives.

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[6] The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia joined the EU in 2004, Bulgaria and Romania in 2007.

13. With a growing world population,[7] continuing and probably increasing mobility of people, including the possibility of a substantial increase of (labour) migration flows in the coming decades,[8] and new centres of growth of the world economy, the role of private international law is bound to expand. The Hague Conference will be called upon, more than ever, to provide the global community with instruments and mechanisms necessary to deal with cross-border civil and commercial issues in a world that is increasingly interconnected yet diverse in terms of civil and commercial law systems. Since all countries, irrespective of their ideological orientations, will want both to be part of the increasingly integrated world economy and the emerging global society, and to be respected in their specific identity as expressed in their civil and commercial law systems, the Hague Conference has – in addition to what it has already achieved – enormous additional potential to be a global forum where different legal traditions meet to agree on mutual co-ordination, communication and co-operation, thereby contributing to economic growth of all countries and peaceful relationships.

B. Regional integration

14. Partly as a manifestation of globalisation – which naturally permeates contiguous nations even more than countries at a distance – the past decade has seen growing regional cross-border socio-economic interconnectedness on all continents. In response, there has been an increase of activity in the field of private international law at the regional level: foremost within the European Union, but also in Latin America (Mercosur), the Arab League, and growing interest for private international law with regional organisations such as Caricom, the African Union, OHADA (Organisation for the Harmonization of Business Law in Africa), the East African Community, Asean, and others. The work of the Hague Conference is generally a source of inspiration, if not a direct model, for such regional work.

15. However, for many issues even the regional level is too limited. Individuals, families, and governments on their behalf wish to see their marriages, divorces, status of children, adoptions, powers of representation, wills, and orders protecting children and other family members recognised; they also want wrongfully removed children returned, not just within but from beyond their region. Likewise, natural persons, companies and other entities and, again, governments on their behalf, wish to see Apostilles for public documents honoured, service of process effectuated, witnesses heard, exemptions of security for costs applied, and their choices of law and choices of court respected, not only within the region, but across the region's borders in other parts of the world. Mobility of people, transnational relationships and commercial activity increasingly transcend regional borders. They call for a global response.

16. The accession of the European Union to the Hague Conference (see **Annex III**, Extract from the updated article on the Hague Conference on Private International Law to be published in the *Répertoire de Droit International* of the *Encyclopédie juridique Dalloz*), the close co-operation between the Hague Conference and other regional organisations such as those mentioned above, the rapid growth of global networks of administrative (Central) authorities in charge of the operation of Hague Conventions as well as the emergence of a global network of judges, both often in parallel with regional networks, all of which took place or intensified during the past decade, are manifestations of the increasingly global span of private international law issues and

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[7] The current world population is estimated at 6.8 billion people, and is expected to increase to 8.3 billon in 2030 [source: International Data Base (IDB) of the U.S. Census Bureau –
< http://www.census.gov/ipc/www/idb/worldpop.php > (last consulted 10 November 2010)].

[8] See United Nations, DESA, Population Division, "Trends in International Migration Stock: the 2008 revision", < http://www.un.org/esa/population/migration/UN_MigStock_2008.pdf > (last consulted 10 November 2010), p. 1; Organisation for Economic Co-operation and Development, "The future of international migration to OECD countries", OECD 2009, p. 83.

solutions to those issues. There can be little doubt that these developments will continue in the years ahead.

C. Digitalisation of information and communication

17. The past decade has seen a dramatic increase in the use of electronic systems and data. Anticipating this development,[9] the Hague Conference has addressed the private international law aspects of digital information and communication. The results are visible in both the substance of the Conference's work and its working methods.

18. Digitalisation has had a major impact on the substance of the work of the Conference. In 2005, the Permanent Bureau, jointly with the International Union of Latin Notaries, organised an international forum on e-Notarization and e-Apostilles, followed by a series of similar international meetings, which gave a major impetus to the successful e-APP project undertaken by the Hague Conference. The phenomenon of the holding and transfer of securities through intermediaries – the conflict of law aspects of which are the subject of the 2006 Securities Convention – depends essentially on electronic book entries. The 2005 Choice of Court Convention and the 2007 Child Support Convention and its Protocol have been expressly designed so as to be used in an electronic environment. The downsides of cyberspace have also attracted the attention of the Conference, *e.g.*, in the context of the discussions on the operation of the 1993 Hague Intercountry Adoption Convention (electronic advertising of children).

19. For a summary overview of the use of electronic media, the development of electronic tools such as INCADAT, and the use of digital means to improve the internal organisation of the Permanent Bureau see **Annex I**. There is tremendous potential for the use of electronic communication means in respect of the co-operative networks of Central Authorities under the Service, Taking of Evidence, Access to Justice, and, in particular, the Child Abduction, Protection of Children and Adults, Intercountry Adoption and Child Support Conventions. If, for example, the Central Authorities designated under the 1980 Child Abduction Convention would generally have video-conference equipment at their disposal, the expedited and well-informed handling of requests for the return of children would certainly benefit.

D. Growing impact of diversity in legal traditions

20. The Hague Conference has been called "comparative law in action".[10] Since the 1960s, in particular, the Conference has made huge efforts, which are ongoing, to bridge differences between civil and common law systems, as well as differences within each of these groups. Also, after Egypt (in 1961) and Israel (in 1964) joined the Organisation, the Conference took into account the fact that these and many other legal systems provide for the application of different laws to different categories of persons. During the past decade, in the aftermath of 9/11 (11 September 2001), cultural differences have become more manifest in the world. The Hague Conference has made a special effort to assist in accommodating these differences, in particular with regard to transfrontier family relations, with a dialogue among Members and non-Member States south, east

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[9] As early as 1997, the Permanent Bureau took the initiative for an academic colloquium on the private international law aspects of the Internet. See K. Boele-Woelki & C. Kessedjian (eds.), *Internet-Which Court Decides? Which Law Applies? Quel tribunal décide ? Quel droit s'applique ?* (The Hague, 1998). This colloquium was followed by an international round table, jointly organised with the University of Geneva, on electronic commerce and the internet in 1999, and an international conference on the legal aspects of an e-commerce transaction, organised jointly with the European Union and the International Chamber of Commerce in 2004. See A. Schulz (Ed.), *Legal Aspects of an E-commerce Transaction* (Munich, 2006).

[10] As said by Arthur Taylor von Mehren. See A. Dyer, "Unfair Competition in Private International Law", *Rec. cours La Haye,* Vol. 212, 1988.IV, p. 383.

and north of the Mediterranean and beyond (the Malta Process).[11] As the Conference has grown both in membership and in the number of non-Member States that are Parties to one or more Conventions, the diversity of legal traditions has increased and its impact on the work of the Conference – at each of the stages of selection of topics, negotiations, promotion and implementation of instruments – has grown. This, again, is a development that is likely to continue in the next decade and beyond.

II. Setting priorities with regard to current (and future) activities

21. Agenda Items III-A to F and Annex A to the Agenda present a (non-exhaustive) overview of current activities of the Permanent Bureau, all of which have been undertaken with the support and encouragement of Members. More extensive information on the activities of the Permanent Bureau is available in the Annual Reports published since 2008 (on activities undertaken since January 2007). **Annex I** summarises what has been achieved during the past decade in terms of both work on new instruments and post-Convention services. See also **Annex V**, The Regional Office for Latin America: achievements, services, and other benefits. The fact remains, however, that the demands on the Permanent Bureau, in particular with regard to post-Convention activities, greatly exceed the resources made available through the Regular Budget. As a result, many of these demands can be met only thanks to the Supplementary Budget – which is not sustainable due to its voluntary character (see *infra*, para. 22). The pressure has become even more intense as a result of the economic tide. A full discussion on priorities with regard to current activities of the Permanent Bureau, on available resources, and on possible ways of increasing funding will be helpful.

The Working Group may wish to examine the current activities of the Hague Conference and advise whether any of these activities should be discontinued, whether any activities should be added, and which priorities should be set.

A. Development of new Conventions and other normative instruments;
B. Promotion of existing Conventions and membership of the Conference;
C. Supporting implementation and operation of existing Conventions;
D. Monitoring and review of existing Conventions;
E. Regional developments and regional presence;
F. Assistance to, and co-operation with, other international organisations.

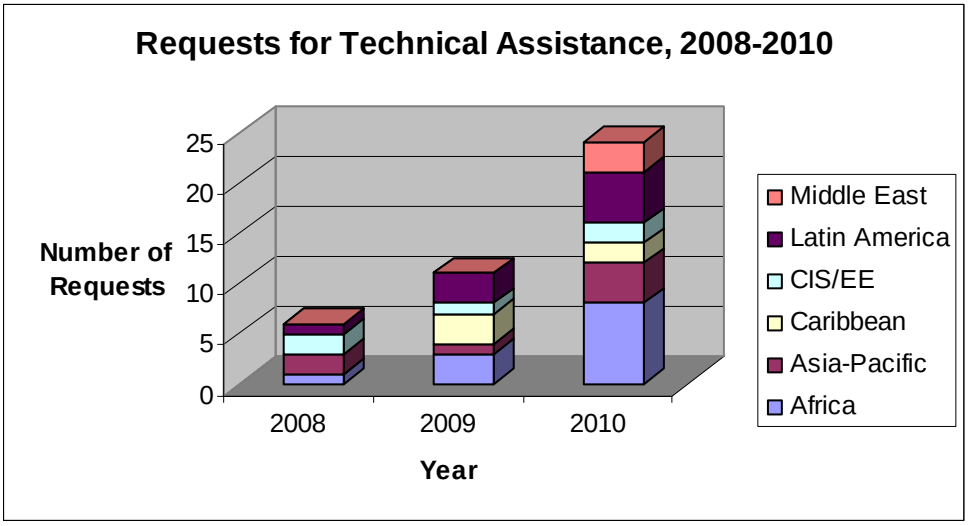
III. Resources

22. Agenda Items IV-A (i) to (iv) raise general issues concerning the funding of the Conference. On several occasions, Members have expressed concerns that activities seen as "core" or "essential", and even some staff positions relating to these activities, are funded though voluntary contributions. This indeed poses a problem because, with the exception of the (one-time) four-year grant from the Dutch Government to support the International Centre for Judicial Studies and Technical Assistance (hereinafter "the

[11] For an early academic congress jointly organised by the Permanent Bureau and the University of Osnabrück, see C. von Bar (Ed.), *Islamic Law and its Reception by the Courts in the West*, Munich, 1999.

