

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

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 10 of December 2018
Title	Planning for a first meeting of the Special Commission to review the practical operation of the 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol (June 2020)	
Author	Permanent Bureau	
Agenda item	Item IV.1.b	
Mandate(s)	Article 6 of the HCCH Statute, Article 54(1) of the 2007 Child Support Convention and Article 21 of the 2007 Protocol	
Objective	To plan for a first meeting of the Special Commission to review the practical operation of the 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	n.a.	
Related documents	n.a.	

I. Introduction

1. The purpose of this document is to suggest that the Council on General Affairs and Policy (CGAP) mandate the Permanent Bureau (PB) to start preparations for a possible meeting, in the course of 2020, of the Special Commission to review the practical operation of the *HCCH Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (hereinafter, the “2007 Convention”), as well as the *HCCH Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (hereinafter, the “2007 Protocol”).¹ The following comments are in support of this proposal.

II. Past events and developments

2. Since its adoption, the 2007 Convention has entered into force for 39 Contracting Parties including one Regional Economic Integration Organisation (REIO) and the 2007 Protocol has entered into force for 30 Contracting Parties including one REIO (as of November 2018). In addition, the Convention will apply to Kazakhstan as of 14 June 2019. Burkina Faso and Canada have signed the Convention. Central Authorities of the different Contracting Parties bound by the Convention have gained experience as they have sent and received requests in application of the Convention. Furthermore, courts have made decisions, in particular, on the application of the 2007 Protocol. On a number of occasions, Contracting Parties have requested assistance from the PB with regard to the practical operation of both instruments. It would thus appear timely to discuss the practical operation of both instruments in a Special Commission meeting setting.

3. In November 2009, a meeting of a Special Commission on the implementation of the 2007 Convention and of the 2007 Protocol took place. It resulted in the adoption of a set of recommended forms, in addition to the mandatory forms provided for by the 2007 Convention. These recommended forms cover all the applications foreseen by Article 10 of the 2007 Convention, as well as a status of application report and a financial circumstances form in support of those applications. Another outcome was the adoption of a Country Profile and the decision to publish such a Country Profile for each Contracting Party on the HCCH website.² The Country Profile contains general information on the Central Authorities designated according to the Convention, as well as information in application of Articles 57 and 61 to 63.

4. In its report to the November 2009 meeting of the Special Commission, the Forms Working Group, which started its work in 2006 as an independent Working Group of the Special Commission,

¹ Art. 54(1) of the 2007 Convention states that “[t]he Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention and to encourage the development of good practices under the Convention.” Art. 21 of the 2007 Protocol provides for the possibility to convene a similar meeting for the purpose of the 2007 Protocol. Under Art. 6 of the Statute of the HCCH, the PB is charged with the preparation and organisation of meetings of the Special Commission under the direction of the CGAP.

² The e-Country Profile was developed thanks to funding provided by Norway and Alphinat (the developer of the e-Country Profile under the 2007 Convention). See the HCCH website at < www.hcch.net > under “Child Support” then “Country Profiles (Convention)”.

identified 12 additional forms that could be developed in the future.³ A second meeting of the Special Commission to review the practical operation of the 2007 Convention and 2007 Protocol would provide an opportunity to discuss the need for additional recommended forms, possible modifications to the Country Profile or an extension of the Country Profile to include spousal support or other forms of family maintenance.⁴

5. Since the 2009 meeting of the Special Commission, iSupport has been developed as a complete electronic case management system to service the 2007 Convention and other international instruments for the recovery of maintenance. It includes the aforementioned recommended forms as well as links to the Country Profiles.

6. Both iSupport and the international sub-committee of the National Child Support Enforcement Association (NCSEA)⁵ have contributed to create communities of users of the 2007 Convention. These communities provide *fora* to discuss steps that States have taken to implement the Convention, the practical questions they encounter in its application, as well as the best practices they put in place. They provide a wealth of experience for States that wish to become a Party to the Convention. A meeting of the Special Commission to review the practical operation of the 2007 Convention and 2007 Protocol would provide a *forum* where all this information could be consolidated and shared among Contracting Parties.

