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Sumário

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1 Introduction

These chronicles are dedicated to reviewing the past three years of intensive work carried out by the Hague Conference on Private International Law ("HCCH") and serve as an update to the 2022 Chronicles[1]. The HCCH has been modernizing itself, increasingly focusing on new topics, and enhancing the use of digital tools in its communications and the daily application of its conventions. Undoubtedly, the area of international legal cooperation is among the most active.

The paper covers both the HCCH's post-conventional projects, which yield more immediate results - such as those led by Nadia de Araujo (OCJ), Arnaldo Silveira (maintenance obligations), Gustavo Ribeiro (Apostille), and Inez Lopes (domestic violence in the 1980 Convention) - as well as legislative projects, as developed by Lalisa Froeder Dittrich (Parentage), Fabricio Polido (Codifi), and Marcelo De Nardi and Nereida de Lima Del Águila (Jurisdiction Project). All chronicles incorporate the Conclusions and Decisions ("C&D") of the 2025 Council´s meeting just held in March 2025[2].

Nadia de Araujo describes one of the most famous and utilized pos conventional work of the HCCH in the procedural field, addressing the topic "The Innovations of the Service Convention (1965) and the Evidence Convention (1970): Outcomes of the 2024 Special Commission."

Throughout the Chronicle, Nadia analyzes the Service Convention, along with a report on the 2024 Special Commission Meeting. Emphasis is placed on the topics and outcomes of the 2024 Special Commission that are of interest to Brazil, particularly regarding the electronic transmission

[1] ARAUJO, Nadia; DE NARDI, Marcelo; RIBEIRO, Gustavo; POLIDO, Fabrício LOPES, Inez; OLIVEIRA, Matheus. Crônicas de Direito Internacional Privado: destaques do trabalho da HCCH nos últimos dois anos. *Revista de Direito Internacional*, Brasília, v. 19, n. 2, p. 27, 2022. Available in: https://www.publicacoesacademicas.uniceub.br/rdi/article/view/8688/pdf. Last access: Feb. 28, 2025

[2] For the text of 2025 CGAP´s Conclusions and Decisions (C&D). Available in: https://assets.hcch.net/docs/1828feba-831f-4f6f-a95e-6286e0495057.pdf, Last access: March 9, 2025.

of requests, which involves an increased use of information technology. The Chronicle also describes the innovations introduced by the 2024 Special Commission and the Working Groups established to review the Handbooks of the Service and Evidence Conventions, as well as the new Country Profiles, whose work, carried out after the meeting, was endorsed by CGAP 2025.

Arnaldo Silveira reports the necessity of a system like iSupport to facilitate cooperation in child support and maintenance obligations in general. iSupport offers tools for the multilingual electronic exchange of maintenance requests between countries, as well as for case management within and between different central authorities. A brief description of the system is made, and the progress of its implementation is reported, focusing on recent developments. The article also emphasizes Brazil's central role in iSupport development and the prospects for its local implementation. Looking forward, the article mentions the next steps in iSupport's evolution, towards maximizing its impact on families and individuals reliant on international maintenance payments.

Gustavo Ribeiro´s chronicle reports on the Apostille Convention, which has been in force since 1965 and simplifies the authentication of public documents for international use by eliminating the need for diplomatic or consular legalization. Brazil adopted the Convention in 2016, becoming its 110th Contracting Party, with global participation now at 127 countries. As Gustavo points out, Brazil recorded a peak of 2.8 million Apostille procedures in 2024, mainly for transnational legal matters. His article depicts two relevant aspects of the Convention. First, he shows that Article 1(3)(b) of the Convention excludes commercial and customs documents from its scope. Despite the exclusion, some Contracting Parties still apply Apostilles to trade-related documents such as certificates of origin and health certificates. Second, Gustavo calls attention to the practical use of the Convention. The Apostille Convention has been evolving with the introduction of the Electronic Apostille Programme (e-APP) to digitize and modernize the process. By 2024, 56 Contracting Parties had adopted at least one component of the e-APP, while 36 had fully implemented it. Furthermore, the e-APP saw accelerated adoption during the COVID-19 pandemic, emphasizing the need for digital authentication.

Inez Lopes´s chronicle examines the challenges of applying the Hague Convention in domestic violence cases. The Forum on Domestic Violence and the Hague Convention, held in 2024, highlighted the legal complexities of balancing the Convention's return principle with the need to protect victims. Courts struggle with interpreting Article 13(1)(b) and its "grave risk" exception, particularly when mothers flee abusive situations. The lack of judicial consensus and ineffective protective measures often lead to the re-victimization of women and children. The article calls for stronger protective mechanisms, judicial training, and a more integrated approach that aligns international legal frameworks with human rights, gender issues, and the best interests of the child.

Lalisa Froeder Dittrich´s text discusses the efforts of the HCCH to create a new international instrument to facilitate the recognition across borders of legal parentage, including concerning international surrogacy arrangements. It highlights the complexities associated with varying legal frameworks, which can lead to adverse situations for children, such as "limping parentage," where their rights—of knowing their origins, for instance—are jeopardized. The HCCH "Filiation/Surrogacy Project" arose from the need for harmonized laws to protect children's rights in the context of new family arrangements and the use of artificial reproductive methods, often with intending parents living in a different country than those of the child and/or the surrogate mother. The chronicle follows the project's development, highlighting the main points that the Working Group must address in the future instrument. Furthermore, it notes Brazil's active participation in the Experts and Working Group on Filiation/Surrogacy, underlining the initiative's relevance and impact on families navigating the challenges of cross-border parentage.

