

## Conclusions & Decisions (C&D)

- 1 The Council on General Affairs and Policy (CGAP) met from 7 to 10 March 2023. The meeting was attended by over 450 participants, representing 80 HCCH Members, 8 non-Member States, 7 intergovernmental organisations, 9 international non-governmental organisations, and members of the Permanent Bureau (PB).<sup>1</sup> Of the attendees, 264 delegates participated in person and 186 delegates participated online.

### I. Ceremonies Relating to HCCH Conventions

- 2 CGAP witnessed:
  - a. the deposit of the instrument of accession to the 1961 Apostille Convention by the People's Republic of China;
  - b. the deposit of the instrument of ratification of the 2000 Protection of Adults Convention by Malta.

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

#### A. Parentage / Surrogacy

- 3 CGAP welcomed the Final Report of the Experts' Group on the feasibility of one or more private international law (PIL) instruments on legal parentage. With the conclusion of the work of the Group, CGAP expressed its gratitude to the Chair of the Experts' Group, Ms Joëlle Schickel-Küng (Switzerland), and to its members.
- 4 CGAP mandated the establishment of a Working Group on PIL matters related to legal parentage generally, including legal parentage resulting from an international surrogacy arrangement.
- 5 In relation to the mandate on the basis of which the Experts' Group had worked, CGAP mandated:
  - a. the Working Group first to explore provisions for, if possible, one new instrument on these matters, to further inform CGAP on policy considerations in relation to the scope and content

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<sup>1</sup> The following Members of the HCCH were represented: Albania, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea (Republic of), Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Monaco, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of North Macedonia, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, and Viet Nam; in addition to the following non-Member States: Bolivia, Colombia, Guatemala, Indonesia, Lebanon, Rwanda, Tanzania, and United Arab Emirates; the following intergovernmental organisations: Council of Europe, International Commission on Civil Status (ICCS), International Development Law Organization (IDLO), International Institute for the Unification of Private Law (UNIDROIT), League of Arab States, MERCOSUR, and World Intellectual Property Organization (WIPO); and the following international non-governmental organisations: American Association of Private International Law (ASADIP), Council of Bars and Law Societies of Europe (CCBE), Common Law Association of Notaries (CLAN), European Law Institute (ELI), International Association of Judges (UIJ), International Bar Association (IBA), International Union of Judicial Officers (UIHJ), International Union of Notaries (UINL), and PRIME Finance Foundation.

of such instrument, including on the feasibility of reaching consensus. The Working Group could later explore the possibility of two instruments, if necessary;

- b. the Working Group to proceed on the basis that the aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights, including, for children, those enshrined in the *United Nations Convention on the Rights of the Child* (UNCRC) and in particular their right that their best interests be a primary consideration in all actions taken concerning them;
- c. the Working Group to draw on the ideas and assessments in the Final Report of the Experts' Group, recognising that a number of elements and approaches identified could feature either on their own or in a combined way;
- d. the PB to make arrangements for a maximum of two meetings within Financial Year (FY) 2023-2024, including at least one meeting before the next meeting of CGAP, with a preference for hosting in-person meetings (with the possibility for online participation).

6 The Working Group will update CGAP at its 2024 meeting.

7 CGAP encouraged Members to designate delegates who can speak to the policy views of their State.

8 CGAP reiterated that any work by the HCCH in relation to surrogacy arrangements should not be understood as supporting or opposing surrogacy.

## **B. Jurisdiction**

9 CGAP took note of the Report of the Chair of the Working Group on matters related to jurisdiction in transnational civil or commercial litigation and the progress made by the Working Group to further develop provisions for a draft Convention. CGAP recalled the Working Group's mandate as established in 2021 (C&D No 9 of CGAP 2021). CGAP invited the PB to convene two further Working Group meetings before CGAP 2024, the first in the second half of 2023 and the second preferably in January 2024, with intersessional work as required. These meetings should preferably be held in-person (with the possibility for online participation). Subject to budgetary considerations, the first of these two meetings could be held in a location outside the Netherlands. The Working Group will report to CGAP at its 2024 meeting.

## **C. Insolvency**

10 CGAP welcomed the cooperation between the PB and the UNCITRAL Secretariat on matters relating to applicable law in insolvency proceedings, and to civil asset tracing and recovery in insolvency proceedings. CGAP thanked Professor Francisco Garcimartín for his involvement, complementing the participation of the PB in these projects.