Centre") and its activities during 2008-2012, voluntary funding is unpredictable and does not allow for long-term planning.[12]

23. The activities of the Centre – which have opened up a new avenue of work, in addition to traditional (but continuously expanding) activities such as treaty administration, development of tools or monitoring – have repeatedly been qualified by Members as essential.[13] As **Annex VI** (tables of requests for technical assistance) illustrates, the number of requests for assistance continues to grow exponentially. Currently, the Permanent Bureau is dealing, through the Centre, with 21 requests for technical assistance with the implementation or operation of Hague Conventions from 18 countries. In addition, 20 such requests are pending from 13 countries.



[12] See, *e.g.*, "Report of Meeting No 4 of the Council on General Affairs and Policy of 2 April 2009", pp. 4-5:

"However, some experts expressed concern with the Supplementary Budget. Several stated that their countries adopted a zero nominal growth policy with regard to contributions to international organisations. It was stressed however that this 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 and the difficult problem of the pension scheme 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."

[13] See most recently Conclusions Nos 32-35 of the Special Commission (17-25 June 2010) on the practical operation of the 1993 Intercountry Adoption Convention:

"32. The Special Commission recognised the great value of the Intercountry Adoption Technical Assistance Programme (ICATAP), which has already provided technical assistance and training for several States.

33. The Special Commission acknowledged the limited resources available to the Permanent Bureau to maintain ICATAP and urged all States to consider making financial and / or in-kind contributions to secure the continuity of the programme.

34. Contributions of some States and international organisations, such as UNICEF, have been crucial to the success of ICATAP. In this regard, the horizontal co-operation between States of origin is particularly beneficial.

35. The work undertaken to support the effective implementation of the Convention under the aegis of the International Centre for Judicial Studies and Technical Assistance should be regarded as essential for the proper functioning of the Convention."

Given that many, if not most, of the States acceding to Hague Conventions are States with a developing economy or an economy in transition, for which the Conventions present real challenges in terms of their implementation and application, this should come as no surprise. Moreover, in respect of the Children's Conventions, the UN Committee on the Rights of the Child not only systematically encourages the States Parties to the UN Convention on the Rights of the Child to join the Hague Conventions, in particular the Intercountry Adoption Convention, but also recommends that they seek assistance from the Permanent Bureau. UNICEF is also increasingly asking for assistance from the Conference with regard to the implementation of the Intercountry Adoption Convention, and has provided generous logistical assistance to Permanent Bureau missions, including in Guatemala, Cambodia and Haiti as well as in States in the Southern and Eastern African Region.

24. There is an incremental awareness among Members' development agencies, but not yet a full recognition, it would seem, that assistance with the implementation or application of Hague Conventions provided to States with a developing economy or an economy in transition may well constitute a significant contribution to promoting the rule of law, good governance, and capacity building.[14]

The Working Group may wish to discuss what could be done to attract the interest, and in particular funding, from the Members' development agencies.

25. Agenda Items IV-B (i) to (v) raise some specific issues in relation to the Conference's resources. People are the Organisation's main capital and, in terms of expenses, its principal cost item. Thanks to a gradual increase of the Regular Budget, the transfer of 408,000 Euros from the Supplementary Budget to the Regular Budget in July 2004 and with the continued assistance of the Supplementary Budget, the Permanent Bureau per 1 July 2010 counts 33 staff members[15] (four of whom are funded through voluntary contributions). The gradual expansion of the team of Legal Officers has been particularly important – see **Annex IV**: Organisation chart of the Permanent Bureau and Staff Comparison 2002/2010. A difficulty that has appeared, however, is the lack of career prospects for this category of staff, which is due in part to limited financial resources. The matter of succession planning was raised in the Council on General Affairs and Policy, and could usefully be discussed by the Working Group, especially with regard to its possible financial implications (for the procedure for the appointment of diplomatic staff, see Art. 5 of the Statute). Currently, in the case of succession of a staff member by an outside recruitment, the budget of the Conference does not allow for new staff to begin work before the departure of the incumbent employee. From the point of view of ensuring continuity, this is not ideal.

The Working Group may wish to reflect on ways to increase career prospects and to improve succession planning.

26. The building at Scheveningseweg 6 has reached its maximum capacity, and since February 2007 the Permanent Bureau has rented three offices (one of which is funded through the Regular Budget and two through the Supplementary Budget) in the Academy building on the grounds of the Peace Palace to accommodate permanent staff, persons on secondment and trainees – a situation which raises some issues from the point of view of cohesion among staff. At the Working Group meeting, a short demonstration

[14] As the Conference's Members have already recognised in the Strategic Plan, which defines the vision of the Conference as follows: "To promote the orderly and efficient settlement of disputes, good governance and the rule of law, while respecting the diversity of legal traditions", Strategic Plan, *op. cit.* note 4, p. 171.
[15] Equalling 31.2 FTEs.

could be given of a proposal to extend the current building; however, such an extension would only provide temporary relief.

27. Another issue, of which the Working Group should be aware, is that the building at Scheveningseweg 6, estimated at a value of 2,150,000 Euros (2008), is an asset of the pension reserve fund (total value of the fund is 3,783,770 Euros, meaning that the liquid pension fund assets to be administered equal 1,633,770 Euros). The existence of this asset in non-liquid form raises issues that should be addressed. First, the amount left for active administration and investment of the pension reserve fund is low. Second, the building does not presently produce revenue for the pension reserve fund since the Members of the Organisation do not pay rent for its use (with the exception of paying for general maintenance under Art. 3 of the Regular Budget). Against this background, the question arises as to whether the Members should be asked to pay rent for the building, which would go into the pension reserve fund. Another option would be to sell the building and use the proceeds to fuel the pension reserve fund. This would of course require careful consideration of the financing of new premises for the Permanent Bureau.

The Working Group may wish to reflect on a policy with regard to the current premises of the Permanent Bureau (expansion of staff and pension aspects).

28. In the early 1990s, during the negotiations on the 1993 Intercountry Adoption Convention in which many Spanish-speaking countries took part, it became clear that most of the experts sent by capitals of these countries had great difficulties following discussions in the official languages of the Conference. Consequently, measures were taken jointly by the Members of the Conference to assist the latter, namely by providing Spanish interpretation and translation of documents. With the help of Members' experts, in particular Professor Alegría Borrás from Spain, with Members' voluntary support (in particular from the Governments of Argentina, the Netherlands, Spain and the United States of America), and thanks to the work of the Liaison Legal Officer for Latin America, it has been possible to find *ad hoc* solutions up to this point. It has been possible on several occasions to provide for Spanish simultaneous interpretation at meetings, and translation of essential documents. The continuing growth of the number of Spanish-speaking Member States and States Parties to Hague Conventions (21 Spanish-speaking States in total) makes this a recurrent issue that may usefully be discussed by the Working Group.

The Working Group may wish to discuss the issue of working languages other than English and French.

29. At the Working Group meeting, the Permanent Bureau will report on the current situation regarding regional offices. Various regional meetings have underscored the importance of a presence of the Conference in the regions where the meetings took place, and the Latin American programme, in particular, has shown the concrete benefits of such a presence. As mentioned before, the application of new communication means, such as video conferences, may also assist in reinforcing regional and global networks to some extent.

The Working Group may wish to discuss the issue of the regional presence of the Hague Conference.

IV. Working methods

30. A discussion on the question as to whether changes are needed – within the context of the amended Statute – in the current working methods of the Conference may benefit from a short reminder of the structural changes introduced by the amendment of the Statute in 2005, which entered into force on 1 January 2007, see **Annex II**.

31. In relation to Agenda Item V-A ("Need to rethink the established four-year cycle for the development of Conventions as a basis for the operation of the Hague Conference"), reference may be made to the Notes on the work programme of the Permanent Bureau for the next Financial Year submitted to the Council on General Affairs and Policy in February 2009 and in February 2010[16] – see also **Annex I** (para. 7). The four-year work cycle of the Hague Conference, with its well-established development stages (selection, research, discussion, drafting, adopting, consolidating, followed by promotion, implementation, support and monitoring),[17] constitutes a unique achievement that, with adaptations necessary depending on the topic and other circumstances, should be cherished. It also provides a basic scheme for a governance structure for the Conference, with a team of chairs (for both General Affairs and Policy and the topic(s) of the Convention(s) under negotiation), *rapporteurs* and other officials, which constitutes the natural core of the bureau of each diplomatic conference.