Fabricio Polido analyses the current intersection between the HCCH work and emerging digital technologies, particularly in response to developments in distributed ledger technologies (DLTs), blockchain, crypto-assets, and tokenization. These efforts were formalized under the HCCH mandate for PIL issues in Digital Economy and subsequently deepened thanks to the achievements of the HCCH Conference on Commercial, Digital and Financial Law Across Borders (Codifi), a broader initiative aimed at exploring the legal implications of the digital economy on existing HCCH instruments and new PIL-digital related issues. Among

the key developments are the Expert Group on Central Bank Digital Currencies (CBDCs) and the Exploratory Project on Digital Tokens, both established under mandates from the Council on General Affairs and Policy (CGAP) in March 2024. These initiatives aim to assess jurisdictional and applicable law challenges, considering the emergence of CBDCs on a domestic scale, decentralized nature of digital assets, and their impact on cross-border financial transactions. This article explores the evolution, scope, and legal challenges of these projects, highlighting Brazil's active role in shaping regulatory discussions through its Virtual Assets Law of 2023 and the Brazilian digital currency – Drex Project.

Finally, **Marcelo De Nardi and Nereida de Lima Del Águila** report on the 8th meeting of the Working Group on Jurisdiction, the latest of the Jurisdiction Project, ongoing for more than three decades work of The Hague Conference on Private International Law (HCCH) regarding the issue of jurisdiction in situations connected to legal systems of more than two States. After the 2005 Convention on Choice of Court Agreements and the 2019 Convention on the Recognition and Enforcement of Foreign Judgments, already in force, but not for Brazil, the work was directed to the theme of jurisdiction itself, and the scope of current work is to address problems arising from concurrent judicial proceedings, being them *parallel proceedings* or *related actions*. With this report, the public is offered the opportunity to understand the evolution of HCCH's legislative work on the subject, with a technical-political analysis based on the personal experience of the authors, who are members of the Brazilian Delegation negotiating for the initiative. The active involvement of the Brazilian Delegation in this project is a testament to Brazil's commitment to international legal cooperation. Since the draft convention is already fully structured, and ready to start the political discussion phase, it is convenient to inform the public of the proposed content to foster debate on the decisions to be taken during the negotiation of the future international treaty. The draft treaty's content touches on the interests of private individuals and companies involved in situations connected to the legal systems of more than one State, in "international" or "transnational" situations, notably those of a commercial nature.

2 Chronicles: The 2024 Special Commission (SC) on the practical operation of the 1965 Service Convention, the 1970 Evidence Convention, and the 1980 Access to Justice Convention: Brazilian perspective on its results. (Nadia de Araujo)

2.1 Introduction

One area in which the Hague Conference on Private International Law (HCCH) has achieved great success over the years is the standardization of practices that facilitate international legal cooperation through procedural conventions[3].

To ensure that the practice and application of these conventions remain continuously updated, the HCCH has expanded its activities to include so-called post-convention activities[4]. Given the difficulty in obtaining acceptance for approving changes to the texts of already adopted conventions, and considering the need to modernize previously developed work, convening periodic Special Commissions was adopted to complement and update the functioning of conventions in force. This is done through the development of best practice guides or the revision of existing manuals, thus avoiding the lengthy and costly negotiation of new treaties[5]. Ultimately, these meetings allow States to exchange experien-

[3] About these Convention: ARAUJO, Nadia; DE NARDI, Marcelo; VARGAS, Daniela Revisitando as convenções processuais da Conferência da Haia para o Direito Internacional Privado: um olhar a partir do Brasil. In: A Conferência da Haia de Direito Internacional Privado e seus impactos na sociedade: 125 anos (1893-2018). ARAUJO, Nadia; RAMOS, André de Carvalho (org.). Belo Horizonte: Editora Arraes, 2018, pp. 115-135.

[4] On post conventions work: ARAUJO, Nadia. Governança Global no Direito Internacional Privado: a atividade pós-convencional da Conferência da Haia de Direito Internacional Privado. In: Boletim da Sociedade Brasileira de Direito Internacional, v. 108, pp. 249-264, 2020.

[5] The Special Commissions are preceded by preparatory work carried out by the Permanent Bureau of the HCCH in collaboration with Working Groups composed of experts and representatives of the Member States. Upon completion, the conclusions reached must be approved by the HCCH Council on General Affairs and Policy ("CGAP").

ces, promote uniformity in the interpretation of conventions, and consequently, increase the reliability and use of these instruments.

In July of 2024 a Special Commission was held in The Hague. It discussed, among other topics, the operation of the Service Convention,[6] the Evidence Convention,[7] and the Access to Justice Convention. At the end of the meetings, the Special Commission adopted Conclusions and Recommendations, [8] which were endorsed by 2025 CGAP in its Conclusions and Decisions (C&D)[9].

The 2024 CGAP determined the creation of Working Groups tasked with completing the revision of the 5th edition of the Practical Handbook on the Service Convention and Evidence Convention [10].[11] After the work at the Special Commission, the Service Handbook was approved through a written procedures while the Practical Handbook on the Evidence Convention was approved at 2025 CGAP[12].

Additionally, the 2024 CGAP mandated the establishment of a Working Group to develop Country Profiles pertaining to the two conventions. The Country Profile, which details each country's practices regarding both treaties, were also approved at the 2025 CGAP. This is an innovation introduced by 2024 CGAP to the procedural conventions and discussed during the 2024 Special Commission. After, it was finalized[13] by the Working Group responsible for this task. At 2025 CGAP its work was approved, and it urged the States to complete them and updated them in a timely fashion[14].

