

CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

PLAN STRATÉGIQUE

établi par le Bureau Permanent

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THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

STRATEGIC PLAN

drawn up by the Permanent Bureau

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TABLE OF CONTENTS

INTRODUCTION	p. 6
1. VISION, MISSION, STRENGTHS & VALUES	p. 9
2. CURRENT ORGANISATION AND OBJECTIVES	p. 10
2.1. HISTORY & DESCRIPTION	p. 10
2.2. PRODUCTS AND SERVICES OF THE HAGUE CONFERENCE	p. 11
2.2.1. Development of New Instruments	p. 13
2.2.2. Implementation, Support and Monitoring of existing Hague Conventions	p. 13
2.2.3. Legal Assistance, Education and Training	p. 14
2.2.4. Providing Information and Work on Publications	p. 14
2.2.5. Other Activities of the Secretariat related to the products and services of the Hague Conference	p. 15
2.3. TARGET COMMUNITIES AND STAKEHOLDERS SERVED BY THE HAGUE CONFERENCE	p. 15
2.3.1. Benefits derived by Member States (including National Organs and Government Delegates)	p. 15
2.3.2. Benefits derived by Non-member States (including Government Delegates)	p. 16
2.3.3. Individuals associated with the Judicial Systems	p. 16
2.3.4. Central and other National Authorities from the Co-operation Systems	p. 17
2.3.5. Families, Children and other Individuals	p. 17
2.3.6. Industry and Private Companies	p. 17
2.3.7. International Governmental and Non-governmental Organisations	p. 18
2.3.8. Professional and Academic Communities	p. 18
2.4. CURRENT BUSINESS MODEL – RESOURCES	p. 20
2.4.1. The Decision Making Process	p. 20
2.4.2. The Funding	p. 20

2.5. THE SUPPORT STRUCTURE OF THE HAGUE CONFERENCE – THE SECRETARIAT	p. 21
2.5.1. The Secretariat ensures that the Hague Conference delivers	p. 21
2.5.2. The Secretariat is Small	p. 21
3. CURRENT KEY DEVELOPMENTS – IMPACT ON THE CONFERENCE	p. 22
3.1. THE INTERNATIONAL CONTEXT – SEVERAL EXTERNAL TRENDS IMPACT ON THE HAGUE CONFERENCE	p. 22
3.1.1. The Increased Diversity of the Membership of the Conference	p. 22
3.1.2. Technological, Economic and Demographic Trends need to be addressed	p. 22
3.1.3. Co-operation with Regional organisations and amongst International Organisations	p. 24
3.2. THE INTERNAL CONTEXT – INCREASING DEMANDS – THE ORGANISATION NEEDS TO ADAPT	p. 25
3.2.1. Increasing Demands from the Target Audience	p. 25
3.2.2. New Conventions require more Work	p. 26
3.2.3. Monitoring of the Existing Conventions requires additional Work	p. 26
3.2.4. Growing Membership of the Conference and Pressure toward increasing Global Span	p. 26
3.2.5. Disconnect between Financial Resources and Programme Demand	p. 27
3.3. SUMMARY OF EXTERNAL AND INTERNAL SITUATION	p. 27
4. STRATEGY FOR THE FUTURE – ANALYSIS OF AVAILABLE OPTIONS	p. 29
4.1. SUGGESTIONS OF STRATEGIC DIRECTIONS FOR THE HAGUE CONFERENCE	p. 29
4.1.1. Continue to increase global coverage of the Conference by enlarging its Membership and the number of States Parties to Hague Conventions	p. 30
4.1.1.1. Increasing the Membership	p. 30

4.1.1.2. Increasing the number of States Parties to existing Hague Conventions	p. 32
4.1.2. Selectivity in relation to the projects undertaken by the Conference	p. 33
4.1.3. Consolidating the provision of “post-Convention” services	p. 34
4.1.4. Enhancing working methods by providing flexibility in the development process	p. 36
4.1.4.1. Preparing model laws and other non-binding harmonising mechanisms when appropriate	p. 36
4.1.4.2. Reviewing the structure and length of international meetings	p. 37
4.1.4.3. Continuing to be innovative in the preparation of the work	p. 39
4.1.5. Determining the role of the Conference in legal education and training	p. 40
4.1.6. Matching resources and demands by establishing a transparent and informative decision-making process and by increasing the capacity to seek additional funding	p. 42
4.1.6.1. Providing additional information with a view to increasing the transparency of the budget	p. 42
4.1.6.2. Establishing a transparent and informed decision-making process in relation to the budget	p. 43
4.1.6.3. Capacity to seek additional funding	p. 44
4.1.6.4. Additional financial questions - the pension scheme for the Secretariat’s staff	p. 45
4.1.7. Increasing communication and co-operation with other international organisations	p. 46
4.1.8. Enhancing the management of internal information and documents in order to increase corporate memory, consolidating the filing system, enhancing the maintenance of the library, and improving the use of computer technology to that effect	p. 47

ANNEX II - MAIN WORKING-MODEL OF THE HAGUE CONFERENCE	p. 51
A-II.1. Development Stage	p. 51
A-II.1.1. Selection Stage	p. 52
A-II.1.2. Research Stage	p. 52
A-II.1.3. Discussion Stage	p. 53
A-II.1.4. Drafting and Adoption Stage	p. 53
A-II.1.5. Consolidation Stage	p. 54
A-II.2. Promotion Stage	p. 54
A-II.3. Implementation Stage	p. 55
A-II.4. Support Stage including Legal Education and Training	p. 55
A-II.5. Monitoring Stage	p. 56
A-II.6. The Working Model – A Complete Cycle	p. 56
ANNEX III - LIST OF INTERNATIONAL ORGANISATIONS MOST FREQUENTLY INVOLVED WITH THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW	p. 58
ANNEX IV – TEMPORARY POSITION AT THE PERMANENT BUREAU FOR QUALIFIED STAFF OF THE MEMBER STATES – DESCRIPTION OF QUALIFICATIONS AND DUTIES	p. 60

INTRODUCTION

[001] The Hague Conference has in recent years experienced an unprecedented period of growth, both in its membership and activities. Its services have never been so much in demand. Over the past twelve months the Conference has welcomed 12 new Member States¹ (an increase of 25%) and saw further applications for membership.² There are now 112 States in all parts of the world which are Parties to one or more of the 34 Hague Conventions. The work of the Conference has over the last twenty years expanded beyond the development of new Conventions to include the administration, monitoring and support of existing Conventions, especially those hall-mark Conventions which involve systems of administrative and judicial co-operation. These successful developments have come about as a result of decisions taken by the Member States and as a result of initiatives taken by the Secretariat supported by Member States.

[002] It is now an opportune time for Member States to take stock of the present situation of the Conference, to make more explicit the strategy underlying these recent developments, to examine their longer term financial implications, to set priorities and to consider how best to consolidate and build upon the current success of the Conference. Already a number of steps have been taken which assist in this process of strategic planning.

[003] In May 2000 the Special Commission on General Affairs and Policy unanimously supported, and the Council of Diplomatic Representatives on 11 July 2000 unanimously adopted a Report entitled “*The Hague Conference on Private International Law on the Eve of the New Millennium: Some concrete suggestions for strategic action*” drawn up in the Fall of 1999 by the Informal Group of Ambassadors, chaired by H.E. Mr H. Reimann, the then Ambassador of Switzerland. The Report recommended that the following steps be taken:

- (a) Increase the membership of the Organisation
- (b) Publicise the Conventions and documents of the Conference, and organise seminars in co-operation with appropriate regional organisations
- (c) Develop training programmes for authorities and judges applying the Conventions

¹ Peru, Brazil, Jordan, Georgia, Bosnia and Herzegovina, Yugoslavia, Belarus, Sri Lanka, Lithuania, the Russian Federation, New Zealand and South Africa making the total of Member States 59.

² Three more States have been admitted and are expected to accept the Statute soon: Panama, Ukraine and Albania. Furthermore, the voting procedure has been opened for the admission of Costa Rica and Malaysia (closing dates 5 September 2002 and 26 September 2002 respectively) and several more States are studying membership.

- (d) Provide assistance to the staff of the Permanent Bureau³

[004] At the end of 2000, the Chairman of the Netherlands Government Committee on Private International Law and the Secretary General of the Hague Conference on Private International Law commissioned PricewaterhouseCoopers to:

- (a) evaluate the organisation of the Secretariat in the light of possibly inadequate resources arising from the possibility that the tasks of the Secretariat have increased dramatically while resources have not grown correspondingly in recent years;
- (b) contribute to the further strategic development of the Organisation by examining external developments in the immediate context of the Organisation.⁴

[005] As a result, a Report followed entitled “*The Hague Conference on Private International Law: Resource Deficiencies and Strategic Positioning*” outlining the findings of PricewaterhouseCoopers. The Report was presented to Member States both at the Commission on General Affairs on 22 June 2001 and at the Council of Diplomatic Representatives on 3 July 2001. At both meetings, Member States agreed with the main conclusion of the Report: “a clear 30% resource gap must be closed” in order for the Hague Conference to remain “fit”.⁵

[006] At the Commission on General Affairs and Policy of June 2001 (Commission I of the Nineteenth Session) and at the Council of Diplomatic Representatives of July 2001, while recognising the current resource gap, a number of Member States invited the Secretary General to prepare a Strategic Plan outlining more clearly the resources needed

³ See the final version “The Hague Conference on Private International Law on the Eve of the New Millennium: Some Concrete Suggestions for Strategic Action”, adopted by the Council of Diplomatic Representatives at its forty-sixth meeting on 11 July 2000. These recommended steps may be seen as an extension, in part, of the Resolution adopted by the Seventeenth Session on 19 May 1993 on the occasion of the celebration of the Centenary of the Conference. Cf. Actes et documents XVII (1993), Tome I, Second Part, p. 59. The Resolution is reproduced in Annex I.

⁴ PricewaterhouseCoopers, “The Hague Conference on Private International Law: Resources Deficiencies and Strategic Positioning”, The Hague, May 2001, 26 p., par. 001, p. 7. This study was made possible by a special financial grant of the Government of the Netherlands. The Governments of the United Kingdom and Denmark also made a contribution.

⁵ *Ibid.* par. 1, p. 3 and par. 302(c), p. 21. “[A] “fit” scenario [would be a] steady increase in demand/workload and substantial extra funding (closure of the gap). Some new Conventions can be produced, and can be monitored when required. Effort can be put into increasing the number of Member States. The proper level of support will be restored and quality will be maintained. The visibility of the Organisation will be improved. There will be better and more transparent internal organisation, and greater potential for fund raising. However the Organisation would remain modest in size (“lean & mean”) since that is also part of the strength of the Secretariat. Effort can be put into necessary activities to secure future strategic position.”

and relating those resources to the programme of the Conference. The Strategic Plan could serve as a basis for implementing either a “fit” or a “breakthrough”⁶ scenario. It was additionally suggested that the Strategic Plan examine the structure, organisation, operations and services of the Conference, study issues such as work choices and prioritisation processes and contemplate new fund-raising and revenue generation mechanisms.

[007] In response to this invitation and in view of the important external and internal developments and challenges the Organisation faces, the Secretary General in consultation with PricewaterhouseCoopers prepared for discussion by the Member States the initial draft of this document. On 21-22 January 2002, at the invitation of the Secretary General (*cf.* L.c. ON No 76(01)), an informal exploratory meeting of representatives from Member States met at the Permanent Bureau to discuss and comment on the draft.⁷ The input provided at the meeting was taken into consideration in preparing the final draft that attempted to reflect the common vision of the Secretariat and the Members of the Organisation.

[008] The main directions indicated in this Strategic Plan have now been given unanimous support by Member States of the Organisation at the Commission I meeting of 22-24 April 2002 on General Affairs and Policy of the Organisation. The Conclusion of Commission I reads as follows:

“Commission I supports the main directions indicated in the Strategic Plan prepared by the Permanent Bureau. Commission I welcomes the linking of the programming of the Conference, decided by the organs of the Conference responsible for General Affairs and Policy, and the budget decided by the Council of Diplomatic Representatives. Commission I supports the proposal that the implementation of the Strategic Plan be reviewed on a regular basis by the organs responsible for General Affairs and Policy and that the Strategic Plan its self be reviewed as a whole on a four year basis, depending on the outcome of the regular reviews of its implementation.”

