

**PROGRAMME DE TRAVAIL DU BUREAU PERMANENT
POUR LE PROCHAIN EXERCICE FINANCIER
(PREMIER JUILLET 2012 – 30 JUIN 2013)**

établi par le Bureau Permanent

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**WORK PROGRAMME OF THE PERMANENT BUREAU
FOR THE NEXT FINANCIAL YEAR
(1 JULY 2012 – 30 JUNE 2013)**

drawn up by the Permanent Bureau

*Document préliminaire No 2 de février 2012 à l'intention
du Conseil d'avril 2012 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 2 of February 2012 for the attention
of the Council of April 2012 on General Affairs and Policy of the Conference*

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INTRODUCTION

1. The Preliminary Document on the “Work Programme of the Permanent Bureau for the next Financial Year” is intended to assist Members in preparing their decisions on the work programme of the Conference at the annual meeting of the Council on General Affairs and Policy. It was well received when it was first presented in February 2009 and this will be its fourth edition. Three years later, it may be useful to look back at the assumptions underlying the 2009 Introduction:¹

(a) Work on Conventions

Members’ representatives have on various occasions, including at Council meetings, expressed a desire for the Permanent Bureau to resume the four-year cycle of work on *new Conventions* as foreseen in the Conference’s Statute. While work continues on Choice of Law in International Contracts, at this point no mandate has been given to the Permanent Bureau to proceed with the preparation of a new Hague Convention. As the Introduction to the 2009 Preliminary Document noted, if the Conference is to maintain its global leadership role in the area of private international law, it must continue to be able to respond promptly and flexibly to emerging needs for new instruments in the field. Moreover, its structure – including the Statute with its guarantee of funding of Diplomatic Sessions by the host country, the four-year cycle (in principle) between adoption of a proposal and the end product (Art. 4(6)), as well as the organisation of its Regular Budget – is geared towards the development of new instruments, in particular Conventions. There is no lack of potential topics for Conventions, including: continuation of the Judgments Project; accessing foreign law; international surrogacy and possibly other topics in the area of family law; and, circular migration, as elaborated below. The difficulty has been for Council to reach consensus on any of these topics. It is hoped that the April 2012 Council will be able to take a decision, or at least prepare such a decision, which would re-establish the normal cycle of work that has been interrupted since the Twenty-First Session took place in 2007.

(b) Post-Convention services

The Council on General Affairs and Policy has consistently stressed the importance of *post-Convention services*, and welcomed the importance of the Organisation’s achievements in the areas of education, training, and technical assistance in relation to the Hague Conventions. More recently, discussions have focussed on the technical assistance component of post-Convention services, *i.e.*, the role of the Permanent Bureau in rendering assistance to targeted countries or groups of countries with regard to the implementation or operation of Hague Conventions, in particular the 1993 Intercountry Adoption Convention. The Council will have before it for discussion and possibly decision the Conclusions and Recommendations and the Report of the open-ended Working Group on Technical Assistance chaired by H.E. Ambassador Susan Jacobs (see Prel. Doc. No 3 for the attention of the Council of General Affairs and Policy of April 2012).

(c) Consequences of the expanding global reach of the work

Since the turn of the century, the Conference has welcomed, on average, *two* new Members, *twenty-three* new ratifications and accessions to Conventions (not counting signatures which may also necessitate activities of the Permanent Bureau), and *eighteen*

¹ See Introduction to Prel. Doc. No 2 of February 2009, available on the Hague Conference website < www.hcch.net > under “Work in Progress” then “General Affairs”, pp. 3-4.

new Central Authorities (as well as numerous other competent authorities, in particular under the 1961 Apostille Convention and accredited bodies under the 1993 Adoption Convention) *per year*. These developments are beyond the control of the Organisation – since the decisions to join the Conference or its Conventions are independent sovereign acts taken by States – but obviously have consequences for its workload. In addition, an increasing number of States drawn to the Hague Conventions are States with developing economies and legal infrastructures, which creates challenges not only with regard to the implementation and operation of the Conventions by these States, but also with respect to (the possibilities for) their participation in meetings of the Hague Conference and their preparation of these meetings.

