

# Council on General Affairs and Policy (5-8 March 2019)



## CONCLUSIONS & RECOMMENDATIONS

### ADOPTED BY COUNCIL

1. The Council on General Affairs and Policy (Council) met from 5 to 8 March 2019, with attendance from 70 Members including one Member REIO, three non-Member States and other observers from three IGOs / nine NGOs.<sup>1</sup>

#### Ceremonies for requesting Membership, as well as signing, ratifying and acceding to HCCH Conventions

2. Council witnessed:
  - the proposal by the Government of the Kingdom of the Netherlands to admit the Republic of Honduras as a Member of the HCCH; and
  - the signing and ratification of the *HCCH Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* by the Republic of Honduras.
3. Council also welcomed the report that the Co-operative Republic of Guyana had deposited the instruments of accession to the:
  - *HCCH Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*; and
  - the *HCCH Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*.

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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, People's Republic of China, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, European Union, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Jordan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Morocco, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of North Macedonia, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet Nam and Zambia; and the following Observers: Dominican Republic, Honduras and Indonesia; and representatives for Intergovernmental Organisations: International Institute for the Unification of Private Law (UNIDROIT), United Nations Commission on International Trade Law (UNCITRAL), United Nations Committee on the Rights of the Child (UNCRC); and representatives for non-Governmental Organisations: American Association of Private International Law, European Law Institute (ELI), International Association of Consumer Law (IACL), International Association of Judges (IAJ), International Association of Lawyers, International Bar Association (IBA), International Union of Judicial Officers, P.R.I.M.E. Finance Foundation, World Intellectual Property Organization (WIPO).

## **Work relating to possible new instruments**

### ***Judgments Project***

4. Council welcomed the advice of the Special Commission on the Recognition and Enforcement of Foreign Judgments that it has completed its mandate. Council mandated the Permanent Bureau to continue preparations for the Twenty-Second Diplomatic Session, to be held from 18 June to 2 July 2019 in The Hague.
5. Council confirmed the mandate given to the Permanent Bureau to plan a further meeting of the Experts' Group addressing matters relating to jurisdiction with a view to preparing an additional instrument. As requested by Council, the meeting will be held in the first week of February 2020. The Experts' Group will provide an update to Council at its 2020 meeting.
6. Council asked the Permanent Bureau to revise Preliminary Document No 26 to reflect the Members' discussions on the finalisation of the Explanatory Report and to affirm the fundamental importance of the principle of consensus. It mandated the circulation of the amended Preliminary Document, together with the current Rules of Procedure of the HCCH, no later than two months before the Diplomatic Session to facilitate the adoption of procedural rules for the Diplomatic Session.

### ***Parentage / Surrogacy Project***

7. Council welcomed the reports of the Experts' Group. It endorsed the continuation of the work in line with the latest report of the Experts' Group and noted that most Experts recommended that future work focus on developing both:
  - a general private international law instrument on the recognition of foreign judicial decisions on legal parentage; and
  - a separate protocol on the recognition of foreign judicial decisions on legal parentage arising from international surrogacy arrangements.
8. Council agreed that another meeting of the Experts' Group should be convened prior to Council's 2020 meeting. The initial task of the Experts' Group is to propose provisions for inclusion in possible future instruments relating to the recognition of judicial decisions as set out in the Reports of the Experts' Group.
9. Council acknowledged that the feasibility of making provisions in relation to applicable law rules and cooperation requires further study and discussion.
10. Council underlined that any work by the HCCH in relation to international surrogacy arrangements should not be understood as supporting or opposing surrogacy.
11. Council decided that intercountry adoptions, including those within the scope of the 1993 HCCH Intercountry Adoption Convention, should be excluded from the scope of the Parentage / Surrogacy Project. Council emphasised the importance of not undermining the 1993 Intercountry Adoption Convention.
12. The Experts' Group will report to Council at its 2020 meeting.

### ***Recognition of domestic adoptions***

13. Council acknowledged that recognition of domestic adoptions raises many important issues and challenges. While not a priority for the HCCH at this time, the topic could be addressed by the Experts' Group on the Parentage / Surrogacy Project at a later stage.