[009] The Strategic Plan will support the Organisation’s budget planning for the coming years. It sets a Vision and a Mission for the Organisation and highlights its strengths and values. Further to a description of the current framework and an analysis of the changes and pressures influencing the work performed by the Hague Conference, the Strategic Plan suggests options for the future.

⁶ *Ibid.* par. 302(d), p. 21. “[A] breakthrough scenario [would be a] strong growth in demand and funding. If, with fundraising, this does become an option, repositioning can be carried out more easily and services can be expanded or improved”.

⁷ The meeting was chaired by Judge Fausto Pocar (Italy). The following Member States were represented at the meeting: Australia, Canada, China, France, Germany, Greece, Italy, Japan, Mexico, Morocco, The Netherlands, Russian Federation, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America.

1. VISION, MISSION, STRENGTHS & VALUES

VISION

- To work for a world in which individuals, families as well as companies and other entities whose lives and activities transcend the boundaries between different legal systems, enjoy a high degree of legal security.
- To promote the orderly and efficient settlement of disputes, good governance and the rule of law, while respecting the diversity of legal traditions.

MISSION

- To be a forum for the Member States for the development and implementation of common rules of private international law in order to co-ordinate the relationships between different private law systems in international situations.
- To promote international judicial and administrative co-operation in the fields of protection of the family and children, civil procedure and commercial law.
- To provide high-standard legal services and technical assistance for the benefit of Member States and States Parties to Hague Conventions, their government officials, judiciary and practitioners.
- To provide high-quality and readily accessible information to Member States and States Parties to Hague Conventions, their government officials, judiciary, practitioners and the public in general.

STRENGTHS AND VALUES

Global Network

- The strength of the Hague Conference derives from the links it maintains with its Member States and States Parties to Hague Conventions – representing all continents – their national experts, delegates, Central and other National Authorities, professional and academic communities and individuals, and from the co-operation with other international governmental and non-governmental organisations.

Diversity of Legal Traditions

- The diversity of legal traditions constituting the Hague Conference makes it a unique forum for the development of universally acceptable solutions.

Experience

- The Hague Conference is known for the high-quality and scientific excellence of its work, for the development of creative solutions and for its unrivalled contribution to private international law over a period of more than 100 years.

Reputation

- The Hague Conference is a centre within which world experts and delegates are committed to working together on the basis of mutual trust, support and respect.

Location

- The strengths of the Conference are enhanced by its location in The Hague, Centre for International Justice, and by the significant and sustained support offered by the Netherlands Government.

2. CURRENT ORGANISATION AND OBJECTIVES**2.1. HISTORY & DESCRIPTION**

[201] Personal and family or commercial situations connected with more than one country are commonplace in the modern world. These situations are often affected by differences between the legal systems in those countries. With a view to resolving these differences, States have adopted special rules known as “private international law” or “conflict of laws” rules. These rules are meant to co-ordinate the relationships between different private law systems connected to an international situation.

[202] The statutory mission of the Hague Conference is to work for the “progressive unification” of these rules. This involves finding internationally agreed approaches to issues such as jurisdiction of the courts, applicable law, the recognition and enforcement of judgments in a wide range of areas, from commercial law and finance law to international civil procedure and from child protection to matters of marriage and personal status.

[203] In carrying out its mission, the Conference has, over the years, become a centre for international judicial and administrative co-operation in the area of private law, especially in the fields of family and child protection and civil procedure. Through the co-ordination of legal systems and co-operation, the Hague Conference aims at building confidence in the cross-border application of private law.

[204] The Hague Conference is a global inter-governmental organisation with what will be soon 60 Member States representing all continents, and several more to follow in the

near future. The Hague Conference is building bridges between differing legal systems – common law and civil law systems, systems based on religious law and secular systems, unitary and federal systems – all of which are widely represented among its Member States. A melting pot of different legal traditions, the Hague Conference develops and services multilateral legal instruments⁸ which respond to global needs.

[205] The First Session of the Hague Conference on Private International Law was convened in 1893 by the Netherlands Government on the initiative of T.M.C. Asser (Nobel Peace Prize 1911). The Hague Conference became a permanent inter-governmental organisation supported by a Secretariat⁹ in 1955, the year its current Statute came into force. The Hague Conference is hosted by The Netherlands Government with whom it has a very close relationship.¹⁰ Indeed, the Netherlands Standing Committee on Private International Law has the formal role under the Statute of ensuring through the Permanent Bureau the functioning of the Conference.¹¹

[206] Since 1955, 34 Hague Conventions have been adopted as well as a number of Recommendations. The operation of many of these Conventions and Recommendations is regularly reviewed and monitored at experts meetings. Subsequently, education and support for effective implementation and uniform interpretation of these instruments is provided.

[207] Apart from its Member States, an increasing number of Non-member States are acceding to Hague Conventions. As a result, the work of the Conference encompasses more than 112 countries around the world.

⁸ Mainly in the form of multilateral treaties, but see, *infra*, par. [414]-[415].

⁹ The term “Secretariat” is used throughout this report to refer to the Permanent Bureau.

¹⁰ In addition to hosting the permanent seat of the organisation, The Netherlands has been the host of every Special Commission and Diplomatic Conference held by the organisation. According to Article 10 of the Statute, the Netherlands Government bears the expenses resulting from the regular sessions. This includes the expensive costs of printing of the *Actes et documents/Proceedings* (see par. [A-II-010]-[A-II-011] below). Furthermore, over the years the Government of The Netherlands has been making several special contributions, including a very important donation for the year 2001, to cover initiatives such as the PricewaterhouseCooper’s Studies, the conversion of the top floor into an additional working floor, the hiring of temporary personal for special projects and the organisation of two international meetings.

¹¹ Articles 3 and 5 of the *Statute of the Hague Conference on Private International Law* – Entered into force 15 July 1955.

2.2. PRODUCTS AND SERVICES OF THE HAGUE CONFERENCE

[208] The statutory mission of the Conference “to work for the progressive unification of the rules of private international law”¹² or “conflict of laws” rules is achieved by means of either or both of the two following techniques. First, the Hague Conference develops common rules on issues such as jurisdiction of the courts, applicable law, the recognition and enforcement of judgments. Second, the Hague Conference develops frameworks to facilitate international judicial and administrative co-operation. In principle, the scope of this work embraces every area of private law, whether in civil or commercial law matters. As the Conference has demonstrated over more than a century, it has the capacity and ability to venture into a great variety of differing topics.¹³ Usually, the development of the rules focuses on areas where harmonisation, at the level of substantive law, is not, or not yet, possible¹⁴ or on subject matters which require urgent attention and harmonisation of which cannot be awaited.¹⁵ On the other hand, the development of co-operation frameworks may result in some harmonisation of areas of private law such as family law, the process of legal documents and procedural law in civil and commercial law matters.¹⁶ At the global level there is no other organisation comparable to the Hague Conference.¹⁷

[209] Over the last 20 years, the range of products and services provided by the Conference has been expanding. Formerly the concentration was on the development of new instruments. Now, however, the promotion, implementation, support and monitoring of existing Conventions require as much time as the development of new instruments. Furthermore, the need for technical assistance such as legal education and training and the

¹² *Ibid.* Article 1.

¹³ Experience has shown that the Conference is successful in venturing in new areas such as child abduction and adoption, successions and trusts. Furthermore, because of its extensive network, the Conference can call upon many experts in virtually all areas of private law.

¹⁴ Many areas of family law, the law of inheritances, property law, the law on service of process and on the taking of evidence and other areas of civil procedure law. Another example includes legal principles or institutions, such as trusts, unknown to other legal traditions in order to allow for their recognition in these legal systems.

¹⁵ That is the case of the future *Convention on the law applicable to certain rights in respect of securities held with an intermediary*.

¹⁶ This includes for example the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* and the *Convention of 25 October 1980 on International Access to Justice*.

¹⁷ In this regard, it is significant that in 1977, Commonwealth Law Ministers decided that, rather than develop their own competence in intra-Commonwealth private law, they would work with the Hague Conference.

resources devoted to providing information are constantly growing. These elements all constitute the current working model of the Hague Conference. Before reading further, the reader is invited to refer to the detailed description of the working model in Annex II.¹⁸

2.2.1. Development of New Instruments

The Hague Conference:

- Identifies, prepares feasibility studies and conducts preparatory research on topics that could be the subject-matter of new private international law instruments
- Consults Member States, their national experts, delegates, Central¹⁹ and other national Authorities,²⁰ professional and academic communities and other international governmental and non-governmental organisations on the need for and the development of new instruments
- Provides a forum for States, in co-operation with interested international governmental and non-governmental organisations, for the negotiation of new instruments

2.2.2. Implementation, Support and Monitoring of existing Hague Conventions

The Hague Conference:

- Offers technical assistance and gives policy and legal advice to States on the implementation of existing Hague Conventions

¹⁸ The Secretary-General of the United Nations has described the treaty-making process of the Hague Conference on Private International Law as being “highly structured”. “Report of the Secretary-General on the Review of the Multilateral Treaty-Making Process”, UN GA, 35th Sess., UN Doc. A/35/312 (27 August 1980), par. 18, p. 11.

¹⁹ The term “Central Authority” refers to an entity designated by a State Party to a Convention to discharge the duties which are imposed by the Convention upon such Authority. The Hague Conventions requiring the designation of Central Authorities include: the *Child Abduction Convention*, the *Intercountry Adoption Convention*, the new *Protection of Children and Adults Conventions*, the *Service Convention*, the *Taking of Evidence Convention* and the *Access to Justice Convention*.

²⁰ More than six hundred and sixty Central and other national Authorities have been designated. Full details may be found on the Conference website at: < <http://www.hcch.net> >.

- Monitors the operation of many Hague Conventions and facilitates their review by providing a forum to interested States and other international governmental and non-governmental organisations
- Encourages consistent interpretation and application of Hague Conventions in force by collecting and analysing case law and current practice on these Conventions and promoting dialogue among Contracting States
- Maintains information concerning the status of the Hague Conventions and the Central and other national Authorities appointed to carry the duties under the Conventions

2.2.3. Legal Assistance, Education and Training

The Hague Conference:

- Advises on, facilitates and organises legal education and training, through conferences, seminars and “on the spot” workshops, to States and Convention users on the implementation and application of many of the Hague Conventions
- Offers internships to State officials or post-graduate students from all over the world with a high interest in private international law

2.2.4. Providing Information and Work on Publications

The Hague Conference:

- Promotes the Hague Conventions and the services offered by the Hague Conference
- Provides information to States and the public on the Conventions and on the Central and other National Authorities appointed under the Conventions through direct contacts, the website of the Conference, the INCADAT database and different publications
- Edits the full proceedings of each of the Sessions of the Conference (*Actes et documents*), and prepares handbooks, guides and other publications in relation to the Conventions

- Gives legal policy advice and information to interested international governmental and non-governmental organisations on existing Hague Conventions and on other private international law issues

2.2.5. Other Activities of the Secretariat related to the products and services of the Hague Conference

The Hague Conference:

- Replies to requests for information and assistance and interacts with the States, other organisations and the public
- Maintains direct contact with Diplomatic representatives in The Netherlands and liaises with stakeholders
- Attends relevant meetings of other international governmental and non-governmental organisations and of professional and academic associations
- Members of the Secretariat are regularly invited to give lectures and to participate in seminars, colloquia and various field studies organised by academic, professional and governmental bodies - their publications appear in journals and books in all parts of the world

2.3. TARGET COMMUNITIES AND STAKEHOLDERS SERVED BY THE HAGUE CONFERENCE

[210] The target communities and stakeholders served by the Hague Conference include the Member and Non-member States, their constituents – individuals, families, as well as companies and other entities –, individuals in their governments associated with the judicial system and their Central and other National Authorities, governmental and non-governmental international organisations, and professional and academic communities. Each of these groups benefit from the services of the Conference in different ways.