(d) Funding challenges

Financial and economic constraints prevailing in several Member States make it more difficult to cope with the expanding and changing demands of the Conference. However, despite its limited Regular Budget, the Conference has thus far been able to respond to many of the additional demands which accompany continuous expansion of its secretariat's workload thanks to generous contributions to its Supplementary Budget. The Supplementary Budget was introduced in 1999 and, since that year, a total of approximately 3,450,000 Euros of additional funding for the Conference, excluding in-kind contributions, has been received. This funding has enabled the Organisation to engage in extremely valuable activities and programmes to assist with the operation and implementation of existing Hague Conventions. As things currently stand, however, dwindling Supplementary Budget funds make it impossible for the Organisation to retain the capacity necessary to continue the highly successful Intercountry Adoption Technical Assistance Programme, as well as other special projects and targeted support much beyond the end of 2012.

Interns and generous secondments from Members, as well as outsourcing of some activities, have partially mitigated the diminishing resources available in both the Regular and the Supplementary Budgets.

(e) Regional presence and programmes

The presence of the Organisation in Latin America – with as a possible next step a presence in the Asia Pacific region – and conferences, seminars and other regional events and activities have proven to be very successful, cost effective, and have contributed significantly to the engagement of Member States in various regions. Council has repeatedly supported the development of regional programmes, and may wish to discuss the increasing importance of this dimension of the work of the Conference at its April 2012 meeting.

PROGRAMME FOR 2012-2013

A. Current work and possible new topics

2. The Conclusions of the April 2011 Council meeting take note of current work on the following topics:

- a) choice of law in international contracts;
- b) preparation of the Special Commission on the practical operation of the 1980 Child abduction Convention and the 1996 Child Protection Convention;
- c) mediation in the context of the Malta Process;

and of progress reports on the following topics for future work:

- d) accessing the content of foreign law and the need for the development of a global instrument in this area;
- e) desirability and feasibility of a protocol to the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*;
- f) continuation of the Judgments Project;
- g) the application of certain private international law techniques to aspects of international migration;
- h) private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements.

3. The Council decided to withdraw the item "Property law aspects of moveable assets" and instead to add to the Agenda of the Conference:

- i) The recognition of foreign civil protection orders.

A short comment will follow on each of the nine topics listed above.

Topic 1 – Choice of Law in International Contracts

4. The Council will have before it Preliminary Document No 4, "Choice of Law in International contracts: Development Process of the Draft Instrument and Further Planning". The Document suggests two options to the Council:

Option 1: set up a Special Commission of governmental experts to take place before the end of 2012 to discuss the draft Hague Principles in their current formulation;

or:

Option 2: approve the draft Hague Principles in their current form, as well as the underlying legislative choices and invite the Working Group to draft comments and illustrations in line with the proposed provisions.

In either case, the Permanent Bureau will draw up a report on the state of progress of this project for the attention of the Council of 2013.

Topic 2 – Preparation of the Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

5. The Council will have before it the consolidated Conclusions and Recommendations (75 from Part I (June 2011) and 17 from Part II (January 2012), see Prel. Doc. No 12 for the attention of the Council of General Affairs and Policy of April 2012). As usual, the Conclusions and Recommendations are addressed to the Contracting States and their Central Authorities as well as to the Permanent Bureau. The Council is requested specifically to:

- 1. consider authorising the establishment of an expert group to carry out further exploratory research on the recognition and enforcement abroad of agreements between the parents (parties) reached in the course of international child disputes. This work would include identification of the nature and extent of the legal and practical problems in this area, including, specifically, jurisdictional issues and would evaluate the benefit of a new instrument in this area, whether binding or not (Conclusion and Recommendation No 77); and

2. authorise the establishment of a Working Group composed of judges, Central Authorities and cross-disciplinary experts to develop a Guide to Good Practice on the interpretation and application of Article 13(1) *b*) of the Child Abduction Convention, with a component to provide guidance specifically directed to judicial authorities, taking into account the conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice (Conclusion and Recommendation No 82).

Topic 3 – Mediation in the context of the Malta Process

6. The Council will receive an oral report on the progress made since the 2011 Council meeting on the Principles for the establishment of mediation structures in the context of the Malta Process, and the work of Parts I and II of the Sixth Meeting of the Special Commission (June 2011 / January 2012).

