

**RAPPORT ANNUEL 2008**

*établi par le Bureau Permanent*

**P R O J E T**

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**ANNUAL REPORT 2008**

*drawn up by the Permanent Bureau*

**D R A F T**

*Document préliminaire No 12 de mars 2009 à l'intention  
du Conseil de mars / avril 2009 sur les affaires générales et la politique de la Conférence*

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## I. ORGANISATION

### A. 115th anniversary celebrations – Hague Convention on the International Protection of Adults

From 12 to 27 September 1893, the First Session of the Hague Conference on Private International Law took place at the Trêves Salle in the Hague under the chairmanship of Tobias M.C. Asser (Nobel Peace Prize 1911).

On 18 September 2008, the Hague Conference celebrated the 115th anniversary of this First Session with a ceremony in the Academy Building on the grounds of the Peace Palace. The ceremony was attended by the Minister of Law and Justice of the Union of India – India having joined the Conference in March 2008 – as well as representatives of the Ministers of Justice of France – the then President of the European Union – and of the Netherlands, by Ambassadors of Hague Conference Member States, representatives of other international organisations in The Hague, and high-ranking authorities of the host State.

The Minister of Law and Justice of India, H.E. Dr H.R. Bhardwaj, in his keynote speech highlighted the importance of the Hague Conference for India and indeed for the world as follows:

“(...) it is estimated that at least 25 million Indian nationals live outside the country, many in Member States of the Hague Conference. An increasing number of these Indian nationals now maintain links with India. They fly regularly back and forth to India, engage themselves in business and family relationships with Indian residents. This fact alone gives rise to numerous problems of private international law. It is not by accident, that is was my colleague Vayalar Ravi, then Minister for Overseas Indian Affairs, who announced India’s intention to join the Hague Conference in December 2006 at the very successful conference on private international law.<sup>1</sup>

The significance of private international law, and thereby of the Hague Conference and its work, is growing in our world. Cross-border contacts are increasing exponentially, and there is an increasing need for these contacts to be facilitated and regulated. This is in the interest of private actors, but also of the common good, because it will bring stability and peace to our emerging world society. (...)”

On the occasion of the ceremony, France deposited its instrument of ratification of the *Hague Convention of 13 January 2000 on the International Protection of Adults*.<sup>2</sup> This ratification led to the entry into force of the Convention for France, Germany and the United Kingdom on 1 January 2009, Germany (2007), and the United Kingdom<sup>3</sup> (2003) having already deposited their instruments of ratification. In addition to the ratification by France, five Member States of the European Union signed the Convention: Finland, Greece, Ireland, Luxembourg and Poland, following the example of the signatures by the Netherlands (2000) and Switzerland (2007). In October 2008, Italy became the eleventh State to sign the 2000 Protection of Adults Convention.

The 2000 Protection of Adults Convention, which is similar in structure to the 1996 Child Protection Convention,<sup>4</sup> applies to the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. The measures of protection that are contemplated by the Convention include, for example, the institution of a protective regime for the adult

<sup>1</sup> Dr Bhardwaj referred here to the Fourth International Conference on Private International Law, organised by the Indian Society of International Law (ISIL), which took place from 2 to 3 December 2006 in New Delhi.

<sup>2</sup> This Convention (hereinafter the “Protection of Adults Convention”) replaces the “old” Hague Convention of 1905 on legal incapacity and analogous measures of protection (*la Convention du 17 juillet 1905 concernant l’interdiction et les mesures de protection analogues*).

<sup>3</sup> Ratification for Scotland only.

<sup>4</sup> *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*.

and the designation and functions of a person representing the adult and having charge of the adult's property. The Convention addresses many of the issues that vulnerable adults may encounter in cross-border situations by providing rules on jurisdiction, applicable law and international recognition and enforcement of protective measures. Moreover it establishes a mechanism for co-operation between Contracting States according to the "Hague Model" which includes the machinery of Central Authorities. The system of co-operation encompasses, *inter alia*, the exchange of information, the facilitation of agreed solutions in contested cases, and the location of missing adults. The Protection of Adults Convention promotes some important objectives of the United Nations *Convention of 13 December 2006 on the Rights of Persons with Disabilities* (New York), which entered into force on 3 May 2008.

The growing importance for improved international protection of vulnerable adults by means of legal norms and international co-operation was underlined by the Presidency of the Council of the European Union in the address delivered by Ms Pascale Fombeur, Director of Civil Affairs, on behalf of the French Minister of Justice during the anniversary ceremony:

"(...) La Convention du 13 janvier 2000 sur la protection internationale des adultes vulnérables est une innovation importante. Elle est la réponse nécessaire aux évolutions démographiques de nos pays et aux changements de mode de vie. La mobilité des personnes est devenue une réalité: nos concitoyens n'hésitent plus à quitter leur pays d'origine pour trouver un travail ou pour passer leur retraite. (...) Les personnes fragilisées par l'âge ou la maladie ont des besoins sanitaires et médicaux. Elles ont aussi besoin d'une protection juridique : pour organiser leur vie quotidienne, pour gérer leur patrimoine, pour prendre des décisions qui engagent leur avenir. Les États doivent s'assurer que les droits des personnes âgées ou malades sont respectés. C'est une question d'humanité et de dignité. C'est aussi une question de cohésion sociale. (...)"

The full text of the speeches mentioned above, including those delivered by the Secretary General of the Ministry of Justice, Mr Joris Demmink and the President of the Netherlands Standing Government Committee on Private International Law, Professor Teun (A.V.M.) Struycken, and the Secretary General of the Hague Conference, Mr Hans van Loon are available on the website of the Hague Conference.<sup>5</sup>

At the conclusion of the ceremony the Hague Conference was honoured by the conferring on the Secretary General of a personal distinction on behalf of the Queen of the Netherlands. The Deputy Secretary General of the Ministry of Foreign Affairs of the host State also announced the decision of his Government to grant the Hague Conference a contribution of 500,000 Euros for its technical assistance programmes.

## **B. Council on General Affairs and Policy**

The Council on General Affairs and Policy met from 1 to 3 April 2008 in the Academy Building, under the chairmanship of Mr Antti Leinonen, Expert from Finland. The Council took decisions relating to future work of the Conference and expressed its support for the broad range of activities being carried out by the Permanent Bureau to promote and ensure the effective implementation and operation of the Hague Conventions, including through the development of regional programmes.<sup>6</sup>

## **C. Budget: Council of Diplomatic Representatives**

The Council of Diplomatic Representatives met on 8 July 2008 under the chairmanship of Mr Ed Kronenburg, Secretary General, on behalf of the Minister of Foreign Affairs of the Netherlands. The Council approved the accounts submitted by the Secretary General of the Hague Conference for Financial Year LII (1 July 2006 – 30 June 2007) and discussed

<sup>5</sup> Available at the address < [www.hcch.net](http://www.hcch.net) >, under "News and Events" then "2008".

<sup>6</sup> For the full text of the Conclusions and Recommendations adopted by the Council, see the Hague Conference website under "Work in Progress" then "General Affairs".

and approved the draft Budget for Financial Year LIV (1 July 2008 – 30 June 2009). The Supplementary Budget for Financial Year LIV, entirely based on voluntary contributions, was also discussed.

#### **D. Permanent Bureau**

In conformity with Article 5 of the Statute, both Ms Marta Pertegás, formerly professor of private international law at the University of Antwerp, and Ms Jennifer Degeling, formerly Principal Legal Officer at the Permanent Bureau, were appointed to the position of Secretary at the Permanent Bureau.

Ms Pertegás is of Spanish nationality. Her appointment became effective as of 1 February 2008. Ms Pertegás has primary responsibility for the implementation of the 2005 Choice of Court Convention.

Ms Degeling is of Australian nationality. Her appointment became effective as of 24 November 2008 and she will continue to have special responsibility for the 1993 Intercountry Adoption Convention.

As of 5 February 2008, Ms Eimear Long joined the Permanent Bureau as Legal Officer. Ms Long is of Irish nationality and her work will mainly focus on the Hague Children's Conventions. Ms Lucía Castrillón Díaz was recruited as Spanish-speaking Translator / Reviser on the basis of the supplementary funds granted by the Government of Spain. Ms Castrillón Díaz is of Spanish nationality and her appointment became effective as of 8 April 2008. As of 24 November 2008, Ms Anna de Vries, who is of American nationality, was recruited as Administrative / Human Resources Assistant.

At 31 December 2008, the Permanent Bureau consisted of 23.6 Full-Time Equivalent staff members funded through the Regular Budget, from 12 different countries around the world.

The Permanent Bureau also welcomed in 2008 two officials on secondment from Canada (Government of Quebec and Government of British Columbia) as well as several interns from the following countries: Australia (Peter Nygh Internship Programme), Canada (McGill University, Montreal), China, France, India and the United States of America (New York University and Georgetown University).

During 2008, the Permanent Bureau maintained ongoing co-operation with a number of academic institutions in many countries.

#### **E. Membership of the Conference**

India accepted the Statute on 13 March 2008 and thus became the Organisation's 69th Member. As a result, on 31 December 2008, membership of the Hague Conference comprised 68 Member States: Albania, Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Jordan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Monaco, Montenegro, Morocco, the Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Venezuela, as well as one Member Organisation, the European Community. In addition, Costa Rica (6 September 2002), Zambia (15 March 2004) and Colombia (17 July 2006) have been admitted as Members, and will join the Organisation upon their acceptance of the Statute. Pending their acceptance, these States are being invited to attend meetings of the Hague Conference in the capacity of observers.

The Permanent Bureau, in consultation with its Members, continues to work towards increasing the Membership of the Organisation, in a considered manner, in all regions of the world.

## F. Acceptance of Hague Conventions

The Permanent Bureau continued to invest its best efforts in promoting wider acceptance of the Hague Conventions. By 31 December 2008, 66 Member States and 63 non-Member States were Parties to one or more Hague Conventions adopted since 1951.

Two Hague Conventions (the 1961 Apostille Convention and the 1980 Child Abduction Convention) apply in all 27 EU Member States.

A few months after an agreement was reached between the United Kingdom and Spain, *inter alia*, on the application of the 1996 Child Protection Convention to Gibraltar, the Council of the European Union took a Decision on 5 June 2008<sup>7</sup> authorising Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom, to collectively ratify, or accede to, the 1996 Convention in the interest of the European Community. The deposit of their instruments of ratification or accession should take place before 5 June 2010.

On the occasion of the deposit of its instrument of acceptance of the Statute in April 2007, the European Community deposited, besides a declaration of competence of the European Community in the field of private international law, a declaration in which it endeavoured to examine whether it is in its interest to join existing Hague Conventions in respect of which there is Community competence. In October 2008 the European Community informed the Permanent Bureau of the outcome of the examination of the Community's interest in acceding to existing Hague Conventions.<sup>8</sup> Apart from expressing interest in the 1996 Child Protection Convention, the European Community foresees it may join in the near future the 2005 Choice of Court Convention, the 2007 Child Support Convention and the 2007 Protocol on the Law Applicable to Maintenance Obligations. Moreover, the European Community informed the Permanent Bureau that it will further reflect on how to proceed in relation to the other Conventions that are not (yet) classified as Conventions for immediate action by the European Community, in the context of the "Stockholm Programme", the new multiannual programme in the area of freedom, justice and security (2010-2014).