This chronicle provides a brief description of the Service Convention and highlights the most important results of the 2024 Special Commission (SC 2024), including the Evidence and Access to Justice Convention in topics important for Brazil. This initial description is deemed necessary because, although the Service Convention has been a subject of debate at the HCCH for nearly 50 years, Brazilian doctrinal production on the topic is scarce, as the country only adopted the convention in 2019. However, it is urgent to raise awareness among legal professionals about this Convention, which is essential for international legal cooperation so that its use by civil society can increase, being their primary beneficiary[15].

2.2 General Characteristics of the Service Convention

The Service Convention[16], adopted at the 10th Diplomatic Session of the HCCH on November 15, 1965, is part of a set of HCCH treaties that facilitate the resolution of cross-border issues in civil and commercial matters, simplifying and expediting inter-state communication, which is increasingly necessary in the context of growing international trade and mobility. Despite the time elapsing since its inception, this Convention remains an important instrument of international legal cooperation, particularly for the transmission of documents, due to the high number of States that have ac-

[6] For more information on the 2024 Special Commission see: HCCH. Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions. Disponível em: https://www.hcch.net/pt/publications-and-studies/details4/?pid=8513&dtid=57

[7] Both Conventions are enforced in Brasil through Decrees nºs 9.039/2017 e 8.343/2014, respectively.

[8] HCCH. 2024 Conclusions & Recommendations Disponível em: https://assets.hcch.net/docs/6aef5b3a-a02c-408f-8277-8c995d56f255.pdf ("C&R 2024").

[9] HCCH, Conclusions and Decisions (C&D) available in: https://assets.hcch.net/docs/1828feba-831f-4f6f-a95e-6286e0495057.pdf, last access: March, 9, 2025. Related to the 2024 SC, see para. 44 to 60.

[10] HCCH. Practical Handbook on the Operation of the Service Convention. Haia: HCCH, 2016 ("Manual").

[11] The Manual begins with a glossary of the terms used and a section providing concise answers to frequently asked questions, followed by a detailed analysis of the Convention, with comprehensive commentary on its articles. It is divided into four parts. The first part examines the nature and scope of the Convention, covering its history, objectives, and application. The second part addresses the channels of transmission, while the third focuses on the mechanisms for protecting the defendant. The fourth and final part discusses the relationship between the Convention and other treaties, such as the Inter-American Convention on Letters Rogatory of 1975 (promulgated in Brazil by Decree No. 1,899/1996), which is used for service of process, notification, and summons, as well as for requests for the taking of evidence contained in a letter rogatory.

[12] See in CGAP 2025 C&D para. 52: "CGAP welcomed the adoption of the Practical Handbook on the Operation of the Service Convention. CGAP highlighted the importance and usefulness of the Handbook and encouraged Contracting Parties to the 1965 Service Convention to promote the use of the Handbook."

[13] See CGAP 2024 C&D, in https://assets.hcch.net/docs/917cb804-9e7c-4f58-ba6d-f505303f9376.pdf.

[14] See in CGAP 2025 C&D para .59 and 60.

[15] See David McClean remarks: "th[e service] protects the defendant by ensuring the most basic principle of procedural justice: the right to be heard, in response to a document that contains the essential elements of the claim to which the defendant is to respond" (Service of Process. BEAUMONT, Paul; HOLLIDAY, Jayne. A Guide to Global Private International Law. Oxford: Hart Publishing, 2022, p. 162).

[16] For more information, see: https://assets.hcch.net/docs/b64c9362-e068-4d3e-9591-d39fa9141f54.pdf

ceded to it across the Americas, Europe, Asia, Africa, and Oceania. Today, 84 States are Contracting Parties[17], including Brazil, which internalized the Convention in 2019. The Convention has also proven capable of adapting to the new era of digital communication, with some countries implementing electronic transmission for the sending and receiving of requests—finalizing and making the Country Profiles publicly available will be highly beneficial for the practical application of the Convention.

The Service Convention establishes the transmission channels to be used when a judicial or extrajudicial document must be transmitted from one Contracting State to another for service, notification, or summons of a natural or legal person[18]. In particular, it represented a significant advancement over the excessively bureaucratic document transmission methods that, under the Civil Procedure Conventions of 1905 and 1954, depended on consular legalization. By stipulating the obligation for States to designate a Central Authority[19], a key entity responsible for facilitating communication between States, the Convention allowed for direct communication between States through these authorities, establishing the model mechanism that was later adopted by other procedural conventions.

While primarily addressing the transmission of documents for service and notification, the Service Convention does not include substantive rules regarding these procedures. This deliberate omission ensures that the Convention does not modify the domestic laws of member countries, thereby accommodating different legal traditions[20]. This flexibility is a testament to the Convention's adaptability and ability to foster international legal cooperation[21].

One of its great advantages is the elimination of legalization or equivalent formalities in transmissions, creating a system of trust between States that ensures the authenticity of documents exchanged between forwarding authorities, which may vary depending on local rules, to the central authorities of the receiving countries. This simplifies the process and reduces the time and costs involved in document transmission. A positive aspect of the Convention is the elimination of legalization requirements for documents sent through the official channel, enabling forwarding authorities to send directly to the central authorities of the receiving states, and the possibility of exemption from fees, which reduces costs for those involved and facilitates the international transmission of judicial acts. The completion of service is certified through a standardized form issued in English, French, or the language of the requested country.

