AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

Doc. prél. No 1
Prel. Doc. No 1

septembre / September 2010

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

RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DU 7 AU 9 AVRIL 2010

établi par le Bureau Permanent

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REPORT OF THE COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE OF 7 TO 9 APRIL 2010

drawn up by the Permanent Bureau

Document préliminaire No 1 de septembre 2010 à l'intention du Conseil d'avril 2011 sur les affaires générales et la politique de la Conférence

Preliminary Document No 1 of September 2010 for the attention of the Council of April 2011 on General Affairs and Policy of the Conference

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RAPPORT DU CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE DU 7 AU 9 AVRIL 2010

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TABLE DES MATIÈRES / TABLE OF CONTENTS

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS 4

CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LE CONSEIL / CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE COUNCIL 14

ORDRE DU JOUR / AGENDA 20

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

CONCLUSIONS AND RECOMMENDATIONS

ADOPTED BY THE COUNCIL

Review of activities of the Conference

The Council welcomed the Annual Report 2009 with its comprehensive review of the activities of the Conference.

In addition, the Council –

a) welcomed the positive results of the Experts' Working Group meeting on the "Guide to Good Practice No 2 – Accreditation and adoption accredited bodies" under the 1993 Intercountry Adoption Convention (The Hague, 15-16 February 2010);

b) took note of the Conclusions and Recommendations of the Southern and Eastern African Regional Seminar, "Cross-Frontier Child Protection in the Southern and Eastern African Region – the Role of the Hague Children's Conventions" (Pretoria, South Africa, 22-25 February 2010) and welcomed the interest shown in the region in the work of the Hague Conference; and

c) took note of the Declaration resulting from the International Judicial Conference on Cross-Border Family Relocation (Washington, D.C., United States of America, 23-25 March 2010).

Ceremonies for signing, accepting and acceding to certain Hague Conventions

The Council witnessed the signing and acceptance of the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* by the European Union, and the accession to the *Hague Conventions of 1 March 1954 on civil procedure* and *of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters* by Albania.

In addition, the Council welcomed the announcement that the Republic of Mauritius had submitted its request for membership of the Hague Conference.

Launch of the German version of the website of the Conference

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

Current work

Cross-border mediation in family matters

The Council noted the progress made in the development of the Guide to Good Practice on Mediation under the 1980 Convention, including the establishment of an Expert Working Group to assist the Permanent Bureau in drawing up a draft, which will be submitted to Members and States Parties for their views. The amended draft will then be submitted for consideration by the Special Commission on the practical operation of the 1980 and 1996 Conventions which will be convened, if possible, in June 2011. It was noted that mediation might also feature in the context of discussions on a possible protocol to the 1980 Convention.

The Council noted the establishment of the Working Group on Mediation in the context of the Malta Process, comprising experts from 12 countries, some of which are Parties to the Convention of 1980 and some non-Parties. The Council noted the rapid progress in the work of the Group, including the drafting of a set of principles which respect the diversity of the legal systems concerned. It is hoped that the work of the Group will be

finalised in a meeting of the Group to be held in Ottawa in May 2010. The Council noted that Members and all participants in the Malta Process would continue to be kept informed of developments and that a further report would be presented to the Council in 2011. Thanks are due to the Governments of Canada and Australia for their financial support of this initiative.

Choice of Law in International Contracts

The Council welcomed the setting up of a Working Group on Choice of Law in International Contracts. It expressed its appreciation to the experts for the progress made and invited the Working Group to continue its work for the progressive development of a draft instrument of a non-binding nature.

The Council noted that there was support in the Working Group for a comprehensive draft instrument also including rules applicable in the absence of choice. The Council confirmed that priority should be given to the development of rules for cases where a choice of law has been made.

The Permanent Bureau was invited to draw up a report on the state of progress of this work for the attention of the Council of 2011.

