

The 2007 Hague Child Support Convention and Access to Justice

**Conference to celebrate the 30th Anniversary of the
establishment of the Legal Aid Board**

Dublin, 15 September 2010

Maja Groff, Legal Officer, HCCH
(<http://www.hcch.net>)

HAGUE CONFERENCE (HCCH) OVERVIEW

- **Origin**: 1893, Tobias Asser (Nobel Peace Prize 1911), since 1955 - 38 Conventions
- **Vision**: Develop and assist in the implementation of international norms for individuals, families and children whose lives and activities transcend boundaries
- **Mission**: Research & Development; Promotion; Implementation & Co-operation; Support including Legal Education & Training; Monitoring; and Review

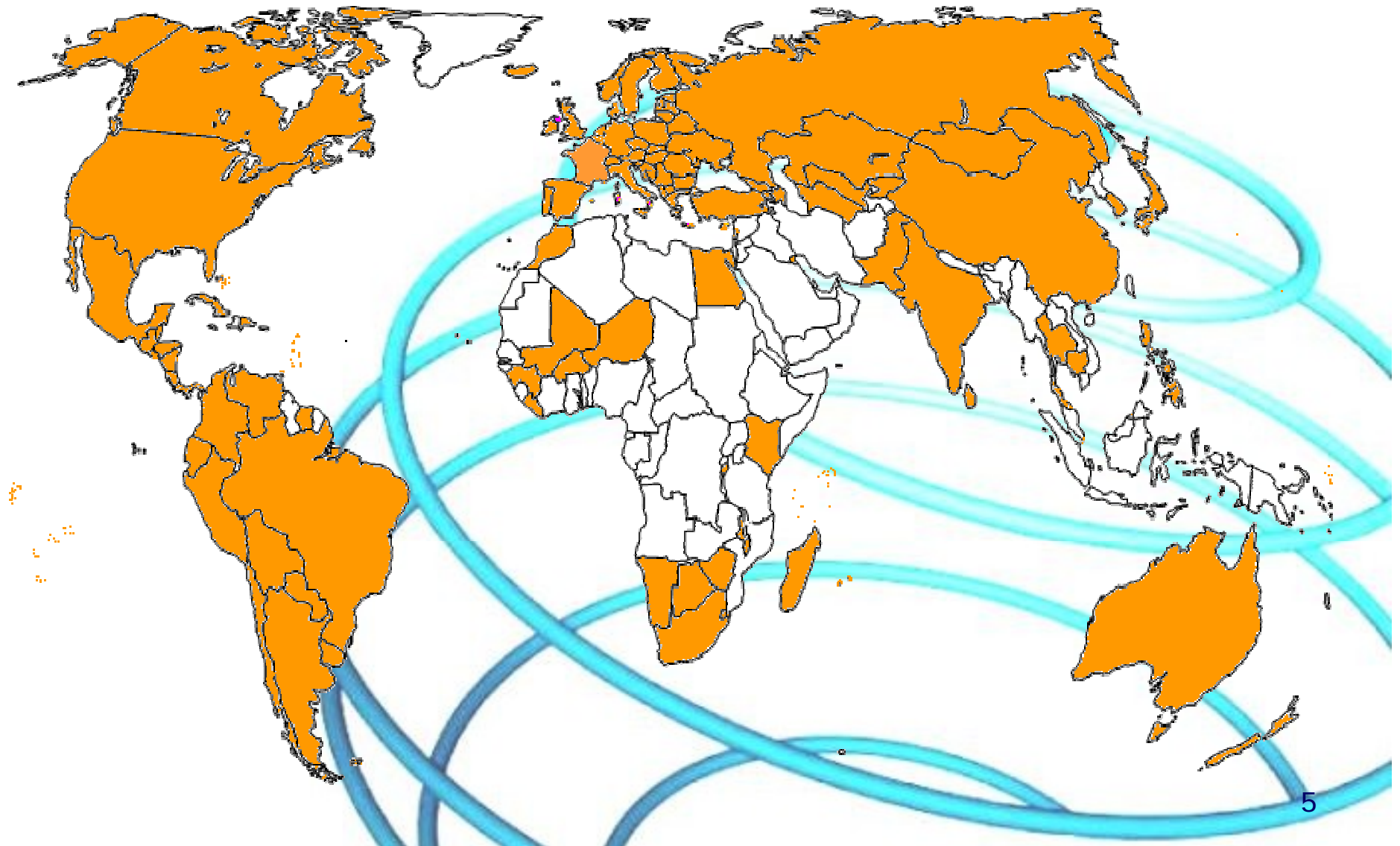
HCCH STRENGTHS & VALUES

- **Global Network** - Members & States Parties | National Experts & Delegates | Central & National Authorities | Professionals and Academics | NGOs
- **Diversity of Legal Traditions** - Civil Law | Common Law | Customary Law | Religious Systems | Secular System
- **Diversity of Structures** - Unitary States | Federal States | Pluri-legislative Unitary States | Regional Economic Integration Organisations
- **Reputation & Experience** - Mutual Trust | Support | Respect | Almost 115 years of creative solutions