2.3.1. Benefits derived by Member States (including National Organs²¹ and Government Delegates)

- Member States and National Organs are the primary beneficiaries of the services provided by the Secretariat and of the Hague global networks
- Member States decide on the general policy of the organisation
- Member States participate, with the right to vote, in the negotiation, drafting and monitoring of instruments
- Member States receive explanatory reports as well as the full proceedings (*Actes et documents*) of each newly negotiated instrument, the Collection of Conventions, and a number of other publications including the Bibliography of the Conference, the Judge's Newsletter, Practical Handbooks, etc.
- Member States suggest and prioritise topics undertaken by the Hague Conference
- Membership and benefits of the Hague Conference are open to any State from any continent, of any legal tradition

2.3.2. Benefits derived by non-member States (including Government Delegates)

- Non-member States may participate, upon invitation, in the negotiation of instruments as observers
- Non-member States participate in the monitoring and review of instruments to which they are a Party
- Non-member States do not decide on the general policy of the organisation
- Non-member States may benefit from the Hague Conference services if they intend to become a Member State or a Party to a Convention in the near future

²¹ According to Article 6 of the *Statute of the Hague Conference on Private International Law*, Member States have to designate a National Organ. National Organs provide the normal channel of communication between the Secretariat and the Member States. For an up-to-date overview, see < <http://www.hcch.net/e/members/members.html> >.

2.3.3. Individuals associated with the Judicial Systems

- Judges, lawyers, bailiffs, “*notaires*”, “*huissiers*” and other individuals associated with the justice system benefit from the use of the Hague Conventions and the information and the technical assistance, including legal education and training, provided by the Conference supporting the application and implementation of such Conventions

2.3.4. Central and other National Authorities from the Co-operation Systems

Central and other National Authorities appointed under different Hague Conventions establishing co-operation systems:²²

- Benefit from the information and technical assistance supporting the application and implementation of such Conventions
- Participate in the monitoring of the Hague Conventions, through direct contacts, contacts via the Secretariat and Special Commissions on the practical operation of the Hague Conventions
- Benefit from the electronically supported network administered by the Secretariat and receive advice and information upon request

2.3.5. Families, Children and other Individuals

- The instruments developed by the Hague Conference respond to the needs of families, children and other private individuals resulting from the cross-border application of private law
- Families, children and other private individuals may benefit from the application of Hague Conventions if their State is Party to them or if their national law was inspired or influenced by them
- Interested individuals have access to a vast amount of information through the Conference’s website

²² See, *supra*, notes 19 and 20.

2.3.6. Industry and Private Companies

- Industry and private companies may benefit from the application of Hague Conventions if their State is Party to them or if their national law was inspired or influenced by them
- Industry and private companies have access to a vast amount of information through the Conference's website

2.3.7. International Governmental and Non-governmental Organisations

- The Hague Conference co-operates and maintains working relationships with a great number of international governmental and non-governmental organisations²³
- They may, upon invitation, participate in the negotiation of instruments as observers
- They may benefit from the Hague Conference's services on private international law matters

2.3.8. Professional and Academic Communities

- The Conference is in constant touch with the professional and the academic communities and the law reform institutes as they play a major role in the development and monitoring of the Hague Conventions
- Members of the Secretariat are regularly invited to give lectures and to participate in seminars, colloquia and various field studies organised by academic, professional and governmental bodies - their publications appear in journals and books in all parts of the world
- The Hague Conference collaborates with academic, law reform institutes and research institutions providing information on request and entering into joint projects

²³ See Annex III for a list of these organisations.

GRAPHIC 2.1. - HAGUE CONFERENCE SERVICE BENEFITS FOR TARGET COMMUNITIES AND STAKEHOLDERS

BENEFICIARIES SERVICES	Member States (including National Organs and Government Delegates)	Non-member States (including Government Delegates)	Individuals associated with the Judicial Systems	Central and Other National Authorities (Co-operation)	Family, Children and other Individuals	Industry and Private Companies	Other International Organisations	Professional and Academic Communities
Development of New Instruments	1	2	2	2	2	2	1	4
	2	3	3	3	3	3	2	10
	3	4*		4			3	
	4						4	
Implementation, Support, Monitoring and Legal Assistance	3	3**	3	3	3	3	9	9
	5	5**	5	5	5	5	10	10
	6	6**	6	6	6	6		
	7	7**	7	7	7	7		
Providing Information and Work on Publications	8	8**	8	8	8	8		
	3	3**	3	3	3	3	9	9
	5	5**	5	5	5	5	10	10
	6	6**	6	6	6	6	11	11
Other Support Activities and Liaison	7	7**	7	7	7	7		
	11	11**	11	11	11	11		
	12	12*	12	12	12	12	12	12
	13	13	13	13	13	13	13	13

List of Benefits

- 1) Suggestions for new projects taken up
- 2) Private international law problems addressed
- 3) Increased legal security
- 4) Involvement in the development of Conventions
- 5) Supplied with tools supporting the application of Conventions (manuals, good practice guides, handbooks, etc.)
- 6) Consistent application of Conventions promoted
- 7) Kept up-to-date on the latest trends with regard to the application of Conventions
- 8) Problems encountered in the operation of Conventions addressed
- 9) Kept up-to-date on the latest information developed
- 10) Scientific development and research promoted
- 11) Requests for information responded to
- 12) Access to a global network of contacts
- 13) Delivery of the services ensured

* Partially

** Lower levels of service

2.4. CURRENT BUSINESS MODEL - RESOURCES

2.4.1. The Decision Making Process

[211] While the Organisation's revenues (primarily (98%) funded by Member States)²⁴ remain more or less stable, costs are rising steadily as a result of expanding the activities.²⁵ This results in part from the built-in disconnection between the decision-making on the programme (the (Special) Commission on General Affairs and Policy) and the decision-making on the finance (the Council of Diplomatic Representatives). At the Commission on General Affairs and Policy and the Special Commissions to review the practical operation of Conventions, the experts from the Member States, in most cases from the Ministries of Justice, request specific actions from the Hague Conference. However, then the same Governments of these experts, through their representatives in The Hague at the Council of Diplomatic Representatives, tend to indicate that a zero nominal or real growth policy must be adhered to for the budget. A better-interconnected approach to funding and programming is one of the items included in this Strategic Plan.²⁶

2.4.2. The Funding

[212] In Fiscal Year 2001,²⁷ the top 16 contributing Member States accounted for 75% of the regular contribution while the next 14 States accounted for the next 17% and the remaining 26 States provided the last 7% of the regular contribution. Aside from the contribution paid by the Member States, some specific activities are financed outside the regular budget.²⁸ Most of the funding is being allocated to personnel. The level of contributions for each State is set, in principle, in accordance with the system applied by

²⁴ This percentage includes regular, supplementary and other special contributions.

²⁵ The higher costs also result from the increasing complexity of the conference's information technology environment, the growing cost of international meetings and the recent retirement of staff members (pensions being paid from the budget).

²⁶ See , *infra*, par. [427] and [428] for a presentation of the options with regard to this matter.

²⁷ On 6 November 2001.

²⁸ See, *supra*, note 10, for some examples of special contributions by the Government of The Netherlands. Over the years, other States have been making special money or in kind contributions, for example by sending national experts on secondment to the Secretariat or by hosting informal working groups.

the Universal Postal Union (UPU), the top class of units being limited to 33 (instead of 50 as in the UPU).²⁹

2.5. THE SUPPORT STRUCTURE OF THE HAGUE CONFERENCE – THE SECRETARIAT

2.5.1. The Secretariat ensures that the Hague Conference delivers

[213] The Secretariat carries on the daily work and operations of the Conference. In this regard, it ensures the core activities of the Conference and provides all support activities related to its products and services. It responds to a high level of correspondence and a number of requests for information and maintains liaison with all the stakeholders involved with the Conference.

2.5.2. The Secretariat is Small

[214] The Secretariat comprises the following full-time and part-time permanent staff (13.8 FTEs)³⁰ and temporary staff:

Full Time Equivalentents

- Four lawyers (five as of 1 January 2002), including the Secretary General (5FTEs)
- One Legal Assistant (1 FTE)
- One senior administrative officer (0.9 FTE)
- One accounting clerk (1 FTE)
- One website manager (1 FTE)
- Five multilingual secretaries (3.9 FTEs)
- One person providing general support (1 FTE)

²⁹ Further to a decision taken in the mid-70s within the UPU to create a class of 50 units (inviting States in the 25 units category to move-up in 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 of 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 then met with unanimous agreement. One important reason for this was that at the time, with 28 Member States, the creation of a 50 units 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 units (*cf.* L.c. A No 27(77) of 24 August 1977).

³⁰ FTE stands for Full Time Equivalentent (on 1 January 2002).

Temporary Staff

- One lawyer on secondment from a Member State³¹
- Three Legal Assistants³²
- One part-time computer technician³³

3. CURRENT KEY DEVELOPMENTS – IMPACT ON THE CONFERENCE

3.1. THE INTERNATIONAL CONTEXT – SEVERAL EXTERNAL TRENDS IMPACT ON THE HAGUE CONFERENCE

3.1.1. The Increased Diversity of the Membership of the Conference

[301] The number of Member States of the Conference continues to expand. Consequently, the number of different legal traditions and systems included in the Conference is also increasing. The challenge of achieving legal co-ordination³⁴ and the promotion, implementation, legal assistance, education, training, administration, support and review of Conventions becomes more complex.³⁵

3.1.2. Technological, Economic and Demographic Trends need to be addressed

[302] Internationally, the impact of new technologies has resulted in an explosion of new products and services, international business, borderless knowledge sharing and communications. Furthermore, the cross-border movement of populations has never been so important. The impact of such widespread transformation on the global environment, societies, economies, cultures and families is raising many issues – most of which have legal implications and sometimes require the review of existing Conventions. As a result, demands for the Conference's services with respect to legal co-ordination increase. Examples of such trends are already included in the work programme of the Conference and are constantly being identified.

³¹ During the current Fiscal Year (XLVII, 1 July 2001-30 June 2002) the Secretariat will benefit from the services from a lawyer from Hong Kong Special Administrative Region (China) (from 1 September 2001 until 1 March 2002) and from a lawyer from Australia (from 1 January 2002 until 31 December 2002).

³² Two legal officers are hired on a temporary basis through the special donation of The Netherlands Government. One legal assistant is on a self-funded internship.

³³ A computer technician is hired on a part-time temporary basis through the special donation of The Netherlands Government.

³⁴ See par. [307] below.

³⁵ See par. [308] below.

[303] Topics constituting the current Work Programme:

- Convention on jurisdiction, recognition and enforcement of foreign judgments in civil and commercial matters;
- Convention on indirectly held securities; and
- New global instrument on maintenance obligations (especially child support).

[304] Topics retained in the Conference's Agenda for future work:

- Transfrontier parent/child contacts;
- Questions of private international law, raised by the information society, including electronic commerce,³⁶ and, without priority;
- Conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage;
- Jurisdiction and recognition and enforcement of decisions in matters of succession upon death;
- Questions of private international law relating to unmarried couples;
- The law applicable to unfair competition; and
- The law applicable to the assignment of receivables.

[305] Topics informally suggested by interested stakeholders:³⁷

- Development of a practical guide on comparative private international law (on a country-by-country or subject-by-subject basis);
- Development of model bilateral agreement for the implementation of Hague Conventions;
- Questions of private international law in relation to intellectual property issues;
- Questions in relation to the international recovery of assets;
- Questions in relation to economic migration;
- Questions in relation to status of children (excluding adoption), in particular recognition of parent-child relationships;
- International mediation in family matters;
- Applicable law to special contracts (barter transactions; trading in futures on a stock exchange).

³⁶ This includes up-dating existing Conventions in the light of the electronic medium.

³⁷ See Preliminary Document No 20 for the attention of the Nineteenth Session: "Observations concerning the Strategy of the Hague Conference – Observations made by other international organisations and observations made in a personal capacity in response to the Secretary General's letter of 30/31 July 2001".

3.1.3. Co-operation with Regional organisations and amongst International Organisations

[306] Regional organisations are also involved in the development of private international law rules. This is the case, for example, with the OAS and more particularly with the EU which, since the Amsterdam Treaty of 1997 (in force since 1 May 1999), has begun to develop a broad programme of activity in this field.³⁸ From the perspective of certain stakeholders this might be seen as a threat to the Conference in that the EU now offers a service to its fifteen (soon more) Member States, all of them Member States of the Hague Conference as well. This service was previously provided exclusively by the Conference. On the other hand, the modern focus of the Conference on administrative and judicial co-operation and co-ordination at the global level remains of vital importance to the European Union and its Member States, as it does to other regional groupings. The process also presents some new challenges. For example, the Secretariat has to invest more time in helping to ensure co-ordination between regional and global developments in private international law, and some of the procedures and working methods of the Conference need to be adapted to accommodate the enlarged role of regional bodies. As the Conference responds to global demands it will benefit from the contribution of regional organisations just as they now often benefit from the work of the Conference.