### ***Tourists and Visitors Project***

14. Council welcomed the report of the Experts' Group and the Final Report on desirability and feasibility of further work prepared by the Consultant, Mr Guinchard. Council thanked the Government of Brazil for its ongoing support for this Project.
15. Having regard to the problems encountered by international tourists and the mandate of the HCCH, Council requested the Permanent Bureau to make arrangements for an Experts' Group meeting to consider whether the HCCH could contribute solutions to any of these problems. If so, Council requested the Experts' Group to identify a range of options, whether legally binding or not, to address these problems. Council further requested the Permanent Bureau to seek the views of Members on the questions to be addressed by the Experts' Group in advance of their meeting.
16. Council recognised the ability of the Permanent Bureau to commission, should the Experts' Group consider it necessary, further work to assist in identifying options, using the balance of the voluntary contribution made by the Government of Brazil, provided that any work should be completed in time for inclusion in the Experts' Group's report to enable Council to take a decision on the future of the Project.
17. Council requested that the Experts' Group report on its findings, any options identified, and the arguments for and against each option to Council at its 2020 meeting.

### ***Family agreements***

18. Council thanked the Experts' Group for its work and for preparing its revised draft *Practical Guide on the cross-border recognition and enforcement of agreements reached in the course of family matters involving children*.
19. In light of concerns expressed, Council did not approve the revised draft Practical Guide. Council asked that the draft Practical Guide be re-circulated to Members to provide additional comments within a three-month period. All comments received will be made available to other Members on the Secure Portal of the HCCH website. The draft Practical Guide would then be revised by the Experts' Group with a view, in particular, to increasing its readability for a wider audience. The finalised draft Practical Guide would be circulated to Members for approval. In the absence of any objection within one month, the draft Practical Guide would be taken to be approved; in the case of one or more objections, the draft Practical Guide would be put to Council at its 2020 meeting, without any further work being undertaken. Council requested that the Permanent Bureau immediately notify the Members of any objections.

### ***Cooperation with UNIDROIT, UNCITRAL, WIPO and other International Organisations***

20. Council welcomed progress on the draft Guide to Uniform Legal Instruments in the area of international commercial contracts. Council recognised the complexities inherent in the nature of multi-partite approval processes for joint projects. In light of the overlap in the membership of the organisations, Council welcomed efforts currently underway to streamline the approval process for the draft Guide. Council invited the Permanent Bureau to circulate a consolidated draft to Members for comment. As part of the tripartite approval process, the draft will be considered at the Council meeting in 2020.
21. Council approved the final draft of the WIPO-HCCH Guide on "When Private International Law meets Intellectual Property Law – A Guide for Judges" and asked the Permanent Bureau to cooperate with WIPO regarding the publication and promotion of the Guide. Council thanked the two authors of the IP Guide, Dr Bennett and Justice Granata, the Secretariat of UNCITRAL for its technical input and WIPO for its assistance in preparing the Guide.

22. Council invited the Permanent Bureau to cooperate with the WIPO Secretariat to publish the Guide and encouraged joint HCCH-WIPO activities aimed at widely promoting the Guide among judiciaries and other relevant stakeholders.
23. Acknowledging its impact on the Work Programme and other priorities, Council encouraged the Permanent Bureau, subject to available resources, to continue to provide expert advice in response to requests from other international organisations, including the HCCH's sister organisations UNIDROIT and UNCITRAL. Council noted that the provision of such expertise would not constitute the view of the HCCH unless approved by Council.

#### **Post-Convention activities**

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

###### *Working Group on Article 13(1)(b)*

24. Council thanked the Working Group and stressed the importance of the Guide to Good Practice on Article 13(1)(b). In light of concerns expressed, Council did not approve the revised draft Guide. Council asked that the draft Guide be re-circulated to Members to provide additional comments within a two-month period. All comments received will be made available to other Members on the Secure Portal of the HCCH website. The draft Guide would then be revised by the Working Group. The finalised draft Guide would be circulated to Members for approval. In the absence of any objection within one month, the draft Guide would be taken to be approved; in the case of one or more objections, the draft Guide would be put to Council at its 2020 meeting, without any further work being undertaken. Council requested that the Permanent Bureau immediately notify the Members of any objections.

###### *Malta Process and related Working Party on Mediation*

25. Council noted recent developments concerning the Malta Process and welcomed the report of Canada as co-Chair of the Working Party on Mediation within the Malta Process. Council requested that further information on the Working Party on Mediation be made available through the HCCH website.

