

<b>Title</b>	<b>Planning for the First Meeting of the Special Commission</b>
<b>Document</b>	<b>Prel. Doc. No 3 of March 2020</b>
<b>Author</b>	PB
<b>Agenda item</b>	TBD
<b>Mandate(s)</b>	C&R No 28 of the 2019 CGAP; C&D Nos 22-24 of the 2020 CGAP
<b>Objective</b>	To present a report on the planning for the First Meeting of the SC based on the responses received from States to Prel. Docs Nos 1 and 2 of August 2019
<b>Action to be taken</b>	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
<b>Annexes</b>	Annex I: Summary of responses for the development of additional tools Annex II: Summary of responses for the development of additional forms
<b>Related documents</b>	– Prel. Doc. No 1 of August 2019 – Questionnaire on the practical operation of the <i>Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance</i> – Prel. Doc. No 2 of August 2019 – Questionnaire on the practical operation of the <i>Protocol of 23 November 2007 on the Law applicable to Maintenance Obligations</i>

## I. Introduction

1. At its March 2019 meeting, the Council on General Affairs and Policy (CGAP) “mandated the Permanent Bureau to start preparations for a possible first meeting of the Special Commission to review the practical operation of the 2007 Convention and 2007 Protocol by circulating questionnaires on those two instruments by July 2019. The Permanent Bureau will report on the outcomes of those questionnaires to Council [CGAP] at its meeting in 2020. Based on this report, Council [CGAP] will consider whether there is a need for a first meeting of the Special Commission, possibly to be held in June 2020.”<sup>1</sup>

2. Two questionnaires were circulated in August 2019.<sup>2</sup> By 27 March 2020, 21 Members<sup>3</sup> had responded to the Questionnaire on the 2007 Child Support Convention and 14 Members<sup>4</sup> had responded to the Questionnaire on the 2007 Maintenance Obligations Protocol. This corresponds to a relatively low response-rate of 24.7% and 16.8% respectively, which made it somewhat difficult to assess whether the responses received reflect a broad consensus amongst the membership.

3. That said, the responses received, as briefly summarised below, show an interest and a need to hold a first meeting of the Special Commission (SC) to review the practical operation of the 2007 Convention and the 2007 Protocol.

4. At its March 2020 meeting, “CGAP mandated the PB to continue the preparations for the first meeting of the SC on the practical operation of the 2007 Child Support Convention and its Protocol. CGAP invited the PB to make arrangements for a meeting of a Working Group prior to the SC to discuss applicable law issues. The findings of the Working Group will inform the work of the SC.”<sup>5</sup> Furthermore, “[n]oting the low number of responses to the questionnaires circulated in preparation for the SC, CGAP decided to extend the deadline for responses until 17 April 2020”.<sup>6</sup> Finally, “CGAP decided to postpone the first meeting of the SC tentatively scheduled for June 2020 and invited the PB to make arrangements for a meeting before the end of 2020”.<sup>7</sup>

5. On 18 March 2020, the PB informed National Organs and Central Authorities designated under the 2007 Child Support Convention, that arrangements were made for the First Meeting of the SC take place during the week of 14 to 18 December 2020.<sup>8</sup> The exact dates of the meeting will be confirmed as soon as possible, as well as the dates for the meeting of the Working Group to discuss applicable law issues. The meeting dates and arrangements will be re-assessed at the end of the third quarter in the light of the evolving coronavirus (COVID-19) situation.

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<sup>1</sup> Conclusion and Recommendation No 28 of CGAP 2019.

<sup>2</sup> “Questionnaire on the practical operation of the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*”, Prel. Doc. No 1 of August 2019 and “Questionnaire on the practical operation of the *Protocol of 23 November 2007 on the Law applicable to Maintenance Obligations*”, Prel. Doc. No 2 of August 2019 both for the attention of the First Meeting of the Special Commission to review the practical operation of the 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol (December 2020).