32. With regard to Agenda Item V-B ("Programming and budget – the link between the Council on General Affairs and Policy and the Council of Diplomatic Representatives"), see **Annex I,** paragraphs 16 to 20.

33. Agenda Item V-C concerns the role of the Council on General Affairs and Policy and its role under the amended Statute (see also **Annex II**). According to Article 4(1) of the Statute, the Council, composed of all Members, "has charge of the operation of the Conference. Meetings of the Council shall, in principle, be held annually". Since 2003, meetings have indeed been held annually, and the duration of the meetings has been determined in consultation with the Members.

> *The Working Group may wish to discuss whether the current frequency and duration of meetings of the Council on General Affairs and Policy of the Conference are satisfactory, and to make an assessment of its operation.*

34. Agenda Item V-D deals with an issue that was raised at the meeting of the Council in April 2010. This is a recurrent theme, and was extensively discussed earlier by the Conference at its Fourteenth Session in 1980.[18] Collaboration with other international organisations has since been considered necessary, especially when specific private international law matters are addressed and when there is a potential overlap or impact

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[16] See "Work programme of the Permanent Bureau for the next Financial Year (1 July 2009 – 30 June 2010)", Prel. Doc. No 2 of February 2009 for the attention of the Council of March / April 2009 on General Affairs and Policy of the Conference and "Work programme of the Permanent Bureau for the next Financial Year (1 July 2010 – 30 June 2011)", Prel. Doc. No 2 of February 2010 for the attention of the Council of April 2010 on General Affairs and Policy of the Conference. Available on the Hague Conference website at < www.hcch.net >, under "Work in Progress" then "General Affairs".

[17] See Strategic Plan, *op. cit.* note 4, pp. 203-209.

[18] See "Procès-verbal No 3, Meeting of Tuesday 14 October 1980", *Proceedings of the Fourteenth Session,* Tome I, *Miscellaneous matters,* pp. I-215-I-222 (at pp. 220-222), see also the "Note concerning certain problems of co-operation by the Conference with other organisations dealing with the unification of law", Prel. Doc. No 4 of November 1979, *ibid.*, pp. I-94-I-100 and "Note on the problems connected with a wider opening of the Hague Conference", Prel. Doc. B of June 1980, *ibid.*, pp. I-193-I-201, in particular Ch. III, pp. I-198-I-200.

with the Conference's existing instruments and projects. Recent examples include the ongoing collaboration with UNIDROIT and UNCITRAL to ensure consistency of both substantive law and conflict of laws relating to, *inter alia*, (intermediated) securities, insolvency or assignment of receivables, and the monitoring of some regional developments (for instance, the new EU instruments or the CIDIP process – *i.e.*, the Inter-American Specialized Conference on Private International Law – of the OAS). Additionally, the Permanent Bureau has maintained an excellent co-operative relationship with the UNCITRAL Secretariat by attending expert group and working group meetings on subject matters such as electronic signatures and electronic commerce, arbitration, the Legislative Guide on Secured Transactions (including the supplement on Security Rights in Intellectual Property), the 2001 Convention on the Assignment of Receivables in International Trade, and the 2004 Legislative Guide on Insolvency Law. The collaboration with UNCITRAL also includes co-operation issues such as judicial communications and the use of information technology in support of Hague Conventions. Admittedly, it has proven increasingly challenging to use the Conference's scarce resources for this type of in-depth work, not only due to the multiplication of regional private international law developments but also due to the technical complexity of matters addressed by its "sister organisations". At the same time, the positive results of this interconnected approach cannot be underestimated: the instruments issued in different international settings form a coherent legal body available to the Organisations' respective memberships. In addition, the mutual experience of exchanging observers enhances the outreach of the Conference's main task, namely, "the progressive unification of the rules of private international law".

The Working Group may wish to examine current methods of co-operation between the Hague Conference and other international organisations.

35. Agenda Item V-E concerns the Permanent Bureau's role in international or national proceedings. As a general rule, the Permanent Bureau has no mandate to give advice or intervene in international or national proceedings relating to one of the Hague Conventions. However, there sometimes arise exceptional circumstances in which the Permanent Bureau, in order to support international consistency in the interpretation and operation of a Convention, will offer advice (including in the form of "declarations"), or, very exceptionally (only twice in recent years), submit an amicus brief. With regard to a request for the submission of an amicus brief, the Permanent Bureau will take into account in particular:

- the importance of the issues raised in terms of achieving international consistency in the interpretation or operation of a Convention;
- that a point of law, and not fact, is in issue;
- that there is a clear basis on which to intervene (*e.g.,* the language and objects of the Convention itself, or interpretation or practice endorsed by a Special Commission);
- that none of the States Parties concerned object to intervention by the Permanent Bureau;
- whether there are other ways to address the issues.

The Working Group may wish to discuss the Permanent Bureau's role in international or national proceedings relating to Hague Conventions.

36. Agenda Item V-F raises the question of whether regulations are needed for the chair / vice-chair(s) / Council on General Affairs and Policy – see also **Annex II** and paragraph 31 *supra.*

The Working Group may wish to discuss the need for regulations in light of its members' experience with other intergovernmental organisations.

ANNEXES I-VI TO ANNEX C

I Bilan – Quelle est la situation de la Conférence de La Haye au regard de son Plan stratégique (2002) tel que revu chaque année par le Conseil sur les affaires générales et la politique et fondé sur les recommandations formulées par le Groupe des Ambassadeurs (2000) et le Rapport de PwC (2002) : quelles sont les réalisations, quels sont les points sur lesquels les efforts doivent être poursuivis ? /

Taking stock – where does the Hague Conference stand in terms of its Strategic Plan (2002) as reviewed annually by the Council on General Affairs and Policy, based on the recommendations by the Group of Ambassadors (2000) and the PWC Report (2002): what has been achieved, what requires further attention?

II Méthodes de travail dans le contexte de la modification du Statut / Working methods in the context of the amendment of the Statute

III Extrait de la rubrique révisée sur la Conférence de La Haye de droit international privé à paraître dans le *Répertoire de droit international de l'Encyclopédie Juridique Dalloz* / Extract from the updated article on the Hague Conference on Private International Law to be published in the *Répertoire de droit international* of the *Encyclopédie Juridique Dalloz*

IV Organigramme du Bureau Permanent et tableau comparatif du personnel 2002 / 2010 * / Organisation chart of the Permanent Bureau and Staff Comparison 2002 / 2010*

V Bureau de liaison pour l'Amérique latine : résultats, services et autres avantages * / The Regional Office for Latin America: achievements, services, and other benefits*

VI Tableaux des demandes d'assistance technique introduites auprès du Centre international d'études judiciaires et d'assistance technique * / Table of requests for Technical Assistance made to the International Centre for Judicial Studies and Technical Assistance*

** Disponible en anglais uniquement / Available in English only.*

Taking stock – Where does the Hague Conference stand in terms of its Strategic Plan (2002) as reviewed annually by the Council on General Affairs and Policy, based on the recommendations by the Group of Ambassadors (2000) and the PWC Report (2001): what has been achieved, what requires further attention?

Strategic Direction 1 – Continue to increase global coverage of the Conference by enlarging its membership and the number of States Parties to Hague Conventions

1. Increasing the membership of the Organisation, in a considered manner, was identified as the first priority by the informal group of Ambassadors, for two reasons: to affirm and respond to its global mission, and to assist in raising revenues. Since 2001, 23 new Members have joined the Organisation, an increase of 49%.[1] Together they represent an additional population of 1.835 billion citizens, an increase of 66%. These figures show that the Conference's policy aimed at enlarging its membership has been quite successful in terms of the first objective: affirming and responding to the Conference's mission. This has ensured representation of a much wider and more diverse range of legal traditions. It has also presented new challenges, precisely because of this diversity, and the change of decision-making at meetings from voting to proceeding through consensus (see **Annex II**).

2. In respect of the second objective, raising revenues, the results of the policy aimed at increasing membership have been more modest. The Hague Conference follows the UPU system to determine contributing shares of the Members, with a top class of 33 units[2] (instead of 50[3] and 40[4] units). The addition of new Members[5] has led to an increase in the number of units of 91.5, or 19% (from 492 in 2000 to 583.5 in 2010). Further growth in membership is likely to have a moderate effect on raising revenues since most States that are not yet Members of the Organisation are countries with developing economies or economies in transition, with small contribution shares (most often 0.5 or 1 unit) in the UPU system.[6]

3. The attached overview of ratifications, accessions and successions (in English only) shows the increase in ratifications of and accessions to Hague Conventions: over 220, *i.e.*, around 21 ratifications and accessions per year. Since 2001, the number of States Parties that have joined one or more Conventions has increased from 111 to 133, or almost 20%. In most instances, the newly ratifying or acceding States have been

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[1] In addition, Colombia, Costa Rica, Lebanon, Mauritius and Zambia have been admitted; these States still have to accept the Statute in order to become Members of the Conference. The Permanent Bureau is actively following progress made by these countries towards membership.

[2] Further to a decision taken in the mid-1970s within the UPU to create a class of 50 units (inviting States in the 25 units category to move up to the new category) – followed later by the creation of a class of 40 units – the Secretary General at the time, M.H. van Hoogstraten, had proposed to Member States of the Conference a possible revision of the system of sharing the costs of the Conference taking into account the new UPU allocation (*cf*. L.c. A No 38(76) of 4 November 1976). This proposal was not met then with unanimous agreement. One important reason for this was that, at the time, with 28 Member States, the creation of a 50-unit category would have resulted in six Member States of the Conference supporting more than half of the costs of the Conference. Consequently, the first class of units of the Conference was fixed at 33 units instead of 50 (*cf*. L.c. A No 27(77) of 24 August 1977).

