

Council on General Affairs and Policy of the Conference – March 2019

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 3 of October 2018 – <i>provisional edition, pending the completion of Annex III</i>
Title	Report of the Experts' Group on the Co-operation and Access to Justice for International Tourists (Tourism Project)	
Author	<ul style="list-style-type: none"> • Permanent Bureau • Chair of the representative Experts' Group on the Co-operation and Access to Justice for International Tourists • Experts of this Group 	
Agenda item	TBD	
Mandate(s)	<ul style="list-style-type: none"> • Prel. Doc. No 3 of February 2018 • C&Rs No 8-11 of the March 2018 Council on General Affairs and Policy 	
Objective	To report on the progress made in relation to the Tourism Project, including on the outcomes of the Meeting of the Experts' Group, and to submit the Conclusions and Recommendations of this Group	
Action to be taken	For Approval <input checked="" type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	<ul style="list-style-type: none"> • Annex I: Aide Memoire of the Chair of the representative Experts' Group on the Co-operation and Access to Justice for International Tourists • Annex II: Conclusions and Recommendations of the representative Experts' Group on the Co-operation and Access to Justice for International Tourists • Annex III: Final Report of the Consultant on the desirability and feasibility of the Project on the Co-operation and Access to Justice for International Tourists (to be circulated, in line with the C&Rs of the Experts' Group, in December 2018; in English only, pending French translation) 	
Related documents	<ul style="list-style-type: none"> • Prel. Doc. No 13 of April 2014 and C&R No 7 of the March 2014 Council on General Affairs and Policy • Prel. Doc. No 2 of January 2015 and C&R No 8 of the March 2015 Council on General Affairs and Policy • C&R No 19 of the March 2016 Council on General Affairs and Policy • Prel. Doc. No 3 of March 2017 and C&Rs No 12-13 of the March 2017 Council on General Affairs and Policy 	

A. Introduction

1. The following sets out in brief, the history of the Tourism Project since its first consideration by the Members of the Hague Conference on Private International Law (HCCH) in 2013, until the most recent Meeting of the Experts' Group on the Co-operation and Access to Justice for International Tourists (Experts' Group).

B. History of the Tourism Project

2. In 2013, the Government of Brazil submitted to the Council on General Affairs and Policy (Council) a proposal (Brazilian Proposal) to undertake work in relation to a possible future Convention on Co-operation and Access to Justice for International Tourists (Tourism Project).¹ In 2015, the Council decided that the Permanent Bureau (PB) should conduct a study on the desirability and feasibility of further work in the area of co-operation in respect of protection of tourists and visitors abroad. The Council also instructed the PB to take into consideration, *inter alia*, the compatibility of the topic with the mandate of the HCCH and the work conducted in other fora.

3. In late 2016, the Permanent Bureau retained, with the generous financial support of the Government of Brazil, a consultant to undertake the study and to prepare a final Report. With the aid of comprehensive questionnaires, a number of discussions and meetings with key stakeholder, and detailed research, the consultant prepared his report "Study on the desirability and feasibility of further work on the Proposal on a draft Convention on Co-operation and Access to Justice for International Tourists" which he presented to the 2018 Meeting of the Council.² The Report was accompanied by additional oral explanations which the Council welcomed.

4. At the 2018 Meeting of the Council, Members mandated, first, steps aimed at completing and finalising the Report and, to that end, invited Members to provide any comments, and a list of additional issues, which they sought to have addressed in the finalised Report. By the deadline on 31 May 2018, and the PB received a total of six submissions.³

5. The Council also mandated the PB to prepare the establishment of an Experts' Group. This Experts' Group met from 28 August 2018 to 31 August 2018 in The Hague. Experts from sixteen jurisdictions, together with the Consultant and members of the PB, considered a wide range of issues pertinent to the Tourism Project.⁴

C. The outcomes produced by the Experts' Group

6. An overview of the issues and a brief summary of the discussions are included in the Aide Memoire of the Meeting of the Experts' Group. It was prepared by the Chair of the Experts' Group, H.E. Ambassador Fernando Bucheli Vargas, Consul General of Ecuador to the Kingdom of the Netherlands. The Aide Memoire is Attachment I.

7. The Experts' Group also formulated a number of Conclusions and Recommendations (C&Rs). In relation to the completion of the Report, the Experts' Group mandated its finalisation, including a round of consultation with the Experts, and submission to the Members by 17 December 2018. As regards possible next steps in relation to the Tourism Project, the Experts' Group asked the Council to consider continuing the Experts' Group mandate to undertake further work. The C&Rs are Annex II.