<sup>3</sup> Australia, Austria, Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, France, Germany, Hungary, Lithuania, Luxembourg, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>4</sup> Australia, Brazil, Bulgaria, Canada, Cyprus, Finland, Germany, Hungary, Norway, Poland, Portugal, Sweden, Switzerland, United Kingdom (England & Wales).

<sup>5</sup> Conclusion and Decision (C&D) No 22 of CGAP 2020.

<sup>6</sup> *Ibid.*, C&D No 23.

<sup>7</sup> *Ibid.*, C&D No 24.

<sup>8</sup> See HCCH 2020 Focussed Circular No 10(2) of 18 March 2020.

## II. Analysis of the responses received

6. In general, responses to both Questionnaires are to the effect that the 2007 Child Support Convention and 2007 Maintenance Obligations Protocol both operate well without any major problems. This being said, a few operational issues could be improved with the assistance of discussions taking place at a first meeting of the SC. Furthermore, Members have indicated an interest for the development of additional tools and additional forms under the Convention.

### A. Analysis of the responses received in relation to the 2007 Convention

#### 1. Issues identified by States for discussion at the SC with a view to identify good practices or adopt conclusions and recommendations

- Response time with regard to acknowledgement of receipt of applications (Annex II of the 2007 Convention) or no response at all
- Use of the Status of Application Reports
- Acceptance of an abstract of a decision in lieu of a complete text of a decision
- Contracting Parties making available mandatory and recommended forms in the required languages other than English and French (Art. 44)
- Applications made in the name of a creditor child (including therein the name and date of birth of the custodial parent)
- Applications from creditors studying abroad
- Transfer of cases within States with non-unified legal systems (*e.g.*, federal States)
- Issues surrounding Central Authorities acting as public bodies (*e.g.*, entitlement to legal assistance in the requested State)
- Issues concerning the establishment of parentage
- Issues concerning the interpretation / application of Article 56
- Enforcement of child support arrears after the child has reached the age of 21 years
- Currency conversion issues (discussion to take place in the context of the report of the Experts' Group on international transfers of maintenance funds)
- Difficulties encountered by certain States to obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets
- Difficulties encountered in enforcing decisions that set the amount of child support in a percentage of the income of the debtor
- Difficulties encountered to enforce a decision against assets when the debtor's habitual residence is not the State where the enforcement is to take place
- Requirement under the domestic law of certain States that applications be signed when filed with competent authorities
- Missing Country Profiles and Country Profiles out of date (including notification as to when Country Profiles are up-dated)

#### 2. Discussion of additional tools and forms

7. Responses to the Questionnaire on the 2007 Child Support Convention show a high interest for the development of guidance for the completion of Mandatory and Recommended Forms, a medium-high interest for the development of a Guide to Good Practice for Central Authorities, a strong-medium interest for the development of a standardised statistical report for Central Authorities and a weak-medium interest for the development of an extension of the current Country Profile to cover spousal support.<sup>9</sup> Responses to the Questionnaire also show an interest to discuss the development of

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<sup>9</sup> See Annex I for a detailed summary of responses regarding the development of additional tools.

additional forms.<sup>10</sup> In light of the relatively low number of responses received, it should be stressed again that the responses are not necessarily representative of the positions of all Members.

#### **B. Analysis of the responses received in relation to the 2007 Protocol**

8. Responses to the Questionnaire on the 2007 Protocol show that a very small number of States would like to discuss issues surrounding “habitual residence”. Two States would like to know from other Contracting Parties whether Article 4(3) had an impact on the number of applications for modifications based on the law of the debtor (forum). One State has identified the issue of access to foreign law as a possible subject of discussion as well as which law applies to the preliminary question of parentage and which law governs the requirements for the possibility to request the modification of a decision. The same State has indicated an interest to discuss the issue of “closer connection” under Article 5. Finally, that same State would like to discuss the coordination between the 2007 Protocol and the Conventions of 1956 and 1973 on the Law Applicable to Maintenance Obligations.