Topic 4 – Accessing the content of foreign law and the need for the development of a global instrument in this area

7. At its April 2011 meeting, the Council decided that the Permanent Bureau should continue monitoring developments but not take any further steps in this area. Council will have before it the Conclusions and Recommendations of a conference organised jointly with and funded by the European Commission held in February 2012 in Brussels, Belgium on access to foreign law in civil and commercial matters. This conference has enabled the Permanent Bureau to take note of global recent developments in this area.

Topic 5 – Desirability and feasibility of a protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

8. Following the Council's 2011 meeting, the Permanent Bureau continued consultations on the desirability and feasibility of a protocol to the 1980 Child Abduction Convention which would contain auxiliary rules intended to improve the Convention's operation. Following Part I of the Special Commission (June 2011), and based on the overall consultation process including the replies to a Questionnaire sent to Members and States Parties in December 2010, it did not appear possible to achieve consensus in seeking a mandate from the Council to work on a protocol at this time (see Prel. Doc. No 13, "Guide to Part II of the Sixth Meeting of the Special Commission and Consideration of the desirability and feasibility of further work in connection with the 1980 and 1996 Conventions (Annex)" for the attention of the Special Commission of January 2012). However, Part II of the Special Commission specifically recommended that Council consider setting up the Experts Group and Working Group referred to *supra* at paragraph 5, **Topic 2**.

Topic 6 – Continuation of the Judgments Project

9. At its April 2011 meeting, the Council concluded that a small experts group should be established to explore the background of the Judgments Project and recent developments in this area with the aim to assess the possible merits of resuming the Project. Following further preliminary work, also in relation to the further promotion and preparation of implementation by several Members of the 2005 Choice of Court, an experts group has been convened which will meet immediately before the 2012 Council meeting, with a view to advising Council on the possible continuation of the Project.

Topic 7 – The application of certain private international law techniques to aspects of international migration

10. At its 2011 meeting, the Council accepted that the Permanent Bureau would continue to explore the potential value of certain of the techniques developed by the Hague Conference for direct cross-border administrative co-operation to, in particular, certain aspects of temporary or circular migration. The topic was discussed, at the express request of the Philippine authorities, at the Fourth Asia Pacific Conference of the Hague Conference which took place in Manila from 26 to 28 October 2011, where it attracted broad interest from experts in the region.² It should be recalled that this topic was always presented as a topic either for the Conference or for any other suitable body.

Topic 8 – Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements

11. The Council, at its 2011 meeting, welcomed Preliminary Document No 11 of March 2011, "Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements", prepared by the Permanent Bureau, and invited it to intensify its work in the area with emphasis on the broad range of issues arising from international surrogacy arrangements. In particular, the Permanent Bureau was invited to continue gathering information on the practical needs in the area, comparative developments in domestic and private international law, and the prospects of achieving consensus on a global approach. The Permanent Bureau was also invited to consult with the legal profession as well as with health and other relevant professionals concerning the nature and incidence of the problems occurring in this area. As requested, the Permanent Bureau will submit a preliminary report on progress to the Council for its 2012 meeting (see Prel. Doc. No 10 for the attention of the Council on General Affairs and Policy of April 2012).

Topic 9 – Recognition of foreign civil protection orders

12. The Council, at its 2011 meeting, suggested adding this topic to the Agenda, having in mind, for example, foreign protective orders made in the context of domestic violence cases. The Permanent Bureau will submit a short document on the subject to assist Council in deciding whether further work on this subject is warranted (see Prel. Doc. No 7 for the attention of the Council on General Affairs and Policy of the Conference of April 2012).

B. Other topics

13. The "other topics" listed in the Conclusions of the April 2011 Council meeting, developments of which the Permanent Bureau was asked to follow are:

- 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; and

² See the Conclusions of the Fourth Asia Pacific Conference on Temporary and Circular Migration available on the Hague Conference website < www.hcch.net > under "News & Events" then "2011".

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

The Permanent Bureau will report orally on developments on these topics. As regards the work on netting mentioned in d) above, it is likely that the Permanent Bureau will be approached by the UNIDROIT Secretariat to participate in the development of conflict of laws rules in this field. This work may require significant involvement of the Permanent Bureau.

C. Post-Convention work

1. Legal co-operation and litigation

14. The Council, at its 2011 meeting, welcomed the developments in the field of the electronic Apostille Program (e-APP) and agreed that work would be undertaken with a view to preparing the next Special Commission on the practical operation of the Apostille Convention. This Special Commission has now been scheduled to take place from 6 to 9 November 2012. A questionnaire to prepare the Special Commission was circulated in January 2012.