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

The Council noted that the Permanent Bureau had begun its consultations concerning the desirability and feasibility of a protocol to the 1980 Child Abduction Convention containing auxiliary rules to improve the operation of the Convention. A questionnaire will be circulated to States Parties and Members later this year seeking general views as well as views in relation to the specific elements which might form part of a protocol. The report on these consultations will be drawn up by the Permanent Bureau and submitted to States Parties and Members for consideration by the Special Commission on the practical operation of the 1980 and 1996 Conventions. The report should also take into account the extent to which the provisions of the 1996 Convention supplement those of the 1980 Convention. The Council reiterated that any decision on the question of a protocol can only be taken by the Council.

Future work: new topics

Feasibility of a protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the international recovery of maintenance in respect of vulnerable persons

The Council approved the Conclusion and Recommendation of the November 2009 Special Commission as follows:

"The Special Commission recognised the importance of ensuring that vulnerable persons are in a position to benefit from the provisions of the Convention. The Special Commission was of the opinion that the core scope of the Convention already covers a number of categories of maintenance obligations in respect of vulnerable persons. Moreover, the Convention contains sufficient flexibility, particularly within the provisions on scope, to enable States to bring other categories by declaration within the scope of the Convention. The Permanent Bureau should, nevertheless, continue to monitor the situation and, if experience reveals that there exist categories of maintenance obligation towards vulnerable persons which cannot be brought within the scope of the Convention under Article 2(3), or that special rules are needed in respect of vulnerable persons, this

should be brought to the attention of the Council on General Affairs and Policy of the Conference."

The Council noted the importance for States of considering the position of vulnerable persons when making declarations concerning scope under Article 2 of the Convention.

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

The Council took note of the outcome of the consultations with stakeholders undertaken by the Permanent Bureau to solicit their views on the need for an instrument in this area. The Council noted that these consultations had not provided sufficient support to justify convening an expert meeting. The Council invited the Permanent Bureau to continue its work to facilitate access to, and exchange of information concerning, foreign law in the context of existing Hague Conventions. The Council decided to retain this item on its Agenda and to revisit the issue at its next meeting.

Continuation of the Judgments Project

The Council noted the suggestions made in Preliminary Document No 14, including a proposal to convene an expert group to explore the options presented in this document. The Council recalled the valuable work which has been done in the course of the Judgments Project and noted that this could possibly provide a basis for further work. The Council concluded, however, that such exploratory work, including the appointment of an expert group, will be further considered only following the entry into force of the 2005 Choice of Court Convention.

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

The Council took note of the follow-up report and accepted that the Permanent Bureau would continue to explore, in consultation with interested Members and relevant international organisations, the potential value of using certain private international law techniques in the context of international migration.

New topics

The Council invited the Permanent Bureau to provide a brief preliminary note to the Council of 2011 on the private international law issues surrounding the status of children (excluding adoption) and, in particular, on the issue of recognition of parent-child relationships (*filiation*).

The Council acknowledged the complex issues of private international law and child protection arising from the growth in cross-border surrogacy arrangements. It was noted that the impact of cases of surrogacy on the practical operation of the Intercountry Adoption Convention would be placed on the draft Agenda for the meeting of the Special Commission on the practical operation of the Intercountry Adoption Convention to take place in June 2010. The Council agreed that the private international law questions relating to international surrogacy arrangements should be kept under review by the Permanent Bureau.

The Council took note of a proposal to examine the topic of the law applicable to the property aspects of moveable assets and invited further elaboration of this proposal.

Other topics

The Council invited the Permanent Bureau to continue to follow developments in the following areas –

a) questions of private international law raised by the information society, including electronic commerce, e-justice and data protection;

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

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

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

The Council decided to delete from the Agenda the topic dealing with the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage.

The operation of the Conference

The Council 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.

