

## Conclusions & Decisions (C&D)

- 1 The Council on General Affairs and Policy (CGAP) met online from 1 to 5 March 2021, with attendance from 68 HCCH Members, 5 non-Member States and other Observers from 8 intergovernmental organisations and 10 international non-governmental organisations.<sup>1</sup>

### I. Ceremonies relating to Membership and HCCH Conventions

- 2 CGAP witnessed:
- a. the deposit of the instrument of acceptance of the Statute by Thailand and welcomed it as the 88<sup>th</sup> Member of the HCCH;
  - b. the proposal by the Government of the Netherlands to admit El Salvador as a Member of the HCCH and thereafter, the opening of the six-month voting procedure by the Secretary General; and
  - c. the signing, by Israel, of the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, and the *Convention of 30 June 2005 on Choice of Court Agreements*.

### II. Work relating to Possible New Legislative Instruments

#### A. Tourists and Visitors (Online Dispute Resolution)

- 3 CGAP welcomed the report of the Experts' Group, including the *Draft Outline – Practical Guide to Access to Justice for International Tourists and Visitors, with a Focus on Online Dispute Resolution (ODR)* prepared by the Permanent Bureau. With the conclusion of the work of the Experts' Group, CGAP recognised the effective stewardship of the Chair, Mr André Stemmet

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<sup>1</sup> These included the following Members of the HCCH: Albania, Andorra, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, European Union, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Kazakhstan, Korea (Republic of), Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Morocco, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela and Viet Nam; and the following Observers: Colombia, El Salvador, Honduras, Lebanon, Mongolia; and representatives for Intergovernmental Organisations: *Asociación Americana de Derecho Internacional Privado (ASADIP)*, *Commission internationale de l'état civil (CIEC)*, Council of Europe, European Patent Office (EPO), International Union of Notaries (IUNL), United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law (UNIDROIT), World Intellectual Property Organization (WIPO); and representatives for non-Governmental Organisations: Hague Academy of International Law, Council of Bars and Law Societies of Europe (CCBE), Common Law Association of Notaries (CLAN, formerly World Organisation of Notaries WON), European Law Institute, International Bar Association (IBA), International Law Association (ILA), International Swaps and Derivatives Association (ISDA), International Union of Judicial Officers (UIHJ) and the International Association of Judges (IAJ).

(South Africa), thanked the members of the Group, and acknowledged the constructive and generous support of Brazil.

- 4 CGAP mandated the PB to develop a *Practical Guide to Access to Justice for International Tourists and Visitors*, based on the Draft Outline. The Draft Guide will be circulated to HCCH Members and relevant Observers and will be submitted to CGAP for approval at its 2022 meeting.

## **B. Parentage / Surrogacy**

- 5 CGAP welcomed the reports of the Experts' Group and endorsed the recommendation to extend the Group's mandate by one year, to allow submission of its final report to CGAP at its 2023 meeting. This will allow the Group to have at least one in-person meeting, as well as to continue intersessional work and convene several short online meetings.
- 6 CGAP reiterated that any work by the HCCH in relation to international surrogacy arrangements should not be understood as supporting or opposing surrogacy.

## **C. Jurisdiction**

- 7 CGAP welcomed the report of the Experts' Group. With the conclusion of the work of the Group, CGAP expressed its gratitude to the Chair, Professor Keisuke Takeshita (Japan), and to the members of the Group.
- 8 CGAP mandated the establishment of a Working Group on matters related to jurisdiction in transnational civil or commercial litigation, and invited Professor Keisuke Takeshita (Japan) to chair the Working Group.
- 9 In continuation of the mandate on the basis of which the Experts' Group had worked, CGAP mandated:
  - a. The Working Group to develop draft provisions on matters related to jurisdiction in civil or commercial matters, including rules for concurrent proceedings, to further inform policy considerations and decisions in relation to the scope and type of any new instrument.
  - b. The Working Group to proceed in an inclusive and holistic manner, with an initial focus on developing binding rules for concurrent proceedings (parallel proceedings and related actions or claims), and acknowledging the primary role of both jurisdictional rules and the doctrine of *forum non conveniens*, notwithstanding other possible factors, in developing such rules.
  - c. The Working Group to explore how flexible mechanisms for judicial coordination and cooperation can support the operation of any future instrument on concurrent proceedings and jurisdiction in transnational civil or commercial litigation.
  - d. The PB to make arrangements for two Working Group meetings before the 2022 meeting of CGAP, with intersessional work, so as to maintain momentum. If possible, one meeting will be held after the northern hemisphere summer of 2021, and another in early 2022, with a preference, where possible, for hosting in-person meetings.

