

CONCLUSIONS & RECOMMENDATIONS

ADOPTED BY THE COUNCIL

1. From 14 to 16 March 2017, 162 participants took part in the Council on General Affairs and Policy of the Conference, representing 66 Member States and one REIO and observers from seven IGO / NGOs.¹

Ceremonies for signing and ratification of Hague Conventions

2. The Council witnessed –
 - a) the signature by the Republic of Belarus of the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*;
 - b) the deposit by the Republic of Cyprus of the instrument of ratification of the *Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*.

Transfer of power between the outgoing Chair and the Chair-elect of the Council

3. The Council expressed its deep gratitude to the outgoing Chair, Mr Antti Leinonen, Director of Legislation, Law Drafting Department, Ministry of Justice of Finland, for his service and dedication to the HCCH.
4. The Council welcomed Mr Andrew Walter, Assistant Secretary, Civil Law Unit, Australian Attorney-General's Department, as the incoming Chair of the Council.

Work relating to possible new instruments

Judgments Project

5. The Council welcomed the very good progress made on this Project, which was confirmed as a priority for the Organisation, and the successful completion of two meetings of the Special Commission on the Judgments Project towards the preparation of a draft Convention. The Council instructed the Secretary General to convene a third meeting of the Special Commission, tentatively scheduled from 13 to 17 November 2017. The Council took note of the Special Commission's recommendation that a Diplomatic Conference may be convened towards the end of 2018 or early 2019.

¹ These included the following Members of the Hague Conference on Private International Law: These included the following Members of the Hague Conference on Private International Law: Albania, Andorra, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China (People's Republic of), Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, European Union, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Korea (Republic of), Lithuania, Luxembourg, Malta, Mexico, Monaco, Morocco, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Viet Nam and Zambia; the following intergovernmental organisations: United Nations Commission on International Trade Law (UNCITRAL), Cooperation Council for the Arab States of the Gulf (GCC); the following non-governmental organisations: Comité Maritime International (CMI), Council of Bars and Law Societies of Europe (CCBE), International Union of Judicial Officers (UIHJ), International Association of Judges (IAJ), International Union of Notaries (UINL).

6. The Council endorsed the recommendation of the Special Commission that, in preparation for the November 2017 meeting, further intersessional work on certain issues is necessary.
7. The Council recalled its decision of 2016 that the Experts' Group of the Judgments Project addressing matters relating to direct jurisdiction (including exorbitant grounds and *lis pendens* / declining jurisdiction) will convene soon after the Special Commission has drawn up a draft Convention.²

Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements (Parentage / Surrogacy Project)

8. The Council welcomed the Report of the Experts' Group on Parentage / Surrogacy. The Council noted the progress made at the Group's second meeting, including its agreement in principle on the feasibility of developing a binding multilateral instrument dealing with the recognition of foreign judicial decisions on legal parentage.
9. The Council acknowledged the Group's conclusions that further discussions are needed with respect to:
 - a) the question of how an instrument dealing with the recognition of foreign judicial decisions on legal parentage could operate;
 - b) the recognition of legal parentage when recorded in a public document; and
 - c) the feasibility of the possible application of future agreed general private international law rules on legal parentage to international surrogacy arrangements, and the possible need for additional rules and safeguards in these cases as well as in cases of assisted reproductive techniques.
10. The Council invited the Group to continue its work in accordance with its mandate of 2015. Noting the urgency identified by the Group, the Council instructed the Secretary General to convene a third meeting of the Group before the next meeting of the Council. The third Experts' Group meeting should focus on the matters identified above. The Experts' Group will report to the Council in 2018.

Cross-border recognition and enforcement of agreements reached in the course of family matters involving children

11. The Council welcomed the oral update on the development of a non-binding "navigation tool" to provide best practices on how an agreement in the area of family law involving children can be recognised and enforced in a foreign State under the 1980 Child Abduction, 1996 Child Protection, and 2007 Child Support Conventions. This draft "navigation tool" will be discussed at the next Experts' Group meeting, to be held in June 2017. The Permanent Bureau will report to the Council in 2018.

Co-operation in respect of protection of tourists and visitors abroad

12. The Council noted the Preliminary Report prepared by Mr Emmanuel Guinchard, and welcomed the additional oral report. The Council acknowledged the generous financial contribution by the Government of Brazil to support this project.
13. The Council looks forward to receiving the Final Report in November 2017, for discussion at Council in 2018. The Council recalled that the final report should include an assessment of the desirability and feasibility of further work by the HCCH in this area taking into account, *inter alia*, the compatibility of the topic with the mandate of the HCCH and work conducted in other fora.