Post-Convention services and activities

The Council reviewed with approval the broad range of activities currently being carried out by the Permanent Bureau to promote and to ensure the effective implementation and operation of the Hague Conventions, including the preparation of Special Commissions and the implementation of their Conclusions and Recommendations. The Council commended the development of regional programmes and took note of the ongoing initiatives to strengthen the regional presence of the Hague Conference in Latin America and in the Asia-Pacific.

The Council also noted however that it would be necessary to ensure that the future programme of activities of the Permanent Bureau is realistic in that the post-Convention services and activities should not prevent the Permanent Bureau from engaging in new legislative work. The council observed that the question of funding would need further debate.

The Council welcomed:

a) the successful outcome of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of its Protocol on the Law Applicable to Maintenance Obligations and took note of its Conclusions and Recommendations; and,

b) the completion and publication of the Explanatory Report on the 2007 Child Support Convention and the Explanatory Report on the Protocol on the Law Applicable to Maintenance Obligations and expressed its gratitude to the *Rapporteurs*, Alegría Borrás, Jennifer Degeling and Andrea Bonomi.

The Council agreed to defer consideration of the formal establishment of a Standing Central Authority Co-operation Committee until the time when there is a sufficient number of Central Authorities designated under the 2007 Child Support Convention. In the interim, the Council agreed that the Administration Co-operation Working Group should continue its work as a forum for discussion of issues of administrative co-operation as was recommended by the Twenty-First Session of the Conference in November 2007 (Final Act, under C 5).

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.

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

The Council noted the need for additional short-term and long-term funding for the post-Convention services and to ensure the sustainability of the International Centre for Judicial Studies and Technical Assistance.

ORDRE DU JOUR / AGENDA

AGENDA

MEETING OF THE COUNCIL ON
GENERAL AFFAIRS AND POLICY OF THE CONFERENCE
(7–9 April 2010)

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

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

Wednesday 7 April 2010, 2.00 p.m.

I. Review of activities since the previous Council meeting (31 March – 2 April 2009)

1. Overview of work accomplished in 2009.

   See Annual Report 2009.

2. Overview of work during the first quarter of 2010.

   Short report on the results of:

   - the First Meeting of the Working Group on choice of law in international contracts (The Hague, 21 – 22 January 2010);
   - the Experts' Working Group meeting on the *"Guide to Good Practice Part II – Accreditation and accredited bodies"* under the 1993 Intercountry Adoption Convention (The Hague, 15 – 16 February 2010);
   - the Southern and Eastern African Regional Seminar, "Cross-Frontier Child Protection in the Southern and Eastern African Region – the Role of the Hague Children's Conventions" (Pretoria, South Africa, 22 – 25 February 2010);
   - the International Judicial Conference on Cross-Border Family Relocation (Washington, D.C., United States of America, 23 – 25 March 2010).

II. Current work

3. Cross-border mediation in family matters.

   See the "Review of activities of the Conference in regard to Mediation", Preliminary Document No 11 of February 2010.

4. Choice of law in international contracts.

   See "Choice of law in international contracts – Report of work carried out", Preliminary Document No 6 of March 2010.

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

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

III. Future work: new topics

Under this heading there will be a discussion of any new topics which have been, or may be, suggested by the governments, the international organisations or the Permanent Bureau. See Preliminary Document No 2 of February 2010 prepared by the Permanent Bureau, with comments on some of the topics below.

6. Feasibility of a Protocol to the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the international recovery of maintenance in respect of vulnerable persons.

See Preliminary Document No 3C of February 2010. Recommendation No 9, Final Act, Twenty-First Session, Part C, p. 55.

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

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

8. Continuation of the Judgments Project

See Preliminary Document No 14 of February 2010.

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

See Preliminary Document No 7 (fourth follow-up note) of February 2010.

10. International Data Protection

See Preliminary Document No 13 of March 2010.