### **III. Next step – Holding a first meeting of the SC**

#### **A. Draft agenda and time allocation**

9. Current plans are for a three-day meeting of the SC to take place during the week of 14-18 December 2020.<sup>11</sup> The meeting will assist States (Parties and non-Parties) to get a better understanding of the practical operation and indeed relevance of the 2007 Convention and its Protocol. It is suggested to devote two and a half days to discussions on the 2007 Convention which would include operational issues (as described above), international transfer of maintenance funds, iSupport and the development of additional tools and forms. The discussions concerning the development of additional tools will be assisted with the development of documents prepared and circulated in advance of the meeting for comments (see the list of documents below). The discussion of future forms will take place in the light of responses found in Annex II and the priorities identified therein. A maximum of one day will be devoted for discussions on the 2007 Protocol in the form of a Working Group that would report to the SC.<sup>12</sup> A half-day would be devoted to the adoption of Conclusions and Recommendations. A draft agenda will be circulated by the beginning of the fourth quarter of 2020.

10. A half-day information session prior to the meeting of the Special Commission could be organised at the PB.<sup>13</sup> Additionally, arrangements could be made to allow States to meet on a bilateral basis during a half-day prior to the meeting of the Special Commission.

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<sup>10</sup> See Annex II for a detailed summary of responses regarding the development of additional forms. Germany has indicated an interest for the development of a form for the purpose of Art. 36(4).

<sup>11</sup> See para. 5 above. The meeting dates and arrangements will be re-assessed at the end of the third quarter in the light of the evolving coronavirus (COVID-19) situation.

<sup>12</sup> In the light of the small number of States interested by the Protocol, and with a view to saving on meeting room rental costs, these discussions will take place at the premises of the PB, for a maximum of 35 participants.

<sup>13</sup> In their responses to the Questionnaire on the 2007 Child Support Convention, 10 Members have indicated an interest (Brazil, Canada, Croatia, Cyprus, Finland, Nicaragua, Poland, Sweden, United Kingdom (England & Wales), United States of America) while eight Members are not interested (Austria, Bulgaria, Germany, Hungary, Lithuania, Luxembourg, Portugal, Switzerland).

**B. Documents planned for the first meeting of the SC**

11. The PB plans to submit the following Preliminary Documents for the SC (where relevant, with an indication as to the expected time of submission):

- Prel. Doc. No 1 of August 2019, Questionnaire on the 2007 Child Support Convention
- Prel. Doc. No 2 of August 2019, Questionnaire on the 2007 Maintenance Obligations Protocol
- Prel. Doc. No 3 of March 2020, Planning for the First Meeting of the Special Commission
- Prel. Doc. No 4 of March 2020, Compilation of responses received to the Questionnaire on the 2007 Child Support Convention
- Prel. Doc. No 5 (tentatively planned for May 2020), Compilation of responses received to the Questionnaire on the 2007 Maintenance Obligations Protocol
- Prel. Doc. No 6 (tentatively planned for April 2020), Possible statistical report for the 2007 Child Support Convention – Document for consultation
- Prel. Doc. No 7 (tentatively planned for April 2020), Guidance to complete the mandatory and recommended forms under the 2007 Child Support Convention – Document for consultation
- Prel. Doc. No 8 (tentatively planned for May 2020), Good Practices for Central Authorities under Article 6 of the 2007 Convention – Document for consultation
- Prel. Doc. No 9 (tentatively planned for June 2020), Draft recommended form for requests for specific measures under Article 7 of the 2007 Child Support Convention – Document for consultation
- Prel. Doc. No 10 (tentatively planned for July 2020), Draft statistical report(s) for the 2007 Child Support Convention – Document for consultation
- Prel. Doc. No 11 (tentatively planned for October 2020), Report of the Experts' Group on the international transfers of maintenance funds