2.3 The 2024 Special Commission Meeting

From July 2 to 5, 2024, within the framework of the Hague Conference on Private International Law (HCCH), the Special Commission (SC) met to discuss the operation and application of the Service[22], Evidence[23], and Access to Justice[24] Conventions (collectively, the "Conventions"), concluding with the approval of Conclusions and Decisions (C&D) with Brazil's support. The negotiations and discussions took place at the Academy of International Law, located in the Peace Palace in The Hague, Netherlands. Two hundred sixty delegates attended the meeting in-person and online,

[17] For the list of contracting states, see in HCCH: <https://www.hcch.net/pt/instruments/conventions/status-table/?cid=17>.

[18] Service Convention, Article 1: "The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad. This Convention shall not apply where the address of the person to be served with the document is not known".

[19] Service Convention Article 2: "Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6. Each State shall organize the Central Authority in conformity with its own law."

[20] CAPONI, Remo. Transnational litigation and elements of fair trial. *Revista Eletrônica De Direito Processual*, v. 16, jul-dec/2015, p. 506-549

[21] See (*Ibid*, pp. 517-518): "According to widespread opinion in the civil law systems, service of process is an act of sovereignty. Thus, the State interest in having control over its territorial sovereignty plays a role in the service of process upon a defendant, who is resident there. According to this view, the service of process is only possible, as a rule, by "tolerance" (such as to direct service by consular and diplomatic channels), consent or collaboration in the framework of international judicial assistance. From a common law point of view, sovereignty concerns relating to the service of process might appear strange and unfamiliar. For instance, under the U.S. Federal Rules of Civil Procedure service is often effected by the plaintiff's attorneys or by private firms specializing in the service of process, not by government officials."

[22] Convention on Service, signed at the Hague on 15.11.1965. In Brazil, Decree nº 9.734, 2019. (http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9734.htm) .

[23] Convention on Evidence, signed at the Hague on 18.03.1970. In Brazil, Decree nº 9.039, 2017. (http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/D9039.htm).

[24] Convention on Access to Justice, signed at the Hague on 25.10.1980. In Brazil Decree nº 8.343, 2014. (https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/decreto/d8343.htm).

representing 55 HCCH Member States and there were also observers from intergovernmental and private institutions. This was the first HCCH meeting in which Spanish was recognized as the third official language[25]. The representative from Finland presided over the Special Commission.

The discussions were based on preliminary documents provided by the Permanent Bureau (PB), including revised versions of the Practical Handbooks on the Service and Evidence Conventions and preliminary versions of the Country Profiles, which detailed the practices of States regarding the Conventions. Notably, the preparatory work conducted by the PB, along with the Working Groups (WGs), focused on refining these Practical Handbooks and Country Profiles. These materials can be obtained at the HCCH website and will be updated to reflect the SC's Conclusions and Recommendations. Also, it is important to note that at the 2025 CGAP meeting the 2024 SC C&D was endorsed[26].

2.4 Key Highlights of the SC 2024 Negotiations and Brazil's Participation

Brazil's primary objective was to achieve progress regarding the electronic transmission of documents and the acceptance of electronic signatures routinely employed in the country's judicial system. This matter is particularly relevant for the effective implementation of the Service Convention but also pertains to the transmission and execution of the Evidence Convention. Specifically concerning the Service Convention, Brazil emphasized its practice of making extensive efforts to locate recipients of notifications, even when the provided address is incomplete. This practice was recorded in the C&D (paras. 76-77).

Two other significant issues concerned (i) ensuring the broadest possible scope for the Service and Evidence Conventions, adopting a more extensive interpretation of the term "civil and commercial," and (ii) enhancing the recording of information regarding the practices of Contracting States concerning service of process in Countries Profiles. Both points were addressed in the C&R (paras. 122-126 and 112-114, respectively).

Regarding the Practical Handbooks and the Country Profiles, areas in which Brazil had a particular interest, progress was made during SC 2024. There was consensus that several new items should be added to the presented drafts, and it was recommended that they be approved after the conclusion of the Working Groups' activities, first through written notice. At 2025 CGAP the Practical Handbook on Service and on the Evidence Convention, as well as the Country Profile of the Service and of the Evidence Convention were approved.

The use of information technology (IT) for each of the Conventions was one of the most debated topics throughout the SC 2024 meeting. Several States expressed a desire to intensify their use, both for transmitting requests and for communication between the Contracting States and other interested parties. Plenary discussions revealed a significant divergence in the matter, with a substantial group of States accepting only paper-based and postal transmissions. In contrast, others have adopted email or even exclusive platforms for transmissions.

The group in favor of electronic transmission highlighted that the text of both Conventions permits the broadest possible use of IT, given its general nature and the absence of any prohibitions or specific rules. Brazil strongly supported this stance, urging other States to fully accept its electronic signature, a standard practice in its judiciary system. The opposing group expressed concerns about fraud and privacy violations, which, in Brazil's view, could be addressed through simple and integrated measures.