[3] France, Germany, Japan, United Kingdom and United States of America.

[4] Canada.

[5] It will be recalled that the EU, as a Regional Economic Integration Organisation, does not contribute to the budget in addition to its Member States, but annually pays a sum determined by the Conference in consultation with the EU to cover additional administrative expenses arising out of its membership (currently €20,000).

[6] It was in this perspective that the Council of Diplomatic Representatives at its meeting of 6 July 2010 decided that States accepting the Statute after 1 July 2010 would be exempted from contributing to the accrued unfunded liabilities under the new pension funding system.

countries with a developing economy or an economy in transition. This has given a huge boost to the activities of the Conference to support the implementation and operation of Hague Conventions (Agenda Item III, with its Annex A). It has also produced the need for a greater presence of the Conference in various regions of the world, as illustrated by the designation of a Liaison Legal Officer for Latin America, the intended establishment of a regional office in Buenos Aires, and the offer from Hong Kong SAR for a regional office in Hong Kong for the Asia-Pacific Region.

4. The expansion of the many activities in support of the Conventions has led to a steady increase in the Conference's visibility. So has the introduction of a logo (2003), the restructuring of the website (since 2004 operating through an electronic database), the launch of the Spanish (2009) and German (2010) versions of the website, the development of a robust trainee and secondment programme (96 trainees from 20 countries and 13 secondments from 10 countries[7] received since 2001), the co-organisation of, and participation in, numerous conferences and colloquia on all continents, the development of a global network of judges supported by *The Judges' Newsletter* (first published in 1999), the establishment of documentation centres in Mexico (2010), Johannesburg (2007) and Moscow (2004), the creation of an Annual Review (since 2007, first published in 2008) and of a network of journalists (2008), the publication of a reprint of the *Collection of Conventions* (2003, and again in 2009), accompanied by the move to a more dynamic editor, special publications for professionals and the public at large (The ABCs of Apostilles), among many others.

Strategic Direction 2 – Selectivity in relation to the projects undertaken by the Conference

5. In light of its limited resources, the Hague Conference has continued to be selective with regard to new projects to be undertaken by the Organisation, including post-Convention services, as well as with regard to the resources invested in each project. With regard to embarking on new projects, guiding criteria are: (i) focus on well-defined, widely recognised and pressing problems; (ii) specific suitability of techniques developed by the Conference to resolve these problems; (iii) broad support and some degree of commitment for future action from Members; (iv) projects that cannot be adequately handled at the regional level.

6. With these criteria in mind, during the past decade the Conference has developed the Securities Convention, the Choice of Court Convention and the Child Support Convention and its Protocol on Applicable Law. Working methods have been designed by the Permanent Bureau with the support of Members to meet the specific needs of each project (fast-track negotiations for the Securities Convention; regional workshops for both the Securities and the Child Support Conventions; informal working group to prepare the ground for the Choice of Court Convention; establishment of an administrative working group, with sub-groups, for the Child Support Convention). They have also guided the activities of the Permanent Bureau in developing the e-APP programme, as well as the dialogue with non-Member States in the context of the Malta Process.

7. At this point, work is being done on a non-binding instrument on the law applicable to international commercial contracts, but not on any binding instrument. Other current projects may also result in non-binding instruments, *e.g.*, cross-border mediation in family matters. Several proposals are on the table for a new Convention, and the

[7] Australia (1), Canada (2), China (Hong Kong SAR) (1), Germany (1), Japan (2), Korea (1), Macedonia (1), Monaco (2), Spain (1), United States of America (1).

Permanent Bureau has, in Notes on the next work programme prepared for the Council on General Affairs and Policy in 2009 and 2010 (with indications on the resources required for each project), emphasised the importance of such a project for the Organisation.[8]

8. Being selective with regard to the many post-Convention activities in which the Organisation is involved is a daily challenge, in the light of the continuing exponential demand for such services. The PWC Report already emphasised that the Permanent Bureau spent as much time on these post-Convention activities as on the preparation of new Conventions, that inadequate compensation for these activities was made in the Regular Budget, that monitoring required 25% more resources than in the early 1990s and that this has led to a resource gap, estimated at 35%, of which 5% at most could be remedied by improved internal organisation.[9] Reducing post-Convention activities was not seen as an option.[10]

9. In addition to a range of measures taken to enhance working methods, reduce costs, and rationalise the pension system, voluntary contributions by Members have made it possible for the Permanent Bureau to grow in response to exponentially increasing demands. Since 1999, many Members have generously contributed to the Supplementary Budget. Financially, this amounts to a total of approximately 2.98 million Euros. The transfer of 408,000 Euros from the Supplementary Budget to the Regular Budget in 2004 made an expansion of the Permanent Bureau possible with 3 Legal Officers, and 1.5 administrative FTEs. A generous gift from the Netherlands of 1 million Guilders (€454,545) enabled the transformation of the attic of the Permanent Bureau into a new office space, with 11 working places (2001). A further gift from the Netherlands of 500,000 Euros on the occasion of the Conference's 115th anniversary (2008), with additional support from other Member States, has enabled the Conference to embark on a programme for technical assistance and the further establishment of the International Centre for Judicial Studies and Technical Assistance.

10. The creation within the Permanent Bureau of the Centre in 2007 constitutes a manner of rationalising post-Convention services. The Centre has supported both ongoing programmes on technical assistance and the initiation of a range of new programmes. Its role in this regard has been recognised by the Council on General Affairs and Policy, most recently in its Conclusions of April 2010:

> "The Council welcomed the achievements of the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions. The Council encouraged the further development of the International Centre for Judicial Studies and Technical Assistance, made possible partly by generous funding through the Supplementary Budget to strengthen its resources, capacity and expertise in response to the growing demand for post-Convention Services."

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[8] See "Work programme of the Permanent Bureau for the next Financial Year (1 July 2009 – 30 June 2010)", Prel. Doc. No 2 of February 2009 for the attention of the Council of March / April 2009 on General Affairs and Policy of the Conference and *idem* (1 July 2010 – 30 June 2011), Prel. Doc. No 2 of February 2010 for the attention of the Council of April 2010 on General Affairs and Policy of the Conference. Available on the Hague Conference website at: < www.hcch.net >, under "Work in Progress" then "General Affairs".

[9] See "The Hague Conference on Private International Law: Resource Deficiencies and Strategic Positioning", Prel. Doc. No 19 of March 2002 for the attention of Commission I (General Affairs and Policy of the Conference) of the XIXth Diplomatic Session – April 2002, *Proceedings of the Nineteenth Session*, Tome I, *Miscellaneous matters*, p. 119.

[10] *Op. cit.*, p. 128.

Strategic Direction 3 – Enhancing working methods and reducing costs by providing flexibility in the development process

11. A combination of scientific and methodological rigour and flexibility has always been a "house trademark"[11] of the Conference. Reference was already made to the holding of various informal meetings and Working Groups in the context of the negotiations according to established practice on the Conventions on Securities, Choice of Court, and Child Support. Expert groups have been convened to prepare both possible future work (*e.g.*, on access to foreign law, in 2007 and 2008) and Guides to Good Practice (*Transfrontier Contact Concerning Children - General Principles and Guide to Good Practice*, in 2004, *The Implementation and Operation of the 1993 Intercountry Adoption Convention*, Parts I, in 2005, and II, forthcoming).

12. The drafting process of Conventions and other texts has been greatly facilitated by the installation of a computer-supported drafting system in the conference room of the Permanent Bureau, made possible through voluntary contributions of Member States. The use of electronic listservs, conference calls (extensively used during the preparations for the Child Support Convention thanks to generous supplementary funding), and the Internet (to present the software for e-APP, iChild, and INCASTAT) has expanded during the last decade.

Strategic Direction 4 – Increasing communication and co-operation with other international organisations

13. Reference was already made to the ongoing work on the Conference's website and INCADAT and other means of communication. INCADAT provides a good illustration of the challenges facing the Conference. An adequate management and maintenance of this very important, indeed basic tool would require a team of two full-time Legal Officers and a board of consultants to advise the Permanent Bureau. Currently, one third of the time of one Legal Officer (*i.e.*, one-third of 1 FTE) is available. One consultant and one translator, both on a part-time basis, provide advice, funded partly through the Supplementary Budget.

14. Co-operation with other international organisations, both intergovernmental and non-governmental, is intense. Formal frameworks for this co-operation exist with the United Nations, the Council of Europe, Mercosur, and the *Commission International de l'État Civil*. Inclusion of the EU in the membership of the Conference has contributed to a more intense co-operation, and so have the annual meetings (reinforced by informal contacts) of the heads of the secretariats of UNCITRAL, UNIDROIT and the Hague Conference. Agenda Item V-D invites a discussion on the Permanent Bureau's role in assisting sister organisations.

Strategic Direction 5 – Enhancing the management of internal information

15. Since 2003, the Permanent Bureau is in a position to operate its computer system simultaneously from and at its main office, its three offices in the Academy Building of the Peace Palace, its regional office in Buenos Aires, and its working offices in the Academy Building during meetings held there, thus saving time and resources. The donation of two servers by the Government of Canada has been critical in this respect. Also, in 2003, the Permanent Bureau retained the services of an outside consultant on the management of internal information and documents, in order to increase corporate memory, consolidate the filing system (including electronic filing), enhance the maintenance of the library and improve the use of computer technology to that effect.