Mention was already made above of the ratification of the 2000 Protection of Adults Convention by France (entry into force on 1 January 2009) followed by the signature of this Convention by Finland, Greece, Ireland, Luxembourg and Poland on 18 September 2008. Importantly, the 1993 Intercountry Adoption Convention entered into force for the United States of America on 1 April 2008. Mention should also be made of: the signature of the 2006 Securities Convention by Mauritius (on 28 April 2008); the accession to the 1980 Child Abduction Convention by Seychelles (on 27 May 2008, entry into force on 1 August 2008); the accession to the 1965 Service Convention (on 16 June 2008, entry into force on 1 February 2009) and the 1970 Evidence Convention (on 16 June 2008, entry into force on 15 August 2008) by Bosnia and Herzegovina; the accession to the 1993 Intercountry Adoption Convention by Seychelles (on 26 June 2008, entry into force on 1 October 2008); the declaration by Vanuatu on 1 August 2008 that it considers itself bound by the 1961 Apostille Convention;<sup>9</sup> the signature of the 1996 Child Protection Convention (on 30 October 2008) by Croatia; the accession on 10 November 2008 to the 1954 Civil Procedure Convention (entry into force, in the absence of any objections, on 31 July 2009), to the 1965 Service Convention (entry into force on 1 July 2009) and to the 1970 Evidence Convention (entry into force on 9 January 2009) by Iceland; the accession to the 1970 Evidence Convention by Liechtenstein (on 12 November 2008, entry into force 11 January 2009); and the accession to the 1961 Apostille Convention by the Dominican Republic (on 12 December 2008, entry into force on 30 August 2009).

<sup>7</sup> *Official Journal of the European Union*, L-151, p. 36 (2008/431/EC).

<sup>8</sup> According to Art. 65 of the EC Treaty (Amsterdam, 1999).

<sup>9</sup> On 24 February 1965, the Convention had been extended to the New Hebrides (now the Republic of Vanuatu) by the United Kingdom of Great Britain and Northern Ireland. The objection period to the declaration of succession runs from 1 September 2008 to 1 March 2009. At the end of this period, Vanuatu will have treaty relations with all the other Contracting States that have not objected to its succession. The 1961 Apostille Convention will then enter into force for Vanuatu with retroactive effect from the date of independence (30 July 1980).

## **G. Co-operation with governments and with other international organisations and institutions**

During 2008, the Secretary General made official visits to China (Mainland and Hong Kong Special Administrative Region), Cambodia, Portugal and Suriname. The Secretary General and other members of the Permanent Bureau also made visits to, lectured or gave seminars in: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cambodia, Canada, Chile, China (Hong Kong SAR), Colombia, the Czech Republic, Denmark, Egypt, France, Georgia, Germany, Guatemala, Honduras, Ireland, Italy, Japan, Lithuania, Luxembourg, Madagascar, Malaysia, Mexico, Morocco, the Netherlands, New Zealand, Norway, Panama, Peru, Portugal, the Russian Federation, Spain, Slovenia, Switzerland, Ukraine, the United Kingdom, the United States of America, Uruguay, Venezuela and Viet Nam.

The Permanent Bureau also continued its co-operation with a large number of intergovernmental as well as non-governmental international organisations. Special mention should be made of the close co-operation with United Nations Commission on International Trade Law (UNCITRAL) and International Institute for the Unification of Private Law (UNIDROIT). The heads of the Secretariats of the three organisations met in Vienna in February 2008 for their annual co-ordination meeting. Members of the staff of the Permanent Bureau participated as observer in the Working Group on the reform of UNIDROIT Principles of International Commercial Contracts in May 2008, and participated actively in the ongoing negotiations for the preparation of a draft convention on substantive rules regarding intermediated securities. In December 2008 a staff member of the Permanent Bureau participated in a working group of experts for the preparation of an UNCITRAL legislative guide on secured transactions dealing with security rights in intellectual property.

The Permanent Bureau also actively participated in the development of new instruments, training sessions or other meetings organised in 2008 by, *inter alia*: the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO), *Mercado Común del Sur* (Mercosur), the Association of Southeast Asian Nations (ASEAN), the Organization of American States (OAS), LAWASIA, International Social Service (ISS), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the European Commission, the European Institute of Public Administration (EIPA), the European Parliament, the Ukraine-European Policy and Legal Advice Centre (UEPLAC), the National Child Support Enforcement Association (NCSEA), the National Notary Association of the United States of America (NNA), the National Association of Secretaries of States (NASS), the Inter-American Children's Institute (IIN), the United Nations Children's Fund (UNICEF), the International Commission on Civil Status (ICCS), the International Association of Women Judges (IAWJ), the International Law Association (ILA), the International Bar Association (IBA), the Inter-American Bar Association (IABA), the American Bar Association (ABA), the *Deutsche Stiftung für Internationale rechtliche Zusammenarbeit* (IRZ), LegaCarta and the International Union of Judicial Officers (UIHJ).

## **II. DEVELOPMENT OF NEW INSTRUMENTS**

### **A. Legislative work**

The Council on General Affairs and Policy, which met from 1 to 3 April 2008 took a number of decisions concerning future work but reserved its position on the ultimate priority to be attached to the possible topics for future work until its next meeting in 2009. The work undertaken by the Permanent Bureau in 2008 on the development of possible new instruments in preparation for a decision of the Council on General Affairs and Policy in 2009 is described below.

With regard to the development of non-binding norms, two new Guides to Good Practice were published in 2008, while other Guides are in preparation: the *Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: A Guide to Good Practice*, and the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children*, the latter of which relates to the 1980 Child Abduction Convention and the 1996 Child Protection Convention (for further details see the Chapter on Post-Convention Services).

State Parties, and in particular Central Authorities designated under the above-mentioned Conventions, are encouraged to review their own practices, and where appropriate and feasible, improve them with the guidelines of best practice set out in the Guides to Good Practice. For both established and developing Central Authorities the implementation of the Conventions should be seen as a continuing, progressive or incremental process of improvement.

## **B. Future work**

The Council on General Affairs and Policy of 2008 discussed the following possible topics for future work, reserving its position on their ultimate priority for the Hague Conference.

### *1. Cross-border mediation in family matters*

During a previous meeting (3 to 5 April 2006) the Council (then Special Commission) on General Affairs and Policy had invited the Permanent Bureau to prepare a feasibility study on cross-border mediation in family matters, including the possible development of an instrument on the subject. Mediation, as an increasingly popular means of dispute resolution in family matters in many jurisdictions, is seen as beneficial in situations where the parties have an ongoing relationship – which is often the case in family disputes, particularly those involving children – and as a way to relieve overburdened courts and tribunals.

The feasibility study prepared by the Permanent Bureau for the Council meeting of 2007 provided an overview of the development of mediation in family matters within national systems, and the current status of mediation in international family matters. It also discussed some of the legal and practical issues surrounding the development of international mediation in family matters, and concluded with suggestions on possible future work for the Hague Conference in this field. The Council of 2007 gave the mandate to the Permanent Bureau to invite Members to provide comments on the feasibility study and responses to a Questionnaire before the end of 2007, with a view to further discussing the topic at the Council's spring 2008 meeting.

The Council of April 2008 studied the written comments on the feasibility study and the responses to the Questionnaire provided by the Members and compiled by the Permanent Bureau<sup>10</sup> and further discussed the topic. The Council decided to invite the Permanent Bureau to start work on a Guide to Good Practice on the subject. This Guide, a tool which the Permanent Bureau already developed in other areas, will focus on the use of mediation in the context of the 1980 Child Abduction Convention, and should be submitted for consideration at the next Special Commission to review the 1980 Convention, which is likely to be held in 2011.

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<sup>10</sup> Prel. Doc. No 10 and Addendum No 1 of March 2008 for the attention of the Council of April 2008 on General Affairs and Policy of the Conference, available on the website of the Hague Conference under "Work in Progress" then "General Affairs".

## 2. *Choice of law in international contracts*

In April 2006, the Permanent Bureau had been requested to prepare a feasibility study on the development of an instrument concerning choice of law in international commercial contracts. The Permanent Bureau pursued a multi-pronged approach when carrying out the mandate given by the Council.

Two comparative law studies were prepared for the attention of the Council of April 2007. One described the status of law governing choice of law in international contracts in general, at the global, regional and sometimes national levels, and focused on how such rules are generally applied in court proceedings. The second study provided a description of the legal situation with regard to choice of law in international contracts that are subject to international commercial arbitration.

The Council of 2007 invited Members to respond to the Questionnaire drawn up by the Permanent Bureau. Its purpose was to explore current practice as to the use of choice of law clauses in international contracts and to what extent they are respected, to identify possible problems and lacunae, and to obtain a first impression as to whether parties to commercial disputes in courts and arbitration, as well as those who would decide these disputes, feel that any (binding or non-binding) instrument might improve the situation.

The Council of April 2008 discussed the updated study drafted by the Permanent Bureau summarising the results of the consultation regarding the existing study and the Questionnaire.<sup>11</sup> The Council of 2008 invited the Permanent Bureau to continue its exploration of this topic concerning international business-to-business contracts with a view to promoting party autonomy. The Council invited the Permanent Bureau to explore, in co-operation with relevant international organisations such as UNIDROIT, UNCITRAL, International Chamber of Commerce (ICC) and IBA, and interested experts, the feasibility and desirability of drafting a non-binding instrument, including the specific form that such an instrument might take.

## 3. *Treatment of foreign law*

In April 2006 the Permanent Bureau had been invited to prepare a feasibility study on the development of an efficient and effective instrument for cross-border co-operation concerning the treatment of foreign law. Such an instrument could assist courts that hear cases involving the application of foreign law to have easy access to this law and ascertain its content.

With a view to preparing the feasibility study on the need for such an instrument, the Permanent Bureau organised a meeting of experts in this field with either a commercial law or family law background. This meeting took place on 23 and 24 February 2007 at the Permanent Bureau in The Hague. The experts acknowledged that there is clearly a need to facilitate access to foreign law and supported the Permanent Bureau's continued work in the area.

On the initiative of the Council of 2007 the Permanent Bureau developed a Questionnaire as suggested in the feasibility study on the treatment of foreign law with a view to identifying practical difficulties in accessing the content of foreign law and determining the areas of foreign law for which information is required. The Questionnaire was addressed to all the Members with an invitation to comment both on the models suggested in the feasibility study and their possible implementation and on the feasibility study itself.

The Council of April 2008 discussed the updated study drafted by the Permanent Bureau summarising the results of the consultation regarding the existing study and the Questionnaire.<sup>12</sup> The Council invited the Permanent Bureau to continue to explore

<sup>11</sup> Prel. Doc. No 5 of February 2008 for the attention of the Council of April 2008 on General Affairs and Policy of the Conference, available on the website of the Hague Conference under "Work in Progress" then "General Affairs".

<sup>12</sup> Prel. Docs. Nos 9 A and 9 B of February 2008 for the attention of the Council of April 2008 on General Affairs and Policy of the Conference, available on the website of the Hague Conference under "Work in Progress" then "General Affairs".

mechanisms to improve global access to information on the content of foreign law, including at the litigation stage, and to report and, if possible, make a recommendation as to future action to the Council in 2009.

With a view to exploring mechanisms to improve global access to information on the content of foreign law an Expert Meeting on Global Co-operation on the Provision of Online Legal Information on National Laws took place at the Permanent Bureau from 19 to 21 October 2008. The Experts discussed free access to (foreign) law via the multiple legal databases, accessible through the internet, existent in many regions and countries. In that context, issues regarding reliability, language barriers and other aspects such as sources of the information, and a light monitoring system were discussed.

The Permanent Bureau will present a report of the Expert Meeting to the Council in 2009 and its conclusions from the preliminary work undertaken on the subject and make a recommendation as to future action on this subject.

#### *4. Protocol to the 1980 Child Abduction Convention*

The matter of a possible Protocol was first discussed at the Fifth Meeting of the Special Commission to review the operation of the 1980 Child Abduction Convention, which took place in October / November 2006. The possible Protocol promotes the making of a clearer distinction between "rights of custody" and "access rights", the clarification of the obligations of States Parties under Article 21 (on rights of access) of the Convention and the provision of a clear legal framework for the taking of protective measures to secure the safe return of the child and, if necessary, the accompanying parent. The potential value of an Protocol was recognised by the Special Commission,<sup>13</sup> though not as an immediate priority.