[307] As questions of private law under the responsibility of other international governmental organisations are becoming more complex and issues are even more intertwined, private international law solutions are more commonly needed and utilised. This calls upon co-operation between the Hague Conference and international governmental and non-governmental organisations.³⁹ Co-operation among international organisations is an essential ingredient to the development and adoption of universally acceptable solutions. It is also important that the work conducted between these many international organisations be co-ordinated in order to avoid duplication of work and resources.

³⁸ See Preliminary Document No 14 of June 2001 for the attention of the Nineteenth Session, “Note on the Impact of Regional Integration, in particular within the European Union, on the Hague Conference and the Hague Conventions”.

³⁹ See Annex III for a list of these organisations.

3.2. THE INTERNAL CONTEXT – INCREASING DEMANDS – THE ORGANISATION NEEDS TO ADAPT

[308] A dramatic increase in workload is clearly visible.⁴⁰ Since the mid-1960's, the Secretariat has employed more or less the same number of staff members, which only recently has increased modestly from 11.5 to 13.8 FTEs but the workload has increased significantly. This increase can be illustrated as follows:

GRAPHIC 3.1. - HIGHLIGHTS OF CHANGES FROM 1965 TO 1980 TO 2002

<u>KEY FACTORS CONSIDERED</u>	1965	1980	2002
Member States⁴¹	23	27	59
States Parties to Conventions	25	53	112
Number of Conventions	11	26	34
Number of Authorities⁴²	23	450 +	660 +
Permanent employees (FTE)	11	11.5	13.8
Products and services	- Development of new instruments	- Development of new instruments	- Development - Promotion - Implementation - Support - Monitoring

3.2.1. Increasing Demands from the Target Audience

[309] As a result of increased cross-border activity and greater utilisation of Conventions, there is an increase in contacts with the public – more Member States, more States Parties to Conventions, more Conventions, more initiatives on the part of the public. Efforts to increase visibility are proving fruitful. The Secretariat is achieving extra exposure through its website which now receives more than 10,000 “hits” a day. The creation of this website has brought with it extra work in terms of daily maintenance and updating. In addition, the amount of correspondence dealt with by the Secretariat has multiplied as a result of a huge increase in requests from all over the world for assistance, advice, information and publications. In that regard, the Secretariat has a very large number of documents to manage, organise and follow-up to.

⁴⁰ PricewaterhouseCoopers, *supra*, note 4, par. 5 at p. 3, and par. 114-121, at pp. 11-14.

⁴¹ By comparison the membership of the UN was 115 States in 1965, 152 States in 1980 and 189 States in 2001.

⁴² National Organs, Central and other National Authorities. This does not include accredited bodies under the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

3.2.2. New Conventions require more Work

[310] As the total amount of resources invested in the development of new Conventions remains about the same, the number of new Conventions adopted per four-year cycle has decreased. This decrease is due to the fact that more resources are needed per Convention. Conventions are becoming more complex and require more intensive preparations and consultations as the legal systems involved have become more complex and diverse. As a result, more legal sources and documents have to be researched and consulted. In the coming years, older Conventions will also be up for review, which, in turn, will take up time allocated for new Conventions. Currently, more countries, and therefore individuals, are involved in preparing new Conventions; less homogenous groups are involved in the drafting stage; the issues are more politically and legally complex; and there may well be more expert meetings.

3.2.3. Monitoring of the Existing Conventions requires additional Work

[311] As a result of increased cross-border activity and greater utilisation of Conventions, 50% of the lawyers' time is needed for the monitoring of existing Conventions whereas this task was almost non-existent before the 1980's. Since then, the number of Conventions has increased from 27 to 34, and Member States have come to regard post-Convention services as an essential activity of the Hague Conference. The monitoring of Conventions that involve co-operation arrangements became more intensive following the introduction of the 1980 Child Abduction Convention. Other Conventions requiring monitoring have followed such as the Convention on Intercountry Adoption.

3.2.4. Growing Membership of the Conference and Pressure toward increasing Global Span

[312] Since 1980, the number of Member States has more than doubled and so has the total number of States linked to the Organisation, whether as Member States or as Contracting States to one or more Conventions. The bilingual challenges, the number of preparatory and consultative meetings and the dramatic increase in contacts with external parties have also contributed to increased activities.

[313] Member States have encouraged the Secretariat in its endeavours to expand Membership of the Organisation. Consequently, representation by the Secretariat and promotion of Hague Conventions and services provided by the Secretariat have required more resources.

3.2.5. Disconnect between Financial Resources and Programme Demand

[314] The resource gap is a mismatch between available resources and demand for services. To close the current gap, either the resources of the Hague Conference should be increased or the demand on the Hague Conference should be decreased. Both Conference stakeholders and staff perceive that a reduction of activities would have a serious impact on the Organisation. A reduction of activities would lead to a decrease in the motivation of personnel, in visibility of the Organisation, and in the status of the Conference. All services provided by the Secretariat are perceived as essential – they form a complete cycle for sound policy development. Therefore, in the light of the current resources, both stakeholders and staff find it impossible to prioritise between the different types of services. Consequently, a decrease in workload is not an option. The only alternative is to increase the resources to match the current demands. In addition to the adjustment of the regular budget, this problem may also be addressed by special measures such as voluntary contributions in money or in kind and by other forms of fund-raising.

3.3. SUMMARY OF EXTERNAL AND INTERNAL SITUATION

[315] Graphic 3.2 summarises the external and internal situation of the Hague Conference in the form of a SWOT – analysis (Strengths / Weaknesses / Opportunities / Threats (Challenges) – analysis). This analysis shows that the Hague Conference has some attractive opportunities, faces some serious threats, can build on significant strengths, and needs to pay attention to some key weaknesses. The strategic options (see Chapter 4) must address each of these points.

Graphic 3.2 - SWOT-analysis (Strengths, Weaknesses, Opportunities and Threats)

<p style="text-align: center;">Strengths</p> <ul style="list-style-type: none"> - Unique position at global level - Global network - Respecting the diversity of legal traditions - Experience and reputation - Highly developed expertise in judicial and administrative co-operation - Ability and possibilities to involve experts in specific areas - Complete set of main and supporting services 	<p style="text-align: center;">Weaknesses</p> <ul style="list-style-type: none"> - Current resource gap - Inadequate mechanisms to set priorities and to match programme demand and resources - Division of tasks between Member States and Secretariat could be clearer
<p style="text-align: center;">Opportunities</p> <ul style="list-style-type: none"> - Internationalisation increases demand for the Conference's services - Co-operation between relevant international organisations may enhance efficiency and prevent duplication of work and resources - Increased visibility of the Conference increases demand for specific services and information 	<p style="text-align: center;">Threats (challenges)</p> <ul style="list-style-type: none"> - Increase in number and diversity of Member States and complexity of issues induces more work per convention - Monitoring increasingly demands time and resources - Regionalisation presents new challenges - Risk of diminishing quality of services if resource gap and inability to prioritise remains

4. STRATEGY FOR THE FUTURE – ANALYSIS OF AVAILABLE OPTIONS

[401] To respond to the current and future developments discussed in Chapter 3, the Hague Conference will need to continue, intensify and initiate the implementation of Strategic Directions that effectively deal with these issues. Chapter 4 presents, for consideration, a number of Strategic Directions to that effect with the objective of ensuring the ongoing success of the Hague Conference. Each Strategic Direction will include a description of its main advantages and consequences. In addition, each Strategic Direction will also include some examples of actions to continue, intensify or initiate with a view to implementing these Directions. Finally, the resource implications for each Strategic Direction will be appraised, in terms of the types of resources needed but without quantifying or costing them, thus ensuring a discussion of the principle. The type of resources needed will be divided between (1) resource implications to respond to immediate needs and (2) resource implications for future needs.

[402] It is important to note that the PricewaterhouseCoopers Report⁴³ which identified a 30% deficit was published when the Conference was serving only 47 Member States and since then the Membership of the Conference has grown by approximately 25% (*i.e.* 12 new Member States). In addition, over the last few years the Conference has been responding to what have now become permanent needs with the use of temporary resources paid through grants and other special contributions.⁴⁴ Over the coming years, these temporary resources should be permanent in order to respond in a sustainable manner to lasting immediate needs. As for budget implications, it should be noted that the Budget for the current Financial Year (XLVII, 1 July 2001 – 30 June 2002) increased in real terms by 4.84% in comparison with the budget taken into consideration by PricewaterhouseCoopers (Financial Year XLVI) and that the 9 new Member States since 1 July 2001 will be contributing an extra 38 units to next Financial Year's budget (XLVIII, 1 July 2002 – 30 June 2003).⁴⁵

4.1. SUGGESTIONS OF STRATEGIC DIRECTIONS FOR THE HAGUE CONFERENCE

[403] The Strategy described herein aims at consolidating the position of the Hague Conference as the leading world organisation in the development of common rules of private international law.⁴⁶ The experience and reputation of the Hague Conference, its ability to promote co-operation among diverse legal systems and the presence of well

⁴³ PricewaterhouseCoopers Report, *supra*, note 4.

⁴⁴ See par. [214], *supra*, note 32 and 33.

⁴⁵ Jordan (1), Bosnia and Herzegovina (1), Yugoslavia (1), Belarus (1), Sri Lanka (3), Lithuania (1), Russian Federation (15), New Zealand (5), South Africa (10). It may be noted that this translates in an increase of 18% of the Membership since 1 July 2001 and in an increase of 7% of the revenues (units).

⁴⁶ See previous Chapters, and for a quick overview, in particular, the SWOT – analysis (Strengths / Weaknesses / Opportunities / Threats (Challenges) – analysis) of the Conference in Graphic 3.2.

established global networks form the building blocks of the Strategy. The following Strategic Directions make up the Strategy:

4.1.1. Continue to increase global coverage of the Conference by enlarging its Membership and the number of States Parties to Hague Conventions

4.1.1.1. Increasing the Membership

Advantages

[404] Increasing the Membership of the Organisation will assist the Conference in affirming and responding to its global mission. In the near future, the organisation may welcome regional integration organisations as Members. The increase of coverage of Membership will ensure the representation of a wide and diverse range of legal traditions in the development of new instruments. It will also assist in raising revenues or rather setting-off some expenses, in particular to the extent that new Member States are mostly drawn from the large circle of Non-member States Parties to Hague Conventions that are already benefiting from the services of the Organisation. Moreover, Membership of the Organisation will stimulate further ratification of, and accession to, Hague Conventions.

Consequences

[405] Some additional resources will be needed to cover the increasing workload and other costs related to an enlarged Membership. Additional costs will result from increased investments in visibility and awareness, extra travelling expenses and growth of contacts in order to maintain a presence in the regions. Furthermore, increasing global coverage may require the capacity to work from time to time in other non-official languages such as Spanish⁴⁷. The increased revenue derived from an enlarged Membership will be partly absorbed by these costs.

⁴⁷ Many Spanish-speaking countries participated in the preparation of the *Intercountry Adoption Convention*. Because many of their representatives only had a passive understanding of French or English and had extreme difficulties in expressing themselves in these languages, simultaneous interpretation in Spanish, French and English was offered during the Second and Third Special Commissions as well as during the Diplomatic Session. The Special Commission held in 2001 to review the practical operation of this Convention also offered this possibility.

Actions to continue, intensify or initiate:

- Continue to increase the Membership of the Hague Conference in a considered way⁴⁸ by approaching:⁴⁹
 - States already Parties to one or more Convention(s)
 - States which have participated in the work of the Conference as observers
 - States having a lead role in regions with a smaller representation at the Hague Conference
- Develop a Membership Guide providing basic information concerning the work of the Conference and the responsibilities of the Member States
- Establish a network of Document Centres to display the work of the Conference⁵⁰
- Welcome regional integration organisations as Members
- Ensure continued contacts and presence of the Hague Conference in the various regions (*e.g.* holding meetings in other regions)
- Acquire the capacity to conduct meetings and specific work in other non-official languages such as Spanish
- Explore the possibility to establish some form of physical presence for the Conference in other regions

Resource implications to respond to immediate needs:

- Additional and varied legal expertise (including administrative and operational support) to respond to work increase of the Conference resulting from the increasing Membership.⁵¹

Resource implications to respond to future needs:

- One might contemplate, for example, the employment of additional legal experts, able to work in Spanish (in view of the large number of Spanish speaking Member States Parties to Hague Conventions), Arabic (in view of the growing importance of the bridge building role of the Conference with the Islamic world) and other languages, and with expertise in related legal systems, as well as additional multilingual secretaries able to work in Spanish, Arabic and possibly other languages. One might also contemplate the establishment of

⁴⁸ See par. [003] *supra*.