[11] See the speech by Professor Isabel de Magalhães Collaço on the occasion of the celebration of the centennial of the Conference, *Proceedings of the Seventeenth Session*, Tome I, *Miscellaneous matters*, Part 2, p. 37. Professor de Magalhães Collaço also spoke of a combination of "imagination" and "realism" as another characteristic trait of the Hague Conference.

The recommendations have been extremely useful, and they have been largely implemented, including the re-organisation of the paper files and archives resulting in effective and logical electronic systems. The hiring of a part-time multilingual information manager who combines librarian, archivist, filing and electronic research skills has made this possible. Since 2010, the Permanent Bureau disposes of an Intranet facility to enhance the distribution and availability of internal information and facilitate the retrieval of documents within the Permanent Bureau.

Strategic Direction 6 – Matching resources and demands by making the decision process more transparent and informed and by increasing the capacity to seek additional funding

16. The Strategic Plan had noted [No 427]:

> "At present, the organs of the Conference deciding on the work programme (Special Commissions on General Affairs and Policy of the Conference, the Commission on General Affairs and Policy of the [Plenary] Diplomatic Conferences […]) take their decisions without taking into account, other than in a very general way, the budgetary and resource implications. This is in line with their primary responsibility to assess the work programme on the basis of policy, not from a financial perspective, the decisions on financial matters being left to the Council of Diplomatic Representatives. This system certainly has its advantages, but the disconnection between the two decision processes is too wide. Without radically modifying the present structure, improvements are possible."

17. As of 2003, in order to reduce the gap between policy and budget decisions, the Special Commission – Council since 2007 – on General Affairs and Policy has had before it, on an annual basis, the draft budget proposal for the next Financial Year (1 July – 30 June), and a preliminary discussion of this draft Budget, and the draft Supplementary Budget, has become a standard agenda item of the Council. In an effort to permit an even more in-depth dialogue, since 2008, following the meeting of the Council on General Affairs (usually at the end of March or early April), an informal meeting has been organised, especially for diplomatic representatives of all Member States, enabling them to raise questions and prepare in detail for the annual meeting of the Council of Diplomatic Representatives. As a result, the practice is now that the final budget proposal is only sent to Members (by the end of May of each year) after representatives from Member States have had an opportunity to discuss the draft twice: first at the meeting of the representatives of the Member States' National Organs at General Affairs, and then at an informal meeting of their diplomatic representations.

18. Further transparency with regard to workload, timelines and budget implications of the various projects undertaken by the Permanent Bureau has been achieved by the annual information notes submitted to the Council on General Affairs and Policy concerning the Children's Conventions, Maintenance, Adults and Co-habitation, and more recently also on the implementation of the recommendations of the Special Commission on the practical operation of the Apostille, Service, Taking of Evidence and Access to Justice Conventions, as well as the "Work programme of the Permanent Bureau for the next Financial Year" submitted annually since 2009.

19. An important step towards further stabilising the financial situation of the Conference has been made by the decision by the meeting of the Council of Diplomatic Representatives in 2009, further implemented in 2010, to change the Conference's pension scheme from a budgeted system to a system based on a pension fund. Preparations for this important decision involved continuous consultation with Members

since 2003, including through six meetings of an informal Working Group of their diplomatic representatives in The Hague.

20. Since 2001, through the generous and voluntary contributions of its Members, the Supplementary Budget of the Hague Conference has facilitated many successful projects with an extraordinary impact. Currently the salaries of the Adoption Programme Co-ordinator, of one Legal Officer dealing with legal co-operation, and of 0.8 FTE for administrative support to ICATAP (Intercountry Adoption Convention Technical Assistance Programme) are funded through the Supplementary Budget. Unfortunately, due to insufficient funding, it has been necessary to end the appointments of two officials who had previously been funded under the Supplementary Budget, one experienced official dealing in particular with the organisation of judicial conferences and INCASTAT/iChild, and one official responsible for the revision of Spanish translations.

Overview of ratifications, accessions and successions 2001–2010 (1 November 2010)

A OVERVIEW PER INSTRUMENT

01 Statute

Year	*Acceptances: 23*
2001	Belarus, Bosnia & Herzegovina, Brazil, Georgia, Jordan, Lithuania, Peru, Russian Federation, Serbia, Sri Lanka
2002	Albania, Malaysia, New Zealand, Panama, South Africa
2003	Iceland, Ukraine
2005	Paraguay
2007	Ecuador, EU, Montenegro
2008	India
2010	Philippines

02 Civil Procedure (1954)

Year	*Ratifications*	*Accessions: 3*	*Successions: 2*
2001			Serbia
2002		Lithuania	
2007			Montenegro
2008		Iceland	
2010		Albania	

10 Protection of Minors (1961)

Year	*Ratifications*	*Accessions: 2*	*Successions*
2001		Latvia, Lithuania	

11 Form of Wills (1961)

Year	*Ratifications*	*Accessions: 1*	*Successions: 2*
2001			Serbia
2007		Armenia	Montenegro

12 Apostille (1961)

Year	*Ratifications: 2*	*Accessions: 21*	*Successions: 5*
2001		New Zealand, Slovakia, Grenada, Saint Lucia	Serbia
2002		Monaco	Dominica, St. Vincent
2003		Albania, Ukraine	
2004	Iceland	Ecuador, India, Poland, Azerbaijan, Cook Islands, Honduras	
2006	Denmark	Georgia, Republic of Korea, Moldova	
2007		Sao Tome e Principe	Montenegro
2008		Dominican Republic	Vanuatu
2009		Cape Verde, Mongolia	
2010		Peru	

14 Service (1965)

Year	*Ratifications*	*Accessions: 17*	*Successions: 1*
2001		Argentina, Russian Federation, Ukraine	
2002		Kuwait, San Marino	
2003		Romania	
2004		Hungary	
2005			St. Vincent
2006		Albania, Croatia, India	
2007		Monaco	
2008		Bosnia & Herzegovina, Iceland, FYROM	
2009		Belize	
2010		Australia, Serbia	

16 Enforcement of Judgments (1971)

Year	*Ratifications*	*Accessions: 2*	*Successions: 1*
2002		Kuwait	
2010		Albania	

17 Protocol (1971)

Year	*Ratifications*	*Accessions: 1*	*Successions: 1*
2002		Kuwait	

18 Divorce (1970)

Year	*Ratifications*	*Accessions: 1*	*Successions*
2002		Estonia	

19 Traffic Accidents (1971)

Year	*Ratifications*	*Accessions: 3*	*Successions: 2*
2001			Serbia
2002		Lithuania, Poland	
2007			Montenegro
2010		Morocco	

20 Evidence (1970)

Year	*Ratifications: 2*	*Accessions: 16*	*Successions*
2001		Belarus, Russian Federation, Ukraine	
2002		Kuwait	
2003		Romania	
2004	Turkey	Hungary, Seychelles	
2005	Greece		
2007		India	
2008		Bosna and Herzegovina, Iceland, Liechtenstein	
2009		Croatia, Republic of Korea, FYROM	
2010		Albania, Serbia	

22 Products Liability (1973)

Year	*Ratifications*	*Accessions*	*Successions: 2*
2001			Serbia
2007			Montenegro

23 Maintenance – enforcement (1973)

Year	*Ratifications: 1*	*Accessions: 2*	*Successions*
2002		Lithuania	
2003	Greece		
2007		Ukraine	

24 Maintenance – appl. law (1973)

Year	*Ratifications: 1*	*Accessions: 2*	*Successions*
2001		Estonia, Lithuania	
2003	Greece		

28 Child Abduction (1980)

Year	*Ratifications*	*Accessions: 16*	*Successions: 2*
2001		Estonia, Latvia, Peru, Sri Lanka, El Salvador	Serbia
2002		Lithuania, Guatemala, Thailand	
2003		Bulgaria	
2004		Dominican Republic	
2006		Ukraine, San Marino	
2007		Albania, Armenia	Montenegro
2008		Seychelles	
2010		Morocco	

29 Access to Justice (1980)

Year	*Ratifications: 3*	*Accessions: 2*	*Successions: 2*
2001	Czech Republic		Serbia
2003	Luxembourg, Slovakia	Romania	
2007		Albania	Montenegro

30 Trusts (1985)

Year	*Ratifications: 2*	*Accessions: 3*	*Successions*
2003	Luxembourg		
2004		Liechtenstein	
2005		San Marino	
2007	Switzerland	Monaco	

33 Intercountry Adoption (1993)

Year	*Ratifications: 22*	*Accessions: 20*	*Successions*
2001	Germany, Slovakia		
2002	Bulgaria, Latvia, Luxembourg, Slovenia, Switzerland, Bolivia	Estonia, Guatemala	
2003	Belarus, India, UK, Uruguay	South Africa, Guinea	
2004	Portugal, Turkey, Madagascar, Thailand	Malta, Azerbaijan, San Marino	
2005	Belgium, China, Hungary	Belize	
2006		Dominican Republic, Mali	
2007	USA	Armenia, Cambodia, Cuba, Kenya	
2008		FYROM, Seychelles	
2009	Greece	Cape Verde, Liechtenstein, Togo	
2010	Ireland	Kazakhstan	

34 Protection of children (1996)

Year	*Ratifications: 18*	*Accessions: 8*	*Successions*
2001	Slovakia		
2002	Latvia, Morocco	Ecuador, Estonia	
2003	Australia	Lithuania	
2004	Slovenia		
2006	Hungary	Albania, Bulgaria	
2007		Ukraine, Armenia	
2009	Croatia, Switzerland, Uruguay	Dominican Republic	
2010	Cyprus, Finland, France, Germany, Ireland, Luxembourg, Poland, Romania, Spain		

35 Protection of adults (2000)

Year	*Ratifications: 5*	*Accessions*	*Successions*
2003	UK		
2007	Germany		
2008	France		
2009	Switzerland		
2010	Finland		

36 Securities (2006)

Year	*Ratifications: 2*	*Accessions*	*Successions*
2009	Switzerland, Mauritius		

37 Choice of Court (2005)

Year	*Ratifications*	*Accessions: 1*	*Successions*
2007		Mexico	

39 Maintenance Protocol (2007)

Year	*Ratifications: 1*	*Accessions*	*Successions*
2010	EU		

B OVERVIEW PER YEAR

Year	*Statute acceptances*	*Ratifications*	*Accessions*	*Successions*	*Total*
2001	10	4	19	7	**40**
2002	5	8	18	2	**33**
2003	2	11	9		**22**
2004		7	14		**21**
2005	1	4	2	1	**8**
2006		2	12		**14**
2007	3	3	16	7	**29**
2008	1	1	11	1	**14**
2009		7	10		**17**
2010	1	12	10		**21**
Total:	**23**	**59**	**121**	**18**	**221**

Total number of Central Authorities designated: 171.

