

Title	1965 Service, 1970 Evidence, 1980 Access to Justice, 2005 Choice of Court, 2019 Judgments Conventions: Update
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Table of Contents

- I. Introduction 2
- II. Progress on the work conducted by the Transnational Litigation & Apostille Division..... 2
 - A. 2005 Choice of Court and 2019 Judgments Conventions..... 2
 - 1. Status 2
 - 2. Post-Convention project 3
 - 3. Promotional activities..... 3
 - B. 1965 Service, 1970 Evidence, 1980 Access to Justice Conventions..... 4
 - 1. Status 4
 - 2. Promotional and training activities..... 5
- III. Preparation of the next meeting of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions..... 5
 - A. Questionnaires 5
 - B. Service Handbook and Evidence Handbook – Fifth Editions..... 6
 - C. Information session and other meetings..... 6
- IV. Proposals for CGAP 6

1965 Service, 1970 Evidence, 1980 Access to Justice, 2005 Choice of Court, 2019 Judgments Conventions: Update

I. Introduction

1 This document reports on developments regarding the core HCCH Conventions that aim to enhance access to justice and facilitate cross-border cooperation in the area of transnational litigation. These Conventions are listed below:

- *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965 Service Convention)*
- *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (1970 Evidence Convention)*
- *Convention of 25 October 1980 on International Access to Justice (1980 Access to Justice Convention)*
- *Convention of 30 June 2005 on Choice of Court Agreements (2005 Choice of Court Convention), and*
- *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention).*

The effective implementation and operation of these Conventions is supported by the Transnational Litigation & Apostille Division (the Division) at the Permanent Bureau (PB).

2 Section II of this document outlines work carried out, and progress made, in relation to the Conventions under the portfolio of the Division, with the exception of the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (1961 Apostille Convention).¹ Section III briefly outlines the planning and preparatory work for the meeting of the SC on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions, expected to be held in mid-November 2023 (2023 SC). Finally, Section IV sets out proposals for CGAP's consideration.

II. Progress on the work conducted by the Transnational Litigation & Apostille Division

3 The following report is divided into two sections. The first section reports on two complimentary Conventions in the Division, the 2005 Choice of Court Convention and the most recent 2019 Judgments Conventions. The second section covers the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions which will be considered further at the 2023 SC.

A. 2005 Choice of Court and 2019 Judgments Conventions

1. Status

4 Currently, 32 HCCH Members are bound by the 2005 Choice of Court Convention, namely Mexico, Singapore, the European Union (EU), all EU Member States, Montenegro and the United Kingdom. The Convention has been signed by the United States of America, Ukraine, the People's Republic of China, North Macedonia and Israel.

¹ The work carried out in relation to the 1961 Apostille Convention is reported on separately in "1961 Apostille Convention: Update", Prel. Doc. No 9 of December 2022 for the attention of CGAP 2023, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy".

5 Significant progress was made in 2022 regarding the 2019 Judgments Convention.² On 29 August 2022, the EU deposited its instrument of accession, becoming the first Contracting Party to the Convention. With this accession, all EU Member States (except Denmark) will be bound by the Convention. On the same day, Ukraine deposited its instrument of ratification. As a result of these treaty actions, and in accordance with Article 28(1), the Convention will enter into force on 1 September 2023, which is just over four years after its adoption in July 2019.

2. Post-Convention project

6 The PB continues to carry out a post-Convention project in South East Europe (SEE) to promote the 2019 Judgments Convention. Notably, a high-level Regional Forum “HCCH 2019 Judgments Convention: Prospects for the Western Balkans” (the Forum) took place in Skopje, North Macedonia in June 2022. The Forum was co-organised by the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), which is funded by the German Federal Ministry for Economic Cooperation and Development (BMZ), and by the Center for International Legal Cooperation (CILC), which in turn is funded by the Dutch Ministry of Foreign Affairs, and in cooperation with the HCCH and the International Union of Judicial Officers (UIHJ). The Forum was designed to raise further awareness of the Convention, with a view to facilitating the possible signature and ratification of the Convention in the Western Balkan region. The Forum was attended by representatives of the Ministries of Justice, Ministries of Foreign Affairs, judicial training institutions, chambers of enforcement agents, and legal experts from respective jurisdictions.

7 As part of the PB’s continuing support for this project, the PB intends to organise a workshop in The Hague for policy makers from Western Balkan jurisdictions in the first half of 2023. This workshop will be tailored to further promote the Convention and to build on the Forum and the ongoing work in the Western Balkan region.

3. Promotional activities

8 The PB continues to promote the 2005 Choice of Court and the 2019 Judgments Conventions, including through maintaining and updating the repository of articles about the Conventions.³

9 The PB also coordinates translations of the Conventions. For example, the PB recently obtained translations of the 2019 Judgments Convention in all EU languages, thanks to the EU translation service. Ukraine’s translation of the Convention has been provided by the Ukrainian government. The 2019 Judgments Convention is now available in 26 languages,⁴ in addition to English and French, the two official languages of the HCCH.