⁴⁹ This is the Strategy adopted in 2000 by the Special Commission on General Affairs and Policy and by the Council of Diplomatic Representatives with the exception of the last bullet. This policy is resulting in a large success.

⁵⁰ Recommendation included in the Council of Diplomatic Representatives Recommendations of July 2000 *supra*, par. [003].

⁵¹ *Supra*, note 1.

some form of physical or representative presence for the Conference in other regions.

4.1.1.2. Increasing the number of States Parties to existing Hague Conventions

Advantages

[406] In general the value of a Convention to a particular State increases in proportion to the number of States Parties to the Convention. The promotion of Conventions among Non-member States also contributes indirectly to the growth of the membership of the Organisation: New Member States in turn will have an interest in considering accession to further Conventions.

Consequences

[407] The work of the Secretariat in administering, supporting, monitoring and reviewing Conventions increases. It should be noted that States Parties to Hague Conventions which are not Members of the Organisation do not contribute to the budget for this purpose. Due to the large number of States Parties to certain Hague Conventions,⁵² the building of the Academy of International Law is now too small and insufficiently equipped to hold Special Commissions to review their practical operations. For this and other reasons the conference facilities available to the Organisation in The Hague require urgent review (it now seems likely that a major extension of the Academy Building will be performed in 2003/2004).

Actions to continue, intensify or initiate:

- Consult with new Member States as to the value of acceding to particular Conventions
- Continue to publicise the Conventions in countries and regions which might benefit from their application
- Establish a network of Document Centres to display the work of the Conference⁵³
- Develop more publicity material in relation to specific Conventions

⁵² The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* has 74 Contracting States, the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* has 48 Contracting States, the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* has 71 Contracting States and the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* has 44 Contracting States.

⁵³ See, *supra*, note 50.

- Continue to encourage other international and regional bodies to promote Hague Conventions (See 4.1.7. *infra* Increasing communication and co-operation with other international organisations)
- Pursue the question of adequate conference facilities in The Hague

Resource implications to respond to immediate needs:

- Additional and varied legal expertise (including administrative and operational support) to respond to work increase of the Conference resulting from the increasing Membership.
- Additional resources will be required for:
 - Travelling to additional destinations,
 - Larger mailings,
 - Organisation of special informative meetings for particular groups of countries,
 - Preparation of implementation guides and other materials for developing States and States in transition, and
 - Occasional additional translations in other languages.

4.1.2. Selectivity in relation to the projects undertaken by the Conference

Advantages

[408] In principle, the scope of the work of the Conference embraces almost every area of private law (civil and commercial law). In the light of the limited resources available it will be important to continue to be selective with regard to new projects to be undertaken by the Conference. These projects should address well-defined, widely recognised and pressing problems.

Consequences

[409] Selectivity implies that some problems may not be addressed immediately or may be addressed by other organisations; which route is appropriate will have to be examined on a case-by-case basis. This also applies to the choice between preparing new international instruments and following up on existing Hague Conventions. Over the last few years, several projects in relation to the implementation, support and monitoring of existing Conventions have been proposed by the Member States or with their support, by the

Secretariat. Some projects are now being implemented⁵⁴ while others await implementation.⁵⁵ Finally, more projects are likely to result from the coming into force of the Conventions recently concluded.

Examples of criteria applicable to the selection of major projects (e.g. work on new instruments):

- Projects for selection should be clearly focussed (*i.e.* they should address well defined, widely recognised and pressing problems)
- The “Hague” approach and techniques should be the best suited to resolve the problems raised
- Projects for selection should have broad support and some degree of commitment for future action from Member States
- Projects chosen should be ones which cannot be adequately dealt with at the regional level

Resource implications:

- The Conference has been using this selection process for a long time. Resource implications can only be beneficial.

4.1.3. Consolidating the provision of “post-Convention” services

Advantages

[410] The PricewaterhouseCoopers report placed emphasis on the role that is now played by the Secretariat in the provision of post-Convention services (described in the report as administration, monitoring and support of existing Conventions). The report pointed out that the Secretariat now spends as much time on these post-Convention services as on the

⁵⁴ Such projects include creating and maintaining the INCADAT database, publishing the *Judge’s Newsletter on International Child Protection*, up-dating and maintaining the Practical Handbooks on the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matter* and the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*. As a result of the last three Special Commissions in relation to the *Child Abduction*, the *Intercountry Adoption* and the *Maintenance Obligation Conventions* a good number of actions are awaiting implementation. Such actions include for example the preparation of a Good Practice Guide under the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction for Central Authorities*, the development of a model chart concerning the division of responsibilities between Central Authorities, Public Authorities and Accredited Bodies in relation to the *Intercountry Adoption Convention*, etc.

⁵⁵ At the Special Commissions in relation to the *Child Abduction* and the *Intercountry Adoption Conventions* it was decided to develop a statistical database (INCASTAT and ICASSTAT respectively) in relation to these two Conventions.

preparation of new Conventions,⁵⁶ that inadequate compensation for these activities is made in the regular budget,⁵⁷ that compared with ten years ago monitoring requires 25% more time (resources),⁵⁸ and that the major part of the current resource gap (5/6) relates to the provision of these services.⁵⁹

[411] It is also clear particularly with the expansion in the number of States parties to certain Conventions that the work of post-Convention servicing will continue to expand. There is a clear need to consolidate this area of the Secretariat's activity by including provision for it within the annual budget of the Organisation. The temporary arrangements made so far to fill the gap need to be placed on a more secure footing. (It should be noted that support to existing Conventions provided through education and training is dealt with under a separate heading).

Consequences

[412] The value of post-Convention services provided by the Secretariat has been widely acknowledged by Member States. The services are designed to promote the effective implementation and operation of the Conventions, to encourage consistency in interpretation and practice under the Conventions, to address specific obstacles to the proper functioning of Conventions, as well as to maximise the number of Contracting States. They all clearly belong to the core activities of the organisation.

Actions to continue, intensify or initiate:

- To make proper budgetary provision for the post-Convention services provided by the Secretariat

Resource implications to respond to immediate needs:

- States' officials on secondment,⁶⁰ interns and *stagiaires* to assist in the monitoring

⁵⁶ PricewaterhouseCoopers Report, *supra*, note 4, par. 107, p. 10.

⁵⁷ *Ibid.* par. 118, p. 14.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* par. 117, p. 13.

⁶⁰ "The Hague Conference on Private International Law on the Eve of the New Millennium: Some Concrete Suggestions for Strategic Action", *supra*, note 3. The 4th Recommendation adopted by the Council of Diplomatic Representatives at its forty-sixth meeting invited Member States to "provide assistance to the staff of the Permanent Bureau. Annex No 4 of the Report adopted by Council of Diplomatic Representatives, reproduced in Annex IV to the Draft Strategic Plan, lists the qualifications required and the duties with regard to secondments at the Permanent Bureau.

of the child protection Conventions⁶¹ and the civil procedure and legal assistance Conventions⁶².

- States' officials on secondment to continue the preparation of a Good Practice Guide for the International Child Abduction Convention.

Resource implications to respond future needs:

- A considerate steady expansion of the permanent staff of the Organisation is a natural consequence of these function being perceived as core activities

4.1.4. Enhancing working methods by providing flexibility in the development process

[413] As previously described, the working model of the Conference allows for some flexibility. This flexibility could be useful with regard to the types of instruments to be developed, the size and length of meetings and the process for the preparation of preliminary studies and consultations. Some changes may be required to provide for an efficient use of the Secretariat's resources.

4.1.4.1. Preparing model laws and other non-binding harmonising mechanisms when appropriate

Advantages

[414] The Conference, while maintaining as its principal purpose the preparation of Conventions, may use other procedures of less binding effect, such as Recommendations and model laws, where, having regard to the circumstances, such procedures appear to be particularly appropriate.⁶³ Such instruments may require fewer resources to develop as most of the preparatory work leading to a Diplomatic Conference can be completed by a small working group of experts. They are at least in some States easier to implement as they provide flexibility and can be implemented in stages. A model law or model code on

⁶¹ *Supra*, note 54.

⁶² *Ibid.* The work consists in up-dating the Practical Handbooks on the Civil Procedure Conventions. Additional work will follow as these handbooks will be turned into a regularly up-dated web database for public use. It is foreseen that these Conventions will require ongoing monitoring in the future as well as the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*. Work on the questions raised by these Conventions in relation to new communication technologies will also be undertaken in the near future.

⁶³ This was decided by the Fourteenth Session of the Conference with regard to the wider opening of the Conference and more specifically the use of certain methods of less binding effect than international Conventions in certain cases of a kind to promote the easier adoption and more wide-spread diffusion of common solutions. The discussion goes back to the 1950's. *Cf.* Actes et documents VIII (1956), Tome I, p. 266-269, Actes et documents IX (1960), Tome I, p. 207-250, and Actes et documents XIV (1980), Tome I, p. 63.

private international law could be developed. Such model law could be based in part on existing Hague Conventions and could also result effectively in the implementation of these Hague Conventions, as well as some other principles or rules of private international law. It might be an efficient way to provide legal assistance and good governance to some new Member States. Other non-binding harmonising mechanisms include model forms⁶⁴ and good practice guides.⁶⁵

Consequences

[415] In contrast to Conventions, Recommendations and model laws do not, in principle, create international obligations. Therefore, they will not provide rules that operate on the basis of mutual obligations between States. On the other hand, it is easier to track the geographic application of Conventions since their coming into force is publicised.

Actions to continue, intensify or initiate:

- Develop model laws when this is appropriate
- Adopt recommendations when this is appropriate
- Continue to develop model forms
- Develop good practice guides when this is appropriate

Resource implications to respond to future needs:

- One might contemplate a special programme for the development with a small informal working group of experts a model law on private international law based on key solutions provided for in the Hague Conventions, particularly adapted to the needs of developing countries and countries in transition.

4.1.4.2. Reviewing the structure and length of international meetings

Advantages

[416] In the light of the growing Membership, it may be opportune, if possible and suitable depending on the projects, to reduce the number and the length of international meetings and to convene, in addition to or in lieu of Special Commissions, smaller working group meetings from time to time to prepare for the plenary Diplomatic Conferences. Such working group meetings would enable the Conference to continue to benefit from high-level expertise, build consensus, lower the costs of meetings and increase efficiency. In

⁶⁴ Model forms have on several occasions been developed at Special Commissions to review the practical operation of Conventions or to further the implementation of a Convention.

⁶⁵ See, *supra*, note 54, for an example of a good practice guide.

addition, more use could be made of new communication facilities such as conference calls and video conferencing could be used in support of these objectives.

Consequences

[417] Reducing the number of participants may be perceived as contrary to the global mission of the Conference. To counter this concern, these working group meetings would need to be transparent vis-à-vis non-participants. Even though there will be a cost associated with this transparency,⁶⁶ the overall costs should be lower for the Conference and will certainly decrease substantially for the States as a whole.

Some actions to continue, intensify or initiate:

- Establish criteria for the composition of working group meetings and for guaranteeing transparency
- Conduct more working group meetings of experts during the development stage
- Examine possibility of simultaneous interpretation equipment for the Secretariat
- Conduct informal meetings in the regions
- Acquire video conferencing technology
- Use conference calls and teleconferencing when appropriate

Resource implications to respond to immediate needs:

- Installation, operation and maintenance of telephone and video conferencing technology (this will also require additional minimal resources for a Computer technician).
- Acquire interpretation facility for the meeting room in the Permanent Bureau.

Resource implications to respond to future needs:

- Equip the Central Authorities designated under the Child Abduction, the Intercountry Adoption and Civil Procedure Conventions with a secure intranet network, and eventually with video conferencing facilities, so as to enable them to communicate and consult more effectively on a daily basis with each other and the Secretariat.

⁶⁶ It would result in the preparation and distribution of summaries of the teleconference and videoconference meetings.

