

EVIDENCE
PREUVES

Draft agenda
Projet d'ordre du jour

October / octobre 2015



DRAFT AGENDA

MEETING OF THE EXPERTS' GROUP ON THE USE OF VIDEO-LINK AND OTHER MODERN TECHNOLOGY IN THE TAKING OF EVIDENCE ABROAD

proposed by the Permanent Bureau

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PROJET D'ORDRE DU JOUR

RÉUNION DU GROUPE D'EXPERTS SUR L'UTILISATION DE LA LIAISON VIDEO ET D'AUTRES TECHNOLOGIES MODERNES POUR L'OBTENTION DE PREUVES A L'ETRANGER

proposé par le Bureau Permanent

*Document for the attention of the Experts' Group
(meeting of December 2015)*

*Document à l'attention du Groupe d'experts
(réunion de décembre 2015)*

DRAFT AGENDA

The meeting of the Experts' Group will take place from **Wednesday 2 December** (2.00 p.m.) to **Friday 4 December 2015** (4.00 p.m.), at the offices of the Permanent Bureau of the Hague Conference on Private International Law, which are located on the 2nd floor, Churchillplein 6b, 2517 JW, The Hague.

This Draft Agenda is proposed by the Permanent Bureau and is based on those issues that have been identified as relevant in making a recommendation to the Council on General Affairs and Policy as to:

- the issues that may arise with the use of video-link and other modern technologies in the taking of evidence abroad; and
- potential ways to address these issues, including the desirability and feasibility of an optional protocol or any other instrument.

It is recognised that the experts in attendance may have other issues that they wish to address and as such, this Agenda will be treated with some flexibility and may need to be modified as the meeting progresses.

It is proposed that the session on Wednesday will continue until 6.00 pm. The sessions on Thursday and Friday are proposed to begin at 9.30 a.m. and end at 6.00 p.m. and 4.00 p.m., respectively. There will be a lunch break from 1.00 to 2.30 p.m. on both days, in addition to breaks for tea and coffee throughout the meeting sessions.

Wednesday 2 December 2015

2.00 p.m. Opening of the Experts' Group meeting

Opening remarks by Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law

Election of a Chair

Adoption of the Agenda

Introduction to Experts' Group members and housekeeping

Brief overview of the mandate from the Council on General Affairs and Policy of the Conference

Council mandate:

"The Council noted the Conclusions & Recommendations of the 2014 Special Commission meeting on the practical operation of the Service, Evidence, and Access to Justice Conventions, and decided to establish an Experts' Group to investigate the issues that may arise with the use of video-link and other modern technologies in the taking of evidence abroad. The Council invited the Experts' Group to study existing instruments and current practice, and explore potential ways to address these issues, including the desirability and feasibility of an optional protocol or any other instrument."

Info. Doc. No. 1:

Background to the creation of the Experts' Group: Original Proposal, 2014 meeting of the Special Commission and 2015 Meeting of the Council on General Affairs and Policy

3.00 p.m. **Setting the Stage I: Legal considerations**

The legal framework of the Evidence Convention and the use of video-link

Overview of how video-link and modern technologies may be used under the Convention and consideration of what is possible.

Info. Doc. No. 2:

Annex 6 of the Practical Handbook on the Operation of the Evidence Convention (3rd Edition)

3.30 p.m. **Setting the Stage II: Practice**

The use of video-link under the Evidence Convention and other international / regional instruments

Overview of the status of the use of video-link among Contracting States, including technological and statistical information.

Participants are invited to present the experience of States regarding the taking of evidence by video-link under the Evidence Convention or under other international / regional instruments

Info. Doc. No. 3:

Synopsis Document of Current International Practice with respect to the use of technology in the cross-border taking of evidence

4.00 p.m. *Coffee break*

4.15 p.m. **Discussion:**

- **Setting the Stage I: Legal considerations (cont'd)**
- **Setting the Stage II: Practice (cont'd)**

6.00 p.m. *End of session*

7.00 p.m. *Dinner*

Thursday 3 December 2015

9.30 a.m. **Assessment of Specific Legal Issues under Chapter I**

Examination of specific legal issues that arise under Chapter I of the Convention and how they may be addressed.

Such issues may include (but are not limited to):

- (i) Desirability and feasibility of direct taking of evidence by video-link (*i.e.* whether a judicial authority in the Requesting State may take evidence directly by video-link in the Requested State)
- (ii) Presence and participation of members of judicial personnel of the requesting State by video-link (Art. 8)

Presence and participation of parties and their counsel by video-link (Art. 7)

Assessment of Specific Legal Issues under Chapter II

Examination of specific legal issues that arise under Chapter II of the Convention and how they may be addressed.

Such issues may include (but are not limited to):

- (i) Permissions for the taking of evidence by video-link
- (ii) The taking of evidence by video-link by a diplomatic or consular agent

The direct taking of evidence by video-link by a commissioner

11.30 a.m. *Coffee break*

11.45 a.m. **Assessment of Specific Legal Issues Common to Chapters I & II**

Examination of specific legal issues that arise under both Chapters of the Convention and how they may be addressed.

Such issues may include (but are not limited to):

- (i) Legal safeguards (*e.g.* due process concerns)
- (ii) Pre-conditions (*e.g.* consent of the parties, permissions)
- (iii) Oaths and affirmations
- (iv) Perjury or contempt of Court
- (v) Interference with the witness and/or process
- (vi) Assessing demeanour and credibility of witnesses
- (vii) Other considerations (*e.g.* willingness, compulsion, duress)

1.00 p.m. *Lunch break*

2.30 p.m. **Practical and Technological Issues**

Examination of practical and technology issues that arise with the use of video-link technology, and how they may be addressed.

Such issues may include (but are not limited to):

- (i) Technical requirements (software and connections)
(including course of action in the event of technical difficulties)
- (ii) Identity verification
- (iii) Interpretation
- (iv) Requests and follow-up enquiries
- (v) Location specifications
- (vi) Audio-visual recording and transcripts
- (vii) Costs

4.15 p.m. *Coffee break*

4.30 p.m. **Discussion:**

- **What opportunities and limitations are there in relation to the use of modern technologies in the taking of evidence?**
(e.g. electronic evidence, "e-Discovery", data management and sharing, electronic court administration platforms)
- **How can the use of video-link and other modern technologies under the Convention be further encouraged?**
- **Is the Evidence Convention still fit for purpose?**

6.00 p.m. *End of session*

Friday 4 December 2015**9.30 a.m. Next Steps and Looking Ahead**

Summary of discussions and consideration of the desirability and feasibility of the different options open to the Experts' Group.

In addition, what additional information or research may be necessary and particularly whether another meeting of the Experts' Group is required.

10.15 a.m. *Coffee break***10.30 a.m. Adoption of Conclusions & Recommendations**

Finalisation of the Conclusions & Recommendations to present to the 2016 meeting of the Council on General Affairs and Policy of the Conference

1.00 p.m. *Lunch break***2.30 p.m. Adoption of Conclusions and Recommendations (cont.)****4.00 p.m. *End of meeting (expected/at the latest)***