## ANNEXES

### Summary of responses for the development of additional tools

	Possible additional tools to be developed	No	Yes	Priority Level		
				Low	Med.	High
9.1.	Guide to Good Practice for Central Authorities on the implementation of the 2007 Convention	8 <sup>1</sup>	11 <sup>2</sup>	1 <sup>3</sup>	4 <sup>4</sup>	6 <sup>5</sup>
9.2.	Guidance for the completion of Mandatory and Recommended Forms under the 2007 Convention	5 <sup>6</sup>	14 <sup>7</sup>	3 <sup>8</sup>	4 <sup>9</sup>	6 <sup>10</sup>
9.3.	Standardised statistical report	7 <sup>11</sup>	11 <sup>12</sup>	–	10 <sup>13</sup>	1 <sup>14</sup>
9.4.	Extension of the current Country Profile to cover spousal support	9 <sup>15</sup>	10 <sup>16</sup>	2 <sup>17</sup>	5 <sup>18</sup>	3 <sup>19</sup>

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<sup>1</sup> Germany, Hungary, Lithuania, Luxembourg, Norway, Portugal, Sweden, Switzerland.

<sup>2</sup> Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, France, Nicaragua, Poland, United Kingdom (England & Wales), United States of America.

<sup>3</sup> Canada.

<sup>4</sup> Brazil, Finland, France, Poland.

<sup>5</sup> Bulgaria, Croatia, Cyprus, Nicaragua, United Kingdom (England & Wales), United States of America.

<sup>6</sup> Lithuania, Luxembourg, Norway, Switzerland, United States of America.

<sup>7</sup> Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, France, Germany, Hungary, Nicaragua, Poland, Portugal, Sweden, United Kingdom (England & Wales).

<sup>8</sup> Canada, Germany, Sweden.

<sup>9</sup> Bulgaria, Finland, France, Portugal.

<sup>10</sup> Brazil, Croatia, Cyprus, Nicaragua, Poland, United Kingdom (England & Wales).

<sup>11</sup> Canada, France, Germany, Hungary, Lithuania, Luxembourg, Sweden.

<sup>12</sup> Brazil, Bulgaria, Croatia, Cyprus, Finland, Nicaragua, Poland, Portugal, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>13</sup> Brazil, Bulgaria, Cyprus, Finland, Nicaragua, Poland, Portugal, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>14</sup> Croatia.

<sup>15</sup> Bulgaria, Cyprus, Germany, Hungary, Lithuania, Luxembourg, Sweden, United Kingdom (England & Wales), United States of America.

<sup>16</sup> Brazil, Canada, Croatia, Finland, France, Nicaragua, Norway, Poland, Portugal, Switzerland.

<sup>17</sup> Brazil, Finland.

<sup>18</sup> France, Norway, Poland, Portugal, Switzerland.

<sup>19</sup> Canada, Croatia, Nicaragua.

### Summary of responses for the development of additional forms

	Possible additional forms to be developed	No	Yes	Priority Level		
				Low	Med.	High
7.1.	Calculation form for maintenance arrears / statement of arrears	1 <sup>1</sup>	19 <sup>2</sup>	2 <sup>3</sup>	10 <sup>4</sup>	7 <sup>5</sup>
7.2.	Scalable model form for decision <sup>6</sup>	11 <sup>7</sup>	8 <sup>8</sup>	6 <sup>9</sup>	3 <sup>10</sup>	–
7.3.	Statements of enforceability with respect to authentic instruments as well as private agreements (Art. 30(3)(b))	3 <sup>11</sup>	16 <sup>12</sup>	4 <sup>13</sup>	10 <sup>14</sup>	3 <sup>15</sup>
7.4.	Model form for Power of Attorney	3 <sup>16</sup>	17 <sup>17</sup>	5 <sup>18</sup>	9 <sup>19</sup>	3 <sup>20</sup>
7.5.	Form attesting that Art. 36 conditions are met	3 <sup>21</sup>	17 <sup>22</sup>	3 <sup>23</sup>	12 <sup>24</sup>	2 <sup>25</sup>

<sup>1</sup> France.

<sup>2</sup> Austria, Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, Germany, Hungary, Lithuania, Luxembourg, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>3</sup> Croatia, Hungary.

