

Council on General Affairs and Policy – March 2020

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	Prel. Doc. 13 of January 2020
Title	1965 Service / 1970 Evidence Conventions – The Use of Information Technology	
Author	Permanent Bureau	
Agenda item	Item IV-2-b	
Mandate(s)	C&R Nos 38-40, and 55 of the 2019 Council on General Affairs and Policy	
Objective	To report on work in relation to the use of IT under the Service and Evidence Conventions	
Action to be taken	For Approval <input checked="" type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	n/a	
Related documents	<ul style="list-style-type: none"> ▪ Guide to Good Practice on the Use of Video-Link under the Evidence Convention ▪ Prel. Doc. No 9 of CGAP 2019 ▪ Practical Handbook on the Operation of the Evidence Convention (3rd ed, 2016) ▪ Practical Handbook on the Operation of the Service Convention (4th ed, 2016) ▪ C&R of the 2014 Special Commission on the Practical Operation of the Service, Evidence and Access to Justice Conventions 	

I. Introduction

1. At its 2019 meeting, the Council on General Affairs and Policy (CGAP) mandated the Permanent Bureau (PB) to conduct work with respect to the use of information technology (IT) under both the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention) and the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention),¹ in the broader context of the ongoing projects in the area of legal cooperation.

2. This document outlines the work carried out to date pursuant to this mandate and presents proposals for future work in this area, in particular ahead of the upcoming milestone anniversaries for both the Service and Evidence Conventions (55th and 50th, respectively) in 2020, as well as for the *Convention of 25 October 1980 on Access to Justice* (Access to Justice Convention), which will celebrate its 40th anniversary.

3. The current and future work in this area will also inform the process of preparing for the next meeting of the Special Commission on the Practical Operation on the Service, Evidence and Access to Justice Conventions (SC), which is tentatively scheduled for 2023.

II. Work completed and ongoing projects

4. The projects being undertaken by the PB each address one or more of the particular issues specified in the CGAP mandate, namely:

“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”.²

A. Guide to Good Practice

5. CGAP will recall that the *Guide to Good Practice on the Use of Video-Link under the Evidence Convention* was presented in draft form during its 2019 meeting. CGAP welcomed the preparation of the Guide and outlined an approval procedure which would include the opportunity for Members to make final comments.³ As part of this procedure, the Guide was circulated to Members on 15 March 2019, opening a period for comments which continued until 15 April 2019. Formal comments were received from three States.⁴ A revised version of the Guide was then circulated on 14 May 2019 as part of the silent approval procedure mandated by CGAP. On 14 June 2019, the period for silent approval of the Guide closed with no objections, meaning that the text of the Guide was approved.

6. Following this approval, the PB began the process of final copy-editing, proofreading and formatting, as per standard HCCH practice. As of January 2020, this work is ongoing, but is in its final stages. It is expected that the final, formatted Guide will be published shortly after the 2020 CGAP meeting.

B. Service and Evidence questionnaires

7. In September 2019, the PB circulated two questionnaires on the use of IT, each one in relation to the Service and Evidence Conventions. The questionnaires covered a variety of topics, including the

¹ C&R Nos 38 to 40 of CGAP 2019.

² C&R No 40 of CGAP 2019.

³ C&R No 38 of CGAP 2019.

⁴ Formal comments were received from Germany, Israel and the People’s Republic of China.

status of the use and implementation of IT solutions in both the transmission and execution of requests under both Conventions, legal and technological challenges and views about future progress. It being over five years since the circulation of the previous questionnaires,⁵ the PB also took the opportunity to request general statistical information on incoming and outgoing requests under both the Conventions and other procedures, such as bilateral / multilateral agreements and as provided for by internal law.

8. The questionnaires were sent to Central Authorities of Contracting Parties to both the Service and Evidence Conventions, as well as National and Contact Organs of Members, with an initial deadline of 29 November 2019 for submission, however the deadline was subsequently extended to 31 December 2019. For the first time in the legal cooperation area, aside from the usual electronic documents made available to requesting Members, the questionnaires were accessible online to facilitate the collation of the response data.

9. At the time of writing, responses had been received to the Service questionnaire from 31 Contracting Parties (*i.e.*, a response rate of approximately 41%), and for the Evidence questionnaire, responses received from 27 Contracting Parties (*i.e.*, a response rate of approximately 44%). The PB has already begun processing and analysing the responses received, with a view to preparing a detailed summary of the findings to be shared with CGAP in due course.