###### *International Hague Network of Judges (IHNJ) and Direct Judicial Communications*

26. Council welcomed the Permanent Bureau's update on the IHNJ and Direct Judicial Communications and on the development of a secure portal for the IHNJ. Council thanked the Government of Germany for the voluntary contribution made in support of the development of the secure portal.
27. Council noted the Government of Singapore's offer to host the next global meeting of the IHNJ in July 2020.

##### ***2007 Child Support Convention (incl. iSupport) and its Protocol***

28. Council 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 at its meeting in 2020. Based on this report, Council will consider whether there is a need for a first meeting of the Special Commission, possibly to be held in June 2020.
29. Council welcomed the Permanent Bureau's update on iSupport.

### ***International transfer of maintenance funds***

30. Council approved the establishment of an Experts' Group on international transfer of maintenance funds which will meet in September 2019. The composition of the Experts' Group should include child support experts and experts from the financial sector. The primary task of the Experts' Group will be to produce an inventory of good practices. After a first in-person meeting, the Experts' Group could meet through videoconferencing. The Experts' Group will report to Council at its 2020 meeting.

### ***1993 Intercountry Adoption Convention***

31. Council supported the continuation of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption, including through an in-person meeting, to be held before June 2019.
32. Council reaffirmed that the next meeting of the Special Commission on the practical operation of the 1993 Intercountry Adoption Convention should be held in 2021, subject to available resources and the overall Work Programme of the HCCH.
33. 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***

34. Council mandated the Permanent Bureau to prepare for a first meeting of the Special Commission to review the practical operation of the 2000 Adults Convention in the first half of 2022. A short questionnaire to help identify the topics to be discussed at the meeting will be circulated by September 2019. The Permanent Bureau will report to Council at its 2020 meeting. The Permanent Bureau is invited to explore possible side-events to support implementation of the 2000 Adults Convention.

## **International legal cooperation and litigation**

### ***1961 Apostille Convention***

#### *e-APP Forum 11*

35. Council welcomed the announcement of the 11<sup>th</sup> International Forum on the electronic Apostille Program (e-APP), to be held from 16 to 18 October 2019 in Brazil. Council encouraged the Permanent Bureau to continue monitoring relevant technological advances (such as distributed ledger technologies) and interoperability issues in relation to the e-APP, and to the Convention more broadly. Council invited the Permanent Bureau to continue holding e-APP fora in conjunction with Special Commission meetings.

#### *Apostille Special Commission*

36. Council approved plans to convene a meeting of the Special Commission on the practical operation of the Apostille Convention in 2021. Council mandated the Permanent Bureau to circulate a questionnaire on the practical operation of the Convention, new technological developments, and relevant challenges related to the use of different technologies.

#### *Apostille Handbook*

37. Council endorsed the ongoing work of the Permanent Bureau in preparing the second edition of the Handbook on the Practical Operation of the Apostille Convention.

## **1965 Service and 1970 Evidence Conventions**

### *Guide to Good Practice on Video-Link*

38. Council welcomed the preparation of the draft Guide to Good Practice on the Use of Video-Link under the Evidence Convention and thanked the Experts' Group. Council asked that the draft Guide be re-circulated to Members to provide additional comments within a one-month period. All comments received will be made available to other Members on the Secure Portal of the HCCH website. The draft Guide would then be revised by the Experts' Group. The finalised draft Guide would be circulated to Members for approval. In the absence of any objection within one month, the draft Guide would be taken to be approved; in the case of one or more objections, the draft Guide would be put to Council at its 2020 meeting, without any further work being undertaken. Council requested that the Permanent Bureau immediately notify the Members of any objections.

### *Practical Handbooks*

39. Council mandated the Permanent Bureau to prepare new editions of the Practical Handbooks on the Operation of the Service and Evidence Conventions.

### *Electronic transmission of requests*

40. Council mandated the Permanent Bureau to conduct work with respect to the development of an electronic system to support and improve the operation of both the Service and Evidence Conventions. The Permanent Bureau was requested to provide an update at Council's 2020 meeting. The update should address the following issues: whether and how information technology would support and improve the operation of the Conventions; current practices on the electronic transmission of requests under the Conventions; legal and technological barriers to such transmission and how best to address these; and how a possible international system for electronic transmission would be financed.