11 Subject to available resources, CGAP encouraged the PB to continue cooperation with the UNCITRAL and UNIDROIT Secretariats on insolvency-related projects.

12 Subject to available resources, CGAP also mandated the PB to continue to monitor developments with respect to PIL issues in insolvency, including issues relating to the treatment of digital transactions and digital assets in insolvency proceedings. The PB will report to CGAP at its 2024 meeting.

## **D. Intellectual Property (IP)**

13 CGAP noted the work carried out on the intersection of IP and PIL, including the cooperation between the PB and the International Bureau of WIPO. CGAP invited the PB to continue monitoring

developments on the intersection of IP and PIL, subject to available resources, and in light of the work programme relating to the digital economy.

## **E. Digital Economy**

### **CODIFI Report**

- 14 CGAP noted the outcomes of the 2022 HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference), and invited the Members to identify to the PB the outcomes of the CODIFI Conference with the highest desirability and feasibility for potential future normative work.
- 15 CGAP mandated the PB to continue, subject to available resources:
- a. monitoring developments with respect to artificial intelligence (AI), digital platforms and automated contracting, in partnership with subject-matter experts and with UNCITRAL;
  - b. monitoring developments with respect to the digital economy, with a view to identifying PIL issues for potential future work;
  - c. developing activities concerning topics falling under the purview of the HCCH International Commercial, Digital and Financial Law Division; and,
  - d. work with other organisations in the field, such as UNCITRAL and UNIDROIT.

### **Central Bank Digital Currencies (CBDCs)**

- 16 CGAP mandated the PB, in partnership with relevant subject-matter experts and Observers, to study the PIL implications of CBDCs. The PB will report to CGAP at its 2024 meeting on the outcomes of this study, including proposals for next steps.
- 17 CGAP also mandated the PB to prepare for and organise an online colloquium on this topic, subject to available resources.

### **HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens**

- 18 CGAP welcomed the cooperation between the PB and the UNIDROIT Secretariat on matters relating to digital assets. CGAP mandated the PB to examine, jointly with the UNIDROIT Secretariat and in light of work already completed at UNIDROIT as well as decisions that may be taken by the UNIDROIT Governing Council, the desirability of developing coordinated guidance and the feasibility of a normative framework on the law applicable to cross-border holdings and transfers of digital assets and tokens, covering relevant private law aspects, through the HCCH-UNIDROIT Digital Assets and Tokens Project. The PB will report on the results of the Project to CGAP at its 2024 meeting, including suggestions on the desirability and feasibility of continuing work on this topic through the establishment of a joint Experts' Group.

## **III. Post-Convention Work**

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

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

- 19 CGAP welcomed the preparations for the Eighth Meeting of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and 1996 Child Protection Conventions to be held in the second half of 2023.

- 20 CGAP reiterated its invitation to Members to consider making voluntary contributions for the maintenance and operation of the International Child Abduction Database (INCADAT) and recommended that Contracting Parties to the 1980 Child Abduction Convention consider the possibility of designating a national INCADAT correspondent.
- 21 CGAP noted the update on the activities of the International Hague Network of Judges (IHNJ) and welcomed the initiative to celebrate the 25<sup>th</sup> anniversary of the IHNJ, to coincide with the meeting of the SC in 2023. CGAP welcomed preparations for a Global Meeting of the IHNJ to be held in Singapore, provisionally scheduled for 2025.

## 2. 1993 Adoption Convention

- 22 CGAP endorsed the Conclusions & Recommendations (C&Rs) of the Fifth Meeting of the SC on the practical operation of the 1993 Adoption Convention and expressed its gratitude to the co-Chairs of the SC meeting, Ms Karabo Ozah (South Africa) and Ms Carine Rosalia (United States of America).
- 23 CGAP approved the *Toolkit to Prevent and Address Illicit Practices in Intercountry Adoption*, subject to editorial amendments, and approved its publication on the HCCH website.
- 24 CGAP approved the Model Forms for use under the 1993 Adoption Convention, subject to editorial amendments, and approved their publication on the HCCH website.
- 25 CGAP mandated the establishment of a Working Group on financial aspects of intercountry adoption and that it meet before the end of 2023. The mandate of the Working Group would be to take stock of current practices, identify possible coordinated, targeted, practical approaches, and to prioritise them with the understanding that the objective would be to raise standards using the HCCH Guides to Good Practice and the *Note on the Financial Aspects of Intercountry Adoption* as the starting point.
- 26 CGAP mandated the development of a Template for Country Fact Sheets on available post-adoption services relating to search for origins.
- 27 CGAP endorsed the holding, both in States of origin and receiving States, of State-led virtual workshops on post-adoption services and approved that the submission of the Report of the Steering Committee organising these workshops be postponed to CGAP 2025.
- 28 CGAP noted the importance of technical assistance, in particular through the Intercountry Adoption Technical Assistance Programme (ICATAP), and encouraged States to request technical assistance if needed.
- 29 Noting that the 1993 Adoption Convention is founded on universally accepted principles, CGAP recalled the importance of respecting the Convention's frameworks and principles, including during and after armed conflict.