## **D. Digital Economy**

- 10 CGAP noted the report on the private international law implications of the digital economy, including distributed ledger technology, and acknowledged the importance of the subject to

the HCCH. CGAP mandated the PB to continue monitoring developments with respect to the digital economy and invited it to continue to study the topic, with a view to identifying private international law issues for potential future work. CGAP also mandated the PB to continue to work with other organisations in the field, such as UNCITRAL and UNIDROIT. The PB will report to CGAP at its 2022 meeting.

#### **E. Private International Law and Intellectual Property**

- 11 CGAP noted the progress made in developing the first joint HCCH-WIPO questionnaire aimed at providing a solid empirical understanding of the intersection between private international law and intellectual property. The PB will report to CGAP at its 2022 meeting.

#### **F. Private International Law and Insolvency**

- 12 CGAP noted the progress made with respect to future work on the applicable law in insolvency proceedings. CGAP reiterated support for the PB to coordinate and cooperate with the Secretariat of UNCITRAL in relation to possible future work in this field, subject to the related deliberations at the Fifty-fourth Session of UNCITRAL. The PB will report to CGAP at its 2022 meeting.

#### **G. Family Agreements**

- 13 CGAP mandated the PB to continue the revision of the *draft Practical Guide on cross-border recognition and enforcement of agreements reached in the course of family matters involving children* with the assistance of the Experts' Group. The draft Practical Guide will be circulated to HCCH Members for comments, revised accordingly, and submitted to CGAP for approval at its 2022 meeting.

### **III. Post-Convention Services and Assistance**

#### **A. Timing and Format of Special Commission Meetings**

- 14 Considering the exceptional circumstances associated with the COVID-19 pandemic, CGAP discussed the appropriate timing and format of the Special Commission meetings scheduled in the Financial Year 2021-2022. The outcomes of these discussions are reflected in C&Ds Nos 28 and 37. Where remote participation has been approved, it will be facilitated in a cost-effective manner. Remote participation will be included on the agenda of the 2022 meeting of CGAP.

#### **B. Statistical Data**

- 15 CGAP mandated the PB to identify possible approaches for the more effective collection and analysis of statistical data in relation to HCCH Conventions, taking into account the needs of, and the impact on, HCCH Members and Contracting Parties. The PB will report to CGAP at its 2022 meeting.

#### **C. International Family and Child Protection Law**

##### **1. 1980 Child Abduction and 1996 Child Protection Conventions**

##### **a. Special Commission Meeting**

- 16 CGAP mandated the PB to continue preparations for the next meeting of the Special Commission on the practical operation of the 1980 Child Abduction and 1996 Child

Protection Conventions, provisionally scheduled for the second half of 2023. CGAP endorsed the work plan for these preparations, including the collection of statistics and the identification of relevant topics for discussion through the circulation of questionnaires ahead of the Special Commission meeting.

**b. 1996 Child Protection Convention: Country Profile**

17 CGAP endorsed the work plan in relation to a Country Profile for the 1996 Child Protection Convention and invited the PB to develop a draft Country Profile in a user-friendly, electronic format for consideration at the next Special Commission meeting.

18 CGAP encouraged the PB to leverage the 25<sup>th</sup> anniversary of the 1996 Child Protection Convention, when planning research activities, publications, and events.

**c. INCASTAT and INCADAT**

19 CGAP welcomed the critical assessment of INCASTAT and mandated its discontinuance.

20 CGAP reiterated its invitation to Members to consider making voluntary contributions towards the maintenance and operation of INCADAT and to designate a national INCADAT correspondent.

**d. Malta Process and the Working Party on Mediation**

21 CGAP expressed its gratitude to the outgoing co-Chair of the Working Party on Mediation Mr Mark Berman (Canada), and welcomed Ms Karine Asselin (Canada) as his successor.

**e. International Hague Network of Judges (IHNJ)**

22 CGAP noted the postponement to July 2022 of the 4<sup>th</sup> Global Meeting of the IHNJ and the HCCH Judicial Roundtable, to be hosted by Singapore.