In any case, in paras. 10-14 of the C&R, SC 2024 reiterated the need for increased use of IT to ensure efficiency and speed in transmission and communication between the parties. As a final note, the issue was referred to the Country Profile Working Group, as States are encouraged to indicate their practices in their profiles. Another specific solution was the task assigned to PB to create and maintain an internal email list of the Central Authorities' addresses to be circulated among member States. To expand the use of electronic means in the Service Convention, the Guide for Completing the Model Form was well received, and the acceptance

[25] The members of the Brazilian Delegation were: Ambassador Fernando Simas Magalhães, Arnaldo Silveira (MJ/DRCI, online), Nadia de Araujo (PUC-Rio), Frederico Bauer (Diplomat, Itamaraty), Thiago Lindolpho Chaves (AGU), Sâmia Albuquerque (MJ/DRCI, online) and Ana Beatriz Schwanck Fernandes (Assistant, Itamaraty).

[26] See in CGAP 2025 C&D para. 44.

of its virtual transmission and electronically signed forms was encouraged (C&R, paras. 79, 84-85).

Before the meeting, the PB provided updated information on the timeframe for executing service requests, with some Contracting States recording completion in less than three months (C&R, para. 94). Based on the data received, most countries that received requests electronically and responded similarly completed proceedings in a shorter timeframe than others that did not embrace this system and relied on mail. It became evident that fulfilling requests as quickly as possible and taking measures to reduce processing time is essential for full compliance with the Service Convention (C&R, para. 95) and that using electronic means effectively achieves better results. In summary, the plenary agreed on the importance of electronic transmission.

The discussions on IT resonated at 2025 CGAP, which welcomed the active role of the PB in providing a separate mailing list for the use of the Central Authorities of the three conventions and noted the importance of keeping the contact information for each mailing list up to date. Also, Contracting Parties were encouraged to enter the mailing list by giving the PB with the relevant contact information for their Central Authorities[27].

Regarding the Service Convention, two topics stood out in plenary discussions. The first concerns the possibility of contractually waving the application of the Convention (contractual waiver), with the Rockefeller case, that was decided in the US, being presented as an exception, where a contractual arrangement was deemed to waive formal service procedures. SC 2024 highlighted the potential negative impact of such contractual agreements on defendants' rights and the recognition and enforcement of judgments in Contracting States, emphasizing the importance of applying the Convention in the spirit of cooperation between States. It also questioned the effect of private agreements considering the declarations and reservations made by each State (C&R, para. 111).

The second topic addressed the service of process on foreign States, a controversial issue given the differences in practices among Contracting States. SC 2024 encouraged States to disclose their rules and practices in their Country Profiles and recorded that (i) receipt by the Central Authority of the requested State does not constitute effective service on that State and (ii) service on diplomatic missions is not permitted (C&R, paras. 112-114).

Regarding the Evidence Convention specifically, intense debate occurred on the use of electronic means not only for transmitting requests through electronic versions of the Model Form but also for obtaining evidence (C&R, paras. 28-29 and 32-34). It was suggested that States indicate in their Country Profile whether they accept or will accept digital or electronic signatures on requests (C&R, para. 33).

Within the framework of this Convention, the use of video-link for evidence gathering was also discussed. SC 2024 noted that the Evidence Convention does not contain any obstacles to its use (C&R, para. 48). Contracting States were encouraged to indicate their position on using video for evidence gathering in their Country Profile (C&R, paras. 49, 51).

The final notable topic concerning the Evidence Convention is related to the interpretation of Article 23, which addresses pre-trial discovery and is a recurring source of misunderstanding among contracting parties. SC 2024 emphasized that this provision should only apply to requests transmitted via Letters Rogatory under Chapter I of the Convention (C&R, para. 56). In this regard, it encouraged States to review their general reservations to this provision, referencing the specific reservations made by the United Kingdom[28] and the terms of Article 16 of the Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad[29]. It was also stressed that a mere reservation to Article 23 should not lead to an automatic rejection of the request without an analysis of its scope (C&R, para. 54).

Finally, discussions on the Convention on Access to Justice were limited, likely due to the fewer Contracting States. Notably, para. 63 of the C&R reflects the joint proposal by Switzerland and Brazil, resulting from informal discussions during the SC 2024 meeting regarding the conditions for assessing the need for legal aid. States are recommended to provide documentation on

[27] See in CGAP 2025 C&D para. 46.

[28] For the UK reservation, see in: https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=564&disp=resdn.

[29] For the Inter-American Convention, see in: https://www.oas.org/juridico/english/treaties/b-51.html.

the applicant's financial situation to allow for a more accurate assessment by the requested State.

2.5 Final Remarks

With the conclusion of the SC 2024 and considering the approved C&R, the efforts to raise awareness among Contracting States regarding best practices in applying the Conventions have received a positive impetus. The work carried out by these periodic Special Commissions enhances the proper implementation of the Conventions, and there was a consensus that the next session should be convened in five to six years, an interval deemed appropriate by the plenary. At 2025 CGAP, a WG was established to finalize the Good Practices documents relevant to these conventions, meeting online only.

A practical measure endorsed by SC 2024 was the encouragement for States to hold online meetings in the interim between this and the next General Commission, particularly to continue discussions on the use of IT in the transmission of cooperation requests. The PB volunteered to assist in initiating these discussions, targeting central authorities and other users of the Conventions. In 2025, CGAP mandated the PB to convene online meetings. The mandate includes online meetings for Central Authorities to discuss and exchange experiences to develop a deeper understanding of the use of information technology and develop additional guidance on the e-transmission of requests and associated matters.

It is also noteworthy that the requests for the inclusion of information in the Country Profiles were approved, the revisions to the Practical Handbooks were agreed upon, and confidence was expressed in the work carried out by the Working Groups. Undoubtedly, the expansion and democratization of information promotes transparency, facilitates Central Authorities' work, and enhances their users' understanding of these Conventions.