## **2005 Choice of Court Convention**

41. Council noted the Permanent Bureau's update on the 2005 Choice of Court Convention, and encouraged the Permanent Bureau to further promote the Convention, including in conjunction with other HCCH instruments.

## **International commercial and finance law**

### **2015 HCCH Principles**

42. Council noted the Permanent Bureau's update on the 2015 HCCH Principles and invited the Permanent Bureau to explore specific actions to encourage further usage of the Principles.
43. Council noted the publication of the OAS Guide on the Law Applicable to International Contracts in the Americas and welcomed the Permanent Bureau's cooperation with the OAS in this regard.

## **1985 Trusts and 2006 Securities Conventions**

44. Council took note of the oral update provided with respect to the Securities and Trusts Conventions and approved the Permanent Bureau's proposal to circulate a questionnaire relating to these and other HCCH Conventions and Instruments concerning commercial and financial law, to assess their practical operation and elicit reasons why parties have not joined these instruments. The analysis of the questionnaire may lead to an international conference in 2022.

***Report on post-Convention assistance activities (1 January – 31 December 2018)***

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

***Report of Regional Offices***

46. Council welcomed the Reports of the Regional Offices and recognised the excellent services they have provided for the HCCH.

***Governance of the Organisation***

***Working Group to consider the future procedure for appointing Secretaries General of the HCCH***

47. Council welcomed the update provided by the Chair of the Working Group and stressed the importance of finalising this work.

***Report from the Working Group on the Rules of Procedure of the HCCH***

48. Council noted the progress made by the Working Group, thanked Ambassador Czepelak for his Chairmanship and stressed the importance of finalising this work. Council did not approve the draft Observer Policy.
49. The Permanent Bureau circulated a list of observers that it is considering inviting to the Diplomatic Session on the Judgments Convention. Council instructed the Permanent Bureau to update Members no later than one month in advance of the Diplomatic Session on which of these observers accepted these invitations. Council also requested contact details, including any URLs, to be shared at that time.

***Update on new Strategic Plan and the framework for Regional Presence***

50. Council approved the HCCH Strategic Plan 2019-2022 with one minor amendment. Members thanked Ambassador Infante for her Chairmanship and the Informal Working Group.
51. Council mandated resumption of work on the Policy on the Framework for Regional Presence, with a view to it being completed and presented to Council for approval at its 2020 meeting.
52. Council agreed to include in its agenda for the 2020 meeting consideration of strategic matters such as those raised in conjunction with the 125<sup>th</sup> Anniversary events.

***Update on the Regional Office for the Asia Pacific***

53. Council thanked the Government of China for its generous offer to continue funding of the Regional Office for the Asia Pacific (Hong Kong SAR, People's Republic of China) until June 2021.

***Management efficiency initiatives***

54. Council noted the resource allocations for 2018 as well as the historical data provided by the Permanent Bureau. The Council made suggestions for improving the resource allocation tool.

### ***Use of modern technology to support the work of the HCCH***

55. Council reaffirmed its support for the activities of the Permanent Bureau in relation to the use and the development of information technology systems in support of HCCH Conventions, including in the areas of legal cooperation and family law (*e.g.*, e-APP, INCADAT, INCASTAT, iSupport).

### ***Proceedings of the HCCH: Update and proposals / Production of Minutes for meetings***

56. Council noted the Permanent Bureau's update on the preparation of *Proceedings* of the HCCH. Council trialed the provision of shorter Minutes accompanied by a full transcript of proceedings and associated audio file for its 2019 meeting and will make a decision, based on the reactions received in response to the trial, on future approaches at its 2020 meeting. The Permanent Bureau will make preparations to ensure it can comply with Council's decision in this regard.

### ***Updates to HCCH Staff Rules***

57. Council noted the update concerning the Staff Rules of the HCCH.

### ***Financial matters***

58. Council noted the Secretary General's update concerning the Draft Budget and Explanatory Notes for the Financial Year 2019-2020.
59. Council noted the Permanent Bureau's update on the Voluntary Contributions received during 2018 and thanked the contributors.

### ***Other business***

60. Council had a preliminary discussion on geographic representation in the HCCH. Council asked the Permanent Bureau to provide information on past discussions at the HCCH, as well as the approaches of other international intergovernmental organisations to this issue, for discussion during Council at its 2020 meeting.