¹ The full history of the Tourism Project can be discerned from the documentation prepared for and by the Councils in 2014, 2015, 2016, 2017 and 2018.

² Annex I.2 to Prel. Doc. No 3 of March 2018.

³ The submissions received by the PB were from Canada, China, the European Union, Israel, Singapore and Switzerland.

⁴ Experts hailed from Argentina, Brazil, Canada, Chile, the Peoples' Republic of China, Ecuador, the European Union, France, India, Japan, Mexico, Russian Federation, Serbia, South Africa, United States of America (via video-link), and Venezuela.

D. Conclusion

8. Members are asked to digest the Aide Memoire as well as the Final Report after its circulation later this year. Members are further invited to reflect on the C&Rs as submitted by the Experts and to consider mandating the open Experts' Group to continue its work in line with the recommendations.

ANNEXES

**Aide Memoire
of the Meeting of the Experts' Group on the Co-operation and
Access to Justice for International Tourists**

Prepared by the Chair of the Experts' Group

The Hague, 28-31 August 2018

A. Introduction

1. At its meeting of 13 to 15 March 2018, the Council on General Affairs and Policy (CGAP) of the Hague Conference on Private International Law (HCCH) mandated the Permanent Bureau (PB) to prepare a meeting of a representative Experts' Group on the Co-operation and Access to Justice for International Tourists (Nos 8-11 of the Conclusions & Recommendations of the CGAP 2018).
2. The meeting of the Experts' Group (EG) took place from 28 to 31 August 2018 at the Permanent Bureau in The Hague. It was attended by experts from Argentina, Brazil, Canada, Chile, the Peoples' Republic of China, Ecuador, the European Union, France, India, Japan, Mexico, Russian Federation, Serbia, South Africa, United States of America (via video-link), and Venezuela.
3. The EG benefitted from comments that were submitted prior to the Meeting by a number of States and Stakeholders.
4. The EG elected His Excellency Ambassador Fernando Bucheli Vargas, Consul General of Ecuador to the Kingdom of the Netherlands, as Chairperson.

B. Deliberations

5. The Experts shared experiences and data in relation to the protection of international tourists, drawing on their respective domestic and regional regimes. Some Experts emphasised the importance of providing appropriate access to justice for tourists through an international instrument. They considered the growth of mass tourism, especially in emerging economies, and the changes experienced by the industry. They remarked on shortcomings concerning the current tourist protection regimes. Moreover, some Experts pondered whether, and, if so, to what extent, there may be a correlation between the rise in tourism and tourism expenditure on the one hand, and the number of dissatisfied tourists on the other hand.
6. Some Experts also wondered whether the number of tourists that experience difficulties, and the nature of those difficulties, would justify work in this area, and whether there would be enough buy-in from States to make an eventual instrument an effective one.

I. Vulnerability and challenges

7. Experts identified that tourists in cross-border situations could experience vulnerabilities. Challenges tourists may experience include information gaps and language barriers that could lead to difficulties in accessing justice.
8. Moreover, the Experts noted that in some instances, there may be an inability to commence or continue court proceedings. Reasons include that the time spent by tourists in the location where the complaint lies is too short, or those non-resident complainants may have to provide security for costs in case of judicial proceedings. They also opined that in some instances, mediation and conciliation may require knowledge of the local language as well as the presence of the complainant in the location.
9. Some Experts suggested that small claims and online dispute resolution (ODR) mechanisms may not be suitable for the full resolution of tourism claims.
10. It was noted that agencies dealing with tourists and consumers might not be able to provide immediate help, also because there exist language barriers, as well as other issues, that prevent such help. Thus, some experts suggested that, where they do not exist, government-funded specialised agencies designed to assist tourists would be required.

11. Cognisant that not all tourists would be able to afford appropriate insurance, Experts noted that using such insurances is an effective means to mitigate some of the vulnerabilities and challenges that can be experienced by tourists.

12. Some experts requested the Consultant to provide in his Report further examples of challenges experienced by tourists and the average amount of the claims made by the tourists.

II. Definition of "tourist"

13. Experts noted that there have been significant changes to the way tourists make their travel arrangements and consume tourism services. Some Experts challenged the traditional view that tourists travel for leisure, noting that there are other reasons for travel. They also challenged that tourists are pecunious and informed about their rights and the remedies available to them. Thus, they asserted that for a possible future instrument to be effective, a broad definition of "Tourist" would be needed. Other Experts emphasised that becoming a tourist is a voluntary decision.

III. Work in other fora and compatibility

14. The Experts recalled the letter of the Secretary-General of the UNWTO of December 2017 that endorsed the work of the HCCH on this issue. Some Experts stated that indeed, the HCCH is the most appropriate forum for this work; others remarked that, in their view, the UNWTO's endorsement was not conclusive as to whether there may be another forum to undertake the work in this area.