**2. 1993 Adoption Convention**

**a. Special Commission Meeting**

23 CGAP noted the progress made in organising the next meeting of the Special Commission on the practical operation of the 1993 Adoption Convention. Considering the exceptional circumstances associated with the COVID-19 pandemic and its preference for an in-person meeting, CGAP agreed to provisionally reschedule the Special Commission meeting to July 2022.

**b. Working Group on Preventing and Addressing Illicit Practices**

24 CGAP welcomed the report of the Working Group and, due to the postponement of the Special Commission meeting, agreed that a further meeting of the Working Group should be held before the Special Commission meeting, in order to enable further work on the Toolkit.

**3. 2000 Protection of Adults Convention**

25 CGAP encouraged HCCH Members that have not yet responded to the September 2020 Questionnaire, in particular Contracting Parties and signatories to the 2000 Protection of Adults Convention, to do so before 31 March 2021.

26 CGAP noted the progress made on the draft Practical Handbook on the Operation of the 2000 Protection of Adults Convention and mandated the PB to establish a Working Group to

continue the development of the draft Practical Handbook. This Working Group will meet online and will comprise experts with experience on the operation or implementation of the Convention.

- 27 CGAP agreed to provisionally reschedule the first meeting of the Special Commission on the practical operation of the 2000 Protection of Adults Convention to the second half of 2022.

#### **4. 2007 Child Support Convention and its Protocol**

##### ***a. Special Commission Meeting***

- 28 CGAP noted the progress made in organising the next meeting of the Special Commission on the practical operation of the 2007 Child Support Convention and its Protocol, including extensive consultations with Members to finalise documents for presentation to the Special Commission. Considering the exceptional circumstances associated with the COVID-19 pandemic, and for this particular meeting, CGAP mandated the PB to make arrangements for an in-person meeting with the possibility of facilitating remote participation. CGAP agreed to the further postponement of the Special Commission meeting, to be held between March and June 2022.

- 29 CGAP welcomed the work completed by the Administrative Cooperation Working Group and the Applicable Law Working Group. CGAP mandated the PB to make arrangements for further meetings of the Administrative Cooperation Working Group ahead of the Special Commission meeting.

- 30 CGAP mandated the PB to make arrangements for online events before the Special Commission meeting, namely, a general information session for Contracting and non-Contracting Parties, bilateral meetings for Contracting and non-Contracting Parties, and an information session on iSupport.

##### ***b. iSupport***

- 31 CGAP welcomed the report on iSupport and invited States to implement the software with a view to standardising and generating savings in their child support operations.

##### ***c. International Transfer of Maintenance Funds***

- 32 CGAP welcomed the progress made by the Experts' Group and invited the PB to make arrangements for a further online meeting ahead of the Special Commission meeting.

#### **5. 1970 Divorce Convention**

- 33 CGAP mandated the circulation of a brief questionnaire on the 1970 Divorce Convention with a view to developing a better understanding of the current operation of the Convention and why more States have not become party to the Convention. Noting that this work is subject to available resources, CGAP invited the PB to report by its 2023 meeting.

#### **D. Transnational Litigation and Authentication of Public Documents**

##### **1. Transnational Litigation**

- 34 CGAP welcomed and endorsed the consolidation efforts of post-Convention assistance and promotional activities in respect to the transnational litigation instruments.

35 CGAP supported the proposal to dedicate Edition 2021 of *HCCH a|Bridged* to the 2005 Choice of Court Convention and, subject to available resources, the circulation of a brief questionnaire to elicit reasons as to why more States have not become party to the Convention.

36 CGAP endorsed the work plan for the preparation of the next meeting of the Special Commission to consider the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions, including the circulation of a questionnaire and the respective revisions of the Practical Handbooks on the Service and Evidence Conventions. Recognising that flexibility may be required, CGAP agreed to provisionally reschedule the Special Commission meeting to the first half of 2023.

## **2. 1961 Apostille Convention and electronic Apostille Programme (e-APP)**

37 CGAP noted the update with respect to the preparations for the Experts' Group on the e-APP and new technologies, the meeting of the Special Commission on the practical operation of the 1961 Apostille Convention, and the 12<sup>th</sup> International Forum on the e-APP. CGAP noted the plans to organise the meeting of the Experts' Group in an online format in May 2021. Considering the exceptional circumstances associated with the COVID-19 pandemic, and for this particular Special Commission meeting, CGAP mandated the PB to make arrangements for an online meeting, without setting a precedent. The Special Commission meeting will be held in conjunction with the Forum and will coincide with the 60<sup>th</sup> anniversary of the Convention in October 2021.