The results of a consultation round among the Members of the Conference launched by the Permanent Bureau in November 2007 were discussed during the meeting of the Council in April 2008.<sup>14</sup> The Council decided to reserve for future consideration the feasibility of a Protocol to the 1980 Convention containing auxiliary rules designed to improve the operation of the Convention.

#### *5. Protocol to the 2007 Child Support Convention regarding international recovery of maintenance in respect of vulnerable persons*

During the negotiations on the 2007 Child Support Convention, certain States suggested bringing maintenance obligations in respect of vulnerable persons within the compulsory scope of the Convention. The Twenty-First Session finally recommended that the Hague Conference consider the feasibility of developing a Protocol concerning the international recovery of maintenance in respect of vulnerable persons.<sup>15</sup>

The Council of 2008 invited the Permanent Bureau to prepare a questionnaire on the feasibility of developing a Protocol to the 2007 Child Support Convention. The Council decided that the responses should be submitted to the Special Commission on the implementation of the 2007 Convention, which is planned to take place in November 2009, the results of which should be reported to the Council of 2010.

#### *6. Legal issues relating to economic migrants*

A Note drawn up by the Permanent Bureau in 2006, and updated respectively in 2007 and 2008,<sup>16</sup> suggested that some of the techniques developed by the Hague Conference for cross-border co-operation in the context of international judicial and administrative

<sup>13</sup> See also Conclusions Nos 1.7.3 and 1.8.3 of the Report of the Fifth Meeting of the Special Commission, available on the website of the Hague Conference under the "Child Abduction Section".

<sup>14</sup> Prel. Doc. No 12 of March 2008 for the attention of the Council of April 2008 on General Affairs and Policy of the Conference, available on the website of the Hague Conference under "Work in Progress" then "General Affairs".

<sup>15</sup> See Final Act of the Twenty-First Session, Part C, Recommendation No 9.

<sup>16</sup> Prel. Doc. No 6 of March 2008 for the attention of the Council of April 2008 on General Affairs and Policy of the Conference, available on the website of the Hague Conference under "Work in Progress" then "General Affairs".

co-operation, and later applied and extended to the area of protection of children and vulnerable adults, might lend themselves to incremental and progressive application to a limited number of specific issues that arise in the context of international migration. Some examples of possible forms of international co-operation that might benefit from the Hague experience included: co-operation in the implementation of temporary or circular migration programmes agreed between States concerned; co-operation in establishing and monitoring a system of licensing and regulation of intermediaries involved in facilitating international migration; and co-operation in facilitating the easy and cheap transfer of remittances sent home by international migrants.

Following the Council of 2008, the Permanent Bureau consulted *inter alia* with the Hague Process on Refugees and Migrations, an independent and non-political forum for discussion about refugees and migration with a human rights and development perspective. The Secretariat of the Hague Process was instrumental in enabling the Permanent Bureau to participate through a written contribution in the Second Global Forum on Migration and Development, which was held from 27 to 30 October 2008 in Manila, the Philippines. In April 2008, the Secretary General met in London with the Special Representative of the Secretary General of the United Nations for International Migration and Development, Mr Peter Sutherland.

#### 7. *Other possible future work*

The Council of 2008 decided to retain the following matters on the Conference's agenda and 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;
- b) the conflict of jurisdictions, applicable law and international judicial and administrative co-operation in respect of civil liability for environmental damage;
- c) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;
- d) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;
- e) assessment and analysis of transnational legal issues relating to indirectly held securities and security interests, taking into account in particular the work undertaken by other international organisations.

Regarding the topic mentioned under d), the Permanent Bureau presented during the Council meeting of April 2008 an extensive scientific report in which the Notes already drafted on this subject in 1987, 1992 and 2000 were also reflected.<sup>17</sup> The report described recent domestic and international developments with respect to the growing reality of unmarried cohabitation and registered partnerships, as well as same-sex marriages. It focussed on the issues of private international law relating to unmarried cohabitation and registered partnership, and also referred to the Convention on the Recognition of Registered Partnerships adopted on 22 March 2007 under the auspices of the International Commission on Civil Status. A large number of experts indicated their great interest in the topic and their support for the Permanent Bureau to continue to follow developments in this area. Several experts however indicated that the time was not ripe to develop an instrument.

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<sup>17</sup> Prel. Doc. No 11 of March 2008 for the attention of the Special Commission of April 2008 on General Affairs and Policy of the Conference, available on the website of the Hague Conference under "Work in Progress" then "General Affairs".

### III. POST-CONVENTION SERVICES

The Hague Conference has been a pioneer in developing various methods of monitoring, supporting and reviewing the operation of its Conventions, in particular those providing for cross-border judicial and administrative co-operation.

The post-Convention services described in this chapter can be divided into four main activities:

- treaty administration<sup>18</sup> and maintaining the international networks of Central Authorities and other bodies charged with implementation of the Hague Conventions;
- providing technical assistance and training to States on matters of implementation and, where possible and appropriate, to professionals, companies and individuals on matters relating to the practical operation of Hague Conventions;<sup>19</sup>
- monitoring, review and adaptation of Hague Conventions;<sup>20</sup> and
- promotion and development.<sup>21</sup>

During 2008 the Permanent Bureau continued its development of these services in its three main areas of work: (A) international protection of children and vulnerable adults, international family and family property relations; (B) international legal co-operation and litigation and (C) international commercial and finance law.<sup>22</sup>

Several of the Permanent Bureau's post-Convention activities now take the form of regional programmes or are Convention-related technical assistance programmes that serve (more than) a specific region or State. These post-Convention activities, the administrative management of which has, since early 2007, been placed under the auspices of the International Centre for Judicial Studies and Technical Assistance, will be described in the penultimate Chapter. More information on the International Centre can be found under the last Chapter.

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<sup>18</sup> An important tool in this respect is the website of the Conference, < [www.hcch.net](http://www.hcch.net) >. During 2008, the Hague Conference continued to modernise (a new design was launched in June) and expand its website with a view to facilitating bilingual (and preparation of trilingual) usage, and making all information accessible through a database, including documents in languages other than the official languages of the Conference.

<sup>19</sup> Important tools for supporting implementation are the Guides to Good Practice, training and familiarisation sessions and Special Commissions on implementation. Tools that help promote consistent interpretation and good practices are the Practical Handbooks, an updated database of court decisions (INCADAT) and training seminars. Problem solving can be done through the provision of technical and legal advice and advice / amicus intervention in relation to legal proceedings.

<sup>20</sup> These activities include research through questionnaires and research collaborations; updating of statistics through INCASTAT and ICASTAT and regular updating of bibliographies. Monitoring, review and adaption can also be undertaken through meetings of the Special Commission to review the practical operation of a Convention or seminars with Central Authorities or the judiciary or other expert meetings.

<sup>21</sup> These activities include the promotion of ratifications of and accessions to Hague Conventions through regional seminars, country visits, brochures and articles and conference attendance and exploratory work. Tools for the development of networks can be publications, seminars, direct judicial communications through network judges, bar association meetings, academic conferences and NGO meetings.

<sup>22</sup> As an example of technical assistance in all of these three main areas, it should be noted that the Permanent Bureau, upon request of the Ministry of Foreign Affairs of Montenegro, reviewed the Draft Act on Resolution of Conflict of Laws with Regulations of Other States. Attention was given in particular to the compatibility of the Draft Act with the seven Hague Conventions to which Montenegro is a Party.

## A. International protection of children and vulnerable adults, international family and family property relations

### 1. *Child Abduction Convention (1980)*<sup>23</sup> and *Child Protection Convention (1996)*<sup>24</sup>

#### a. Promoting ratifications and accessions

On 5 June 2008, the Council of the European Union authorised certain EU States to ratify, or accede to, in the interest of the European Community, the 1996 Child Protection Convention,<sup>25</sup> which in December 2008 had 15 Contracting States and was signed by 20 more States. Those EU States that are not yet Parties to the 1996 Convention should ratify, or accede to, the Convention, if possible, before 5 June 2010. It is hoped that this decision will encourage many other Members of the Conference to proceed to the ratification / accession of this important instrument. Croatia signed the 1996 Convention on 30 October 2008. Several other States, including Argentina, Canada, New Zealand, the United States of America and Venezuela, have indicated that they are studying the Convention with a view to ratification or accession.

#### b. Guides to Good Practice

In 2008 the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* was published. This Guide differs from the first three Guides to Good Practice relating to the 1980 Child Abduction Convention,<sup>26</sup> as it relates to both the 1980 and the 1996 Convention, and contains general principles as well as examples of good practice. A copy of the Guide was sent to all National Organs of the Hague Conference and Central Authorities of both Conventions in either English or French. The Spanish version of the Guide is expected to be available during 2009.

The principles and good practices set out in the Guide will assist in the more effective implementation and application of those provisions of the 1980 and 1996 Conventions, which relate to transfrontier contact and provide guidance concerning their application.

The purpose of the General Principles is to draw attention to certain general considerations and special features which need to be borne in mind by States and their authorities when formulating policies in respect of international access / contact cases. The Principles provide an overall model for constructing an international system of co-operation designed to secure effective respect for rights of contact. They are aimed at all States, not only those signatory to the 1980 Child Abduction Convention or the 1996 Child Protection Convention. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to Central Authorities in informing their practice. They could possibly also be helpful to the courts and other authorities, as well as to applicants as they present their cases.

The Guide looks at all the different aspects of transfrontier contact starting with the importance of contact to children. Areas examined include mediation and parental agreement, inter-State administrative co-operation, the processing of international applications concerning contact by the competent authorities, making, modifying and enforcing cross-border contact orders, relocation and contact with the left-behind parent and the interpretation of Article 21 of the 1980 Child Abduction Convention.

<sup>23</sup> *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.*

<sup>24</sup> *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.*

<sup>25</sup> *Official Journal of the European Union*, L-151, p. 36 (2008/431/EC).

<sup>26</sup> Parts I, on Central Authority Practice, and II, on Implementing Measures, were published in 2003. Part III, on Preventive Measures, was published in 2005. All Guides are published in English, French and Spanish.

During 2008 the Permanent Bureau continued its work, with the assistance of a group of experts, on the Guide to Good Practice on Enforcement of Return Orders / Access Orders (Part IV). This Guide is expected to be finalised in 2009. Furthermore, work will soon be under way on updating the standard request for a return form in consultation with Contracting States.

Work on a Checklist on Implementation of the 1996 Convention and on a Handbook on the practical operation of the Convention, is under way.

c. INCADAT

The International Child Abduction Database (INCADAT, < [www.incadat.com](http://www.incadat.com) >) was established by the Permanent Bureau in 1999 with the objective of making accessible many of the leading decisions rendered by national courts in respect of the 1980 Child Abduction Convention. INCADAT is used by judges, Central Authorities, legal practitioners, researchers and others interested in this rapidly developing branch of law. INCADAT has already contributed to the promotion of mutual understanding and consistency of interpretation among the 81 States Parties to the 1980 Convention, essential elements in the effective operation of this Convention and to the promotion of the 1980 Convention among States that are not (yet) a Party.

INCADAT is an evolving tool. During 2008 its substantive legal coverage continued to expand, as did the network of INCADAT correspondents and the so-called "non-Hague Convention" webpage, which deals with relevant developments concerning States that are not Parties to the Convention. Work also continued on the Spanish module. On 31 December 2008, INCADAT included more than 800 summaries of the leading child abduction cases in English and French, as well as the full text of the decisions in their original language. Progress was also made on the translation into Spanish of all these summaries, and efforts were made to expand the commentary section with a view to comparing and contrasting different decisions.

d. INCASTAT

Implementation of INCASTAT, the international child abduction statistical database, continued during 2008. The system will allow Central Authorities designated under the 1980 Child Abduction Convention to generate different types of statistical analyses and graphs. In 2008 the Permanent Bureau prepared important technical improvements which are expected to be completed early in 2009.

e. iChild case management system

After the completion of the pilot in 2006, efforts continued during 2007 and 2008 on implementation of the iChild case management system for the 1980 Child Abduction Convention. Available in English, French and Spanish, this tool is designed to store and keep track of all essential information concerning child abduction cases.