## 3. 2000 Protection of Adults Convention

- 30 CGAP endorsed the C&Rs of the First Meeting of the SC on the practical operation of the 2000 Protection of Adults Convention and expressed its gratitude to the Chair of the SC meeting, Ms Tania Jewczuk (France).
- 31 CGAP mandated the Working Group developing the Practical Handbook on the Operation of the 2000 Protection of Adults Convention to continue working on the finalisation of the Implementation Checklist, the Country Profile and the Practical Handbook before they are circulated to Members for comment. Once finalised in the light of the comments received from Members, the aforementioned documents will be circulated to Members for approval. In the absence of any

objection raised within two months, the drafts will be taken to be approved; in the case of one or more objections, the drafts would be put to CGAP at its 2024 meeting, without any further work being undertaken.

#### Extension of the IHNJ

32 Following the recommendations of the SC, CGAP:

- a. mandated extending the scope of the IHNJ to matters relating to the 2000 Protection of Adults Convention;
- b. encouraged Contracting Parties to designate one or more members of the judiciary for the purpose of judicial communications on matters relating to the 2000 Protection of Adults Convention. Designated members of the judiciary should be sitting judges, or members of the judiciary bound by the same standards of independence and impartiality as a sitting judge, with authority and, ideally, with experience in the area of protection of adults. Contracting Parties could designate existing members of the IHNJ to that effect and / or new members;
- c. mandated the PB to keep the list of members of the IHNJ updated, indicating the areas of law for which each member is responsible; and
- d. mandated the extension, with the necessary adaptations, of the *Emerging Guidance and General Principles on Direct Judicial Communications* to the 2000 Protection of Adults Convention. Such adaptations could be carried out by a Working Group mainly constituted of members of the IHNJ, at a time when CGAP considers that a sufficient number of members of the IHNJ, representing different legal traditions, have been designated for the purpose of the 2000 Convention.

#### Possible amendments to the Convention

33 Following a recommendation from the SC to this effect, CGAP considered the issue of amending the 2000 Protection of Adults Convention. Pursuant to further discussions, CGAP decided that proposed amendments to the Convention, including the addition of an REIO clause, were neither desirable nor necessary,

#### 4. 2007 Child Support Convention (incl. iSupport) and its Protocol

- 34 CGAP endorsed the C&R of the First Meeting of the SC to review the practical operation of the 2007 Child Support Convention and 2007 Protocol on Applicable Law and expressed its gratitude to the Chair of the SC meeting, Ms Floor de Jongh Bekkali (Norway). CGAP also endorsed the C&R of the Applicable Law Working Group (ALWG) and of the International Transfer of Maintenance Funds Experts' Group (ITMFEG).
- 35 CGAP approved the future work programme of the Working and Experts' Groups, and of the PB, subject to available resources.
- 36 CGAP noted recent encouraging developments in relation to iSupport and renewed its invitation to Members and Contracting Parties to consider implementing the software with a view to facilitating the recovery of child support payments and generating savings in their child support operations.
- 37 CGAP took note of the *Aide-mémoire* of the ITMFEG meeting of February 2023. The ITMFEG will meet once again and report to CGAP at its 2024 meeting.

## **B. Transnational Litigation and Apostille**

### **1. 2019 Judgments Convention**

- 38 CGAP welcomed the upcoming entry into force of the 2019 Judgments Convention on 1 September 2023.

### **2. 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions**

- 39 CGAP welcomed the preparations for the next meeting of the SC on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions. In light of budgetary considerations, CGAP decided to postpone the meeting to the earliest possible date in FY 2024-2025.