## **E. International Commercial and Financial Law**

38 CGAP noted the report on preparations for an online international conference on the HCCH Conventions and Instruments relating to commercial and financial law, including the preparation of a questionnaire. CGAP mandated the PB to continue to make arrangements for the conference, to be held in the second half of 2022, subject to available resources.

39 CGAP noted the report on the 1985 Trusts Convention and mandated the PB to continue its work in relation to the Convention. CGAP encouraged the PB to leverage the 30<sup>th</sup> anniversary of the entry into force of the Convention when planning research activities, publications, and events.

## **F. Report on post-Convention Assistance Activities**

40 CGAP noted the oral report on post-Convention assistance activities.

## **IV. Reports of Regional Offices**

41 CGAP welcomed the Reports of the Regional Offices and recognised the excellent services they continue to provide to HCCH Members.

42 CGAP welcomed the new Representative of the Regional Office for Asia and the Pacific, Professor Yun Zhao.

## **V. Governance of the Organisation**

### **A. Chair of CGAP**

43 CGAP welcomed the announcement by its Chair that he would remain in the position until the conclusion of its 2022 meeting.

44 With respect to the election of a new Chair, CGAP noted the Rules of Procedure and recalled the importance of ensuring appropriate geographic and gender representation. CGAP invited HCCH Members wishing to recommend a delegate or expert for consideration for the position of Chair to advise the Secretary General and the incumbent Chair by 1 September 2021.

#### **B. Working Group on Future Secretaries General**

45 CGAP approved the *Arrangements for appointing Secretaries General of the Hague Conference on Private International Law (HCCH)*.

#### **C. List of Observers**

46 CGAP amended the List of Observers.

#### **D. Production of Minutes**

47 CGAP noted the adjustments made by the PB in producing minutes for meetings and, taking into account the feedback provided by HCCH Members, including on the special nature of traditional minutes, approved the use of the current approach until the 2022 meeting of CGAP.

#### **E. Resource Allocation**

48 CGAP noted the report of the PB on its time recording system and the allocation of resources in 2020.

#### **F. Financial Matters**

49 CGAP noted the Secretary General's update concerning the Draft Budget and Explanatory Notes for Financial Year 2021-2022.

50 CGAP noted the importance of voluntary contributions and thanked contributors.

51 Noting C&Ds Nos 23 and 28, due to the financial implications of rescheduling these meetings, CGAP recommended that the Council of Diplomatic Representatives authorise the Secretary General to carry over funds previously allocated to these Special Commission meetings.

#### **G. Geographic Representation**

52 Reaffirming the principles of universality and inclusiveness, CGAP reiterated its commitment to ensuring appropriate geographic representation at the HCCH. Recognising the importance of this issue, CGAP agreed to maintain this item on the agenda for its 2022 meeting. CGAP invited the PB to facilitate, within existing resources, informal consultations ahead of the 2022 meeting of CGAP, through in-person meetings, while ensuring the opportunity for any HCCH Member to participate.

53 In the context of this discussion, CGAP also recalled the importance of ensuring appropriate gender representation.

54 CGAP requested the PB to provide a historical overview of geographic and gender representation in the key bodies and groups of the Organisation ahead of the 2022 meeting of CGAP.



## **H. Strategic Development of the Organisation**

- 55 CGAP noted the progress made on the implementation of the HCCH Strategic Plan 2019-2022. CGAP noted the need to review the Strategic Plan ahead of its expiry, acknowledging the possibility of extending the current Strategic Plan with amendments. CGAP mandated the PB to re-circulate the Strategic Plan 2019-2022 to HCCH Members for comment, and to compile the comments submitted by HCCH Members for CGAP ahead of its 2022 meeting.
- 56 CGAP noted the ongoing efforts of the PB, with the assistance of an open, informal Group of Ambassadors, to prepare for further discussions on the strategic development of the HCCH at the 2022 brainstorming session and meeting of CGAP.
- 57 CGAP expressed its gratitude to the Ministry of Foreign Affairs of the Netherlands for its generous voluntary contribution towards a study on the economic and societal impact of HCCH Conventions.