Working methods in the context of the amendment of the Statute

Introduction

1. The original Statute of the Hague Conference was adopted in 1951, on the occasion of the Seventh Diplomatic Session of the Conference, the first to be held after the Second World War. The reason prompting the reform of the Statute was the wish expressed in December 2002 by the European Community – the predecessor of the European Union – to become a full Member of the Conference, instead of an observing international organisation at the Conference's meetings. The Member States of the Conference were of the view that acceding to this request, which they favoured, would require a modification of the Statute since it referred to membership of States only. This led to the introduction in the revised Statute of a new provision allowing for membership of the Conference of certain Regional Economic Integration Organisations (REIOs) (Art. 3), with consequential amendments of other articles (Arts 7 and 9).

2. This review was also seen as an opportunity to bring the Statute in line with some internal reforms that had already occurred since 1980, without any formal change of the Statute, and which otherwise were not thought to necessitate such change. These reforms concerned (1) the governance of the Hague Conference and (2) the decision-making process.

Governance

3. Without any change of the Statute, the governance structure of the Conference had evolved since 1980 beginning with a reduction in the involvement of the Netherlands Standing Government Committee on Private International Law in favour of more direct governance by Member States. The growing relevance of the work of the Conference to its Member States led the Fourteenth Session (1980) to decide itself on the agenda for future work of the Conference and on other matters of policy, instead of requesting the Standing Government Committee, as the traditional organ of proximity, to take such decisions.[1] To prepare the decisions of the quadrennial Diplomatic Sessions, it became customary to convene a Special Commission on General Affairs and Policy about nine months before each Session.[2]

4. The next step was the delegation of decision-making powers by the Diplomatic Sessions of the Conference to the Special Commission on General Affairs and Policy. In 2002, the Nineteenth Session decided to convene Special Commission meetings more frequently, and authorised the Special Commission to take decisions on matters relating to general affairs and policy of the Conference on its behalf.

5. The final step was made when the modified Statute consolidated these informal constitutional reforms. The new Statute, which entered into force on 1 January 2007, instituted the Council on General Affairs and Policy, composed of all Members, as the organ in charge of the operation of the Conference (Art. 4) and of directing the Permanent Bureau (Art. 6), replacing the Standing Government Committee (which retained certain powers under Arts 4(4)-(8) and 5(1)). There was no intention to go beyond this consolidation of what had already occurred as an informal institutional evolution or to affect the relationship between the Permanent Bureau and the governing organs of the Conference, including its relative autonomy, which has enabled it to be a proactive, creative, flexible and highly cost-efficient international secretariat, subject always to the overriding control of the governing organs of the Conference.

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[1] See Final Act, in particular Part E, *Actes et documents de la Quatorzième session*, Tome I, *Matières diverses*, p. I-64.
[2] See Final Act of the Sixteenth Session, Part B, under 2, d, *Proceedings of the Sixteenth Session*, Tome I, *Miscellaneous matters*, p. 34.

Decision-making

6. The second statutory reform, in addition to the opening up of the Statute for the European Community (Union) and certain other Regional Economic Integration Organisations, concerned the rules on decision-making. In fact, the original Statute did not deal with this question, and instead left it to the (standard) Rules of Procedure for Plenary Meetings, adopted by each Diplomatic Session. These Rules were based on the system of voting, it being understood that efforts were often made to accommodate the views of significant minorities. Since May 2000,[3] however, consensus has become the practice in the operation of the Organisation (except for financial matters) and it was thought desirable to consolidate this practice in the modified Statute (Art. 8(2)). The Rules of Procedure were amended accordingly, and declared applicable generally to the Diplomatic Sessions, the meetings of the Council on General Affairs and Policy, and those of Special Commissions.[4]

[3] For the origin of this change see Prel. Doc. No 10 of June 2000, Conclusions of the Special Commission of May 2000 on General Affairs and Policy of the Conference, accessible on the Hague Conference website at: < www.hcch.net >, under "Work in Progress" then "General Affairs".

[4] See Final Act of the Twentieth Session, Decision C 4, accessible on the Hague Conference website at < www.hcch.net >, under "Conventions" then "All Conventions" and "Convention of 30 June 2005 on Choice of Court Agreements".

EXTRACT FROM THE UPDATED ARTICLE ON THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW TO BE PUBLISHED IN THE *RÉPERTOIRE DE DROIT INTERNATIONAL* OF THE *ENCYCLOPÉDIE JURIDIQUE DALLOZ*

[translation by the Permanent Bureau]

(...)

6. A modification of the Statute of the Conference – adopted by the Twentieth Session on 30 June 2005, approved by Member States on 30 September 2006 and entered into force on 1 January 2007 – paved the way for certain *"Regional Economic Integration Organisations"* (REIOs) to be admitted as Members of the Organisation. The conditions and procedure for the admission of REIOs are set out in the new Article 3 of the revised Statute, which was modelled after the Statute of the United Nations Food and Agriculture Organization (FAO) but adapted to some extent to the Conference's specific characteristics. The amendment of the Statute was mainly intended for the EU (the European Union, at the time the European Community) which, following the entry into force of the Treaty of Amsterdam on 1 March 1999, acquired legislative competence in the area of private international law. In accordance with the jurisprudence of the European Court of Justice (ERTA doctrine, ECJ, 31 March 1971, case 22/70), this caused the EU to also acquire *external* competence. The incompatibility of the external competence transferred to the EU with its status as Observer to the work of the Conference meant that it had to be empowered to participate in the Conference as a full-fledged Member. The issue should be seen as distinct from the question (see *infra,* paras 22-25) of authority to sign or ratify a Hague Convention, an issue which is addressed in each Convention's final provisions (see J. H. A. VAN LOON, A. SCHULZ, The European Community and the Hague Conference on Private International Law, in *Justice, Liberty and Security,* B. Martenczuk and S. van Thiel (Eds.), 2008, pp. 279 *et seq.*).

(...)

21. Following the EU's acquisition of legislative competence in the area of private international law, the question of the relationship between Hague Conventions and EU regulations arose. Several regulations simply stipulate their priority over Hague Conventions in fields that are governed by the regulation in question (see, *e.g.*, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, referred to as the "Brussels II a" or "II *bis*" Regulation, Art. 60). On the other hand, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), in its Article 25, and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), in its Article 28, in principle reserve the application of international conventions to which one or more EU Member States are parties, but only at the time when the regulation in question is adopted. Thus the Hague Conventions concerning Sales (1955), Agency (1978), Traffic Accidents (1971) and Products Liability (1973) continue to apply in the EU Member States that were Parties to these Conventions when the relevant regulations were adopted, while prohibiting the other EU Member States from adhering to them. On the other hand, rather than specifying the rules of applicable law, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations instead refers to the provisions of the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations. For its part, the Brussels II *bis* Regulation leaves it to the 1996 Hague Child Protection Convention to determine the law applicable in matters of parental responsibility.

22. Beginning with the Hague 2006 Securities Convention, which was adopted in 2002, a special clause is included in Hague Conventions to provide for the possibility of signature, approval or accession by certain REIOs as defined by these Conventions (ratification being reserved for States). In reality, at present these clauses apply to the EU only, since it alone currently meets the criteria therefore established.