For Brazil, additional efforts should be made to raise awareness among legal practitioners regarding the Conventions discussed, which are essential for international legal cooperation, to increase their use by civil society, which, ultimately, is their greatest beneficiary.

3 Chronicle: The advantages of the iSupport system in the Maintenance Convention (Arnaldo Silveira)

3.1 Introduction

The recovery of maintenance obligations across international borders presents significant legal challenges. This article argues the necessity of a system like iSupport[30] to facilitate cooperation in this area. It offers a brief description of the system and reports on the progress of its implementation. It also focuses on recent developments. The article also emphasizes Brazil's role in iSupport development and its local implementation. Looking forward, the article mentions the next steps in iSupport's evolution toward maximizing its impact on families and individuals reliant on international maintenance payments.

3.2 International Legal Cooperation in child support and maintenance cases

It is important to note that when individuals involved in maintenance or child support matters require assistance, domestic judicial or administrative orders are often insufficient to address the necessary issues, especially when enforcement must take place across different countries. This is because the issuing authorities lack jurisdiction in foreign countries. These authorities, as a rule, must resort to a form of international legal cooperation, and thus request the relevant authority in the foreign country to comply with its decision.

The need to rely on the foreign authority for execution may seem obvious, but it is quite common to see local authorities issuing orders or decisions to be made or to have effects on other countries, without considering their lack of jurisdiction abroad.

To achieve the execution of these orders and decisions the interested party may obtain voluntary collaboration of those abroad affected by them or may start litigation directly in the foreign jurisdiction. Another option is to resort to international legal cooperation.

[30] iSupport was mentioned by Professor Inez Lopes in the 2019 issue of these Chronicles, in pg. 27 "Chronicle 2 Cross-border Maintenance: an assessment after the Hague Convention entered into force in Brazil (item 2.7 iSupport)".

It is rife to see national authorities assuming that they can issue orders for execution to be carried out abroad with no treaty to base them, just as if they were issuing orders to be executed within their jurisdiction. It is also quite common to see orders directed at foreign Embassies and Consulates in the same jurisdiction of the national authorities, instead of an international legal cooperation request. In these cases, it must be reminded that foreign Embassies and Consulates are not subject to these orders, as prescribed by the 1961 Vienna Convention on Diplomatic Relations[31] and the 1963 Vienna Convention on Consular Relations[32].

Thus, in a case of child maintenance in which it is necessary to serve a person abroad, to obtain evidence or to request enforcement in a foreign country, there are three paths available, as previously mentioned: (i) voluntary collaboration of those abroad affected by it; (ii) litigation of the interested parties directly in the foreign jurisdiction; or (iii) international legal cooperation.

3.3 The role of the Central Authorities in child support and maintenance cases

When an international legal cooperation request is made on maintenance and child support recovery in transnational cases, it generally occurs with the assistance of Central Authorities designated by each State which is a party to a certain treaty. The Central Authorities' role includes, among other activities: (i) receiving incoming and outgoing international legal cooperation requests for child support or other types of maintenance, like spousal support; (ii) detecting the existence of one or more treaties that could help to move the case forward; (iii) facilitating their correct formatting and documenting, depending on the result of the previous step; (iv.a) executing the incoming requests or facilitating their execution; or (iv.b) sending outgoing requests to the foreign Central Authority; and (v) following up on the effectivity of the case, including, among several other responsibilities, facilitating the payment by the debtor to the creditor.

In Brazil, the Central Authority for international legal cooperation in civil matters is the Ministry of Justice and Public Security - MJSP. This includes requests based on treaties and, in the absence of an applicable treaty, requests based on reciprocity. Most of the requests for cooperation in civil matters are maintenance and child support cases. Within the MJSP, the role of Central Authority is delegated to the Department of Assets Recovery and International Legal Cooperation - DRCI of the National Secretariat of Justice. The full list of treaties in force in Brazil that can be used for child support and maintenance cases can be found on the DRCI's website[33], including the only international instrument in this field which is under the responsibility of the General Prosecutor's Office - PGR, the United Nations Convention on the Recovery Abroad of Maintenance[34]. Also known as the 1956 New York Convention, this treaty is largely superseded by the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague 2007 Child Support Convention)[35], for which the DRCI is also the Central Authority.

It should be pointed out that, currently, the vast majority of the maintenance and child support legal cooperation requests received or sent by the Brazilian Central Authority are not yet based on the Hague 2007 Child Support Convention, but on other treaties, like: (i) The Hague Service Convention, or "*Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*"[36]; (ii) The Inter-American Convention on Letters Rogatory[37]; (iii) other treaties used with Mercosur State Parties and

[31] 1961 Vienna Convention on Diplomatic Relations, articles 22, 24, 31 and 37. In Brazil, Decree nº 56.435, 1965. (https://www.planalto.gov.br/ccivil_03/decreto/antigos/d56435.htm).

[32] 1963 Vienna Convention on Consular Relations, articles 31, 33 and 44. In Brazil, Decree nº 61.078, 1967. (https://www.planalto.gov.br/ccivil_03/decreto/d61078.htm).

[33] (https://www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/cooperacao-juridica-internacional-em-materia-civil/acordos-internacionais/prestacao-internacional-de-alimentos).

[34] United Nations Convention on the Recovery Abroad of Maintenance. In Brazil, Decree nº 56.826, 1965 (https://www2.camara.leg.br/legin/fed/decret/1960-1969/decreto-56826-2-setembro-1965-397343-publicacaooriginal-1-pe.html).