4.1.4.3. Continuing to be innovative in the preparation of the work

Advantages

[418] With regard to the preparation of preliminary studies, Special Commissions on the development of new projects or on the monitoring of existing Conventions, the Secretariat will continue to be innovative in efforts to maintain and enhance the quality of its research as well as its consensus building capacity. New and existing Conventions demand more consultations and efforts in consensus building due to the increased complexity of their application in different legal systems. In order to increase its research capacity the Secretariat should invest in electronic research tools and develop inter-library loan arrangements. Furthermore, in order to help and relieve the Secretariat in its scientific work, the Conference could engage in more partnerships with Member States for possible secondments or with academics and legal institutions or call upon outside expert consultants to produce or co-produce preliminary studies and conduct consultations. Secondments have the additional advantage of widening the diversity and range of linguistic and other skills of the Secretariat.

Consequences

[419] The Secretariat would have to review the work produced outside and the cost of outside experts or consultants is usually much higher than the cost of internal resources. It may be noted that the recent experience the Conference has had with public servants seconded to the Secretariat and outside expert consultants has been very positive.

Actions to initiate:

- Establish a supporting network of academics and legal institutions
- Intensify internship and secondment arrangements with the Member States
- Invest in electronic research tools and develop inter-library loan facilities

Resource implications to respond to immediate needs:

- Outside expert consultants, States' officials on secondment, interns and *stagiaires* to provide temporary help to ongoing projects.
- Basic subscription to electronic legal databases for research such as Lexis Nexis⁶⁷ (the installation and maintenance of this technology will require

⁶⁷ The cost of a basic subscription to Lexis Nexis was estimated at +/- 7000 Euros per year. Cf. Supplementary Budget for Financial Year XLVII (1 July 2001 – 30 June 2002) at p. 3 and p. 13.

- additional minimal resources for a Computer technician).
- Additional resources for translation needs.

Resource implications to respond to future needs:

- Additional internships or secondments could be considered and arranged on a temporary basis to conduct research and preliminary studies on particular projects in order to relieve the Secretariat.
- One might contemplate the employment of an in-house translator in order to ensure that the work produced by interns and individuals on secondment, be available in both official languages for external purposes.

4.1.5. Determining the role of the Conference in legal education and training

Advantages

[420] The principal objectives of the educational function of the Conference⁶⁸ are to aid the effective implementation of the Hague Conventions, to promote consistency in their interpretation and in the practices developed under them by States Parties, and more generally to promote awareness of the objectives and value of the Conventions, particularly among new Members States and other potential States Parties.

[421] The role of the Conference in the provision of education and training is by no means exclusive. On the contrary, the primary responsibility for the provision of training in respect of Conventions falls on the States Parties. Education concerning the Conventions is also carried-out by academic and other institutions.

Consequences

[422] The Secretariat should concentrate its efforts on initiatives in which National Authorities cannot alone meet their local needs or in which the unique standing and expertise of the Secretariat offers obvious added value. The particular strengths of the Secretariat lie in:

- the unique overview it has of international experience of the implementation and functioning of the different Conventions,
- its capacity and responsibility to promote consistent interpretation and practice under the Conventions,
- its impartial position with regard to particular inter-state problems in the application of particular Conventions,

⁶⁸ See Annex II, par. [A-II-104].

- the role it has in promulgating the recommendations and conclusions of Special Commissions set up to review the operation of the various Conventions.

[423] It is clear also that this is an area in which there is scope for partnerships with Universities, with other international organisations, with groups of States, with national training bodies, etc. In addition, the form of involvement of the Conference through the Secretariat needs to be carefully tailored and may range from the development and provision of guides to good practice or practice manuals to direct involvement in training programmes.

Actions to initiate:

[424] Activities of the Secretariat in the field of education and training, while intensifying in recent years, have developed largely on an *ad hoc* basis and are dependent on external funding. There is an urgent need to adapt a more coherent framework to make possible advanced planning and more regular financing. There is a need in particular:

- to offer better services to new Member States, some of which have little experience in private international law matters
- to provide all Member States with a clearer picture of the services offered by the Secretariat and the terms on which these are offered
- to put into effect a support program⁶⁹ for States implementing the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*
- to explore more systematically possible sources of funding, including development aid

Resource implications to respond to immediate needs:

- States' officials on secondment or other persons on temporary placement to manage the education and training activities and to explore funding opportunities.

Resource implications to respond to future needs:

- One might contemplate the creation of a training centre for officials of developing States and States in transition, in partnership with the Hague Academy and other international organisations in The Hague.

⁶⁹ That is an already planned programme designed to provide information, advice and training to support the effective implementation of the Convention, in Contracting States, and particularly to provide support in those Contracting States having few resources available for this purpose. See the Report and Conclusions of the Special Commission of 28 November-1 December 2000, par. 111, p. 39.

4.1.6. Matching resources and demands by establishing a transparent and informative decision-making process and by increasing the capacity to seek additional funding

4.1.6.1. Providing additional information with a view to increasing the transparency of the budget

Advantages

[425] In essence, the budget⁷⁰ is the tool used to plan the resources required to implement the Strategic Plan of the Conference, its Working Model and Work Programme. In that respect, the budget, provided it is supplemented by relevant additional information, could help to prevent a disconnection between the Work Programme and the resources available.⁷¹ In that sense, additional information supplementing the budget could, for example, provide detailed information as to the resource allocation on the basis of the functions/activities constituting the working model (*i.e.* development, promotion, implementation, support, monitoring) and/or the resource allocation for the general services supporting the working model (*i.e.* overall management, secretarial support, translation and overhead) and/or resource allocation with regard to the specific Strategic Directions of the Strategic Plan. Furthermore, the additional transparency that this information would provide would support the prioritisation scheme set-up in Part 4.1.2. as to new projects. It is also envisaged that this system would allow for consideration of the impact of an increasing Membership and of additional States Parties to existing Hague Conventions on the operational costs of the Conference.

Consequences

[426] The preparation of this additional information will over time require some internal adjustments. In order to operate a smooth transition to this additional system, it is recommended to start with a small, simple, effective and flexible system for which the level of detail could be adjusted over the years. In this regard the preparation of this additional information could be facilitated by the use of information generated by some kind of resource tracking or time-keeping tool. In that respect, it is recommended that the resource-tracking tool should be simple, effective and flexible and it should not be an extra burden. It should not be perceived as a control mechanism but rather as a planning device that could follow the working model (*i.e.* development, promotion, implementation, support, monitoring).

⁷⁰ The 47th Council of Diplomatic Representatives at its meeting of 3 July 2001 adopted a streamlined budget layout. See the Minutes of that meeting at p. 6.

⁷¹ PricewaterhouseCoopers Report, *supra*, note 4, p. 8.

Action to initiate:

- Identify the costs and resources for which additional information is necessary
- Prepare a system to provide additional information to supplement the current budget
- Develop a resource tracking tool

Resource implications to respond to immediate needs:

- Possible acquisition of a resource tracking software (the installation, operation and maintenance of this technology will require additional minimal resources for a Computer technician).

4.1.6.2. Establishing a transparent and informed decision-making process in relation to the budget

[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 Diplomatic Conferences – Sessions – the Plenary Sessions) 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.

Possible action to initiate:

- First, the (Special) Commission on General Affairs and Policy of the Conference should be more aware of the financial context and implications of its decisions. As a minimum, the Commission should have at its disposal the current budget, and an effort should be made to provide an indication of the estimated resource implications of any new project proposed by the Commission or by the Secretariat. The Commission would still make its decisions primarily on the basis of policy considerations and would make clear the order of priorities within the programme, on the understanding that only those projects for which appropriate resources are available would be proceeded with.
- Second, a connection between the decisions of a Special Commission on General Affairs and Policy of the Conference and the decision on the budget by the Council of Diplomatic Representatives could be made through a small committee made up of policy and financial representatives which could convene at the same time as the Commission on General Affairs and Policy. This

committee would consider in more detail the present and future budgetary implications of the proposed programme and would advise the Secretary General when he draws up his budget in the spring of each year.

Consequences

[428] If the Special Commission on General Affairs and Policy of the Conference and the small committee would meet early in the spring in designated years, an orderly process could be established which would bridge the gap between the policy decision-making process and the financial decision-making process. The objective is to link the choice of specific projects and services to the resources available and to create partnerships with the Member States in order to devise subsidiary funding solutions such as voluntary supplementary funding and contributions in kind, for example secondment of State officials, internships and the supply of equipment.

Resource implications to respond to immediate needs:

- This reorganisation will require some additional work and resources on a short term basis that should normally be absorbed within the available resources. This is an urgent matter.

4.1.6.3. Capacity to seek additional funding

Advantages

[429] The capacity to seek additional funding could help the Conference to undertake projects that appear lower in the list of priorities and that would not be carried on otherwise because of insufficient resources.

Consequences

[430] The raising of additional funding in a systematic, meaningful manner is not a task that the Secretariat can assume at this time; it requires additional resources. Furthermore, the raising of private funding is sensitive, as every source of funding will have to be assessed in order to verify potential conflict of interests.

Actions to initiate:

- Explore with Member States the possibility to organise a fund-raising campaign
- Aim for a certain percentage of the budget to be funded by additional fundraising

Resource implications to respond to future needs:

- Costs associated with a fund-raising campaign.

4.1.6.4. Additional financial questions - the pension scheme for the Secretariat's staff

[431] The Hague Conference's Pension Scheme Rules, which came into force on 1 June 1981, follow those of the Co-ordinated Organisations. This was advantageous to Member States and it also has important practical advantages.⁷² The system underlying this scheme is not based on a mutual fund, but on budgetary allocations: pensions will be charged to the budget of the Financial Year in which they are paid.⁷³ There is a small Reserve Fund,⁷⁴ but this leaves 75% of the pension obligations unsecured by that Reserve Fund. This system is not without risks for its beneficiaries. Furthermore, the present Pension Scheme presents some difficulties with regard to the transfer or buy back of pension funds constituted by new and present employees in other organisations thus affecting the capacity of the Conference to attract and/or retain employees. The Secretary General has found in the current budget the resources in order to commission the opinion of a consultant, thanks to lower expenses for international meetings.

Advantages

[432] With the growing circle of Member States, the risks of the present situation will only increase. It is, therefore, appropriate to examine whether the percentage of pension obligations unsecured by that Reserve Fund can be reduced without compromising acquired rights.

Consequences

[433] Pending the advice of outside consultants, it is not possible at this stage to give a precise idea of the consequences, financial or otherwise (change of Pension rules, etc.).

⁷² The mechanisms operate for a large number of international officials; this facilitates uniform interpretation of the rules; the Conference benefits from the technical and administration support of the Joint Pensions Administration Section at modest costs.

⁷³ The Member States collectively guarantee the payment of pensions (Article 40, paragraph 2 of The Hague Conference's Pension Scheme Rules).

⁷⁴ Constituted by repurchases paid by staff members who elected for the scheme in 1981, plus contributions – 8% of their basic salary – by staff members.

4.1.7. Increasing communication and co-operation with other international organisations

Advantages

[434] Regionalisation and globalisation have a multiplying effect on the frequency and extent of issues of private international law. Consequently, many regional and world-wide organisations active in the legal field, are now increasingly faced with questions of private international law. The Hague Conference has always been ready to assist, and excellent co-operation giving rise to mutual benefits has developed and intensified over the years with a number of global international organisations.⁷⁵ Moreover, the Conference has co-operated with regional organisations wishing to draw inspiration from its Conventions when drawing up their own regional instruments. The growing importance of issues of private international law and the need to use resources effectively (avoid “reinventing the wheel”), will require even closer co-operation between international organisations. A three-pronged effort is therefore necessary: (1) to increase the promotion of the organisation and its work so as to clarify the areas of expertise of the Conference vis-à-vis other related international organisations and make its “products” and “services” more widely accessible⁷⁶ (2) to increase the effective presence of the Conference in the work of other international organisations, where such presence is possible and desired and (3) to initiate more joint work where this is possible.

Consequences

[435] Increasing communication and co-operation will clearly require some additional resources.

Actions to continue, intensify or initiate:

- Increase the visibility of the Organisation
- Promote the work of the Conference
- Attend and participate in colloquia, seminars and field studies
- Offer the services of the Conference and mutual assistance
- Provide comments on the work of related international organisations

⁷⁵ These relationships are not static, but evolve overtime. An example is offered by the co-operation with UNCITRAL, which used to be based on a strict division of responsibilities (UNCITRAL: substantive law; Hague Conference: private international law), but more recently has taken the form of a joint expert meeting on conflict of law aspects of an UNCITRAL project (assignment of receivables).