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

a) questions of private international law raised by the information society, including electronic commerce and e-justice;
b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage;

See Preliminary Document No 12 of February 2010;

c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;
d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;

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

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

Thursday 8 April 2010

12.00 p.m. Signature of the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* by the European Union, and of the *Hague Conventions of 1 March 1954 on civil procedure* and of *1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters* by Albania.

IV. Round table on progress made concerning the signature and ratification of and accession to Conventions

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

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

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

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

    Convention of 30 June 2005 on Choice of Court Agreements.

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

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

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

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

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

16. Other Conventions adopted by the Hague Conference.

V. Monitoring, adaptation and support of Conventions

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

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

    a) Apostille Convention;

b) Service Convention;

c) Evidence Convention; and

d) Access to Justice Convention.

See Preliminary Document No 15 of February 2010.

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

18. Report on the activities in relation to the Conventions of 1980, 1993, 1996 and 2007 and, in particular –

a) follow-up on the Special Commission meeting of November 2007 on the implementation of the 2007 Child Support Convention and of the Protocol on Applicable Law;

See Preliminary Documents Nos 3A and 3B of February 2010.

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

See Preliminary Document No 5 of February 2010.

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

C. General issues

19. Monitoring and support of Conventions through information technology.

20. Judicial networking and direct judicial communications.

VI. Regional activities. International Centre for Judicial Studies and Technical assistance

21. Reports on:

a) Latin America;

b) Asia Pacific;

c) Malta Process;

d) Africa;

e) CIS States / Eastern Europe;

f) Achievements, current developments and future work programme 2009 - 2012 of the Centre;

g) Funding methods for the Centre, in particular in respect of countries identified as Official Development Assistance Recipients, in accordance with OECD criteria;

h) Supplementary Budget Part II.

Draft Supplementary Budget for Financial Year LVI (1 July 2010 – 30 June 2011) and Explanatory Notes (see Prel. Doc. No 9B of March 2010).

VII. Future work (cont'd)

Friday 9 April 2010

VIII. Organisation of the work of the Conference

22. The Strategic Plan.

Report on progress by the Secretariat (see Prel. Doc. No 4 of February 2010).

23. Proposed Budget for Financial Year LVI (1 July 2010 – 30 June 2011).

Draft Budget for Financial Year LVI (1 July 2010 – 30 June 2011) and Explanatory Notes (see Prel. Doc. No 8 of March 2010).

24. Supplementary Budget for Financial Year LVI (1 July 2010 – 30 June 2011), Part I Special Projects and Expenses.

Draft Supplementary Budget for Financial Year LVI (1 July 2010 – 30 June 2011) and Explanatory Notes (see Prel. Doc. No 9A of March 2010).

IX. Co-operation with other international organisations

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

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

X. Conclusions

The meeting will end by 1.00 p.m. at the latest.

1.00 p.m. Launch of Tome III of the *Proceedings of the Twentieth Session*, followed by a Reception offered by the publisher, Intersentia.

Annex A

Topics informally suggested to the Permanent Bureau –[1]

- development of a practical guide on comparative private international law (on a country-by-country or subject-by-subject basis);
- development of model bilateral agreements to facilitate the implementation of (multilateral) Hague Conventions;
- questions of private international law in relation to intellectual property issues;
- the international recovery of assets relevant to criminal law enforcement as well as to ordinary claims, and which is related to aspects of provisional and protective measures;
- questions in relation to status of children (excluding adoption), in particular recognition of parent-child relationships *(filiation)*;
- conventions (or model laws) on the law applicable to specific contracts (barter transactions; trading in futures on a stock exchange);
- cross-border regulatory issues: how to preserve, through international co-operation and mutual enforcement, the integrity of the growing variety of regulatory systems in a converging world;
- feasibility study on the provision of enhanced legal assistance in particular for categories of cases such as small and / or uncontested claims (suggestion by the Special Commission of 2 – 12 February 2009)[2].

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

[2] Referred to Annex A by the Council on General Affairs and Policy of March - April 2009.