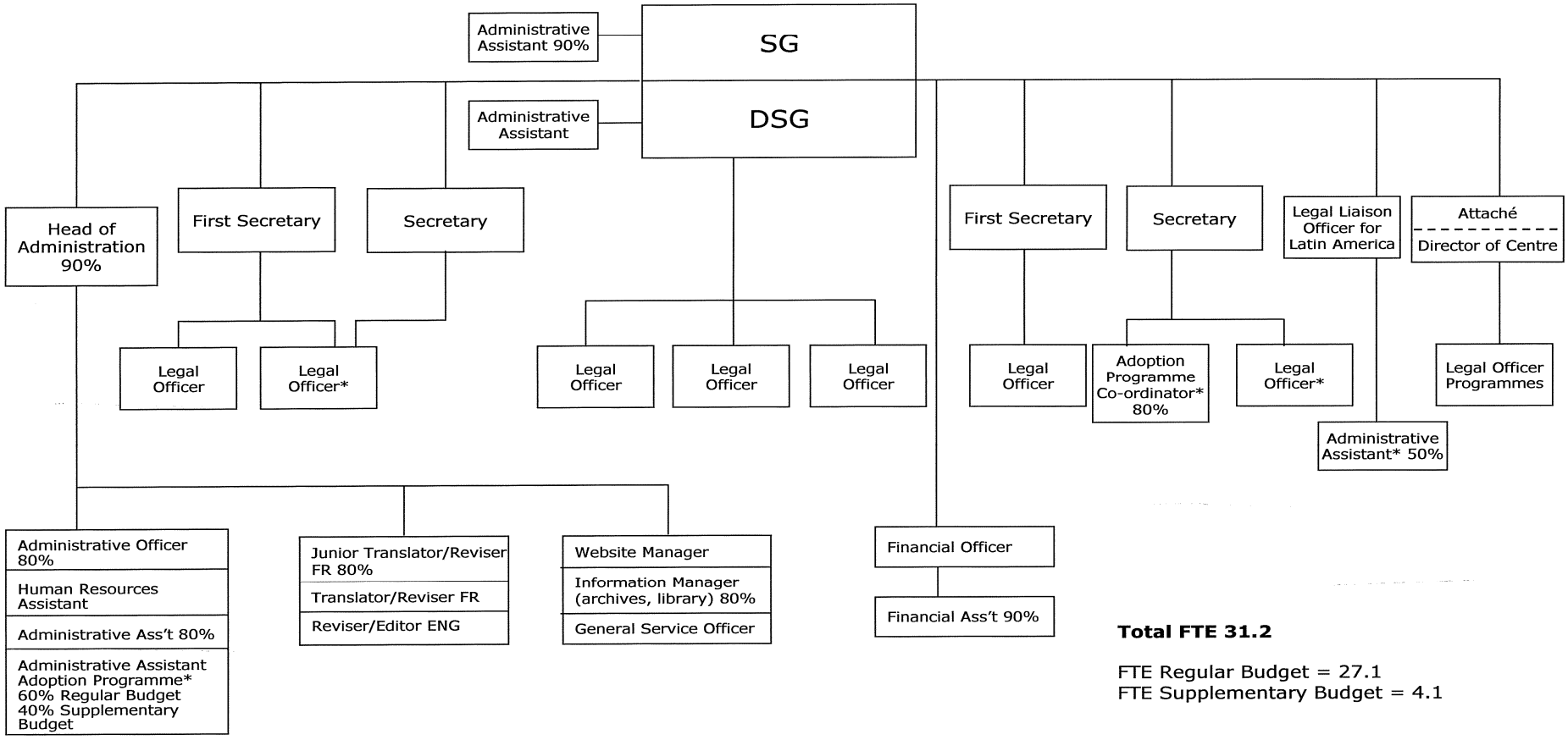
23. Two hypotheses are possible. According to the first, the EU and its Member States become Parties to a Convention. This can occur if the EU and its Member States are endowed with a shared competence – that is, a parallel external competence with respect to matters governed by the Convention in question. This competence can also be shared or mixed, which is the case when certain areas fall under the external competence of the EU while others remain with the Member States, as is the case with the 2006 Hague Securities Convention. In the second hypothesis, the EU has exclusive competence: only the EU may become Party to a Convention, and thereby so would all its Members. The signature by the EU in 2009 of the 2005 Choice of Court Convention or the EU's signature and approval in 2010 of the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations can both be cited as examples.

24. A difficulty arises with Conventions adopted prior to 2002 that do not contain such a clause, but that henceforth fall under the competence that has been transferred to the EU by its Member States. This is because if, on the one hand, the absence of such a clause in a Convention does not entitle the EU to become a Party thereto, on the other hand, the EU Member States are no longer free to ratify the Convention, or to ratify it individually. In the case of the Hague 1996 Child Protection Convention, whose subject matter overlaps in part with that of the Brussels II *bis* Regulation (see *supra*, para. 21), the Council of the European Union decided to "authorise" its Member States to collectively ratify or adhere to this instrument "in the interest of the Community".

25. More generally, when the EU accepted the Statute of the Hague Conference, it made the following solemn declaration: *"The European Community endeavours to examine whether it is in its interest to join existing Hague Conventions in respect of which there is Community competence. Where this interest exists, the European Community, in cooperation with the [Hague Conference], will make every effort to overcome the difficulties resulting from the absence of a clause providing for the accession of a Regional Economic Integration Organisation to those Conventions."*

(…)

Organisational Chart of the Permanent Bureau



Total FTE 31.2

FTE Regular Budget = 27.1
FTE Supplementary Budget = 4.1

* = funded through Supplementary Budget

Nov. 2010

REGULAR BUDGET OCTOBER 2010

	FTE	
J.H.A. van Loon	1	*Secretary General*
W.R. Duncan	1	*Deputy SG*
C. Bernasconi	1	*First Secretary*
P. Lortie	1	*First Secretary*
M. Pertegas	1	*Secretary*
J. Degeling	1	*Secretary*
Subtotal	6	
F. Stikkelbroeck	1	*Attaché to the SG*
A. Koelewijn-de Vries	0.9	*Head of Administration*
C.C.A.M. Himpens	1	*Financial Officer*
J. Cefai Soler	0.9	*Financial Assistant*
Subtotal	1.9	
G.O.J. Boerman	1	*Website Manager*
C. Darbas	0.8	*Information Management Officer*
M. Celis	1	*Legal Officer*
J. Hirsch	1	*Legal Officer*
N. Sauvage	1	*Legal Officer*
M. Thorner	1	*Legal Officer*
M. Groff	1	*Legal Officer*
H. Baker	1	*Legal Officer*
I. Goicoechea	1	*Liaison Legal Officer*
Subtotal	7	
L.J. Molenaar	0.8	*Administrative Officer*
S. Molina	0.9	*Admin. Assistant to SG*
W. de Zoete	1	*Admin. Assistant to DSG*
M. Waszink- Prénas	0.8	*Administrative Assistant*
S. Hawkins*	0.2	*Administrative Assistant*
Subtotal	3.7	
M. Berkhout	1	*Human Resources Assistant*
H. Guerin	1	*Reviser/Editor*
L. de Loof	1	*Translator/Reviser*
J. Klein Meulekamp	0.8	*Junior Translator/Reviser*
Subtotal	2.8	
W.J. van der Endt:	1	*General Services Officer*
TOTAL	**27.1**	

STRATEGIC PLAN 2002

J.H.A. van Loon	1	*Secretary General*
W.R. Duncan	1	*Deputy SG*
C. Bernasconi	1	*First Secretary*
P. Lortie	1	*First Secretary*
A.Schulz	1	*First Secretary*
Subtotal	5	
M.Ely	1	*Legal Assistant*
C.Chateau	0.9	*Senior Administrative Officer*
C.C.A.M. Himpens	1	*Accounting clerk*
G.O.J. Boerman	1	*Website Manager*
L.J. Molenaar	0.6	*Multilingual secreatry*
B.Leroy	1	*Multilingual secreatry*
W. de Zoete	0.8	*Multilingual secreatry*
A.Nieuwland	1	*Multilingual secreatry*
S.Adam	0.5	*Multilingual secreatry*
Subtotal	3.9	
W.J. van der Endt:	1	*General Services Officer*
TOTAL	**13.8**	

SUPPLEMENTARY BUDGET OCTOBER 2010

	FTE	
L. Martinez-Mora	0.8	*Adoption Programme Co-coordinator*
A. Kunzelmann	1	*Legal Officer*
S. Hawkins*	0.8	*Administrative Assistant*
S.Pepit	1	*Legal Officer*
F.Castro	0.5	*Administrative Assistant*
TOTAL	**4.1**	

* NB (S.Hawkins): at the moment the division is (temporarily): RB 60% / SB 40%

2002

J. Degeling	1	*Principal Legal Officer* *
S. Armstrong	1	*Legal Assistant*
TOTAL	**2**	

* Note: on secondment

THE REGIONAL OFFICE FOR LATIN AMERICA: ACHIEVEMENTS, SERVICES AND OTHER BENEFITS

1. Achievements

The creation of the position of Liaison Legal Officer (LLO) for Latin America in 2005 has brought multiple benefits to the region as well as to all Members of the Conference. It has contributed to a better knowledge and understanding of the Hague Conference and its work. It has facilitated the flow of information from the region to other Members. It has stimulated ratifications of Hague Conventions, and reinforced the networks of (Central) Authorities and of judges that are based upon these Conventions. Additionally, the position of LLO has facilitated progressive improvement of the implementation and application of Hague Conventions throughout the region, including in a number of Latin American States that are not yet Members of the Organisation but that have joined one or more Hague Conventions. In short, the Regional Office has successfully operated as an extension of the Permanent Bureau in Latin America.

On a day-to-day basis, officials, judges, practitioners and academics from the region are now in contact with the LLO, Mr Ignacio Goicoechea, who has occupied the post since the beginning of 2005. Mr Goicoechea either responds to these stakeholders directly or channels their needs and requests to the Permanent Bureau. Likewise, many requests addressed from the Permanent Bureau to the region are channelled through the LLO, who serves as a source of information and momentum in the region for many of the global initiatives that are developed and co-ordinated from the Permanent Bureau. Furthermore, some of the Hague Conference's activities in the region, including those supported by the Permanent Bureau's International Centre for Judicial Studies and Technical Assistance, are now developed by and co-ordinated from the Regional Office in Buenos Aires.