⁷⁶ In this regard, the enormous amount of comparative law research, not limited to private international law, but extending to substantive law as well, which is embodied in the Proceedings of the Hague Conference might be used on a much wider scale than is the case at present.

- Invite comments on the work of the Conference from related international organisations
- Attend the meetings of related international organisations
- Invite related international organisations to Hague Conference sessions
- Share the results of scientific work
- Conduct joint work programme planning sessions
- Organise joint meetings, seminars and colloquia
- Provide and participate in internships
- Organise exchange of personnel

Resource implications to respond to immediate needs:

- Additional legal expertise to increase co-operation and mutual assistance with other international organisations.
- Increase the allocation of resources to attend meetings and conferences of other international organisations.

4.1.8. Enhancing the management of internal information and documents in order to increase corporate memory, consolidating the filing system, enhancing the maintenance of the library and improving the use of computer technology to that effect

Advantages

[436] Better-managed internal information and documentation will increase productivity.⁷⁷ There is a need to make this information and documentation easily accessible to all employees of the Secretariat. This is even more true, as the Conference will welcome over the coming years more interns and more individuals on secondment who will have to navigate through its internal documentation. In that respect it is essential to address the loss of corporate memory from the past and to prevent any loss in the future.⁷⁸ The constitution of a database of internal documents as well as studies, lectures, articles, legal opinions on the Conference, on its Conventions and other questions of private international law, to the extent that they have not been published in the *Actes et Documents*, having value of precedent will have to be considered. The creation of an archive for the

⁷⁷ This proposal should address in part the additional “5% gap” identified by the PricewaterhouseCoopers Report with regard to the internal organisation of the Conference. Cf. PricewaterhouseCoopers Report, *supra*, note 4, at par. 117-121.

⁷⁸ During the last five years the Conference has lost more than 150 years of corporate memory, as Secretary General, Georges Droz (1957-1996), Deputy Secretary General, Michel Pelichet (1968-1997), Deputy Secretary General, Adair Dyer (1973-1997) Senior Administrator, Françoise Lalloz-Antoine (1966-2001) and Bookkeeper, Irene van Houten (1971-1996) have all retired.

Hague Conference also needs to be undertaken. The information relating to staff member's individual filing systems and libraries should be consolidated in a central database. An appropriate level of resources should also be dedicated for the up-keep of the library. The situation of the library gives rise to concerns; the personnel to keep it at an acceptable level is simply lacking.

Consequences

[437] Inadequate access to legal precedents for the preparation of legal opinions will eventually result in unnecessary research and work and may also carry the risk of giving inconsistent legal advice. The same is true with regard to lack of knowledge as to the content of other colleagues' personal files and libraries. More generally, the files of the Secretariat suffer from a filing backlog that sometimes result in a waste of resources used for unnecessary research. The situation of the library is a serious problem.

Actions to initiate:

- Create and maintain a database of legal opinions and precedents
- Enhance the filing system of the Conference and create an archive
- Constitute a database on the content of the lawyers' and legal advisors' personal files and libraries
- Create an Exit strategy for all leaving legal staff
- Enhance the maintenance of the library
- Survey the internet and catalogue sites of interest on private international law
- Create an internet porthole⁷⁹ on private international law for the Secretariat and make it available to the public at a later stage

Resource implications to respond to immediate needs:

- Full-time computer technology support.⁸⁰
- A multi-lingual information manager who will combine librarian, archivist, filing and electronic research skills.
- Acquisition of computer technology to develop a database of legal advice and precedents and a database for the files of the Secretariat and to assist in electronic archiving of documents (the installation, operation and maintenance of this technology will require additional minimal resources for a Computer technician).

⁷⁹ A "porthole" is a website which catalogues in a meaningful way all websites (including their hyperlink) on a particular subject matter. Such portholes sometimes also include a search engine.

⁸⁰ This finding is supported by an assessment of PricewaterhouseCoopers of 15 February 2002.

Resource implications to respond to future needs

- One might contemplate the employment of a Librarian with computer expertise to create and maintain an Internet porthole on private international law.

ANNEX I

RESOLUTION ADOPTED BY THE SEVENTEENTH SESSION

The Seventeenth Session, in the presence of the Ministers of Justice and High Representatives of the States Members of the Hague Conference on Private International Law, meeting at The Hague on 19 May 1993 on the occasion of the celebration of the Centenary of the Conference,

Considering that according to its Statute, the Conference's purpose is to work for the progressive unification of the rules of private international law,

Considering the unique, broad and important work accomplished by the Conference and the effectiveness of its working methods confirmed by the fact that since the Seventh Session in 1951 thirty-one Conventions have been drawn up,

Confirming that the Conference's mission is to facilitate both the relationships between private parties across international borders and international legal transactions,

Recognizing that the Conference also is developing into a worldwide centre in the service of international judicial and administrative co-operation in the field of private law, and particularly in the area of child protection,

Considering however that it is essential that the Conference continue to be effectively supported by its Member States within their Countries and in other international organizations,

Congratulates the Conference on its contributions to the field of private international law over the past century;

Urges Member States both to maintain and enhance their support for the Conference and to encourage non-Member States to join the Conference;

Recommends to the Member States that they -

1 explore and develop mechanisms in consultation with the Permanent Bureau to encourage wider adherence to Hague Conventions;

2 take the appropriate measures to publicize the existence and the operation of the Conventions;

3 work in co-operation with the Permanent Bureau to develop effective mechanisms to implement the Conventions;

4 co-ordinate more fully their positions on private international law in various international bodies involved with unification or harmonization of questions of private law.

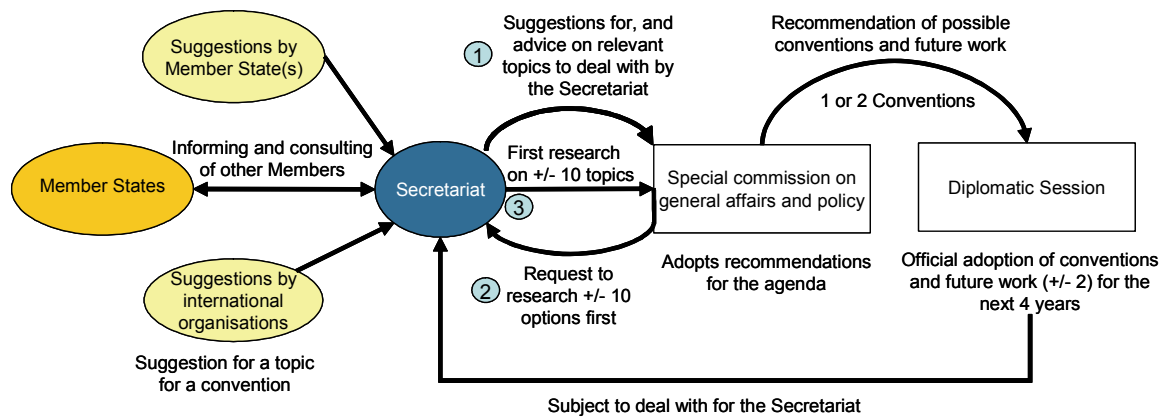
ANNEX II

MAIN WORKING-MODEL OF THE HAGUE CONFERENCE

[A-II-001] The Hague Conference's main instruments to accomplish its mission are the multilateral treaties – The Hague Conventions. The first step of the working-model is (1) the development of these treaties. It involves the following stages: a) Selection of a topic; b) Research; c) Discussion; d) Drafting and Adoption; and, e) Consolidation. Depending on the degree of complexity of the topic and the urgency, the timeframe of this first component is flexible. Normally, the discussion and the drafting stages (*i.e.* the negotiations) last 4 years; however the time period can be shorter; it may exceptionally be longer.⁸¹ The successful completion of the treaty is followed by (2) the promotion and (3) the implementation stages, and then finally (4) the support and (5) the monitoring stages.

A-II.1. Development Stage

GRAPHIC A-II.1. - WORK-PROCESS CHART (SHOWING ONLY THE DEVELOPMENT OF TREATIES)



⁸¹ The entire development of the current project on indirectly held securities is envisaged to be completed in less than 2 years.

A-II.1.1. Selection Stage

[A-II-002] Most suggestions for topics to be undertaken by the Hague Conference are presented by delegates of the Member States at a Special Commission meeting on general affairs and policy.⁸² Topics may also be suggested by members of the Secretariat following consultations with Members States. Suggestions are occasionally made by other international organisations, within the framework of the Conference's co-operation agreements with various organisations. Often, suggestions for topics result from the monitoring of existing texts.⁸³ These topics are discussed and considered in the Special Commission meeting; a certain number of topics are retained for further study. The Secretariat may then prepare feasibility studies on topics retained which are sent out to the Member States in advance of the Plenary Session meeting which will decide the work programme for the next four years.

[A-II-003] In deciding whether to include a topic in the work programme, consideration may be given to the global need for a solution, the time-frame – urgency – and whether there are alternate solutions such as the harmonisation of substantive law. Because of the limited number of topics that may be carried to the point of preparation of a treaty text, some topics are carried on the list from one Plenary Session to the next until ultimately they are definitively undertaken or dropped from the list.

A-II.1.2. Research Stage

[A-II-004] Once a topic has been adopted with a view to the preparation of a treaty, a comprehensive research study based on comparative work is prepared on the subject in question, which is often preceded or accompanied by a questionnaire directed to Member States. One, sometimes two, members of the Secretariat will be assigned the topic in question. The nature and extent of the research study and the questionnaire will vary depending on the amount of work and study already devoted to the issues whether by the Conference, by other international organisations or by independent scholars or research institutions. The nature of the reports and questionnaires will also vary considerably according to the stage of development of the subject-matter.⁸⁴ Extended research may be pursued for as much as a year.

⁸² The term “Special Commission” refers to a meeting of Governmental representatives, normally a meeting of legal experts.

⁸³ See par. [A-II-016]-[A-II-017], *infra*.

⁸⁴ Questionnaires may be information-seeking or opinion-eliciting or both.

A-II.1.3. Discussion Stage

[A-II-005] The first meeting of Governmental representatives on each topic is normally a meeting of legal experts, who will have studied the questionnaire, the report and the replies of the Governments and, sometimes, a synthesis of the replies prepared by the Secretariat. Experts attending the first meeting are asked to express their opinions on the various questions broadly and personally without binding their Governments at this stage. This is a distinctive and essential feature of the “Hague” approach which experience has shown adds greatly to the quality of the final text. A Chairman, and a Reporter are selected from among the experts attending. The Reporter will take notes on the important points of the discussions and will participate *ex officio* in any drafting committee which may be set up. The continuing discussion process is facilitated by the preparation by recording secretaries and the rapid circulation of half-daily reports of meetings in English and French.

[A-II-006] The first meeting usually lasts one week and normally results in a set of written conclusions, drawn up by a small committee or by the Secretariat, following the meeting. The responsible member of the Secretariat may also prepare and distribute a written document identifying the options which will be presented to the next Special Commission meeting and the decisions which will have to be taken by that Special Commission.

A-II.1.4. Drafting and Adoption Stage

[A-II-007] The work of drafting a treaty text normally begins with the second Special Commission meeting in the light of the written conclusions drawn from the first meeting. The Special Commission may also have the benefit of a text drawn up, as a basis for discussion, by a small working group during the interim. The general practice of the Conference has been to avoid preparation of draft articles of a treaty in advance of the experts’ meeting, and rather to leave the form and structure of the draft produced to the Commission of experts themselves following the first round of general discussions. In general, the preparation of an advance text by the Secretariat is not favoured because of its tendency to fix the attention of the delegates from the participating States on particular language directed to particular solutions, before there has been a general discussion. Nevertheless, this is not a hard and fast rule.

[A-II-008] A drafting committee usually consists of five or six experts headed by a chairman, the reporter of the Special Commission being an *ex officio* member of the Committee. Since the official languages of the Conference are French and English, the Committee will normally include at least one native speaker of each of these languages. Experts who are neither French nor English native speakers are also included in the Committee to broaden the range of legal experience and to raise potential difficulties of translation into non-official languages. Texts are drafted in French and English simultaneously with the assistance of members of the Secretariat. The bilingual

discussions and the simultaneous drafting of the Committee are important components with regard to the substance of the treaty as they often bring out points of misunderstanding or points which require further clarification which were not revealed during the Commission's meeting.