### **3. 1961 Apostille Convention (incl. the e-APP)**

- 40 CGAP welcomed the PB's post-Convention activities with respect to the 1961 Apostille Convention and the e-APP. CGAP encouraged Contracting Parties or Members interested in translating the second edition of the Apostille Handbook to contact the PB.
- 41 CGAP encouraged Contracting Parties or Members interested in hosting the e-APP Forum in 2023 to contact the PB.

## **C. International Commercial, Digital and Financial Law**

- 42 CGAP noted the outcomes of the CODIFI Conference, which was successfully held online from 12 to 16 September 2022.

### **1. 2006 Securities Convention and digital developments in respect of securities markets**

- 43 CGAP mandated the PB, in partnership with relevant subject-matter experts, and subject to available resources, to:
- a. study the determination of jurisdiction and applicable law in the context of securities markets in light of developments in technology such as distributed ledger technology;
  - b. assess the ramifications of the growing attention that financial services and securities industries have accorded to developments in technology; and
  - c. identify opportunities, in the context of the digital economy, for the desirability and feasibility of future normative guidance concerning securities.
- 44 CGAP further mandated the PB to explore, subject to available resources, the possibility of organizing an online colloquium on these topics and to develop promotional materials on the 2006 Securities Convention. The PB will report to CGAP at its 2024 meeting.

### **2. 2015 Choice of Law Principles**

- 45 CGAP mandated the PB to continue work, in partnership with relevant subject-matter experts, and subject to available resources, to study the feasibility, desirability and necessity of developing guidance on applicable law in international contracts providing protection to weaker parties. Subject to available resources, CGAP also mandated the PB to continue monitoring developments relating to the 2015 Choice of Law Principles in order to identify areas for review and future work, and to develop promotional materials on the 2015 Principles. The PB will report to CGAP at its 2024 meeting.



### **3. 1985 Trusts Convention**

- 46 CGAP mandated the PB to continue work, in partnership with relevant subject-matter experts, and subject to available resources, to study the interpretation of analogous institutions for the purpose of Article 2 of the 1985 Trusts Convention, with a focus on:
- a. clarifying the divergences in interpretation between the English and French versions of the Article; and
  - b. exploring whether analogous institutions would include foundations and endowments, institutions and developments relating to the *waqf* in the Islamic legal tradition, and decentralised autonomous organisations (DAOs) and other similar structures.
- 47 Subject to available resources, CGAP also mandated the PB to continue monitoring developments relating to the 1985 Trusts Convention in order to identify areas for review and future work, and to develop promotional materials on the 1985 Convention. The PB will report to CGAP at its 2024 meeting.

## **D. e-Country Profiles and the Collection of Statistical Data**

### **1. e-Country Profiles for selected HCCH Conventions**

- 48 CGAP welcomed the proposal to develop e-Country Profiles under the 1965 Service Convention, 1970 Evidence Convention, 1980 Child Abduction Convention, 1993 Adoption Convention, 1996 Child Protection Convention, 2000 Protection of Adults Convention and 2007 Child Support Convention and is grateful to the EU and Australia, France, Germany, Italy, Sweden, Switzerland and the European Baillifs' Foundation (EUBF) for funding this important initiative.

### **2. Update on the proposed approach for the Collection of Statistical Data**

- 49 CGAP noted that the PB already collects data for the purposes of analysis on specific, timely occasions, such as SC meetings. CGAP invited the PB to undertake further work on options for the collection of statistics relating to the HCCH Core Conventions, taking into account the needs of, and the impact on, Members and Contracting Parties. CGAP invited the PB to consult Members and Contracting Parties by circulating a questionnaire to identify which Conventions the PB should undertake work on, as well as the feasibility of data collection and statistical analysis on these identified Conventions. CGAP invited the PB to explore possible partnerships in the collection and analysis of statistical data on these identified Conventions with subject-relevant experts. The PB will report to CGAP at its 2024 meeting.

## **E. Post-Convention Assistance**

- 50 CGAP noted the report on post-Convention assistance activities and recognised the value of these activities in contributing to the effective operation of HCCH Conventions.