Both INCASTAT and iChild are activities that are being funded through the Supplementary Budget of the Hague Conference.

f. *The Judges' Newsletter on International Child Protection*

Ongoing work regarding the *The Judges' Newsletter on International Child Protection* during 2008 included consultation with the Editorial Board, soliciting material, writing and editing, co-ordination with the publisher (Butterworths Legal Publishers), and maintenance of a distribution list. Furthermore, the work included translation into other languages (Spanish and Arabic).

In winter 2008, Volume XIII of *The Judges' Newsletter on International Child Protection* was published by the Permanent Bureau. This volume features, *inter alia*, the Hague Centre for Judicial Studies and Technical Assistance, the 1993 Intercountry Adoption Convention and Judicial Communications. All volumes of *The Judges' Newsletter on*

*International Child Protection* are available in English and French, as well as various volumes in Spanish, on the Hague Conference website.<sup>27</sup>

g. Direct international judicial communications

During 2008 progress was made in respect of the regional development of the International Hague Network of Judges (IHNJ) specialised in family matters, in particular related to the Special Programme for Latin American States (Judges from Chile, the Dominican Republic, Panama and Peru were designated to the Network).

The IHNJ included on 31 December 2008 formal and informal nominations of 39 Network Judges from Argentina, Australia, Brazil, Canada, Chile, China (Hong Kong SAR), Cyprus, the Czech Republic, Denmark, the Dominican Republic, Gabon, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Panama, Peru, Romania, the United Kingdom (England and Wales, Northern Ireland and Scotland), the United States of America and Uruguay. The number of judges that are part of the Hague Network is steadily growing as the importance of this network is increasingly widely acknowledged.

Preparations were ongoing for a joint conference to be hosted by the Hague Conference and the European Community in Brussels in January 2009 on Direct Judicial Communications in Family Law Matters and the Development of Judicial Networks.

h. International Child Abduction and Child Protection Assistance Programme

The International Child Abduction and Child Protection Assistance Programme launched by the Permanent Bureau in 2007 has been further developed throughout 2008. Further details on this Programme are provided in the Chapter on the International Centre below.

i. Participation in seminars and expert meetings

The 1980 Child Abduction Convention was discussed at the International Congress of Family Law, co-organised by the Supreme Court of Justice of Venezuela and UNICEF, which was held from 5 to 8 March 2008 in Caracas, Venezuela. The Permanent Bureau provided the keynote speaker at a symposium in Tokyo on the "Hague Convention: International Children's Rights in the 21st Century", organised by the Embassy of Canada in Japan, with the participation of experts from Japan, Canada and the United States of America (13 - 15 March 2008).

Presentations on the 1980 and 1996 Conventions were made by the Permanent Bureau during the Ninth Biennial International Conference of the International Association of Women Judges on "Justice for All: Access, Discrimination, Violence and Corruption" held in Panama City, Panama, from 25 to 28 March 2008, as well as at an International Conference in Geneva, organised by the Swiss Foundation of the International Social Service, on "Children in Cross-border Family Conflicts" (21 – 23 April 2008), which focused on mediation in the context of the 1996 Convention.

The Chilean Central Authority under the 1980 Child Abduction Convention organised a Regional Judicial Seminar on Child Abduction in which the Permanent Bureau participated from 23 to 24 April 2008 in Santiago, Chile.

The 1980 and 1996 Conventions were discussed in the Seventh Bi-National (US-Mexico) Child Abduction and Child Protection Conference held in San Diego, Mexico, from 1 to 2 May 2008 and also during the Child Protection and Child Abduction Training for Prosecutors held in Montevideo, Uruguay, on 11 June 2008 and the Judicial Seminar

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<sup>27</sup> For a complete list of volumes published so far (including the Arabic version of the autumn 2004 edition), see the Publications section on the website of the Hague Conference.

organised by the Judicial School for the Second Federal Region, held in Rio de Janeiro, Brazil, on 19 August 2008.

The 1980 and 1996 Conventions were also promoted during the Third Asia Pacific Regional Conference on International Co-operation through Hague Conventions in the Asia Pacific, from 24 to 26 September 2008.

The Permanent Bureau took part in a Conference organised by the University of Barcelona, Spain (2 - 3 October 2008) on International Judicial Co-operation in Civil Matters, which *inter alia* explained the co-operation mechanism in the 1980 Child Abduction Convention, as well as other Hague Conventions.

Members of the Permanent Bureau took part in a session of the International Bar Association's Annual Conference in Buenos Aires, Argentina (12 - 17 October 2008) on the "International Movement of Children" and "Mediation in International Child Abduction Cases". During that same week in Buenos Aires members of the Permanent Bureau took part in a Judges' Seminar on "International Child Abduction", and the official launch of a "Model Law of Procedure", organised by the Buenos Aires Magistrates Association, as well as the launch of the Argentinean National Network of Expert Judges on Child Abduction at the Association of Federal Magistrates. On 15 October 2008, the Permanent Bureau presented a special lecture on International Child Protection at the University of Buenos Aires Law School to an audience of judges, academics, practitioners, health professionals and research students.

Members of the Permanent Bureau participated in a UNICEF regional (Latin America and the Caribbean) meeting held in Panama on 22 October 2008 and made presentations on the Hague Children's Conventions.

The Permanent Bureau presented papers on "the Malta Process" at the Salzburg Global Seminar on "Islamic Law and International Law: Searching for Common Ground" from 25 - 30 October 2008, organised in co-operation with the International Bar Association, and on "Judicial Co-operation and Communication in the Context of the Hague Conventions" at the Law of the Future Conference 2008, organised by the Hague Institute for the Internationalisation of Law (HiiL) from 23 to 24 October 2008 in The Hague.

## 2. *Intercountry Adoption Convention (1993)*<sup>28</sup>

### a. Promoting ratifications and accessions

On 1 April 2008, the 1993 Intercountry Adoption Convention entered into force for the United States of America. The United States thereby joined the Hague global network in the field of intercountry adoption to which, on 31 December 2008, 77 States were a Party. This network includes some 550 Central Authorities, competent authorities and accredited bodies co-operating to protect children worldwide.

The United Nations Committee on the Rights of the Child in its State by State reviews often recommends States, who are not (yet) a Party to the 1993 Convention, to ratify or accede to the Convention as quickly as possible as the safeguards in the Convention are intended to protect the child who is the subject of an intercountry adoption, in particular from abduction, sale or trafficking.<sup>29</sup>

On 19 March 2008, an important Report on Adoption (*Rapport sur l'adoption*) drawn up by Mr Jean-Marie Colombani, former chief editor of *Le Monde*, at the request of the French Government was delivered to the French President. The extensive Report (350 pages) makes 32 recommendations aimed at developing strategies and improving

<sup>28</sup> *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.*

<sup>29</sup> See the website of the United Nations Committee on the Rights of the Child at [www2.ohchr.org/english/bodies/crc/index.htm](http://www2.ohchr.org/english/bodies/crc/index.htm) (last consulted on 27 March 2009).

existing procedures and structures in France regarding both domestic and intercountry adoptions, including (i) reinforcing the Central Authority designated under the 1993 Intercountry Adoption Convention, by incorporating it into the Ministry of Foreign Affairs; (ii) ensuring a more active and immediate involvement of the Central Authority in multilateral consultations, in particular the periodic meetings of Central Authorities organised by the Hague Conference; and (iii) initiating and participating in the technical assistance programmes developed by the Hague Conference for countries of origin.

#### b. Guides to Good Practice

In 2008 the first Guide to Good Practice on the Convention was published by the Permanent Bureau: *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: A Guide to Good Practice*. A copy of the Guide, which is also available on the website of the Hague Conference, was sent to all National Organs of the Hague Conference, Central Authorities and accredited bodies in either English or French. The Spanish version of the Guide will be available in the course of 2009.

The new Guide identifies important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention. It is directed at policy makers involved in short-term and long-term planning to implement the Convention in their country, as well as judges, lawyers, administrators, caseworkers, accredited bodies and other professionals needing guidance on some practical or legal aspects of implementing the Convention.

The Guide emphasises the shared responsibility of receiving States and States of origin to develop and maintain ethical intercountry adoption practices. At the heart of the matter are the child's best interests, which must be the fundamental principle that supports the development of a national child care and protection system as well as an ethical, child-centred approach to intercountry adoption.

Preliminary work continued in 2008 on the preparation of the second Guide to Good Practice on the subject of accreditation.

#### c. Country profiles

Following up on the Recommendations of the Special Commission of 2005 on Intercountry Adoption, the Adoption Section of the website of the Hague Conference was expanded by the addition of a section where country profiles would be posted. These profiles should include, *inter alia*, procedures, website addresses and how the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities, accredited bodies and any other bodies and persons. This work is ongoing and the final form of the country profiles is still to be finalised. This post-Convention activity is being funded through the Supplementary Budget of the Hague Conference.

#### d. ICASTAT

Work began on the collection of statistics from States Parties to the 1993 Intercountry Adoption Convention for the purpose of establishing a special database on intercountry adoption: ICASTAT. ICASTAT will be made available directly to Central Authorities via the Hague Conference website. This post-Convention activity is being funded through the Supplementary Budget of the Hague Conference.

#### e. Intercountry Adoption Technical Assistance Programme (ICATAP)

To ensure the successful operation of the 1993 Intercountry Adoption Convention, it is essential that the initial steps necessary for its implementation within each Contracting State be carefully planned. The Convention places heavy burdens of responsibility on both receiving States and States of origin. Providing technical assistance for the proper implementation of the Convention may be particularly vital in countries that have few resources available.

ICATAP is designed to provide assistance directly to governments of certain States which are planning ratification of, or accession to, the 1993 Convention, or which have already ratified or acceded but are experiencing difficulties with implementation of the Convention. ICATAP was launched by the Permanent Bureau in 2007 and functioned successfully throughout 2008. Further details on ICATAP can be found in the Chapter on the International Centre.

f. Participation in seminars and expert meetings

From 11 to 13 February 2008, a member of the Permanent Bureau gave a presentation on the 1993 Intercountry Adoption Convention during the Meeting on Research on Intercountry Adoption in Ireland, organised by the Children's Research Centre of the Trinity College in Dublin, Ireland. On 26 February 2008, the Permanent Bureau participated, among others, in a round table and panel discussion on adoptions in Europe, co-organised by the European Parliament and Terre des Hommes in Brussels to which experts from all the EU Member States were invited. A member of the Permanent Bureau delivered a paper at the Euradopt Conference on "Scenarios and Challenges of Intercountry Adoption" held from 4 to 5 April 2008 in Venice, Italy. The 1993 Convention was promoted during the Third Asia Pacific Regional Conference on International Co-operation through Hague Conventions in the Asia Pacific, from 24 to 26 September 2008.

Members of the Permanent Bureau made presentations at the European Central Authorities meeting in Brno, Czech Republic, from 24 to 26 September 2008 and the meeting on International Co-operation between Central Authorities, held at the University of Barcelona, Spain, from 2 to 3 October 2008.

From 4 to 5 November 2008, the Hague Conference participated in the First International Congress on Adoptions held in Bogotá, Colombia, and organised by the *Instituto de Bienestar Familiar* (ICBF). The Congress analysed the situation regarding national and international adoptions in Colombia. Representatives from receiving countries such as France, Germany, Italy, Norway and the United States of America and of countries of origin such as Brazil, Ecuador, Guatemala, México, Paraguay and Uruguay attended the Congress.