Global Network – 70 Members



Global Network – 132 States Parties



**“THE HAGUE CONVENTION OF
23 NOVEMBER 2007 ON THE
INTERNATIONAL RECOVERY
OF CHILD SUPPORT AND OTHER
FORMS OF FAMILY MAINTENANCE”**

(short title)

“2007 CHILD SUPPORT CONVENTION”

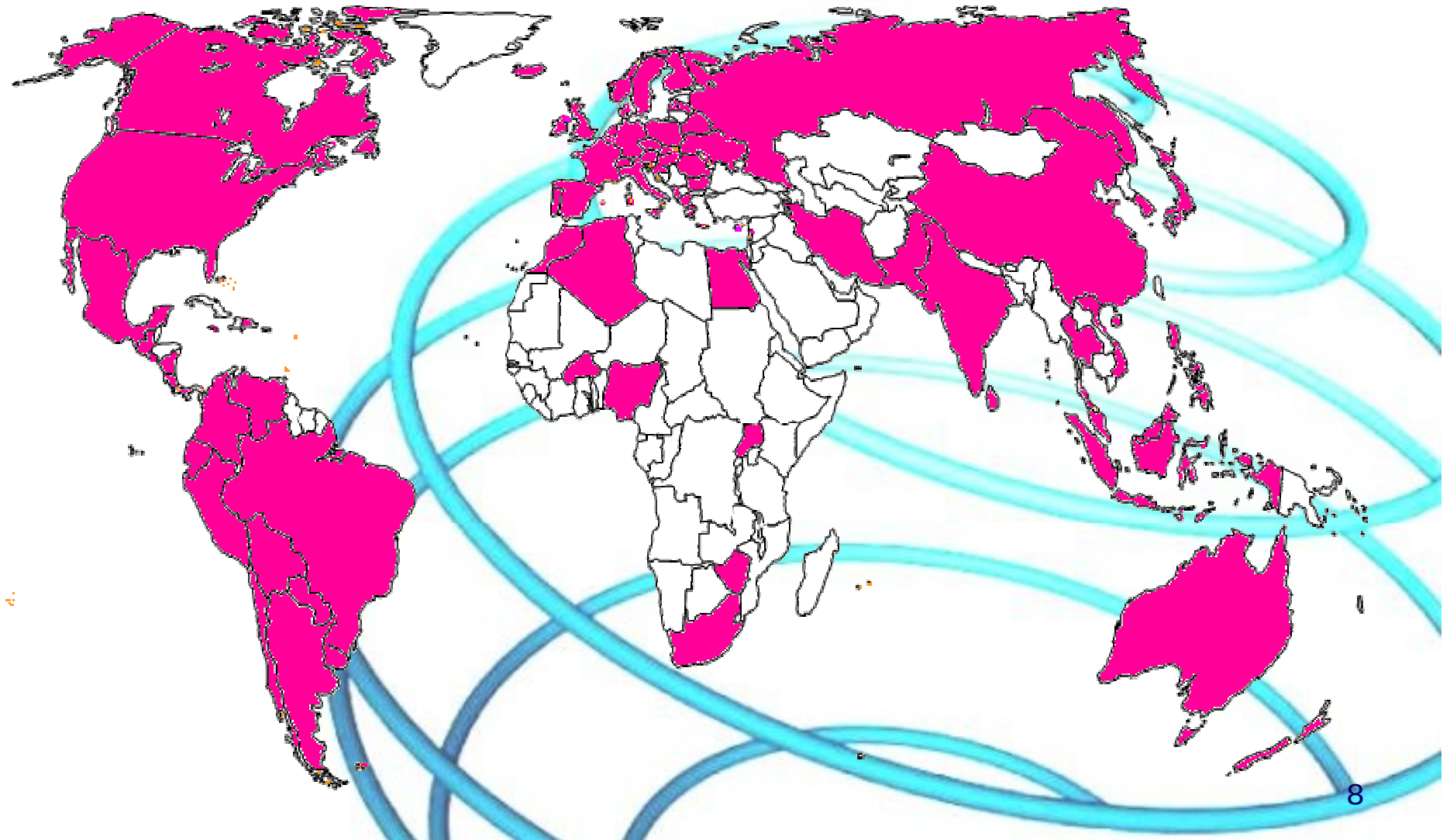
In response to: The 1989 UN Convention on the Rights of the Child

Article 27(4)

States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad...