² "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (15-17 March 2016)", C&R No 13.

Use of video-link and other modern technologies in the taking of evidence abroad

14. The Council welcomed the work done by the Experts' Group on the use of video-link and other modern technologies in the taking of evidence, and invited all Members to complete the country profile. The Council directed the Permanent Bureau to continue the work on the Guide to Good Practice and to report to Council in 2018.

Recognition and enforcement of foreign civil protection orders

15. The Council welcomed the oral update provided by the Permanent Bureau and noted that the topic will be discussed during the upcoming Special Commission on the 1980 Child Abduction and 1996 Child Protection Conventions. The Council directed a short note to allow for a discussion of the future of this work item at its 2018 meeting.

Cohabitation outside marriage

16. The Council welcomed the summary and analysis of responses to questionnaires provided by the Permanent Bureau. While the Council approved the removal of the item from the agenda, it authorised the Permanent Bureau to continue monitoring this area, and, if necessary, to bring any significant developments to the attention of the Council. The Council invited Members to inform the Permanent Bureau of developments in this area.

Co-operation between UNCITRAL, UNIDROIT and the HCCH (and between the HCCH and other international organisations or entities)

Joint project of the Secretariats of UNCITRAL, UNIDROIT and the HCCH for the drafting of explanatory text in the area of international commercial contract law (with a focus on sales)

17. The Council took note of progress made with regard to the preparation of a legal guide in the area of international commercial contract law (with a focus on sales). The Council directed the Permanent Bureau to continue co-operation with UNCITRAL, UNIDROIT, and the designated experts in the drafting of the guide. The Council understands that only minimal resources need to be allocated to this project, given the co-operative working method among the three Organisations. The Permanent Bureau will report to Council in 2018.

Joint HCCH-WIPO project on the development of a resource tool addressing the intersection between private international law and intellectual property law

18. The Council welcomed the progress WIPO and the HCCH made on developing a resource tool addressing the intersection between private international law and intellectual property law. The Council directed the Permanent Bureau to circulate a draft Resource Tool later this year, and invited Members to submit comments within a maximum of three months after the circulation of the draft Resource Tool.
19. The Permanent Bureau, together with the WIPO Secretariat and co-authors, will then review any received comments and finalise the Resource Tool. The Council noted that, subject to available resources, an Experts' Meeting may be convened, in co-ordination with the WIPO Secretariat, to facilitate the finalisation of the Resource Tool. Further to its consideration of the Resource Tool by the relevant WIPO organs, the final version of the Resource Tool will be submitted to Council for approval.

New proposals – the Judicial Sale of Ships

20. The Council noted the information provided by the Comité Maritime International (CMI) on a possible new instrument on the Judicial Sale of Ships. The Council invited the CMI to share any further relevant material with the Permanent Bureau. The Council also noted the offer by the International Association of Judges (IAJ) to circulate a questionnaire to all specialised maritime judges, with a view to obtaining information as to the possible need in this area. The Council directed the Permanent Bureau to forward any information provided to it by the CMI and the IAJ to the Members. Some Members expressed doubt as to whether the HCCH would be the right forum for such work.

Post-Convention activities

1980 Child Abduction and 1996 Child Protection Conventions

21. The Council took note of progress made towards a meeting of the Special Commission on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions, to be held from 10 to 17 October 2017, including progress on the development of a Guide to Good Practice on the interpretation and application of Article 13(1)(b) of the 1980 Child Abduction Convention.
22. The Council welcomed the report on the successful, expanded fourth Meeting of the Malta Process (Malta IV), held in May 2016 in Valletta, Malta, and thanked the host government of Malta and other States for enabling the meeting.
23. The Council welcomed the report of the Working Party on Mediation in the context of the Malta Process as well as the direction for future work. The Council agreed that the Working Party continue its work on the implementation of the principles for establishment of mediation structures and establishment of Central Contact Points, with the expectation of further reports to the Council on progress.

1993 Intercountry Adoption Convention

24. The Council welcomed the Report of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption. The Council endorsed the Group's recommendation that a representative subgroup be established to develop a toolkit containing the elements described in its Report. The Council directed the Permanent Bureau, as a second step, to explore the feasibility of establishing a secure portal on the HCCH website, or a similar web-based tool, where States could share information. The Council also directed the subgroup to develop guidance for States regarding information on resources and contact points for victims. The Council agreed that, if necessary, the Group would meet in person. The Permanent Bureau will report to the Council in 2018.
25. The Council noted the importance of technical assistance in relation to the implementation of this Convention and the need to secure funding to continue the Intercountry Adoption Technical Assistance Programme (ICATAP).