7. As other States announce their intention to join the 2007 Convention and its Protocol, and as iSupport extends its membership, it seems relevant to hold a first meeting of a Special Commission to review the practical operation of both instruments. As extending the number of Contracting Parties to both the 2007 Convention and its Protocol is an important objective at this stage, participants in the meeting of the Special Commission could also discuss the promotion of the Convention and its Protocol to States that have not yet joined. By the beginning of 2020, one may hope that 10 to 15 States will be using iSupport. In this respect, the content of a statistical report to be produced by iSupport on applications processed under the Convention could, as well, be discussed by the Special Commission.

III. Lead-up to the envisaged Special Commission meeting

8. As a first step, the PB suggests to prepare questionnaires for the 2007 Convention and the 2007 Protocol respectively, to be sent to Contracting Parties by early June 2019. The responses to both questionnaires would be expected by November 2019. Based on the responses received, the PB would prepare, as a second step, a report to the attention of the March 2020 meeting of the CGAP. This

³ See, Prel. Doc. No 2-A of July 2009, "Forms Working Group Report", which identified the following forms that could be developed in the future and their level of priority: **Priority:** (1) Model decision; (2) Form to locate the debtor (Art. 6(2) b)); (3) Form to obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets (Art. 6(2) c)); (4) Model form for record of payments made by the debtor; (5) Statement of arrears and / or amounts due and paid statement (Art. 25(1) d)); (6) Form regarding the automatic adjustment by indexation (Art. 25(1) e)). **Non-priority:** (1) Instruction page for each form; (2) Request for specific measures (Art. 7) – already completed; (3) Statements of enforceability with respect to authentic instruments as well as private agreements (Art. 30(3) b)); (4) Model power of attorney (Art. 42); (5) Form to provide assistance in establishing parentage (Art. 6(2) h)); (6) Document establishing that the conditions of Article 36(2) are fulfilled and that benefits have been provided to the creditor (Art. 36(4)), available on the HCCH website at < www.hcch.net > under "Child Support" then "Preliminary Documents".

⁴ See Prel. Doc. No 3 of August 2009, "Draft Country Profile – 2007 Child Support Convention". In its present form "the Country Profile is designed to reflect an implementation of the Convention where no declaration or reservation in relation to the scope of the Convention have been made (*i.e.*, implementation limited to the compulsory scope of the Convention)", available on the HCCH website at < www.hcch.net > under "Child Support" then "Preliminary Documents".

⁵ NCSEA is a non-governmental organisation based in the United States of America with an international membership which has observer status at the HCCH for the purpose of child support work. NCSEA includes an International Sub-Committee which meets on a monthly basis by conference call to discuss child support issues including the implementation of the 2007 Convention.

Report would recommend whether or not to convene a first meeting of the Special Commission to review the practical operation of the 2007 Convention and 2007 Protocol. If a Special Commission meeting is indeed recommended, it would further suggest for that meeting to take place in June 2020 (preferred option), or in October 2020 (if the work required for an effective preparation of the meeting so requires).

9. At this stage, it is envisaged that such a Special Commission meeting could be held over a period of three days (if held in June 2020, it could take place during the week of 8 or 15 June 2020). The meeting could start with a half day of discussions on the 2007 Protocol, for those States which are bound by it (the 2007 Protocol came into force in 2013 with the European Union's approval). The Special Commission could then proceed with two days of discussions gathering all those States bound by the 2007 Convention. Time could also be set aside during the meeting of the Special Commission (probably a half day) to discuss and promote iSupport. This could be done in between the part on the practical review of the 2007 Protocol and the part on the practical review of the 2007 Convention.

10. The timing of the proposed Special Commission would coincide with the first conclusions of an Experts' Group on the international transfer of maintenance funds (see Prel. Doc. No 11). The Experts' Group would report to the Special Commission on its findings which in turn could make a recommendation to the CGAP for its meeting in 2021.

IV. Proposal submitted to CGAP

11. The PB is of the view that a first meeting of a Special Commission to review the practical operation of the 2007 Convention and its Protocol may at this stage be appropriate, and indeed necessary, to support and promote the practical operation of both instruments. The PB therefore seeks the approval of CGAP at its 2019 meeting to proceed with the preparation of the aforementioned questionnaires. If approved, the PB would report to CGAP in 2020 on the responses to the questionnaires. CGAP at its 2020 meeting would then decide whether or not a Special Commission meeting should be convened, and, if so, whether to hold it in June or October 2020.