<sup>4</sup> Austria, Brazil, Canada, Finland, Luxembourg, Norway, Poland, Sweden, United Kingdom (England & Wales), United States of America.

<sup>5</sup> Bulgaria, Cyprus, Germany, Lithuania, Nicaragua, Portugal, Switzerland.

<sup>6</sup> For example, the abstract of a decision could be used as a template which could be converted into a full text decision with a simple click.

<sup>7</sup> Austria, Croatia, Finland, France, Germany, Hungary, Lithuania, Luxembourg, Norway, Portugal, Sweden.

<sup>8</sup> Brazil, Bulgaria, Canada, Cyprus, Nicaragua, Poland, United Kingdom (England & Wales), United States of America.

<sup>9</sup> Brazil, Bulgaria, Canada, Lithuania, United Kingdom (England & Wales), United States of America.

<sup>10</sup> Cyprus, Nicaragua, Poland.

<sup>11</sup> Austria, Hungary, Lithuania.

<sup>12</sup> Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, Germany, Luxembourg, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>13</sup> Croatia, Finland, Lithuania, Switzerland.

<sup>14</sup> Bulgaria, Canada, Cyprus, Germany, Nicaragua, Poland, Portugal, Sweden, United Kingdom (England & Wales), United States of America.

<sup>15</sup> Brazil, Luxembourg, Norway.

<sup>16</sup> Canada, Finland, France.

<sup>17</sup> Austria, Brazil, Bulgaria, Croatia, Cyprus, Germany, Hungary, Lithuania, Luxembourg, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>18</sup> Austria, Bulgaria, Lithuania, Switzerland, United States of America.

<sup>19</sup> Croatia, Germany, Hungary, Nicaragua, Norway, Poland, Portugal, Sweden, United Kingdom (England & Wales).

<sup>20</sup> Brazil, Cyprus, Luxembourg.

<sup>21</sup> France, Lithuania, United Kingdom (England & Wales).

<sup>22</sup> Austria, Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, Germany, Hungary, Luxembourg, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland, United States of America.

<sup>23</sup> Austria, Canada, United States of America.

<sup>24</sup> Brazil, Cyprus, Finland, Germany, Hungary, Luxembourg, Nicaragua, Norway, Poland, Portugal, Sweden, Switzerland.

<sup>25</sup> Bulgaria, Croatia.



7.6.	Form for calculation of interest (with a table of interest or a link to a relevant website)	5 <sup>26</sup>	14 <sup>27</sup>	2 <sup>28</sup>	11 <sup>29</sup>	1 <sup>30</sup>
7.7.	Dynamic forms (available on the HCCH website to be completed online, printed and sent by registered mail)	2 <sup>31</sup>	18 <sup>32</sup>	2 <sup>33</sup>	10 <sup>34</sup>	6 <sup>35</sup>

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<sup>26</sup> Austria, France, Hungary, Norway, Portugal.

<sup>27</sup> Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, Germany, Lithuania, Luxembourg, Nicaragua, Poland, Sweden, United Kingdom (England & Wales), United States of America.

<sup>28</sup> Canada, United States of America.

<sup>29</sup> Brazil, Bulgaria, Croatia, Cyprus, Germany, Lithuania, Luxembourg, Nicaragua, Poland, Sweden, United Kingdom (England & Wales).

<sup>30</sup> Finland.

<sup>31</sup> France, Norway.

<sup>32</sup> Austria, Brazil, Bulgaria, Canada, Croatia, Cyprus, Finland, Germany, Hungary, Lithuania, Luxembourg, Nicaragua, Poland, Portugal, Sweden, Switzerland, United Kingdom (England & Wales), United States of America.

<sup>33</sup> Luxembourg, Switzerland.

<sup>34</sup> Austria, Bulgaria, Canada, Germany, Lithuania, Nicaragua, Poland, Sweden, United Kingdom (England & Wales), United States of America.

<sup>35</sup> Brazil, Croatia, Cyprus, Finland, Hungary, Portugal.