10 With a view to raising awareness and promoting the operation of the 2005 Choice of Court and 2019 Judgments Conventions, the PB cooperated with various stakeholders, including government officials, practitioners and academics at various events, either in person, online or via hybrid meetings, across many regions, and, where necessary, with the assistance of ROAP or ROLAC. The PB discussed the features and the relationships of these two Conventions and their importance for international trade and business at each of these events.

² Currently, there are five signatories to the 2019 Judgments Convention: Uruguay, Israel, Costa Rica, the Russian Federation and the United States of America.

³ The bibliographies of the 2005 Choice of Court and the 2019 Judgments Conventions are available on the HCCH website at www.hcch.net under “Choice of Court” / “Judgments” then “Bibliography”.

⁴ Albanian, Arabic, Bosnian-Serbian-Montenegrin, Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, German, Hungarian, Italian, Latvian, Lithuanian, Macedonian, Maltese, Polish, Portuguese, Romanian, Russian, Slovak, Slovene, Spanish, Swedish and Ukrainian.

- In May 2022, the PB attended the conference of the European Association of Private International Law (EAPIL) Young Research Network in Dubrovnik, covering both Conventions and the Jurisdiction Project.⁵
 - In July 2022, the PB and the Asian Business Law Institute (ABLI) co-organised an online webinar, “Cross-border Commercial Dispute Resolution – HCCH 2005 Choice of Court and 2019 Judgments Conventions”, building upon the success of the joint HCCH-ABLI webinar in 2021 which focused on the 1970 Evidence Convention.
 - In August 2022, the PB organised an online seminar for the Philippines covering the 2019 Judgments Convention and the 1970 Evidence Convention.
 - In November 2022, the PB participated in the Association of Southeast Asian Nations (ASEAN) Law Forum, “HCCH Conventions on mutual legal assistance in civil matters” in Hanoi, Viet Nam, and delivered a speech about the scope, role and impact of the Conventions under the Division’s portfolio.
 - Throughout the year, the PB gave lectures on both Conventions at various universities.
- 11 The PB followed the UNIDROIT project on “Best Practices for Effective Enforcement” and participated in both the 4th and 5th Working Group meetings as an Observer to ensure close coordination with UNIDROIT so as to avoid inadvertent overlaps with the 2019 Judgments Convention, and to provide technical support where required.

B. 1965 Service, 1970 Evidence, 1980 Access to Justice Conventions

1. Status

- 12 The 1965 Service Convention has 79 Contracting Parties. The latest treaty action was the entry into force of the Convention for Georgia on 1 January 2022, following Georgia’s accession in May 2021.
- 13 The 1970 Evidence Convention has 64 Contracting Parties, and the most recent treaty action was the accession by Georgia in 2021. Currently, the number of acceptances of accessions accounts for 73.93% of the total number of acceptances required in order for the 1970 Evidence Convention to become fully operational amongst all Contracting Parties.⁶ In this regard, the PB encourages Contracting Parties to revisit their pending acceptances so as to further enhance the usefulness and operation of the 1970 Evidence Convention.
- 14 Some positive developments can be witnessed from the ongoing efforts in the revision of the declarations. In July 2022, Germany amended its declaration made under Article 23 concerning the execution of Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. In Switzerland, a draft federal decree proposes to amend the Swiss declaration relating to Articles 15, 16 and 17. This amendment would permit the questioning or hearing of a person residing in Switzerland to be conducted by telephone or videoconference without prior approval from Swiss authorities, provided certain conditions are met. The declaration currently requires prior authorisation by the Federal Justice and Police Department. The new proposal is currently under consultation and subject to Parliament’s approval.
- 15 In relation to the existing declarations about Article 23, 28 Contracting Parties have made a general declaration (“full exclusion”), 20 have made a particularised declaration qualifying the circumstances in which they will or will not execute such Letters of Request (“qualified exclusion”), and 18 have made no declaration.⁷ In this regard, the PB recalls the Recommendation of the 2009

⁵ The work carried out in relation to the Jurisdiction Project is reported on separately in “Jurisdiction Working Group: Report”, Prel. Doc. No 2 to be published in February 2023 for the attention of CGAP 2023 and posted on the HCCH website (see path indicated in note 1).

⁶ More details are available on the HCCH website at www.hcch.net under “Evidence” then “Acceptance of accessions”.

