

A few takeaways of the Conclusions & Decisions of the HCCH governing body (CGAP): gender issues, Jurisdiction Project and future meetings

On 5 March 2021, the Conclusions & Decisions of the HCCH governing body, the Council on General Affairs and Policy (CGAP), were released. [Click here for the English version](#) and [here for the French version](#).

Although there is a wide range of topics discussed, I would like to focus on three aspects: gender issues, the Jurisdiction Project and future meetings.

1) Today is International Women's Day and there are important conclusions on gender issues. The Conclusions & Decisions No 52-54 read as follows:

"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." (our emphasis)*

Awareness of gender representation is always a victory for everyone!

2) As you may know, a spin-off from the Judgments Project was the establishment of the **Experts' Group on the Jurisdiction Project**. The purpose of this Group was to continue its discussions on “matters relating to direct jurisdiction (including exorbitant grounds and lis pendens / declining jurisdiction)”, “with a view to preparing an additional instrument”. It met 5 times.

A report of the Experts' Group was presented to the CGAP. It includes an aide-mémoire of the Chair (Annex I) and a Summary of the Responses to the Questionnaire on Parallel Proceedings and Related Actions in Court-to-Court Cases (Annex II). See here the Report on the Jurisdiction Project.

Interestingly, three options on the possible types of future instrument(s) were discussed by the Experts' Group but views were divided: [**Option A**] Binding instrument on direct jurisdiction, including on parallel proceedings; [**Option B**] Binding instrument on parallel proceedings, and a binding additional protocol on direct jurisdiction; [**Option C**] Binding instrument on parallel proceedings, and a non-binding instrument (e.g., model law, guiding principles, etc.) on direct jurisdiction (see page 5).

A clear and strong preference was expressed for Options A and C (experts were divided).

In my personal opinion Option C seems to be the more sensible option. As expressed by the experts favoring this option: “[...] with a common consideration being that diverse legal backgrounds and jurisdictional rules from around the world would make a binding instrument on direct jurisdiction difficult to conclude and to implement. These experts also noted that Option A may not be feasible due to existing differences in opinion of experts and considering past similar attempts. In this context, they considered it more useful to develop a soft law instrument on direct jurisdiction and were open to considering the viability of different types of soft law instruments such as a model law, principles, or guidelines. Given the need to deal with parallel proceedings in practice, they expressed a preference for developing a binding instrument on parallel proceedings.”

Following the conclusion of the work of the Experts' Group on the Jurisdiction Project, a new **Working Group on matters related to jurisdiction in transnational civil or commercial litigation** was established, and Professor

Keisuke Takeshita (Japan) was invited to chair the Working Group.

The Conclusion & Decision No 9 of the CGAP reads:

“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” (our emphasis).

3) With regard to future meetings, there are a few meetings in the pipeline, among them:

Special Commission meetings (SC – basically, a global meeting of experts)

- Special Commission on the practical operation of the 2007 Child Support Convention and its Protocol – postponed to March-June 2022
- Special Commission on the Apostille Convention + 12th e-APP Forum – to be held online in October 2021

- Special Commission on the practical operation of the 1993 Adoption Convention - postponed to July 2022

Edition 2021 of HCCH a|Bridged will focus on the 2005 Choice of Court Convention (incl. 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”).