Members of the Permanent Bureau participated in the OSCE Seminar on Intercountry Adoption held in Kyiv, Ukraine, from 6 to 7 November 2008 and in the First International Congress on Adoption, held in Lisbon, Portugal, from 19 to 20 November 2008 organised by the Portuguese Central Authority (*Instituto da Segurança Social I.P., ISS*) in co-operation with the *Santa Casa da Misericórdia de Lisboa* (SCML) as well as the *Associação Portuguesa para o Direito dos Menores e da Família - CrescerSer*.

3. *Child Support Convention and Protocol on Applicable Law (2007)*<sup>30</sup>

a. Promoting ratifications and accessions

The United States of America declared during the Council on General Affairs and Policy in 2008 that it is preparing for Senate approval for ratification of the Convention which the United States of America already signed on the day of its adoption. The European Community, Brazil and Burkina Faso<sup>31</sup> also indicated in 2008 that they envisage joining the Convention in the near future. The European Community declared that it is actively working towards the signing and ratification also of the Protocol on Applicable Law. The first step towards signature and ratification by the European Community of both instruments was made by the adoption by the Council of the European Union on 18 December 2008 of the Regulation on jurisdiction, applicable law, recognition and

<sup>30</sup> *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.*

<sup>31</sup> Burkina Faso signed the 2007 Convention on 7 January 2009.

enforcement of decisions and co-operation in matters relating to maintenance obligations.<sup>32</sup>

b. Special Commission on implementation

As a result of the Twenty-First Session of the Hague Conference held from 5 to 23 November 2007, several recommendations were adopted that gave the Permanent Bureau a very extensive post-Convention work programme, among which was a recommendation to convene a Special Commission on the implementation of the 2007 Child Support Convention 12 to 18 months after the adoption of the Convention. The Permanent Bureau started in 2008 preparations for the Special Commission that is planned to be convened in November 2009.

c. Explanatory Reports

The final versions of two Explanatory Reports are expected to be published in the first half of 2009. The Explanatory Report drawn up by Alegría Borrás and Jennifer Degeling is dedicated to the 2007 Child Support Convention, while the Explanatory Report drawn up by Andrea Bonomi is dedicated to the 2007 Protocol.

In November 2007 the Ministry of Justice of Brazil adopted a public policy of regional dissemination of information on the 2007 Child Support Convention and graciously offered to bear all the costs of both translation and publication of a Portuguese version of the Report to be prepared in consultation with the Permanent Bureau. Work on the Portuguese translation will commence once the Explanatory Report has been finalised.<sup>33</sup>

d. Final Acts and Proceedings

The complete collection of preliminary documentation and the minutes of the discussions of the Twenty-First Session concerning both the 2007 Convention and its Protocol, together with previous related work and both Explanatory Reports will be reproduced in the *Proceedings of the Twenty-First Session*, which will form part of the traditional series of publications of the Hague Conference.

e. Guide to Good Practice

In 2008 preliminary work started on the development of a Guide to Good Practice on Implementation, a draft of which will be reviewed by the Special Commission in November 2009.

f. Practical Handbook

Work started in 2008 on a Practical Handbook for caseworkers and those with responsibility for processing applications under the Convention. The Province of British Columbia's Ministry of the Attorney-General kindly agreed to second the services of Ms Hannah Roots to the Permanent Bureau to assist with the project. The draft for a Practical Handbook will also be reviewed by the Special Commission to be held in November 2009.

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<sup>32</sup> *Official Journal of the European Union*, L-7, p. 1 (2009/4/EC). Preamble (8): "In the framework of [t]he Hague Conference on Private International Law, the Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (...) and the Protocol on the Law Applicable to Maintenance Obligations (...). Both instruments should therefore be taken into account in this Regulation."

<sup>33</sup> It is worth noting that, during the official visit by the Secretary General of the Hague Conference to Lisbon in May 2008, a project of the Ministry of Foreign Affairs of Portugal to prepare a complete collection of Portuguese translations of the Hague Conventions was discussed.

g. Standard forms and country profiles

The Permanent Bureau continued its work on the development of standardised forms for applications under the Convention and on the country profile through the continued efforts of the Administrative Co-operation Working Group (ACWG) which may be established as a standing Central Authority Co-operation Committee. In 2008 support was given by the Permanent Bureau to the Country Profiles Group for the finalisation of the Country Profile Form for the provision of information.

h. iSupport

Exploratory work continued in 2008 under the guidance of the Permanent Bureau on the possible development of a common multilateral electronic case management and Internet-based communication system (iSupport). A series of meetings were held in Australia, Canada, New Zealand and the United States of America during which a draft Business Plan for the Development of iSupport was presented, seeking the support and assistance of the child support authorities and organisations to facilitate the further development of the iSupport system. The collaboration of both governments and service providers (information technology vendors and banks) with an interest for the development and implementation of such systems, and possibly their operation and maintenance, was called upon. The system would assist the effective implementation of the 2007 Child Support Convention and lead to greater consistency in practice in the different Contracting States. In addition to the management of cases, the system could provide instructions to banks with regard to electronic transfer of funds and could send and receive secured online applications under the Convention. The system could also generate the required statistics as part of the means of monitoring the operation of the Convention.

i. Participation in seminars and expert meetings

The 2007 Child Support Convention and its Protocol were promoted on many occasions during 2008, including at the *États généraux du droit de la famille en France* held in Paris, France, from 24 to 25 January 2008; the Second International Conference hosted by the National Child Support Enforcement Association (NCSEA) in Vancouver, British Columbia, Canada (9-12 March 2008); the Annual meeting of NCSEA held in San Francisco, United States of America, from 3 to 7 August 2008; the Nordic Conference on the Recovery of Maintenance, organised by the Department of Family Affairs of the Danish Government held in Copenhagen from 20 to 22 August 2008; a workshop organised by the Brazilian Ministry of Justice in Brasilia on 22 August 2008; and the Anglophone Germanophone Judicial Conference in Vienna, Austria, held from 10 to 13 September 2008.

The Convention was also promoted during the Third Asia Pacific Regional Conference on International Co-operation through Hague Conventions in the Asia Pacific that took place from 24 to 26 September 2008. On 29 September a meeting with the bar association of La Plata, Argentina, was entirely dedicated to the study of the 2007 Child Support Convention. Both the Convention and the Protocol were the subject of a panel during the European Family Law Conference held in Brussels from 11 to 12 December 2008.

## B. International legal co-operation and litigation

### 1. *Apostille Convention (1961)*<sup>34</sup>

#### a. Promoting ratifications and accessions

The Apostille Convention welcomed its 95th Contracting State when the Dominican Republic deposited its instrument of accession on 12 December 2008. The Convention, to which almost all Member States are a Party and which became the second Hague Convention (after the 1980 Child Abduction Convention) to be in force in all the 27 EU Member States, continues to attract new States from all continents, which confirms the global practical importance of the 1961 Apostille Convention. However, the great number of Apostilles issued around the world each day requires important efforts to assure cohesion in the application of the Convention.

#### b. Practical Handbook

Following up on the Conclusions and Recommendations adopted by the Special Commission on the practical operation of the Hague Apostille, Evidence and Service Conventions (28 October – 24 November 2003), work was started on developing a comprehensive Practical Handbook on the operation of the 1961 Apostille Convention. The Handbook will provide both practical and direct answers to the most basic questions raised by the day-to-day application of the Convention, and will offer more detailed commentaries on specific issues raised by the Convention over the years. The Practical Handbook is expected to be finalised in 2010.

#### c. Electronic Apostille Pilot Program (e-APP)

Under the electronic Apostille Pilot Program (e-APP), the Hague Conference and the National Notary Association of the United States of America, together with interested States, are developing, promoting and assisting in the implementation of low-cost, operational and secured software models for (i) the issue and use of electronic Apostilles (e-Apostilles), and (ii) the operation of electronic Registers of Apostilles (e-Registers). The e-APP, officially launched in 2006, illustrates how the Conclusions and Recommendations of the 2003 Special Commission meeting and of the 2005 International Forum on e-Notarisation and e-Apostilles can be implemented in practice by relying on existing and widely used technology.

An important next step in the innovative electronic Apostille Pilot Program was the joint launch of the official website of the e-APP (< [www.e-APP.info](http://www.e-APP.info) >) in 2007. The website allows in particular access to (i) step-by-step instructions on how Competent Authorities may use PDF technology and digital certificates to issue e-Apostilles, and how third parties can use such e-Apostilles, and (ii) the fully open-source software for the creation and operation of e-Registers by Competent Authorities, and an explanation on how third parties can use such e-Registers.

Because the e-APP provides security that far exceeds standards in a paper-only environment, the e-APP is a powerful tool to combat fraud as more and more sensitive public documents – including birth certificates, notarial acts, international adoption papers and education diplomas and degrees – are exchanged between States.

In October 2007, both Belgium and Colombia launched e-Registers for verifying the authenticity of their respective Apostilles. Belgium is working towards the issuance of e-Apostilles after having implemented the e-Registers. In the meantime, Colombia has started to produce its Apostilles in a way that is very close to the model suggested under the e-APP.

During 2008 Spain prepared for implementation of the two components of the e-APP (e-Register and e-Apostille). On 1 December 2008, the Superior Court of Murcia became the first jurisdiction in Europe to issue e-Apostilles under the e-APP. The pioneering

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<sup>34</sup> *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents.*

initiative of the Spanish Authorities to link the e-APP to intercountry adoption matters underlines the importance of Conclusions and Recommendations of the 2003 Special Commission, which stressed the utility of linking the application of the 1993 Intercountry Adoption Convention to the 1961 Apostille Convention.<sup>35</sup>

d. Participation in seminars and expert meetings

From 20 to 27 February 2008, the Permanent Bureau co-operated with UNCTAD and the WTO in a series of meetings on the Hague Apostille, Service and Evidence Conventions. The meetings were held in Antananarivo, Madagascar with government officials and focused on the implications and obligations arising from the Apostille, Service and Evidence Conventions. The meetings were part of an overall ITC project aimed at strengthening Madagascar's legal framework for international trade through greater accession to and participation in multilateral conventions. In May 2008 a delegation of two experts from Madagascar visited the Permanent Bureau to continue to discuss the possible accession of Madagascar to the Apostille, Service and Evidence Conventions. This meeting was organised in co-operation with LegaCarta, an organisation managed by the International Trade Centre UNCTAD/WTO (ITC).

The Permanent Bureau was also represented at the Fourth International Forum on Digital Evidence, held from 27 to 30 May 2008 in New Orleans, United States of America. This Forum is a continuation of the first three Forums on e-Apostille and e-Notarisation. Every year the Permanent Bureau, which has an active role in these Forums, encourages in particular the Competent Authorities designated under the 1961 Apostille Convention to take part in this important event to enable a fruitful exchange of experiences and information regarding the application of this Convention.

On 8 and 9 April 2008, the Fourth ASEAN Law Forum on Mutual Legal Assistance in Civil and Commercial Matters was held in Ha Noi, Viet Nam. The Forum, hosted by the Ministry of Justice of Viet Nam, was attended by experts from all ASEAN Member States - Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam – as well as by representatives from the Hague Conference, Australia and China. Presentations were delivered and discussions were held on measures to strengthen legal co-operation among the ASEAN countries in civil and commercial matters, and experiences were shared by the Contracting States with respect to the 1961 Apostille Convention and the 1965 Service Convention.

On 17 July 2008, the Permanent Bureau participated and delivered a paper in a workshop on the 1961 Apostille Convention during the CAFTA-DR (Central America Free Trade Agreement and the Dominican Republic) Regional Trade Programme which was attended by experts from Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. Furthermore, the 1961 Apostille Convention was part of the programme of the Third Asia Pacific Regional Conference on International Co-operation through Hague Conventions in the Asia Pacific, which took place in Hong Kong from 24 to 26 September 2008.