...In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the **accession to international agreements or the conclusion of such agreements**, as well as the making of other appropriate arrangements.

States involved in the negotiations from 2003 until 2007



SOME KEY OBJECTIVES

The 2007 Child Support Convention:

- **has the potential to benefit millions of dependent persons, children and adults, in countries all around the world**
- **will assist national exchequers (treasuries) by reducing dependency on State social benefit payments**
 - **By recovering child support from debtors (not States)**
- **is geared towards the use of information technologies to ensure speedy, efficient and cost-effective recovery of child support and other family maintenance**
- **will invite domestic reforms of child support and other family maintenance recovery systems**

**KEY FEATURES
OF NEW INSTRUMENTS:
INTEGRAL TO CROSS-BORDER ACCESS TO
JUSTICE CONCERNS**

**Universality
Accessibility
Simplicity & Flexibility
Speed & Efficiency
Cost-effectiveness
Responsive and fair
Non-discrimination
Co-operation and
compliance**

SCOPE OF APPLICATION OF CONVENTION

- Entire Convention applies on a mandatory basis to maintenance cases of persons under the age of 21 (possible to reserve for persons under the age of 18)
- Convention also covers spousal support but its provisions on administrative co-operation will only apply to spousal support where States have made a declaration
- Application of any part of the Convention could be extended by way of declaration (with reciprocal effect) to other maintenance obligations arising from a family relationship, parentage, marriage or affinity
- Application of the Convention could be extended to vulnerable adults
- Convention applies to children regardless of the marital status of the parents

What are the barriers to the Recovery of Maintenance?

Child support recovery / enforcement system:

- may be very expensive (court based, no legal assistance)
- may not be user-friendly (may require a lawyer)
- may not exist or is not publicised properly
- may be very slow
- may not protect confidential and personal information properly

SOME STATISTICS

Number of International Child Support Cases by Country

FRANCE: less than 200 (2004 EC Green Paper)
– 1 case per 320,000 persons

USA: more than 150,000 cases
– 1 case per 2,200 persons
– Domestic collection rate around 50%

CANADA: around 30,000 cases
- 1 case per 1,100 persons

AUSTRALIA: around 30,000 cases
– 1 case per 700 persons

PRINCIPAL COMPONENTS OF NEW CONVENTION AND PROTOCOL

- System of administrative co-operation (efficient, responsive, flexible, accessible)
- Procedures available in States for establishment, recognition and enforcement, modification of decisions
- **Effective access to procedures**
- Recognition and enforcement of foreign decisions / orders (maximum recognition, simple procedures)
- Swift and effective enforcement
- Compliance – Monitoring and review
- Direct requests to competent authorities
- Applicable law rules – set out in an optional Protocol

HCCH Convention: Legal Assistance

Article 3(c) definition of “Legal Assistance”:

“legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings.

HCCH Convention: Effective Access to Procedures, Articles 14-17

- Services of Central Authorities to be provided without cost to applicant, with rare exceptions (Article 8)
- **Free legal assistance to creditors for all child support applications**, including establishment and recognition and enforcement of decisions, with rare exceptions. (Arts. 14 and 15)
- No need to provide free legal assistance if the State has simple procedures that do not require such assistance, and the Central Authority provides any necessary services free of charge. (Art. 14(3))
- No exceptions – means test is only possible limit under Articles 16 and 17

EC Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Stated Goal:

“[a] maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.” (Recital 9)

In order to achieve this goal: “it is advisable to create a Community instrument in matters relating to maintenance obligations bringing together provisions on jurisdiction, conflict of laws, recognition and enforceability, enforcement, legal aid and cooperation between Central Authorities.” (Recital 10)

Scope:

“This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.” (Article 1)

EC Regulation on Maintenance

- Incorporates the Hague *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* by Reference: Article 15, Chapter III “Applicable Law”
- Main Chapter IV on “Recognition, Enforceability and Enforcement of Decisions” has a section dealing with decisions in those Member States party to the Hague Protocol and those not party to the Hague Protocol
- Central Authority System in the Regulation almost identical to that in the Hague Convention
- Other Articles in the two instruments are very similar or identical (e.g., Hague Art. 18, EU Art. 8)