## **F. Accessibility to HCCH Documents by Persons with Impairments**

- 51 Following a recommendation from the SC on the practical operation of the 2000 Protection of Adults Convention, CGAP discussed the accessibility to HCCH documents by persons with impairments. The PB will report to CGAP at its 2024 meeting on the possible obstacles to such accessibility, possible solutions and their budgetary implications.

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

- 52 CGAP welcomed the reports of the Regional Offices (ROs) and recognised the services they continue to provide to Members. CGAP further:
- a. encouraged Members to offer concrete support towards the implementation of the activities and objectives of the ROs, including, in the form of voluntary contributions, secondments, information, translations, or introductions;
  - b. invited States from the relevant regions that are currently considering the possibility of joining one or more HCCH Conventions, or of becoming Members, to contact their respective RO;
  - c. invited National Organs, Central Authorities and Competent Authorities to contact their relevant RO, where experience sharing with authorities of other Contracting Parties, or the academic sector, would be helpful to the effective implementation and operation of HCCH Conventions;
  - d. invited Members from Latin America and the Caribbean to consider appointing the bodies already designated as HCCH National Organs as their focal point for private international law for the Organization of American States (OAS).

## **V. Governance**

### **A. List of Observers**

- 53 CGAP amended the List of Observers pursuant to Part II.J of the HCCH Rules of Procedure.

### **B. Use of Spanish at the HCCH**

- 54 CGAP decided to adopt Spanish as an official language of the HCCH as of 1 July 2024.
- 55 With a view to alleviating the related financial impact on the Budget of the HCCH, CGAP recommended to the Council of Diplomatic Representatives (CDR) that the costs be implemented in stages, with the possibility of using voluntary contributions to this effect until the end of FY 2024-2025. As of FY 2025-2026, all costs relating to the use of Spanish as an official language should be covered by the Budget of the HCCH.
- 56 CGAP encouraged Members to consider making voluntary contributions to facilitate the translation of documents completed prior to the adoption of Spanish as an official language.

### **C. Format of HCCH Meetings**

- 57 Without prejudice to any decision on the format of future meetings, as regards meetings to be held in FY 2023-2024, CGAP decided that its meeting in 2024 will be held in-person, with the possibility of online participation, and that the meeting of CDR will be held in-person only.
- 58 As regards the format of the upcoming SC meetings on the practical operation of the 1980 Child Abduction and 1996 Child Protection Conventions, and on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions, CGAP emphasised the importance of having significant in-person participation. CGAP expressed its support for those meetings to be held in-person with the possibility of online participation, subject to budgetary considerations by CDR.



## **D. Financial Matters**

### **1. Draft Budget FY 2023-2024**

59 CGAP noted the update provided by the Secretary General on the draft Budget and Explanatory Notes for FY 2023-2024.

### **2. Changes in the Universal Postal Union (UPU)'s class system**

60 CGAP noted the PB's paper on the changes in the UPU contribution class system.

61 CGAP noted the importance of having a discussion in the future on the funding of the Organisation.

### **3. Voluntary contributions**

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

## **E. Strategic Plan**

63 CGAP approved the Strategic Plan for 2023-2028. CGAP expressed its gratitude to the Chair of the Working Group, Ms Adia Sakiqi (Albania), and its members.

## **F. Representation**

64 CGAP noted the update on representation at the HCCH.

65 CGAP mandated the PB to actively seek appropriate representation across and within geographic regions, and from underrepresented Member States, when proposing Chairs of meetings of the HCCH.

66 CGAP mandated the PB to actively seek appropriate representation across genders when proposing Chairs of meetings of the HCCH.

67 CGAP invited the PB to implement measures relating to diversity, equity, and inclusion in the recruitment of staff, including to actively seek appropriate representation across and within geographic regions, and from underrepresented Member States, as well as across genders.

68 The PB will report to CGAP on representation at its 2024 meeting.

## **G. Resource Allocation**

69 CGAP noted the report of the PB on its allocation of resources in 2022.

## **H. Report of Assessment Committee for the Position of Secretary General**

70 CGAP noted the report of the assessment committee for the position of Secretary General, and expressed its gratitude to the Chair of the committee, Professor Paul Vlas, and its members. CGAP welcomed the offer of the Chair to prepare a summary of the assessment committee's experience operating under the Arrangements for Appointing Secretaries General of the HCCH.

71 CGAP decided to recommend Mr Christophe Bernasconi to the Netherlands Standing Government Committee on Private International Law for the position of Secretary General.