15. The Special Commission of 2009 on the practical operation of the Apostille Convention, the 1965 Service Convention, the 1970 Evidence Convention and the 1980 Access to Justice Convention adopted 99 Conclusions and Recommendations, many of which require follow up work by the Permanent Bureau (see Prel. Doc. No 11, "Task list and status of implementation of Conclusions and Recommendations adopted by the Special Commission on the practical operation of the Hague Apostille, Service, Taking of Evidence and Access to Justice Conventions (2-12 February 2009) – Update No 2").

16. As regards the preparation of a Handbook on the Practical Operation of the Apostille Convention, it is envisaged to organise an experts meeting at the Permanent Bureau in May 2012 to review a first draft prepared by the Permanent Bureau. The amended version of the handbook will then be submitted to the Special Commission for approval.

17. Furthermore, at its 2012 meeting, the Council will also be asked to agree that work be undertaken with a view to preparing the next Special Commission on the Service and Evidence Conventions. This Special Commission is tentatively planned for late 2013 / early 2014. It will be prepared, in principle, by the same three lawyers who are, amongst other things, already in charge of preparing the Special Commission on the practical operation of the Apostille Convention.

2. International protection of children, vulnerable adults, family relations and family property including succession

18. In 2011, the Council recommended that following the completion of the Guide to Good Practice No 2 on the 1993 Intercountry Adoption Convention, *Accreditation and adoption accredited bodies: general principles and Guide to Good Practice*, an informal Working Group be established to assist the Permanent Bureau in examining the question of costs in intercountry adoption. The Guide No 2 is scheduled to be published in April

2012. Preparations are under way for the meeting of the informal experts group on costs, which is scheduled for June 2012.

19. The Special Commission of 2010 on the practical operation of the 1993 Inter-country Adoption Convention adopted 42 Conclusions and Recommendations, many of which require follow up work by the Permanent Bureau.

20. The Special Commission of 2011 / 2012 on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention adopted 92 Conclusions and Recommendations, many of which require follow up work by the Permanent Bureau. See also **Topic 2** *supra* (see Prel. Doc. No 12 for the attention of the Council of General Affairs and Policy of April 2012).

3. Regional programmes - education, training and technical assistance

21. On regional programmes see the Annual Report for 2011 as well as Information Document No 7, "Latin American Report - Status of the Hague Conference Latin American Office" (available only in English and Spanish).

22. The Council, at its meeting of 2011, welcomed the achievements of the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions. As mentioned, the Council will have before it the Conclusions and Recommendations and the Report of the open-ended Working Group on Technical Assistance.

Conclusion

23. As suggested above in the Introduction, paragraph 2 (a), **Work on Conventions**, it is hoped that at its April 2012 meeting the Council will be able to take, or at least prepare, a decision which would re-establish the normal four-year cycle of work on one or two new Conventions. Several of the nine topics listed above under **A. Current Work and possible new topics** may lend themselves to such work. The Council may wish to identify two topics for a future Convention, possibly one in the field of legal co-operation, litigation, trade or finance, and one in the field of family law. If two topics were chosen, the Council might determine a tentative time-schedule extending beyond the period 2012-2016 for the legislative programme, because whilst it is possible to start work in preparation of two Conventions, experience shows that it will be difficult to complete more than one Convention within the four-year cycle.

24. In any event, the Council is invited to take the decisions concerning the next steps for the work on Choice of Law in International Contracts (see **Topic 1**) and concerning the Experts Group relating to the Recognition and Enforcement Abroad of Agreements reached in the course of international child disputes and the Working Group to develop a Guide to Good Practice on the interpretation and application of Article 13(1) b) of the 1980 Child Abduction Convention (see under **Topic 2**).

25. Post-Convention work, in addition to the scheduled informal Working Group on costs in inter-country adoption (*supra*, para. 18) and the Special Commission on the practical operation of the Apostille Convention (*supra*, para. 14), will continue to need to be planned carefully. This work, consisting of treaty administration, monitoring, review and adaptation, promotion and development, and assistance to targeted countries or groups of countries with implementation and operation of Conventions (technical assistance) depends for several of its components on additional funding from the Supplementary Budget.