EC Maintenance Regulation and Access to Justice

- Includes a separate Chapter V, “Access to Justice”
- HCCH Effective Access provisions are mirrored
- Additional coverage for applications beyond those through Central Authorities:
 - applications directly to courts (Art. 45)
 - applications to administrative authorities (Art. 46(3))
- Provides a wider scope of legal assistance, including translation, interpretation, and travel costs

Status of the 2007 Hague Convention

Signatory States (4): Burkina Faso, Norway, Ukraine, United States of America

European Union (27 States) to sign and ratify the Convention within the next two years

United States of America signed the Convention in 2007 and will ratify within the next two years

Other States to join soon: Australia, Canada, Brazil, Norway

iSupport system

Looking for partners (States) to fund the development of the system

Other Hague Conventions and Global Access to Justice

- *Hague Convention of 25 October 1980 on International Access to Justice*
- Hague 1980 on the Civil Aspects of International Child Abduction
- Potential new Convention on Cross-Border Access to Foreign Legal Information: global access to legal information

Other Hague Conference Initiatives:

- IT endeavours (efficiency, low-cost and accessibility)
- Guides to Good Practice and Post-Convention Services
- Providing Technical Assistance and Training to Judges and Governmental Officials Around the World

Concluding Observations

- Access to Justice issues at International Organisations
 - *E.g.* Organisation of American States
 - Future HCCH Endeavours?
- Trends in the “Legal Empowerment of the Poor” and Access to Justice in academic literature within a global frame
- Role in peace-building and conflict-prevention

Questions?

INFORMATION

Secretariat at the Permanent Bureau of
The Hague Conference on Private International Law

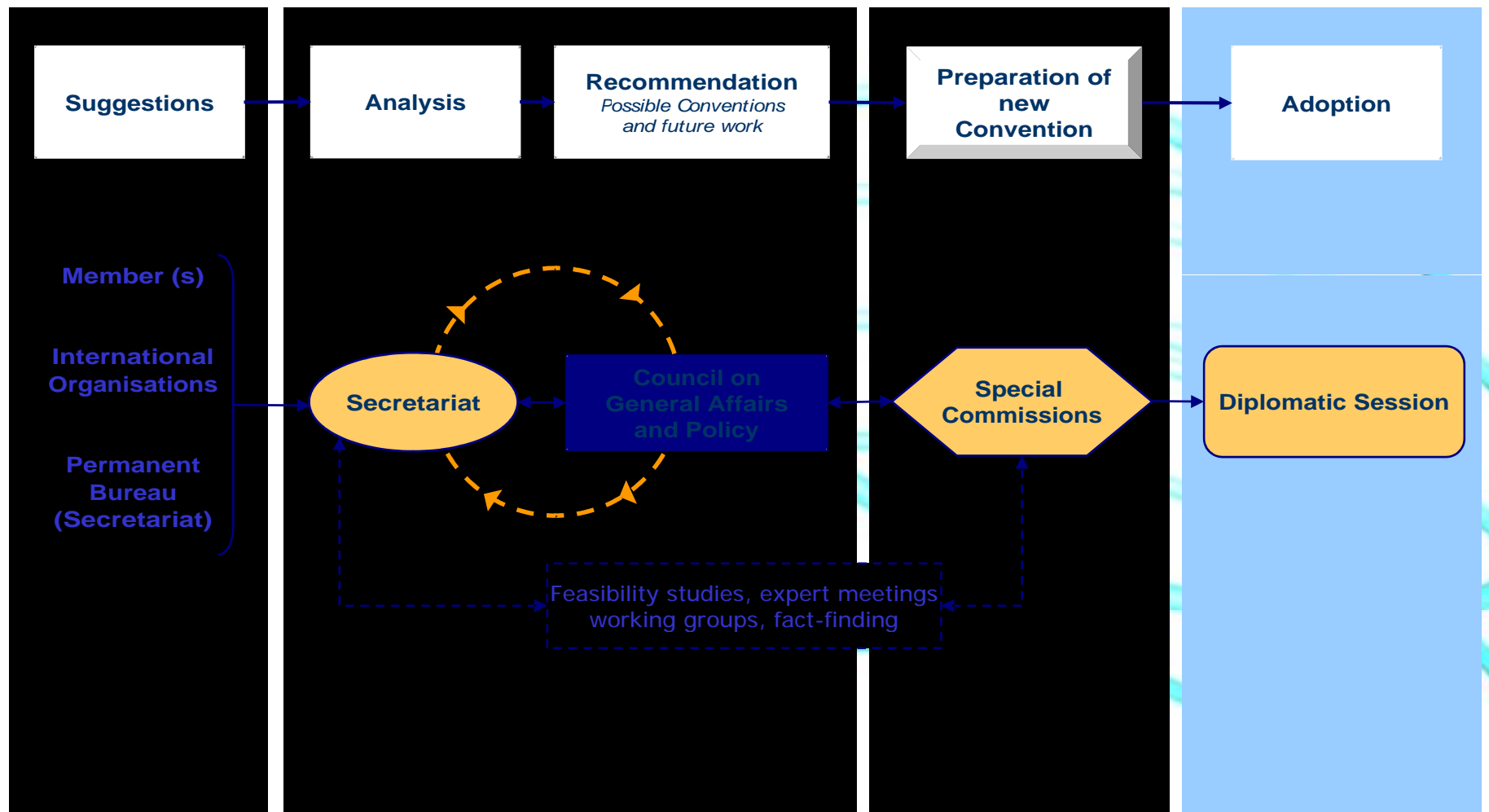
Scheveningseweg 6
2517 KT The Hague
The Netherlands