2000 Adults Convention

26. The Council welcomed the report of the Permanent Bureau, and encouraged States that are not yet Contracting States to the 2000 Adults Convention to join that Convention.

1961 Apostille Convention

27. The Council welcomed the Conclusions and Recommendations of the meeting of the Special Commission and the 10th e-APP Forum held in November 2016, and endorsed the establishment of a Working Group on the authentication of documents generated by supranational and intergovernmental organisations. The Working Group will comprise representatives of States, and may, in addition, include representatives of supranational and intergovernmental organisations.
28. The Council took note of the need to update the Handbook in light of the recommendations made by the Special Commission. The revised Handbook will be submitted to Council for approval in due course.

2005 Choice of Court Convention and the 2015 Hague Principles

29. The Council expressed its continued support for the promotion and wider implementation of the 2005 Choice of Court Convention and 2015 Hague Principles, and encouraged more States to join the Convention and to implement the Principles.

30. The Council invited Members to keep the Permanent Bureau updated about significant developments in relation to the implementation or application of these instruments (*e.g.*, new case law and legislation), and decided not to consider other specific proposals suggested by the Permanent Bureau at this stage.

2006 Securities Convention

31. The Council welcomed the upcoming entry into force of the 2006 Securities Convention on 1 April 2017, and encouraged other States to join the Convention.

Post-Convention assistance

32. The Council welcomed the achievements of the Permanent Bureau in the area of education, training, and post-Convention assistance in relation to the Hague Conventions.

e-Tools

33. The Council welcomed the continuing work of the Permanent Bureau in relation to the electronic tools established under the 2007 Child Support Convention (iSupport), the 1980 Child Abduction Convention (INCADAT, INCASTAT), and the 1961 Apostille Convention (e-APP) and encouraged States to support work in these areas.

Governance of the Organisation

Procedure for the review of performance of the Secretary General

34. The Council discussed the Chair's proposal for an *ad hoc* procedure for reviewing the performance of the Secretary General. The Council mandated the Chair to conduct this *ad hoc* procedure in line with his proposal, bearing in mind different views as expressed by some Members.
35. The Council requested the Chair to present to its March 2018 meeting, a proposal for establishing a working group to consider the future procedure for appointing Secretaries General of the HCCH, the terms of their appointment, and the process for review of performance.

Universality of the Organisation

36. The Council welcomed the Reports of the Regional Offices and recognised the excellent services they have provided for the HCCH. In addition, Council took note of the increasing interest in the work of the HCCH, shown by Caribbean States in the last years. Against this background, Council approved the extension of the Latin American Regional Office's geographic reach to include the Caribbean region, as well as the change of name of the office to "Regional Office for Latin America and the Caribbean" (ROLAC)".
37. The Council warmly thanked the Permanent Bureau's Representative for Asia and the Pacific, Professor Anselmo Reyes, for his excellent work promoting the work of the HCCH in the region, and wished him well for his future endeavours.
38. Having regard to the principle of universality, the Council directed the Permanent Bureau to prepare a strategic paper to assist Council to assess proposals by Members for the establishment and development of new regional offices of the Permanent Bureau. The paper would address criteria for establishing and developing new regional offices, including: funding, privileges and immunities, as well as approval and assessment processes by the Council.

125th Anniversary of the HCCH

39. The Council directed the Permanent Bureau to develop a proposal for how to refresh the HCCH's existing Strategic Plan, to be discussed at the Council's meeting in March 2018. In preparing the proposal, the Permanent Bureau will conduct informal consultations with Members.

40. The Council invited the Permanent Bureau to develop, through informal consultations with Members, modest and financially neutral proposals for how to mark the HCCH's 125th Anniversary. The Council invited all Members to find ways to mark this important milestone, and to keep the Permanent Bureau apprised of any celebrations which they propose to organise.

Framework of voting by correspondence, including e-mail

41. The Council discussed the Permanent Bureau's paper on written voting procedure and directed the Permanent Bureau to do further work on the development on these rules through informal consultations, to be discussed at the 2018 meeting of the Council.

Management efficiency initiatives

42. The Council received the update from the Permanent Bureau on the Staff Rules. The Chair noted concerns raised in relation to the procedure applied for the approval of the Staff Rules. Further discussions are properly within the remit of the Council of Diplomatic Representatives.
43. The Council mandated the Permanent Bureau to work on the sustainability of the Pension Reserve Fund.
44. The Council requested that those Agenda items relating to management efficiency initiatives not discussed at this Council meeting, be discussed at the 2018 Council meeting.