In November 2008 technical assistance was given to the Government of Georgia in respect of the 1961 Apostille Convention.

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<sup>35</sup> The Conclusions and Recommendations are available on the Hague Conference website under "Apostille Section", then "Practical Operation Documents", in particular Conclusion No 6.

## 2. *Service Convention (1965)*<sup>36</sup>

### a. Promoting ratifications and accessions

Bosnia and Herzegovina and Iceland acceded in 2008 to the 1965 Service Convention. On 31 December 2008 the Convention counted 59 Contracting States.

### b. Practical Handbook on the 1965 Service Convention

In 2006, the Permanent Bureau published an entirely revised and enhanced edition of the Practical Handbook on the operation of the 1965 Service Convention. This publication, in English and French, accompanied by an electronic book (e-book) which is easy to use and permits keyword searches, provides in-depth explanations on the general operation of the Convention as well as authorised comments on the main issues raised by practice over the last 40 years. The Practical Handbook was also made available in Russian. Furthermore, editions of the Handbook in Chinese (two versions) and Portuguese are in preparation; the possibility of publishing editions of the Handbook in Spanish, Ukrainian and Romanian is also being examined.

The "Service Section" of the Hague Conference website offers a wide variety of practical information relating to service in the States Parties to the Convention.

### c. Participation in seminars and expert meetings

A major event concerning the 1965 Service Convention was the seminar held on 15 and 16 May 2008 in Yekaterinburg, Russia. This Seminar, a follow-up from two seminars convened in Moscow on 4 and 5 October 2005 and in Saint Petersburg on 30-31 January 2007, was jointly organised by the Permanent Bureau and the Canadian and Finnish Governments.

As mentioned under the 1961 Apostille Convention, the 1965 Service Convention was also discussed at both the Fourth ASEAN Law Forum on Mutual Legal Assistance in Civil and Commercial Matters held in Ha Noi, Viet Nam on 8 and 9 April 2008 and from 11 to 12 November 2008 at the Annual Conference of the American Association on Private International Law (ASADIP) in Mexico. The Permanent Bureau participated in both meetings.

## 3. *Evidence Convention (1970)*<sup>37</sup>

### a. Promoting ratifications and accessions

Liechtenstein, Bosnia and Herzegovina and Iceland acceded in 2008 to the 1970 Evidence Convention. On 31 December 2008, the Convention had 47 Contracting States.

### b. Practical Handbook

Work continued in 2008 on a new edition of the Practical Handbook on the operation of the 1970 Evidence Convention that will contribute to facilitating application of the Convention.

## 4. *Special Commission on the practical operation of the Hague Apostille, Service, Evidence and Access to Justice Conventions*

During 2008 the Permanent Bureau continued its preparations of the next meeting of the Special Commission to discuss the practical operation at global level of the four Hague Conventions on administrative and judicial co-operation. The Special Commission was held from 2 to 12 February 2009 in The Hague. Preparatory consultations of all Members of the Conference together with non-Member States Parties to these four Conventions,

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<sup>36</sup> *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.*

<sup>37</sup> *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.*

were undertaken on the four topics in the form of questionnaires, the results of which were processed and analysed in the form of synopsis documents, summaries and analysis of responses to these questionnaires. It was the first time that the practical functioning of the 1980 Access to Justice Convention was examined.

#### 5. *Choice of Court Convention (2005)*<sup>38</sup>

##### a. Promoting ratifications and accessions

During 2008 the Permanent Bureau continued its efforts to promote the 2005 Choice of Court Convention. Since the ratification by Mexico in September 2007, one more ratification or accession is necessary for the Convention to enter into force. During the April 2008 meeting of the Council on General Affairs and Policy of the Conference, several Members, including Argentina, Australia and Canada, declared that they were studying the possibility of signing, ratifying or acceding to the Convention. These States are carrying out preparatory legislation work towards signature and ratification or accession. The United States of America expressed in 2008<sup>39</sup> its intention to sign the Convention as did the European Community. It is expected that the Council of the European Union will take the decision on the signing of the Convention in early 2009.<sup>40</sup>

##### b. *Proceedings of the Twentieth Session*

Work on the publication of the *Proceedings* containing the preparatory scientific studies, the work of the preparatory Special Commission meetings and of the final negotiations during the Twentieth Session continued in 2008. It is hoped that the volume of the *Proceedings* with the complete *travaux préparatoires* concerning the 2005 Choice of Court Convention will be published in 2009.

##### c. Participation in seminars and expert meetings

The Third Asia Pacific Regional Conference in September 2008 gave special emphasis to the three most recent Hague Conventions, *i.e.*, the 2005 Choice of Court Convention, the 2006 Securities Convention and the 2007 Child Support Convention and its Protocol. In the Conclusions of the Third Asia Pacific Regional Conference, the 27 participating States acknowledged “the desirability of acceding to the 2005 Convention as an instrument to consolidate the international litigation system, in parallel to the international arbitration system, in particular the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards”. The 2005 Choice of Court Convention has not only the potential of becoming a useful tool in international business relationships but may also be used as a legislative model: for example, the 2005 Choice of Court Convention served as a reference for the Reciprocal Enforcement Ordinance between the Hong Kong Special Administrative Region and the courts of mainland China which came into effect in August 2008.<sup>41</sup>

The 2005 Choice of Court Convention was also extensively discussed in meetings which took the form of a panel meeting during both the ILA Conference held in Rio de Janeiro, Brazil, from 17 to 21 August 2008 and the IBA Congress held in Buenos Aires, Argentina, from 12 to 19 October 2008 and during the 21st LAWASIA Conference held from 30 October to 1 November in Kuala Lumpur, Malaysia. The Permanent Bureau participated in these meetings.

<sup>38</sup> *Hague Convention of 30 June 2005 on Choice of Court Agreements.*

<sup>39</sup> The United States of America signed the 2005 Choice of Court Convention on 19 January 2009.

<sup>40</sup> The European Community will have signed the 2005 Choice of Court Convention during the Council of March / April 2009 on General Affairs and Policy of the Conference.

<sup>41</sup> Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned.

## C. International commercial and financial law

### 1. *Traffic Accidents Convention (1971)*<sup>42</sup>

The 1971 Traffic Accidents Convention features among its primary objectives the provision of clear, precise and easily applicable rules to determine what law applies to traffic accidents. These clear rules serve the interests of all the parties involved and those of the victim in particular. The victim has a critical interest in knowing with certainty, immediately after an accident, what law applies to the issues of liability and damage, so that these do not become the subject of (protracted) litigation. This is also in the interest of insurers who are thus able to avoid judicial costs. This, in turn, results in lower insurance premiums, which is in the general interest of everyone.

The 1971 Traffic Accidents Convention has proven its utility since it came into force on 3 June 1975 and has continued to attract new States Parties. On 31 December 2008 there were 19 Contracting States. Moreover, the Convention has had an impact as a model law in several States such as Tunisia and in some Mercosur States, for example Argentina. In July 2008, Morocco indicated its interest in joining this Convention.

The Convention retains its interest following the publication on 11 July 2007 of Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations ("Rome II"), which does not contain specific rules for traffic accidents. During the meeting of the Council on General Affairs and Policy in April 2008 a preliminary discussion took place on the relationship between the 1971 Traffic Accidents Convention and Rome II.

It should be stressed that most international traffic accidents, probably more than 99%, are dealt with outside the court system, mainly through the activity of insurers, and often through agreed international arrangements.

### 2. *Products Liability Convention (1973)*<sup>43</sup>

The 1973 Products Liability Convention, the structure of which follows that of the 1971 Traffic Accidents Convention, also provides a high degree of predictability of the applicable law in cases of liability of manufacturers, producers or suppliers, for all sorts of damage caused by a product. These clear rules serve the interests of all the parties involved and those of the victim in particular. During the meeting of the Council in April 2008 a preliminary discussion took place on the relationship between the 1973 Products Liability Convention and the Rome II Regulation. In August 2008, Brazil indicated its interest in joining the 1973 Products Liability Convention.

### 3. *Securities Convention (2006)*<sup>44</sup>

#### a. Promoting ratifications and accessions

During 2008 the Permanent Bureau continued to promote the 2006 Securities Convention which is designed to provide legal certainty and predictability to cross-border transactions worth more than USD 2,000 million per day. It does so by providing clear and practical conflict of law rules for the most important commercial law issues affecting intermediated securities, *i.e.*, securities that are credited to an account with a broker, bank, clearing agency or other intermediary.

On 28 April 2008, Mauritius signed the 2006 Securities Convention following the example set by the United States of America and Switzerland, both having signed the Convention on 7 July 2006. The three States are in the process of preparing for ratification of the

<sup>42</sup> *Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.*

<sup>43</sup> *Hague Convention of 2 October 1973 on the Law Applicable to Products Liability.*

<sup>44</sup> *Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.*

Convention. Several States also indicated that they were undertaking the necessary steps towards becoming Parties to the Convention. A representative of the United States of America stated during the Council on General Affairs in 2008 that the Convention is considered as a priority for the United States Government and that a document is being prepared for Senate approval of the ratification of this Convention. The European Community started consultations regarding a possible collective signing and ratification. Three ratifications or accessions will suffice to bring the Convention, which is open to all States, into force.

The 2006 Securities Convention, which deals with private law issues only, has no impact on existing or future regulatory regimes controlling the conduct of intermediaries. An instrument that aims at a global substantive law regime for the holding, transfer and collateralisation of securities, and which is fully complementary to the 2006 Securities Convention, is the draft convention on substantive rules regarding intermediated securities, developed under the auspices of UNIDROIT. From the outset, the Permanent Bureau has actively participated in the ongoing negotiations for the preparation of this draft convention, and was present during the first session of the diplomatic Conference in Geneva in September 2008.

#### b. Participation in seminars and expert meetings

In the course of 2008, the Permanent Bureau took part in several seminars to promote and encourage the signature and ratification of or accession to the 2006 Securities Convention. During the Third Asia Pacific Regional Conference on International Co-operation through Hague Conventions in the Asia Pacific, held in Hong Kong from 24 to 26 September 2008, many Asian States showed interest in the Convention. The Third Asia Pacific Regional Conference recognised in its conclusions "the benefits of implementing the 2006 Securities Convention as an instrument which provides a clear, straightforward, pragmatic and easily applicable solution to [the] technically complex issue" of securities held with an intermediary.

## IV. DEVELOPMENTS AT THE REGIONAL LEVEL

Over the past decade the Permanent Bureau has continued to develop its activities in the fields of promotion, education and training in respect of Hague Conventions, at the global, regional and national levels, in close consultation and co-operation with Hague Conference Members, with States Parties to Hague Conventions and with those States that expressed the intention to become a Member of the Conference or Party to one or more of its Conventions. In recent years the Permanent Bureau has begun to focus efforts and initiatives at the regional level, in particular in Latin America, in Africa, in the Asia Pacific region, as well as among States with legal systems based upon or influenced by Shariah law and, more recently, also among States Parties from the Commonwealth of Independent States.

These regional developments, which have always been generously funded by Member States of the Conference, bring several dividends. They promote closer networking and co-operation among States with special cultural and linguistic ties. They bring into the Hague Conventions more States formerly unfamiliar with them. They benefit other States outside the regions through the development of good practices, consistent interpretation, and effective implementation and thus contribute in a more general way to the successful operation of the Conventions. They allow consideration to be given to ways of adapting the Conventions to the particular legal environments shared by States in a region.

### A. The Americas

The Special Programme for Latin American States for the promotion and training in respect of Hague Conventions has completed its fourth year. States that have been involved so far include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the

Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, as well as Canada, Spain and the United States of America.