15. The EG stressed that if the proposed project were to go forward, there would remain the need to continue the exchange information and to co-ordinate efforts, in particular with the UNWTO, to rule out any potential overlap or incompatibility of a possible future instrument.

IV. Information on the 2005 Mercosur Agreement and the ECC-Net

16. The Experts welcomed the explanations provided by the Brazilian and Argentinian Experts in relation to the 2005 Mercosur Agreement on Assistance to Consumer-Visitors ("*Acuerdo interinstitucional de entendimiento entre los organismos de defensa del consumidor de los Estados Parte del Mercosur para la defensa del Consumidor visitante*"), and the European Union Experts in relation to the *European Consumer Centres Network* (ECC-Net).

V. Relationship with the 1980 Hague Convention on Access to Justice

17. Experts stressed that the 1980 Hague Access to Justice Convention (1980 Convention) is an important instrument that addresses some of the vulnerabilities and challenges the Meeting identified, including the security for costs.

18. However, some Experts pointed out that its scope is limited and that the 1980 Convention does not fully address the vulnerabilities and challenges faced by tourists today. It was suggested that it may be worth exploring the development of a Protocol to the 1980 Convention which extends the instrument's scope to tourists, and expands it measures to offer effective protection to them.

VI. Expected added value of a possible new instrument

19. If a new instrument were to be developed, the Experts identified a number of possible expected values such instrument might add. These included that tourists might be able to obtain appropriate information, including in a language they understand, to ascertain and understand their rights, and the potentially available options to seek redress. It might also provide co-operation mechanisms among suitable bodies that can work in a concerted manner to facilitate the resolution of complaints, with a view to guaranteeing access to justice in the broadest sense, including through alternative dispute resolution, in a non-discriminatory way. The instrument might also have a preventive effect. Finally, it might create an official record of the complaint, including for subsequent use abroad.

VII. Costs

20. In assessing the feasibility of any possible new instrument in this area, some Experts stressed that costs for the development and implementation of such instrument should be considered upfront, as they are an important element of the feasibility assessment. Others, however, stressed the importance of the subject matter and impressed that costs, including

especially costs associated with the implementation of a possible new instrument, may, and should only be, considered at a later stage when the basic framework of such instrument would be known, considering the likely benefits accrued thereto. Such cost assessment should be performed at State level.

21. Some Experts observed that the development of a new instrument will also have some cost implications for the HCCH.

VIII. Nature of a possible future instrument

22. Should the HCCH decide to develop a possible new instrument in this area, some Experts expressed support for that being a hard law instrument. Others suggested that it could be a soft law instrument instead, noting that such instrument could eventually lead to a hard law instrument in the future.

**Experts' Group on the Co-operation and
Access to Justice for International Tourists**

Conclusions and Recommendations

The Hague, 28-31 August 2018

1. The Experts welcomed the opportunity to exchange their views on the co-operation and provision of access to justice for international tourists (Tourism Project) and to conduct discussions in a very constructive manner.
2. In accordance with the mandate provided by the Council on General Affairs and Policy of the HCCH (CGAP), the Experts noted that the Consultant will finalise his draft Report, considering the comments he received, and responses he provided, as well as the Experts' discussions during the Meeting.
3. Noting that the information would be very valuable for the finalisation of the draft Report, the Experts' Group invited all States and other Stakeholders that have not yet responded to the Questionnaires, to do so as early as possible and, in any event, no later than Friday 28 September 2018. The Experts' Group asked the Permanent Bureau to assist in this regard.
4. In accordance with the roadmap developed by the Experts' Group, the updated draft Report will be circulated to the Experts at the latest on Monday 22 October 2018. The Experts' comments will be due as soon as possible, and in any event, no later than Monday 19 November 2018. The final Report will be circulated to the Members of the HCCH no later than Monday 17 December 2018.
5. The Experts' Group recommends to the CGAP that it mandates the Experts' Group to continue its work, with a view to assessing the need for, the nature (soft law and hard law options) and the key elements of, a possible new instrument. The composition of the Experts' Group should remain open, and, if possible, also include representatives of Stakeholders, such as the UNWTO, as well as representatives of relevant organisations and private international law experts.
6. The Experts' Group endorsed, and recommends that the GCAP considers, the Aide Memoire written by the Chair based on the deliberations made during the Meeting.
7. The Experts expressed their gratitude to the Brazilian Government for their ongoing support of the Tourism Project, as well as to the Consultant for all his work, and the Permanent Bureau for the preparation of the Meeting.