⁷ When calculating the numbers of declarations, Hong Kong SAR and Macao SAR are calculated separately in addition to the Mainland China.

meeting of the SC that Contracting Parties revisit their general, non-particularised declarations under Article 23, if any, taking into account terms such as those contained in the United Kingdom declaration.⁸

- 16 With respect to the application of Chapter II of the 1970 Evidence Convention, five Contracting Parties have excluded the application in whole, 18 have excluded the application in part, and 43 have made no declaration regarding the application of Chapter II.⁹
- 17 The 1980 Access to Justice Convention currently binds 28 Parties. The last treaty action was the accession by Costa Rica in 2016.

2. Promotional and training activities

- 18 Where appropriate, the PB endeavours to promote the Conventions in the Division as a package. However, depending on the needs of the stakeholders involved, the Conventions are also promoted jointly or individually.
- In January 2022, the PB participated in an online seminar organised by the Ministry of Justice of Thailand, under the theme of “Global Unification of Private International Law as a Means for Regional Integration”, where the PB delivered presentations about the HCCH and the core Conventions, with focus on the 1961 Apostille and 1965 Service Conventions.
 - In June 2022, the PB joined the UIHJ to deliver a presentation on the 1965 Service Convention for the Ministry of Justice of the Democratic Republic of Congo, drawing on contributions from Congolese experts with a view to encouraging Congo's accession to the Convention.
 - The PB participated in contact point meetings of the European Judicial Network in Civil and Commercial Matters (EJN) on different topics, for example, introducing the Guide to Good Practice – The Use of Video-Link, in relation to the 1970 Evidence Convention, at the EJN's 86th meeting in June 2022, and the 1980 Access to Justice Convention at its 87th meeting in November 2022.

III. Preparation of the next meeting of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions

- 19 The PB is in the process of preparing the next meeting of the SC for the three Conventions (1965 Service, 1970 Evidence and 1980 Access to Justice). The 2023 SC was mandated by CGAP in 2022 and was provisionally scheduled for July 2023. The PB has revised the timing of this SC and has scheduled the meeting to take place in mid-November 2023. Further to the reporting to CGAP in 2022 by the PB, the PB has initiated a number of projects to prepare for the 2023 SC, as briefly outlined below.

A. Questionnaires

- 20 In December 2022, the PB circulated separate questionnaires on the practical operation of each of the three Conventions to HCCH Members and Contracting Parties to the Conventions. The PB also circulated these questionnaires to some non-Members where it was deemed appropriate to

⁸ C&R No 51 of the 2009 SC on the Practical Operation of the HCCH Apostille, Service, Taking of Evidence and Access to Justice Conventions; see also, C&R Nos 29-34 of the 2003 SC on the Practical Operation of the HCCH Apostille, Evidence and Service Conventions.

⁹ Of those Contracting Parties that have excluded in part the application of Chapter II, one party has excluded the application of Art. 15; 14 have excluded the application of Art. 16; 12 have excluded the application of Art. 17; and 13 have excluded the application of Art. 18. When calculating the numbers of declarations, Hong Kong SAR and Macao SAR are calculated separately in addition to Mainland China.

do so and with a view to promoting awareness of these Conventions and the work of the HCCH. The responses to these questionnaires will inform the agenda of the 2023 SC and will provide updated statistical information on the use of the Conventions. A summary of the responses will be prepared and circulated in advance of the 2023 SC.

B. Service Handbook and Evidence Handbook – Fifth Editions

- 21 Since the publication of the fourth edition of the Handbook on the Practical Operation of the Service Convention (Service Handbook) in 2016 and the fourth edition of the Handbook on the Practical Operation of the Evidence Convention (Evidence Handbook) in 2020, the PB has been monitoring relevant developments related to the 1965 Service and 1970 Evidence Conventions. The revision of both Handbooks was endorsed by CGAP in 2021.¹⁰ The PB plans to circulate a first draft of the fifth edition of each Handbook to Members and Contracting Parties for comment, in both English and French, in the first half of 2023. Taking into account any comments on the first drafts and the responses to the respective questionnaires, the PB will prepare and circulate amended draft versions ahead of the 2023 SC. The SC will then discuss the Handbooks in their respective final draft form. Final drafts, which will include amendments reflecting the Conclusions & Recommendations from the 2023 SC meeting, will be submitted to CGAP for approval at its 2024 meeting.

C. Information session and other meetings

- 22 The PB plans to organise an information session for participants in advance of the 2023 SC. The PB will also explore the possibility of organising other meetings in the margins of the SC meeting, including bilateral or regional meetings of Central Authorities or promotional meetings with States interested in joining any of the three Conventions.

IV. Proposals for CGAP

- 23 Based on the above report, the PB proposes the following Conclusions and Decisions:
- CGAP welcomed the upcoming entry into force of the 2019 Judgments Convention on 1 September 2023.
 - CGAP welcomed the preparations for the next meeting of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions, scheduled for mid-November 2023.

¹⁰ C&D No 36 of CGAP 2021.