2. Examples of services provided by the Regional Office

a) Promotion of the Hague Conference and Hague Conventions and preparation for States to join Conventions and the Organisation;
b) Post-Convention services: capacity-building, reinforcing good governance and the rule of law;
c) Pre-Convention work: exploring future topics, conducting research, analysis and feasibility studies, preparing questionnaires;
d) Development of Hague Conference work in Spanish;
e) Co-ordination with other international organisations and institutions in Latin America;
f) Legal education, training and technical assistance as part of the supportive work of the Permanent Bureau's International Centre for Judicial Studies and Technical Assistance.

3. Other benefits of the Regional Office

The provision of services from the Latin American Regional Office is a cost-effective solution (implementing the Latin American Programme from The Hague would involve significantly higher costs). Further benefits: travel costs are dramatically reduced; office space and operative costs (*e.g.,* computers, Internet, telephone communications) are covered under arrangements with the Government of Argentina; the time difference with The Hague implies 3 to 8 more office hours to contact people in the region.

Hague Conference | International Centre for Judicial Studies and Technical Assistance

Pending Technical Assistance

Request Received	Date	State	Area	Description
2005	Ongoing	Guatemala	ICATAP	Ongoing technical assistance on intercountry adoption. Provide support to Central Authority to implement pilot project.
2009	2011-2012	Namibia, Nigeria, Swaziland, Uganda	ICATAP	Follow up technical assistance planned for 2011-2012.
2009	Early 2011	Nepal	ICATAP	Request for information on training/seminars for government officials in Nepal.
2009	2010/Spring	Mexico	CP	Assistance re: 1980 and 1993 Conventions.
2010	2010/11	Kenya	CP (Abduction)	Request for technical assistance on 1980 Child Abduction Convention.
2010	2010/11	Cambodia	ICATAP	Request for assistance in implementing new Cambodia Intercountry adoption Law and relevant regulations; fact-finding mission followed by 12 months of training support.
2010	2010/09	Kenya	ICATAP	Request to assist Kenya with the reviewing of adoption regulations for mid October.
2010	2010/10	Madagascar	ICATAP	Fact-finding and training mission.
2010	2010/11	Brazil	LC	Choice of Court Convention training seminar.
2010	2010/10	Malaysia/Philippines	LC/CPC	Foreign Affairs Seminar on Child Abduction, Service/Evidence/Apostille Conventions.
2010	2010/10	Mexico	CPC	Discussions with DF Supreme Court, Hague Network and MFA on Inter-American Meeting on Child Abduction and Judicial Training for Mexican Judges.
2010	2010/12	Morocco	CPC	Seminars on the 1980 Child Abduction Convention and 1996 Child Protection Convention: Algeria, Germany, Belgium, Egypt, Spain, France, Libya, Lebanon, Malta, UK, Switzerland, Tunisia and Turkey.
2010	2011/02	Qatar	CPC/LC	Seminar on Hague Conventions for Gulf Council States.
2010	2010/11	Chile, Uruguay, Argentina	LC	Legal Cooperation Conventions Seminar.
2010	2010/10	Cameroon	LC	Seminar on Service Convention.
2010	2011	Kenya	LC	East African Regional Seminar on Apostilles.

Hague Conference | International Centre for Judicial Studies and Technical Assistance

Requests for assistance - Outstanding Requests

Date	State	Contact	Area	ODA	Description	Action
2008/10	Azerbaijan	UNICEF	ICATAP	YES	Visit of the Minister to The Hague. Minister undertook to send formal request.	Awaiting formal request.
2009/04	Belarus	Embassy	ICA/CP/LC and Securities	YES	Request for fact-finding mission and follow up with national or regional seminars	Follow up conversation and correspondence. May prefer to focus on 1993 adoption Convention. Would like to schedule for November 2010.
2009/07	Bermuda	Dr Ewart Brown	LC/CPC	NO	Proposal from Premier/Minister for Tourism to jointly host a conference	Possible programme with other Caribbean countries proposed for March 2011.
2010/08	Bermuda	Government of Bermuda	LC	NO	Request for programme related to LC Conventions, possibly to be organised with Caribbean countries	Funding request sent to European Commission officials who provide financial assistance for Caribbean programmes.
2010/09	Chile	Patricio Cornejo Bobadilla, National Association of Judiciary Receivers	CPC-LC	YES	Request for training/technical assistance.	IG asked to follow up.
2010/06	Ethiopia	Special Commission delegation	ICATAP	YES	Request for technical assistance on intercountry adoption.	Expecting formal request; review draft law; assist with development of action plan; intensive training for experts.
2010/06	Guinea	Special Commission delegation	ICATAP	YES	Request for technical assistance on intercountry adoption.	Expecting formal request.
2010/09	Haiti	Francoise Gruloos, UNICEF	ICATAP	YES	Request for assistance for mission to assist Haiti with joining the 1993 Adoption Convention	See e-mail correspondence dated 10-11 Sept 2010 (between JD and UNICEF, adoption and Centre team copied). Possibility of mission being investigated
2010/05	Honduras	Jorge Valladeres (Instituto para el Desarrollo Social y Participación Ciudadana)	Abduction	YES	Request for technical assistance regarding abduction.	*Ciudadana* jointly with the Children and Adolescence Commission have designed a plan to improve the operation of the 1980 Convention, mainly raising awareness, providing training to different actors of the child protection system, and strengthening CA capacities. Request to PB to develop this initiative.
2010/09	Iran	Mr Behzad Saberi (Iranian Embassy)	LC/CPC	YES	Request for assistance on Apostille Convention and Abduction Conventions.	Meetings with Iranian embassy to discuss assistance on abduction and apostille conventions. Last meeting held 14 Sept 2010
2009/05	Kyrgyzstan	UNICEF	ICATAP	YES	Request for technical assistance on intercountry adoption.	PB attended seminars and meetings with government officials. Waiting for further request.
2010/10	Lebanon	Lena Gannage	LC/CPC		Technical assistance re: all Hague Conventions.	Awaiting formal request; interest expressed by Government directly related to new membership. Programme tentatively planned for May 2011.
2010/06	Moldova	Mr Corneliu TARUS, Head of Department of Child Rights Protection, Ministry of Labour, Social Protection and Family, Chisinau	ICATAP	YES	Request for technical assistance on intercountry adoption.	Formal request expected.
2009/08	Nepal		ICATAP	YES	Request for technical assistance on intercountry adoption.	Fact-finding mission and report completed. Awaiting request for further assistance.
2010/07	Nepal	EurAdopt	ICATAP	YES	Request for technical assistance on intercountry adoption.	EurAdopt has had a request from Nepal to help extend an invitation to an official delegation from the Nepali ministry who would like to meet with the Permanent Bureau
2009/06	Nigeria		ICA/CP/LC and Securities	YES	Request to provide training to Nigerian officials.	Seminar organised at PB on 12-13 October 2009. Request for follow-up expected.
2008/10	Panama		ICATAP	YES	Request for technical assistance on intercountry adoption.	Mission to Panama. Possible follow up in the coming two years if possible.

Date	State	Contact	Area	ODA	Description	Action
2010/06	Swaziland	Ms Zandile DHLAMINI, Legal Advisor, Deputy Prime Minister's Office, Mbabane	ICATAP	YES	Request for technical assistance on intercountry adoption.	Formal request expected; interest and informal request received during 2010 SC
2008/11	Uganda		ICATAP	YES	Exchange of letters between Uganda and PB.	Formal request expected.
2010/06	Uganda	Ministry of Gender, Labour and Social Development	ICATAP	YES	Request for technical assistance on intercountry adoption.	Must identify funding and develop programming.
2010/04	Ukraine	Ukrainian MFA	CP (Abduction)	YES	Request for technical assistance on 1980 Child Abduction Convention	Assistance organising a seminar in Ukraine in the near future regarding the application of the Child Abduction Convention which Ukraine accepted on 2.06.2006. This seminar shall be aimed at practical aspects of trials in child abduction cases and execution of the relevant judgements.
2010/06	Vietnam	Department of Adoption (Le Thi Hoang Yen)	ICATAP	YES	Request for technical assistance on intercountry adoption.	Must contact Department of Adoption to identify needs; identify funding and develop programming.
2010/08	Vietnam	Child Protection Unit of UNICEF Viet Nam (Le Hong Loan)	ICATAP	YES	Request for assistance to raise funds for adoption programme	E-mail response to be sent by JD.

A N N E X E / A N N E X D

Proposal for the Chair and Vice-Chair(s) of the Council on General Affairs and Policy of the Hague Conference

The delegations of [...]

Wishing to improve the liaison between the members of Hague Conference and the Permanent Bureau and to improve communication between members;

Further wishing to improve the transparency of the PB work programme and capacity for states to influence priorities for the Hague Conference:

Propose the establishment of the position of a Chair and Vice-Chair(s) of the Council whose role includes assisting the Permanent Bureau in the exercise of its tasks during the period between the Council's meetings, including:

- assisting the Permanent Bureau in the preparation of the meetings of the Council, including setting the agenda and preparing and clearing documents;
- making suggestions for work priorities to be decided by the Council;
- continuous monitoring of activities agreed by the Council;
- assisting the Chair and Permanent Bureau in preparing the conclusions of Council meetings;
- acting as a sounding board for the Permanent Bureau in non day-to-day decisions with political exposure, e.g. the submission of amicus briefs;
- assisting communication between members.

Chair and Vice-Chair(s) could appointed be on a rotational basis with regard to expertise and equitable geographical representation.