

Conclusions and Recommendations

adopted by the Council

Review of activities of the Conference

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

In addition, the Council –

- a) welcomed the positive results of the Experts' Working Group meeting on the "Guide to Good Practice No 2 – Accreditation and adoption accredited bodies" under the 1993 Intercountry Adoption Convention (The Hague, 15-16 February 2010);
- b) took note of the Conclusions and Recommendations of the Southern and Eastern African Regional Seminar, "Cross-Frontier Child Protection in the Southern and Eastern African Region – the Role of the Hague Children's Conventions" (Pretoria, South Africa, 22-25 February 2010) and welcomed the interest shown in the region in the work of the Hague Conference; and
- c) took note of the Declaration resulting from the International Judicial Conference on Cross-Border Family Relocation (Washington, D.C., United States of America, 23-25 March 2010).

Ceremonies for signing, accepting and acceding to certain Hague Conventions

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

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

Launch of the German version of the website of the Conference

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

Current work

Cross-border mediation in family matters

The Council noted the progress made in the development of the Guide to Good Practice on Mediation under the 1980 Convention, including the establishment of an Expert Working Group to assist the Permanent Bureau in drawing up a draft, which will be submitted to Members and States Parties for their views. The amended draft will then be

submitted for consideration by the Special Commission on the practical operation of the 1980 and 1996 Conventions which will be convened, if possible, in June 2011. It was noted that mediation might also feature in the context of discussions on a possible protocol to the 1980 Convention.

The Council noted the establishment of the Working Group on Mediation in the context of the Malta Process, comprising experts from 12 countries, some of which are Parties to the Convention of 1980 and some non-Parties. The Council noted the rapid progress in the work of the Group, including the drafting of a set of principles which respect the diversity of the legal systems concerned. It is hoped that the work of the Group will be finalised in a meeting of the Group to be held in Ottawa in May 2010. The Council noted that Members and all participants in the Malta Process would continue to be kept informed of developments and that a further report would be presented to the Council in 2011. Thanks are due to the Governments of Canada and Australia for their financial support of this initiative.

Choice of Law in International Contracts

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

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

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

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

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

Future work: new topics

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

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

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

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

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

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

Continuation of the Judgments Project

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

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

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

New topics

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

The Council acknowledged the complex issues of private international law and child protection arising from the growth in cross-border surrogacy arrangements. It was noted that the impact of cases of surrogacy on the practical operation of the Intercountry

Adoption Convention would be placed on the draft Agenda for the meeting of the Special Commission on the practical operation of the Intercountry Adoption Convention to take place in June 2010. The Council agreed that the private international law questions relating to international surrogacy arrangements should be kept under review by the Permanent Bureau.

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

Other topics

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

- a) questions of private international law raised by the information society, including electronic commerce, e-justice and data protection;
- b) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;
- c) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;
- d) assessment and analysis of transnational legal issues relating to security interests, taking into account in particular the work undertaken by other international organisations.

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

The operation of the Conference

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

The Council agreed that the working group should submit a report to the 2011 Council meeting.

The Council accepted the Chair's proposal that the following would constitute the core membership of the working group:

Argentina, Australia, Brazil, Canada (Chair), China, Egypt, France, Germany, Japan, Mexico, Russia, South Africa, Switzerland, United Kingdom and the United States of America.

The Council agreed that the Chair of the Council on General Affairs and Policy and the President of the Netherlands Standing Government Committee would also be members of the working group.

Post-Convention services and activities

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

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

The Council welcomed:

- a) the successful outcome of the Special Commission of November 2009 on the implementation of the 2007 Child Support Convention and of its Protocol on the Law Applicable to Maintenance Obligations and took note of its Conclusions and Recommendations; and,
- b) the completion and publication of the Explanatory Report on the 2007 Child Support Convention and the Explanatory Report on the Protocol on the Law Applicable to Maintenance Obligations and expressed its gratitude to the *Rapporteurs*, Alegría Borrás, Jennifer Degeling and Andrea Bonomi.

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

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

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

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