The Special Programme, initiated in early 2005, has been progressively expanding its scope and increasing the extent of its services as was foreseen during the implementation of Phases I to III.<sup>45</sup> Phase IV (July 2008 – June 2009) will combine all the services that have been foreseen in the first three phases and focus on both the Hague Children's Conventions and the Conventions on legal and administrative co-operation.

It should be noted that during 2008 some concrete developments resulted from the work achieved in 2007 - during the 2007 Interamerican Expert Meeting on International Child Abduction jointly organised by the Inter-American Children's Institute (IIN) and the Hague Conference - in particular, the adoption of the Model Law of Procedure for the Application of the Conventions on International Child Abduction and the Preliminary Study on the 1996 Child Protection Convention.

The Model Law was launched in October 2008 by the Hague Conference and IIN, simultaneously from Buenos Aires and Ottawa. The objective of the Model Law is to guide States in making their internal procedures compliant with the swift timeframes provided for in the Child Abduction Conventions (1980 Hague Convention and 1989 Inter-American Convention). In particular, the Supreme Court of the Dominican Republic adopted a resolution on 6 March 2008 establishing a special procedure applicable to the 1980 Hague Convention which has been inspired on the Model Law. Furthermore, the Model Law is also being considered for the ongoing development of draft laws of procedure in Argentina, Brazil, Honduras, Mexico and Uruguay.

The Preliminary Study on the 1996 Child Protection Convention turned out to be a useful tool for States that are considering becoming a Party to the 1996 Convention such as Argentina, Chile, Colombia, El Salvador, Peru, Uruguay and Venezuela.

On 11 June 2008, IIN and the Hague Conference agreed during a co-ordination meeting on a series of activities in order to promote, and improve the operation of, the Hague and Inter-American Children's Conventions in the region. Both organisations will, among others, (i) co-operate in providing technical assistance for those states that are willing to implement the Model Law, (ii) assist with the development of direct judicial communications and judges networks, (iii) co-operate in long distance training programmes, and (iv) promote the use of databases and tools developed by each organisation to facilitate the operation of the Children's Conventions.

On 11 and 12 November 2008, the Permanent Bureau took part in the Annual Assembly of the *Asociación Americana de Derecho Internacional Privado* held in Mexico City, Mexico.

## **B. The Malta Process**

In March 2004 and again in March 2006, the Hague Conference and the Government of Malta together organised a Judicial Conference on Cross-Frontier Family Law Issues involving certain Hague Convention States and certain non-Hague States from within the Islamic tradition: the Malta Process. The countries and organisations that to date have participated in the Malta Process include Algeria, Australia, Belgium, Canada, Egypt, France, Germany, Indonesia, Italy, Jordan, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Portugal, Spain, Sweden, Tunisia, Turkey, the United Kingdom, the United States of America, the European Community (Commission, Parliament and Council), ISS, the International Centre for Missing and Exploited Children and Reunite.

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<sup>45</sup> For further information on Phases I, II and III of the Special Programme for Latin American States see the 2007 Annual Report of the Hague Conference, which is available on the website of the Hague Conference under "Publications", then "Annual Report".

As a result of the two judicial conferences in Malta several States are considering implementation of the uniform rules of jurisdiction set out in the 1996 Child Protection Convention and the 1980 Child Abduction Convention. The Permanent Bureau has offered these States (technical) assistance to facilitate this process.

During 2008 preparatory work was undertaken for the Third Conference in the Malta series that took place from 24 to 26 March 2009.

### **C. Africa**

The Hague Project for Africa involves the following countries: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Rwanda, Senegal, Somalia, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

Many joint efforts were undertaken in 2008 to convene a major regional conference, in co-operation with the Presidency of the Republic of South Africa and to be hosted by that country. The Regional Conference, that will probably take place in 2009, will build on the Conclusions and Recommendations of the Judicial Seminar of 2006 that involved principally judges from Southern and Eastern Africa. The Recommendations adopted during this Seminar<sup>46</sup> identified two areas in which the Hague model would be useful for African countries in the practical implementation of the United Nations *Convention of 20 November 1989 on the Rights of the Child* and the African Charter on the Rights and Welfare of the Child: (i) the development of Central Authority structures to play a key role in intergovernmental co-operation for the protection of children in cross-border situations, including cases of trafficking, as well as (ii) the development of judicial networks, supported by a legal infrastructure which includes the Hague Children's Conventions addressing international child abduction, intercountry adoption, and parental responsibility and measures for the protection of children.

### **D. The Asia Pacific region**

From 24 to 26 September 2008 representatives from Australia, Bangladesh, Bhutan, Cambodia, China, Cook Islands, Fiji, India, Indonesia, Japan, Republic of Korea, Lao People's Democratic Republic, Malaysia, Nepal, Mongolia, Myanmar, New Zealand, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore, Sri Lanka, Thailand, Timor-Leste, Tonga and Viet Nam, and academics, professionals, representatives from non-governmental organisations and members of the Permanent Bureau of the Hague Conference met in Hong Kong, to discuss the relevance, implementation and operation of the Conventions of the Hague Conference within the Asia Pacific region in the areas of family relations, legal co-operation, litigation and finance law. The Hague Conventions discussed included those on International Child Abduction, International Protection of Children, International Child Support, Intercountry Adoption, Divorce, Marriage, Protection of Adults, Apostille, Service, Evidence, Choice of Court Agreements and Securities.

The Third Asia Pacific Conference, organised in co-operation with the Department of Justice of the Hong Kong Special Administrative Region and with the generous support of the Hong Kong Special Administrative Region, gave special emphasis to the three most recent Hague Conventions (on Securities, Choice of Court and International Child Support). It built on the work of the second *Asia Pacific Regional Meeting on the Work of the Hague Conference on Private International Law* held from 27 to 29 June 2007 in

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<sup>46</sup> For the full text of the Conclusions and Recommendations adopted by the Council, see the Hague Conference website under "News & Events" then "2006".

Sydney, Australia, and the first meeting, *An introduction to the Hague Conventions: Seminar on Fostering the Rule of Law in Cross-Border / Transnational Civil and Commercial Relations in the Asia Pacific*, held from 22 to 24 August 2005 in Kota Kinabalu, Sabah, Malaysia.

The Third Asia Pacific Conference recognised that greater and enhanced judicial co-operation in the region had the potential to assist increasing numbers of individuals and legal persons engaging in transnational activities, and to promote cross-border co-operation in the interests of families, individuals and businesses. The Conference participants were of the view that regional meetings in the Asia Pacific should be held on a regular basis and they encouraged the Permanent Bureau to consider ways in which its presence and representation in the region be strengthened. See also under F.

Another major regional event took place in Ha Noi, Viet Nam on 8 and 9 April 2008, namely the Fourth Law Forum of the Association of Southeast Asian Nations (ASEAN), organised in co-operation with ASEAN and the Hague Conference (see above).

## **E. Commonwealth of Independent States**

The Hague Programme for the Commonwealth of Independent States is designed to provide assistance in respect of the implementation and operation of the judicial and administrative co-operation Conventions (Apostille, Service, Evidence and Access to Justice Conventions) to States Parties from the Commonwealth of Independent States (CIS), through both diagnostic missions and training / educational seminars, particularly in respect of the 1965 Service and 1970 Evidence Conventions. CIS States include: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan.

A major event concerning the 1965 Convention was the seminar held on 15 and 16 May 2008 in Yekaterinburg (Russia).

Specific assistance was also provided, in April and July 2008, to the Government of Ukraine in respect of the 1980 Child Abduction and the 1996 Child Protection Conventions and in November 2008, the Permanent Bureau participated in a seminar in Kyiv organised by the OSCE to promote understanding of the 1993 Intercountry Adoption Convention.

## **F. Regional presence**

The Permanent Bureau continued its efforts and initiatives at the regional level both in the form of promotion of the Hague Conventions and of post-Convention services as described above, which bring many mutual benefits to the individual States involved and to the regions as a whole and beyond. In 2008 suggestions were raised to establish regional offices of the Hague Conference with a view to reinforcing these regional activities. Such offices would not be independent entities but would operate as an integral part of the Permanent Bureau, under the supervision of the Secretary General.

Activities of the regional office would include promotion of, assistance with, and preparations for joining Hague Conventions and the Hague Conference, as well as provision of post-Convention services such as reinforcing good governance and the rule of law as well as capacity building (including the provision of assistance in setting up Central Authorities).

### *1. Asia Pacific region*

Consultation among Member States in the Asia Pacific region started when almost 30 States from the region affirmed during the Third Asia Pacific Conference in September 2008 the relevance of the Hague Conventions and the importance of *inter alia* the provision of training and technical assistance for the effective implementation of these Conventions to the States in the region. The States encouraged the Permanent Bureau,

in co-operation with Member States in the region, to consider ways in which the Organisation's presence and representation in the Asia Pacific region might be strengthened.<sup>47</sup> A beginning was made with informal consultations with Member States in the region concerning the possibilities for the establishment of such a regional presence in one of those Member States.

## 2. *Latin American region*

Also in the Latin American region informal consultations started in 2008 with various States in this region on the idea of reinforcing the regional character and presence of the very successful one-man office of the Legal Liaison Officer for Latin America.

## **V. INTERNATIONAL CENTRE FOR JUDICIAL STUDIES AND TECHNICAL ASSISTANCE**

In 2007 the International Centre for Judicial Studies and Technical Assistance was established by the Hague Conference as an integral part of the Permanent Bureau, principally to give administrative and organisational support to the five Regional Programmes of the Conference and the Convention-specific Technical Assistance Programmes.

This important initiative to put the programmes on a more secure footing was made possible by an initial grant from the Government of the Netherlands. In the same year the first Convention-specific pilot programme was launched: the Intercountry Adoption Technical Assistance Programme (ICATAP) with the support of the Government of the Netherlands, and subsequently the Governments of the United States of America, Australia, Belgium, France and Switzerland. This was followed by the establishment of the International Child Abduction and Child Protection Assistance Programme with the support of the Governments of the Netherlands and Norway.

The need for technical assistance (including capacity building) in the three main areas of work continued to grow in 2008 with the expansion of the global reach of the Hague Conference. Another reason for the increase in requests was the very successful pilot programme in Guatemala where the Permanent Bureau, together with a group of dedicated States, provided technical assistance for the implementation of the 1993 Intercountry Adoption Convention. As a consequence, a number of States filed their official or unofficial request for (bilateral) implementation assistance. The same happened during and after the Third Asia Pacific Conference held in Hong Kong in 2008 which equally led to an increase in demands addressed to the Centre. States such as Bhutan, Mozambique, Myanmar, Nepal and Uganda that are not yet Members of the Conference or Party to one or more Hague Conventions, requested specific technical assistance for implementation preparations.

These are strong signs that the Centre has an enormous potential as there is a real need for assistance in many States around the globe. To be able to respond to the numerous requests, it will however need to expand its staff - which now includes only an Intercountry Adoption Programme Co-ordinator and an administrative assistant - including through the development of an extensive network of external Hague Conference experts supporting the work of the Centre. Ideally, the Centre should take over much of the administrative and organisational work in relation to the regional and convention-specific technical assistance programmes, while working within a framework determined by the Permanent Bureau.

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<sup>47</sup> The Conclusions and Recommendations are available on the Hague Conference Website under "News & Events" then "2008".

## A. Convention-specific Technical Assistance Programmes

### 1. *Intercountry Adoption Technical Assistance Programme (ICATAP)*

States involved in the pilot scheme for the Intercountry Adoption Technical Assistance Programme (ICATAP) are Guatemala and Cambodia. The success of the pilot programme was followed by specific requests for technical assistance in 2008 from authorities in Contracting States: Azerbaijan, Kenya, Mauritius, Mexico and Panama and non-Contracting States: Namibia, Nepal and Viet Nam.