C. HCCH a/Bridged: Edition 2019

10. On 11 December 2019, the inaugural edition of *HCCH a/Bridged* was held in The Hague. The purpose of the event was to bring together experts and stakeholders from around the world in an innovative format to discuss and debate the latest in cross-border litigation, civil procedure and dispute resolution. In light of the specific mandate of CGAP, *HCCH a/Bridged: Edition 2019* was focused on the “*HCCH Service Convention in the Era of Electronic and Information Technology*”.

11. *HCCH a/Bridged: Edition 2019* was specifically designed to be open to the public but with a limited number of participants in mind, so as to facilitate quality interactions. Over 85 participants attended the event, which included representatives of Central Authorities and the diplomatic corps, practitioners, academics, and students. A strong online presence was also curated, including livestreaming all of the sessions and a series of targeted social media posts, to ensure that this inaugural edition of *HCCH a/Bridged* reached the largest possible audience, both in person and remotely.

12. The programme saw speakers representing all continents presenting in a variety of formats, including moderated and self-moderated panels, as well as a series of individual talks focused on specialised topics. Various interactive elements were also incorporated in the day’s sessions to encourage audience engagement and feedback.

13. All of the *HCCH a/Bridged* sessions were filmed and once post-production editing is completed, the videos will be published online in early 2020, contributing to the expansion of the HCCH audiovisual library. In addition, speakers have been asked to submit a detailed written contribution to complement their presentations, each of which will be made available in 2020 as part of the post-event publication.

14. A generous voluntary contribution of the German Federal Ministry of Justice and Consumer Protection made the event possible, with additional support received from Ropes & Gray LLP and the AVEQ Group.

15. An interesting takeaway from *HCCH a/Bridged: Edition 2019* was that the participants confirmed a general interest in the use of electronic and information technology in the better operation of the Service Convention. In particular, there was strong support for the use of secure e-mail, and the exploration of a possible electronic platform, for the transmission of requests abroad under the Service

⁵ These questionnaires were circulated in November 2013 ahead of the May 2014 meeting of the Special Commission on the Practical Operation of the Service, Evidence and Access to Justice Conventions.

Convention. Other more recent technologies such as distributed ledger technology (DLT) were also explored, the question of whether such technologies would be in compliance with the provisions of the Service Convention, as well as the practical reality of what next steps Contracting Parties could take, were discussed in detail.

16. *HCCH a/Bridged: Edition 2019* has laid the foundation for possible future editions targeting other topics relevant to innovation in cross-border litigation, civil procedure and dispute resolution. Following the success of Edition 2019's focus on the Service Convention, a possible focus for edition 2020 could be the use of technology and the Evidence Convention, coinciding with the milestone 50th anniversary of the Evidence Convention and the publication of the video-link Guide to Good Practice.

D. Practical Handbooks

17. As mandated by CGAP at its 2019 meeting,⁶ over the course of the year, the PB has also continued substantive research with a view to publishing new editions of both the *Practical Handbook on the Operation of the Service Convention* (Service Handbook) and *Practical Handbook on the Operation of the Evidence Convention* (Evidence Handbook). The current editions (4th and 3rd editions, respectively) were published in 2016 and have proven to be invaluable tools for government authorities, members of the judiciary, and practitioners.

18. Where relevant, the work conducted in the context of the above-mentioned projects (*e.g.*, the Service and Evidence questionnaires and *HCCH a/Bridged*) will also inform the drafting and preparation process. In addition, once the video-link Guide to Good Practice is published as a standalone publication, it will supersede what is currently contained in Annex 8 of the 3rd edition of the Evidence Handbook.

III. Proposal to CGAP

19. The PB invites CGAP to welcome the approval and subsequent publication of the *Guide to Good Practice on the Use of Video-Link under the Evidence Convention*. CGAP is further invited to note the update regarding the work conducted to date with respect to the use of IT under the Service and Evidence Conventions, in particular the success of the inaugural edition of *HCCH a/Bridged*. Finally, CGAP may wish to endorse the continuation of work in this area and invite the PB to leverage the milestone anniversaries of the Service, Evidence and Access to Justice Conventions to further progress this work, with a view to reporting back to CGAP at its 2021 meeting.

⁶ C&R No 38 of CGAP 2019.