Tel: +31 (70) 363 3303 or Fax: +31 (70) 360 4867

e-mail: secretariat@hcch.nl

<http://www.hcch.net>

ANNEX I HAGUE CONFERENCE PROCESS FOR NEW CONVENTIONS



ANNEX II

DECISION-MAKING PROCESS : 2007 Child Support Convention

- Ongoing research and monitoring by Secretariat
- Questionnaires to States and Interested Organisations: 1998 and 2002
- Consultations / informal discussions 2001 / 2002
- Background Reports 2003
- Negotiation sessions: May 2003, June 2004, April 2005, June 2006, May 2007
- Negotiation session June 2006: **Access to Justice issues first raised**
- Negotiation session of May 2007: **Access to Justice issues discussed further**
- Meetings held between sessions by: (1) Drafting Committee, (2) Applicable Law WG, (3) Administrative Cooperation WG, and (4) Forms Committee
- Diplomatic Conference November 2007: **Access to Justice issues consolidated**

States are responsible for the process – The Secretariat of the Hague Conference facilitates

ANNEX III

The 1989 UN Convention on the Rights of the Child: Relevant Provisions

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, **shall take all appropriate legislative and administrative measures.**

Article 27:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
- ...
4. **States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad.** In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

ANNEX IV

HCCH Convention: Effective Access to Procedures, Articles 14-17

Article 3(c) definition of “legal assistance”:

“legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings.

Article 14: Effective access to procedures

- (1) The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.
- (2) To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.
- (3) The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge.
- (4) Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.
- (5) No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

Article 15: Free legal assistance for child support applications

- (1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.
- (2) Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) a) and b) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

ANNEX IV

HCCH Convention: Effective Access to Procedures, Articles 14-17

Article 16: Declaration to permit use of child-centred means test

(1) Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) *a*) and *b*) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.

(2) A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test.

(3) An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.

(4) If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided.

Article 17: Applications not qualifying under Article 15 or Article 16

In the case of all applications under this Convention other than those under Article 15 or Article 16 –

a) the provision of free legal assistance may be made subject to a means or a merits test;

b) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

ANNEX V

EC Maintenance Regulation and Access to Justice

EU Article 45, defining “legal aid”:

Legal aid granted under this Chapter shall mean the assistance necessary to enable parties to know and assert their rights and to ensure that their applications, lodged through the Central Authorities or directly with the competent authorities, are fully and effectively dealt with. It shall cover as necessary the following:

- (a) pre-litigation advice with a view to reaching a settlement prior to bringing judicial proceedings;
- (b) legal assistance in bringing a case before an authority or a court and representation in court;
- (c) exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings;
- (d) in Member States in which an unsuccessful party is liable for the costs of the opposing party, if the recipient of legal aid loses the case, the costs incurred by the opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seised;
- (e) interpretation;
- (f) translation of the documents required by the court or by the competent authority and presented by the recipient of legal aid which are necessary for the resolution of the case;
- (g) travel costs to be borne by the recipient of legal aid where the physical presence of the persons concerned with the presentation of the recipient’s case is required in court by the law or by the court of the Member State concerned and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.