[A-II-009] After the Special Commission has completed a draft of the Convention, its work will be referred to the Commission of the Plenary Session of the Conference for conclusion and adoption of a Final Act. The Plenary Session is organised along the same lines as the Special Commission which preceded it, though it will usually have a broader representation and it will follow a more formal procedure. Contrary to a Special Commission that produces summary reports of its meetings the Commission of the Plenary Session keeps a verbatim record of the discussions.

A-II.1.5. Consolidation Stage

[A-II-010] Following the Plenary Session of the Conference that adopts the treaty the Reporter will draw up his final Report on the Convention which is subsequently translated and distributed by the Secretariat. The Report is an important tool for States assessing signature and ratification of or accession to the Convention. The Report also contains useful information for the implementation and application of the Convention.⁸⁵

[A-II-011] The Report is one of the most essential sources of information on a particular Convention and may be used by national courts to interpret the Convention. All informative documents on a particular Convention including the Report will take the form of a bound volume in the series of the *Actes et documents de la Conférence de La Haye de droit international privé/Proceedings of the Hague Conference on Private International Law*.⁸⁶ The *Actes et documents/Proceedings* will include the Final Act of the Convention and the preliminary drafts prepared by the Special Commission as well as the minutes of the sessions and the working documents submitted. A table providing references to the minutes of the particular sessions at which the individual provisions were discussed is also included. The *Actes et documents/Proceedings* also include the names and capacities of the persons who attended the Special Commissions and the Commission of the Plenary Session. This information which summarises a four-year cycle is extremely valuable for users of the Convention and for researchers alike.

A-II.2. Promotion Stage

[A-II-012] With the completion of a Convention comes the challenge of encouraging Member States to ratify it and Non-member States to accede to it. The Secretariat devotes much time and energy, by way of meetings and correspondence at diplomatic and

⁸⁵ It is important to note that the Report is not approved by the Plenary Session of the Conference.

⁸⁶ Thirty-six "Tomes" (volumes), in total comprising 12914 pages, have been published since 1956.

governmental levels and through its information services, in assisting States as they consider the value of particular Conventions in terms of their national interests and needs. In general the value of Conventions to a particular State increases in proportion to the number of States Parties. The promotion of Conventions among Non-member States also contributes indirectly to growth in the membership of the Organisation: New Member States in turn will have an interest in considering adhesion to further Conventions.

A-II.3. Implementation Stage

[A-II-013] The Conference provides services to Member States and Non-member States, including their Central and other Authorities, for the effective implementation of the Conventions. In that respect, the Conference provides technical assistance, such as legal education and training, and policy and legal advice on the implementation of Conventions. In this regard, the Conventions' handbooks, the good practice guides and the *Actes et Documents* are invaluable tools.

A-II.4. Support Stage including Legal Education and Training

[A-II-014] All the target communities and stakeholders identified previously⁸⁷ benefit from the ongoing support services provided by the Conference on the application of Conventions, including the Conventions' handbooks, the good practice guides and the *Actes et documents/Proceedings*. In addition, by collecting and analysing case law and by compiling legal doctrine on the Conventions and making this information available to users, the Conference encourages consistent interpretation and application of its instruments. In that regard, the general website of the Conference⁸⁸ and the special website with case law on the Child Abduction Convention (INCADAT) are very important tools as they enable the instant dissemination of high quality and up-to-date information. Finally, the Conference provides education for users and "on the spot" training and workshops in the States.

[A-II-015] It is recognised that the successful functioning of many of the Hague Conventions, especially those which involve international co-operation at the administrative or judicial level, requires that those who are charged with the implementation, such as Judges, Central Authority personnel, court officers and members of the legal profession, should receive appropriate training, orientation, and education. The primary responsibility for such training falls upon the national Authorities of Contracting

⁸⁷ See the descriptions under item 2.3., *supra*.

⁸⁸ At < <http://www.hcch.net> >.

States. The Permanent Bureau has increasingly over recent years taken on a supporting role, promoting, advising upon, participating in and sometimes organising training and education sessions. Different Conventions, of course, give rise to differing needs and indeed the purposes of training may vary, ranging from preparation for implementation to continuing education and from the addressing of specific operational problems to the functional review of Conventions. Also some countries may have less capacity than others to mount appropriate training programmes (for example countries of origin operating under the 1993 Hague Adoption Convention), and their need for external support will be correspondingly greater. This category of countries, developing countries and countries in transition, is expanding rapidly within the Conference.

A-II.5. Monitoring Stage

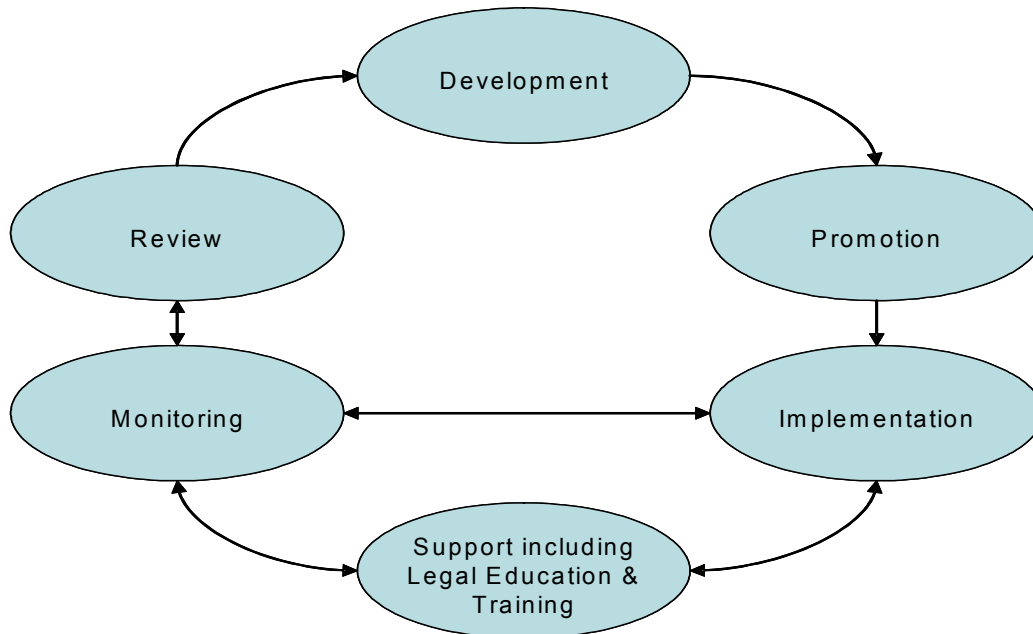
[A-II-016] On a regular basis, the Conference will organise meetings where States Parties to a Convention will share their best practices and discuss difficulties in the application of specific Conventions. The compilation of case law and legal doctrine and their analyses will provide a wealth of information in preparation for these meetings. Recommendations for an improved application of these conventions will result from these meetings. These recommendations can have a major impact on the work programme of the Conference as their implementation frequently requires a large quantity of work. The recommendations may also serve as the basis for the review of a Convention or for the negotiation of a new Convention. Finally, the information compiled during the monitoring stage will be extremely valuable for the preparation of legal education and training sessions.

A-II.6. The Working Model – A Complete Cycle

[A-II-017] The services provided by the Conference are inter-linked and form a complete cycle. They serve as a basis for sound policy development. By keeping in close touch with the implementation and application of existing Conventions and learning from errors, best practices and latest legal trends, the working model allows, over the years, for the review of existing Conventions and the development of new topics. For example, this is how the *1954 Convention on Civil Procedure* replaced the *1905 Convention relating to Civil Procedure* (which in turn had replaced the *1896 Convention on Free Judicial Assistance*). The 1954 Convention on Civil Procedure was then broken-up into three

Conventions: The 1965 Convention on the Service Abroad, the 1970 Convention on the Taking of Evidence and the 1980 Convention on International Access to Justice.⁸⁹

GRAPHIC A-II.2. - THE WORKING MODEL – A COMPLETE CYCLE



⁸⁹ Similarly, the 1902 Convention relating to minors was replaced by the 1961 Convention concerning the protection of minors which was in turn replaced by the 1996 Convention on the protection of Children. Furthermore, this is also how the 1956 and 1958 Conventions on maintenance obligations towards children were both adapted and extended to adults in 1973 through two new Conventions. In the years to come these four Conventions will be completed by a new co-operation instrument to be developed. In the same vein, the 1970 Convention on the Recognition of Divorces and Legal Separations replaced the 1902 Convention on Divorce and Judicial Separations, the 1978 Convention on the Celebration and Recognition of the Validity of Marriages replaced the 1902 Convention Governing Conflicts of Laws concerning Marriage, and the 1999 Convention on the Protection of Adults replaced the 1905 Convention on Guardianship of Adults.

ANNEX III

LIST OF INTERNATIONAL ORGANISATIONS MOST FREQUENTLY INVOLVED WITH THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

International Governmental Organisations

The United Nations System

- International Monetary Fund
- United Nations Children's Fund (UNICEF)
- United Nations Commission on International Trade Law (UNCITRAL)
- United Nations Committee on the Rights of the Child (UNCRC)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Economic Commission for Europe (UNECE)
- United Nations Economic and Social Council (ECOSOC)
- United Nations Environment Programme (UNEP)
- United Nations High Commissioner for Human Rights
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Human Rights Committee (UNHRC)
- United Nations Institute for Training and Research (UNITAR)
- World Bank
- World Intellectual Property Organisation (WIPO)
- World Trade Organisation (WTO)

Other Organisations

- Asian-African Legal Consultative Organisation (AALCO)
- Commission internationale de l'état civil (CIEC)
- Commonwealth Secretariat
- Council of Europe
- European Bank for Reconstruction and Development
- European Free Trade Association (EFTA)
- European Union
- Inter-American Children's Institute
- International Institute for the Unification of Private Law (Unidroit)
- International Organisation for Migration
- Organisation of American States
- Organisation of African Unity
- Organisation for Economic Co-operation and Development
- Organisation pour l'harmonisation en Afrique du droit des affaires (OHADA)
- Permanent Court of Arbitration

International Non-Governmental Organisations

- African Society of International and Comparative Law
- Association européenne des juristes d'entreprises
- Association internationale de droit judiciaire
- Association internationale des jeunes avocats
- Association internationale pour la protection de la propriété industrielle
- Bureau européen des Unions de consommateurs
- Defence for Children International
- Euradopt
- European Network on Parental Child Abduction
- Inter-American Bar Association
- Inter-Pacific Bar Association
- International Academy of Trial Lawyers
- International Association of Democratic Lawyers
- International Association of Juvenile and Family Court Magistrates
- International Association of Voluntary Adoption Agencies and NGO's
- International Bar Association
- International Centre for Missing and Exploited Children
- International Chamber of Commerce
- International Law Association
- International Save the Children Alliance
- International Social Service
- International Society of Family Law
- Internet Law and Policy Forum
- Ligue internationale du Droit de la concurrence
- North American Council on Adoptable Children (NACAC)
- Union internationale des Avocats
- Union internationale des Huissiers de Justice et Officiers judiciaires
- Union internationale du Notariat Latin

ANNEX IV

TEMPORARY POSITION AT THE PERMANENT BUREAU FOR QUALIFIED STAFF OF THE MEMBER STATES

Description of qualifications and duties

QUALIFICATIONS REQUIRED

- Law school education (in a system based on civil law, common law and equity, or other), including conflicts of laws, familiarity with comparative law (substantive and procedural law); knowledge of public international law, particularly the law of treaties, is desirable.
- Good command, both written and spoken, of at least one of the official languages of the Conference (French or English); knowledge of another language an asset.
- Good drafting capabilities (dissertation, academic essay, law review or other publication experience will be taken into account).

DUTIES

- Carry out research on particular points of private international law or comparative law, relevant either to the operation of existing Hague Conventions or to the future work of the Conference.
- Prepare and take part in the various meetings organised by the Permanent Bureau (working groups, training seminars, Special Commissions, Diplomatic Sessions).
- Carry out preparatory work of translation or documentary research in accordance with the agenda of the Conference.
- Other duties may be determined in accordance with the needs of the Permanent Bureau and of the interests of the candidate.