[35] Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. In Brazil, Decree nº 9.176, 2017. (https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/d9176.htm).

[36] Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. In Brazil, Decree nº 9.734, 2019. (https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/d9734.htm).

[37] Inter-American Convention on Letters Rogatory. In Brazil, Decree nº 1.899, 1996. (https://www.planalto.gov.br/ccivil_03/decreto/1996/d1899.htm).

Associated Countries, like the Las Leñas Protocol[38] [39]; (iv) The Hague Evidence Convention, or "*Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*"[40]; and (v) bilateral treaties.

3.4 The Hague 2007 Child Support Convention

The Hague 2007 Child Support Convention allows for several types of child support or maintenance requests[41], like applications for the establishment of maintenance decisions, the recognition and enforcement of maintenance decisions, enforcement of maintenance decisions and modification of decisions. It is also possible, under certain conditions, to request the determination of paternity, the location of debtors and creditors of maintenance, the service of process upon them, and the identification of their income and assets.

As the Central Authority for the Hague 2007 Child Support, DRCI directly executes incoming requests for the location of debtors or creditors of maintenance or child support and, when necessary, requests location assistance from other Brazilian governmental agencies. Most importantly, DRCI facilitates the execution of all the other types of requests. For many of those cases, the requests are sent by DRCI to the Office of the Public Defender of the Union - DPU, so that judicial procedures can be established. A joint bylaw was signed between the DPU and the National Secretariat of Justice[42], to which DRCI is linked. Also, the Ministry of Foreign Affairs, at the request of DRCI, designated the DPU as a Public Body under article 6(3) of the Hague 2007 Child Support Convention. DPU, thus, plays a particularly significant role in executing incoming requests in Brazil, acting in close partnership with the Central Authority (DRCI).

3.5 The need for international initiatives for the electronic transmission of international legal cooperation requests

When it comes to the transmission of the outgoing requests and to the receipt of the incoming requests, surprisingly enough, the international standard is still not the electronic transmission. Many foreign Central Authorities still demand paper requests sent by physical mail.

The Brazilian legal community is accustomed to a fully electronic national judicial system and tends to assume that this is the prevailing global standard. This leads many to believe that the requests for international legal cooperation sent abroad through DRCI in its' Central Authority role will be sent electronically. Unfortunately, this is not the case, because many countries still demand paper requests sent by physical mail.

DRCI, the Brazilian Central Authority, as well as many other foreign central authorities, considers the institutional e-mail accounts of the central authorities to be secure enough for sending and receiving international legal cooperation requests. This is currently the main electronic tool for the exchange of requests.

Other means of electronic transmission of requests include the use of encrypted e-mails and other secure transmission systems, such as the secure website provided by the "*Rede Iberoamericana de Cooperação Jurídica Internacional - IberRede*[43]". There are also country-specific solutions, like those made available by China, Peru, and the United States of America - the latter exclusively for requests under the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (HCCH 1965 Service Convention) and the Inter-American Convention on Letters Rogatory[44].

European Union countries are probably switching to the electronic transmission of requests among its members, since the enactment of the European Parliament and Council adopted Regulation (EU)

[38] "Protocolo de Cooperação e Assistência Jurisdicional em Matéria Civil, Comercial, Trabalhista e Administrativa" (Protocolo de Las Leñas) – Mercosur. In Brazil, Decree nº 2.067, 1996.

[39] "Acordo de Cooperação e Assistência Jurisdicional em Matéria Civil, Comercial, Trabalhista e Administrativa entre os Estados Partes do Mercosul, a República da Bolívia e a República do Chile" – Mercosur. In Brazil, Decree nº 6.891, 2009.

[40] Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. In Brazil, Decree nº 9.039, 2017. (https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/d9039.htm).

[41] Article 10 of the Hague Child Support Convention.

[42] Portaria Conjunta nº 1, de 29 de outubro de 2019. (https://pesquisa.in.gov.br/imprensa/servlet/INPDFViewer?jornal=515&pagina=209&data=06/11/2019&captchafield=firstAccess).

[43] The "Medellín Treaty", or "*Tratado Relativo à Transmissão Eletrônica de Pedidos de Cooperação Jurídica e Judiciária Internacional entre Autoridades Centrais*". (https://comjib.org/wp-content/uploads/2019/08/Tratado_Medellin_PT.pdf).

[44] In the United States of America, incoming requests for international legal cooperation based on these two treaties are dealt with by a company named ABC Legal, contracted to this end by the United States' Central Authority, the Department of Justice.

2023/2844 on the digitalization of judicial cooperation and access to justice in cross-border civil, commercial, and criminal matters. Countries outside the EU should not be immediately affected by the implementation of the Regulation. Regardless, when this practice becomes widespread within the EU, it would be expected that EU countries may choose to require the same standard from countries outside the EU.

Over the past decades, DRCI has actively and persistently advocated for the electronic transmission of international legal cooperation requests, which represents worldwide leadership in initiatives for the electronic transmission of requests.

Among these initiatives, DRCI has suggested and achieved the negotiation of the *Tratado Relativo a la Transmisión Electrónica de Solicitudes de Cooperación Jurídica Internacional Entre Autoridades Centrales* (*Tratado de Medellín*), aimed at the electronic transmission of those requests between the Central Authorities of the Ibero-American countries via the Iber@ website, one of the features of IberRede. Several other initiatives have been put in place by DRCI, including bilateral practices and advances with most of the Mercosur partners and with some countries of the Community of Portuguese Speaking Countries – CPLP. In the specific field of maintenance and child support, DRCI has also included Brazil in the first Pilot Project of iSupport and has since had a significant role in its development.