ICATAP, which was launched in 2007 to support the implementation of the 1993 Intercountry Adoption Convention, is operated directly by the Centre under the supervision of the Permanent Bureau, utilising staff and resources dedicated to this project, as well as external international consultants and experts. An initial grant by the Government of the Netherlands and subsequent support by the Governments of the United States of America and Australia assisted with the ICATAP staff and running costs for pilot countries Guatemala and Cambodia (and Kenya) until December 2008. The need for technical assistance for Guatemala and Kenya has also been recognised by the United Nations Committee on the Rights of the Child.<sup>48</sup>

#### a. Pilot Programme for Guatemala

The Permanent Bureau has been active since 2002 in providing assistance to Guatemala for the implementation of the 1993 Intercountry Adoption Convention. Following the accession to the Convention in 2002 a group of neighbouring and other interested Central Authorities met in May 2003 in The Hague to discuss possible assistance to Guatemala. This assistance, however, was suspended when the accession was declared unconstitutional by the Guatemalan Constitutional Court in 2003 and suspended until May 2007 when, following a visit of the Secretary General to Guatemala in 2005, the Guatemalan Congress finally reapproved the Hague Convention. In February / March 2007 a fact-finding mission to Guatemala was carried out through the International Centre which laid the basis for the work of the international advisory group that was created upon the request of, and in consultation with, the Guatemalan Authorities to give legal advice on the 2007 Adoption Bill. This advisory group consisted of experts from Colombia, Germany, Norway, Spain, the United States of America and the Permanent Bureau.

The Permanent Bureau and the advisory group were invited by the Government of Guatemala, by the President of Congress and the Vice-Minister of Foreign Affairs, and supported by UNICEF Guatemala, to visit Guatemala and provide information sessions and training. Experts from the Permanent Bureau, the United States of America (receiving country) and Colombia (country of origin) took part in the mission in July 2007. In addition to training and information sessions, intensive work was done on the draft legislation. A final report, including the recommendations made during the visit, was addressed to Congress at the end of the mission. The mission was followed by a meeting in September 2007 in The Hague with representatives of the Central Authorities of Belgium, Chile, Colombia, France, Guatemala, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America. These Central Authorities recalled their willingness to assist Guatemala in implementing the 1993 Intercountry

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<sup>48</sup> In its concluding observation regarding Guatemala it states: "The Committee suggests that the State party seek urgent technical assistance from the Hague Conference on Private International Law on the development of national legislations, as well as its practical application." Report on the Forty-fifth session (from 21 May - 8 June 2007), CRC/C/OPSC/GTM/CO/1 of 6 July 2007, para. 28. In its Report on the Forty-fourth session (from 15 January - 2 February 2007, CRC/C/44/3, para. 111 (d)), the Committee urges Kenya: "to (...) (c) Strengthen its monitoring of intercountry adoptions, in particular by ratifying and implementing the 1993 Hague Convention No 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption; (d) seek technical assistance from the Hague Conference on Private International Law for the above-mentioned purpose." Kenya ratified the 1993 Hague Convention in February 2007 and on 1 June 2007 the Convention entered into force for this State.

Adoption Convention and expressed their willingness to provide support through training by their experts and / or written materials, and specific projects of co-operation were presented by the United States of America and Chile. The September meeting supported the continued assistance of the International Advisory Group on the Draft Adoption Law. Finally, on 11 December 2007 the Congress approved the Decree (No 77) issuing the Law on Adoptions (No 3217). On 31 December 2007 the new law entered into force and the 1993 Intercountry Adoption Convention became effective again in Guatemala. In February 2008 the Central Authority, the *Consejo Nacional de Adopciones* (CNA), started operating under the Convention.

During 2008 technical assistance continued to be given by the Centre, mainly to the staff of the CNA. In order to be informed about the initiatives developed for the implementation of the 1993 Convention by the Guatemalan authorities, the Permanent Bureau undertook a mission to Guatemala in April 2008. The Report of the April 2008 mission underlined the need for training and capacity building of the different bodies taking part in the adoption procedure, in particular to strengthen the operation of the new Central Authority, the Courts and the Attorney General's Office, the *Procuraduría General de la Nación* (PGN). It was further revealed that there is an urgent need to have an efficient investigation of the family of origin and extended family carried out by PGN in order that a judge can declare the genuine adoptability of the child, a first step to ensure that the adoption has been properly carried out. A proposal for the sending of different experts to Guatemala was launched in 2008, in the framework of projects developed by UNICEF, to give in-house, one-on-one training and mentoring to personnel in the different bodies that are involved in the child protection and adoption process. In December 2008 a group of experts of the Central Authority of Chile (the *Servicio Nacional de Menores, Sename*) was sent by its Government to give training and assistance under ICATAP.

During 2008 the CNA reviewed the situation of intercountry adoptions that had started under the previous law (adoptions in transition), it arranged 51 national adoptions and declared 197 children adoptable in the country. 227 domestic prospective adoptive parents have registered their interest to adopt a child. These figures show that the CNA worked hard to guarantee the principle of subsidiarity, which means that placement of the child within Guatemala has been given priority when this served the child's best interest.

#### b. Pilot programme for Cambodia

In 2008 the Centre gave technical assistance to Cambodia following a request from its Government in November 2007. The first stage of training was developed by the Permanent Bureau and an international expert was engaged by the Permanent Bureau. The expert started work as per September 2008 for the duration of two months in Phnom Penh, thanks to the financial contribution of the Governments of the Netherlands and Australia. The expert provided much needed practical support and advice to Cambodian officials to ensure that laws and regulations can operate effectively and are consistent with Hague Convention principles and procedures, and to prepare for their operation in practice. A number of draft recommendations were developed to address the most urgent problems in Cambodia's adoption system, those that pose the biggest obstacles to achieving the basic protection for children under the Hague Convention. In December 2008, all receiving countries that had been active in Cambodia received a request to take part in a Working Group of Concerned Countries, in order to make a joint effort together with the Centre and the Permanent Bureau to continue supporting the Cambodian Government as it implements the Hague Convention.

A request for further funding to engage an expert to assist Cambodia was launched towards the end of 2008 to all the Members of the Hague Conference, the purpose of which is to assist with capacity building of the Central Authority and other authorities and bodies.

### c. Other countries

In relation to Kenya, discussions were undertaken in 2008 with the Office of the Vice President and Ministry for Home Affairs, the Chief Justice of Kenya, and with UNICEF with a view to providing technical assistance, including legislative advice and co-operation with the judiciary. A first stakeholder discussion and information session for the judiciary will be the next step.

In April 2008, the Hague Conference received an official request from the Prime Minister's Office in Mauritius for technical assistance, including training for reinforcing the Central Authority (the National Adoption Council), and to bring the new draft Adoption Bill in line with the Hague Convention.

In September 2008, the Hague Conference, at the request of UNICEF Namibia, discussed the possibility of providing technical assistance under ICATAP to assist in the preparation of the new Child Care and Protection Bill which will need to be aligned with the 1993 Intercountry Adoption Convention and the 1996 Child Protection Convention.

Finally, in October 2008, a delegation of officials from the State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan, accompanied by child protection specialists from UNICEF, visited the Hague Conference. The meeting at the Permanent Bureau focused on the issues of Accredited Bodies and how to structure Central Authorities and internal laws. The delegation expressed an interest in receiving technical assistance under ICATAP.

## 2. *International Child Abduction and Child Protection Assistance Programme*

States or regions involved in the International Child Abduction and Child Protection Assistance Programme are: Latin America, the Middle East and North African (MENA) region, Sub-Sahara African States, the Asia Pacific region and the Commonwealth of Independent States, in particular Ukraine and Georgia.

The 1980 Child Abduction Convention and the 1996 Child Protection Convention depend heavily on a judiciary having a full understanding of the operation of the Conventions as well as Central Authorities with the capacity to co-operate with one another to secure the prompt return of children.

Under the Assistance Programme, launched at the end of 2007, the focus has been on identifying States where weaknesses or needs exist or where the Convention is about to come into operation. In identifying weaknesses or needs in States, the Permanent Bureau may be alerted by Contracting States experiencing difficulties with other Contracting States or the Permanent Bureau may be contacted for assistance by those State experiencing difficulties themselves. Following such a request further investigations and consultations may be undertaken by the staff of the Permanent Bureau (or by an external expert requested to act on behalf of the Permanent Bureau) to identify the strengths and weaknesses of the State as well as to identify regional and national experts and organisations that may be able to assist in subsequent missions and training.

Ukraine was the first country in 2008 to benefit from technical assistance delivered under the Assistance Programme. The assistance was jointly organised by the Hague Conference and the Ukrainian-European Policy and Legal Advice Centre (UEPLAC) upon the request of the Ukrainian Government. The Hague International Centre provided the necessary co-ordination and administrative back-up. The assistance took the form of two separate actions. A fact-finding mission, held from 27 to 28 May 2008 in Kyiv, Ukraine, in order to allow the Permanent Bureau to tailor the subsequent training seminar to actual needs. The Permanent Bureau invited an external expert with both governmental and private sector experience to carry out the fact-finding and to further assist the Permanent Bureau during the seminar held in Kyiv from 8 to 11 July 2008. One Hague Liaison Judge was involved in the seminar as an expert with experience hearing Hague cases. The more than 40 participants at the seminar held in Kyiv, were carefully targeted government officials working at the designated Central Authority as well as judges with

jurisdiction to hear Hague cases and practicing attorneys. The seminar allowed for in-depth discussions, case studies and interaction between the judicial and government sectors.

Georgia was the second country to request technical assistance under the Assistance Programme. This request was co-ordinated by the *Deutsche Stiftung für internationale rechtliche Zusammenarbeit* (IRZ) in co-operation with the *Deutsche Gesellschaft für technische Zusammenarbeit*, a development organisation that gives support to the Ministry of Justice, the Supreme Court as well as other Georgian partners. GTZ requested the Permanent Bureau to provide an expert for a training session on the 1980 Child Abduction Convention. The targeted group for the training included judges of all instances specialising in family law, court bailiffs, staff members of the Ministries of Justice, Education, Health and Social Affairs and Foreign Affairs.

## **B. Centre funding and recipients for Official Development Assistance (ODA)**

The Centre depends for its operation essentially on voluntary contributions, administered through the Supplementary Budget of the Hague Conference. Generous financial support was granted by a number of States in 2008 towards the operational costs of the Centre: the Netherlands, the United States of America and Australia. A number of States have been generous in giving support for specific (regional or convention-specific) programmes: the Netherlands, the United States of America, Australia and Spain (all of which made substantial contributions) and Canada, Ireland, Belgium, France, Germany, Malta, the United Kingdom, Switzerland and Norway.

Significantly, on the occasion of the celebration of the 115th anniversary of the Hague Conference on 18 September 2008, the Ministry of Foreign Affairs of the Netherlands, announced, on behalf of the Ministry for Development Co-operation, the decision of the Government to grant the Hague Conference a contribution of 500,000 Euros. This amount will secure the operation of the Centre over a period of four financial years (July 2008 to June 2012) and is especially intended for the Centre's legal capacity building, reinforcing the rule of law and good governance activities in or on behalf of developing countries qualifying as Official Development Assistance (ODA) recipients.<sup>49</sup> The Hague Conference drafted a detailed proposal for a balanced allocation of the funds which will be further discussed with the relevant Ministries in 2009. The Centre will co-ordinate the activities described in the proposal in close co-operation with the Permanent Bureau.

It is hoped that the contribution of the Government of the Netherlands will lead to similar development aid contributions to the Supplementary Budget by other Members of the Hague Conference.

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<sup>49</sup> In September 2008, the OECD's Development Assistance Committee (DAC) approved the new List of Recipients of Official Development Assistance (ODA). It will govern ODA reporting for three years.