3.6 iSupport

iSupport is the secure electronic transmission and case management system designed to be used by the Central Authorities for international child support and maintenance requests, developed under the coordination of the Permanent Bureau of the Hague Conference on Private International Law – HCCH with the collaboration of many of the members of that organization, including Brazil.

The system user interface is based on commonly used internet browsers and is available in English, French, German, Portuguese, Spanish, and Swedish. Additionally, after a case is registered in iSupport, the forms necessary to formalize the request can be automatically generated in the language of the requested authority. The data entered by the Central Authority is not automatically translated, but it is transposed to a form whose fields and standard text are in the language of the requested country. Thus, some additional translation by the user may be necessary, depending on the relevant form and related to the information filled by the user in the form.

iSupport is tailor-made to be used both for requests made between parties to the Hague 2007 Child Support Convention, and for requests made between parties to the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition, and enforcement of decisions and cooperation in matters relating to maintenance obligations (the European Regulation[45]). Even so, it is also designed to accommodate requests made under other multilateral or regional maintenance and child support treaties, such as the 1956 New York Convention, and the 1989 Inter-American Convention on Support Obligations (the Inter-American Convention), as well as bilateral agreements.

The case management feature of iSupport also allows case management and the exchange of messages between the relevant Central Authorities. It also allows the automatic collection of the statistics that the Permanent Bureau of the HCCH requests periodically from the Parties to the Convention. Other features are currently being developed and tested, like the monitoring of the international transfer of maintenance funds.

The security of request transmissions via iSupport relies on e-Codex, a European technology whose development and coordination first relied on a partnership between certain European countries, organizations, and experts, but has recently been chosen as a standard by the European Union – EU. It is currently under the auspices of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice - EU-Lisa[46].

The coding and design of iSupport were commissioned to the Indian company Protech, following the appropriate open selection processes that apply to the HCCH and supervised by the iSupport Governing Body. As it was partly funded by the EU, the rules of that international organization also applied.

[45] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R0004&qid=1741648505159).

[46] (https://www.eulisa.europa.eu/activities/large-scale-it-systems/e-codex).

The iSupport Governing Body is comprised of members of the HCCH that have contributed to the development of iSupport over the years, as some countries contributed by direct funding or by human resources fully or partially dedicated to the project.

iSupport saw a recent breakthrough, after ten years of planning, developing, testing, and some false starts. Germany and Sweden were the first countries to finally start to use iSupport for the secure exchange of child support requests.

3.7 The involvement of Brazil in iSupport Development and Implementation

Brazil was one of the first countries to adhere to the Pilot Project of iSupport, in 2014. In the first years, two to three long virtual meetings were held each week between the participants of the project, many times including representatives of the contracted company, Protech. Decisions were made about what the system would include, how the information would flow within the system and between authorities, the levels of security and how to technically implement each solution. Even the size and format of each field of the database were discussed at length.

At the same time, several virtual meetings were also held to discuss administrative matters like the funding of the project, tender and contracting rules, and projects for requesting funding from the participant countries and the EU. The text of a possible agreement between countries interested in using iSupport and the HCCH was also discussed.

The translation of iSupport to Portuguese was done by the Brazilian representatives from the DRCI and by the representatives of the Portuguese Ministry of Justice. Each word or phrase to be displayed in an iSupport screen was translated, taking into account the use of terms that would be acceptable in the Portuguese language spoken in Brazil, and in the Portuguese language spoken in Portugal and in most of the other Portuguese-speaking countries.

Over the years, Brazil has continued to participate consistently in frequent iSupport virtual meetings, including technical ones and the Governing Body ones.

The Information Technology personnel of the MJSP and the DRCI have worked together over the years to always have the latest testing release of iSupport installed. Testing with the HCCH and the other countries involved was and is frequent.

At the same time, DRCI looked for budgetary solutions to enable iSupport's full implementation, as payments to an international organization follow specific and bureaucratic legal and administrative procedures in Brazil. For that matter, DRCI is also studying the terms of proposed agreements to deal with that matter, either by an agreement between the MJSP and Protech, or between the HCCH and the MJSP. There is also discussion about whether a formal treaty would be needed to allow for regular iSupport payments to the HCCH.

As the number of countries using iSupport now is still small, DRCI is under pressure to justify the need for this additional expenditure. In the meantime, DRCI was able to fully or partially establish procedures for sending requests based on the Hague 2007 Child Support Convention through the Central Authorities' institutional e-mail addresses to Austria, the Czech Republic, England, Estonia, Finland, Greece, Ireland, Italy, New Zealand, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and several State authorities from the United States of America.

3.8 Current stage of iSupport

According to the Statute of the HCCH, the Council on General Affairs and Policy - CGAP is composed of all Members and is in charge of the operation of the Conference, of giving directions to the work of the Permanent Bureau, to approve regulations, and examine and determine the action to be taken regarding all proposals intended to be placed on the Agenda of the Conference.

The matter of iSupport was under consideration of the last meetings of CGAP. In 2023, paragraph 36 of the CGAP Conclusions and Decisions document stated that "*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*". In 2024 paragraph 38 of the CGAP Conclusions and Decisions document, stated that "*CGAP noted the* ***first official exchange of data using iSupport between Germany and Sweden****, and their continued use of iSupport. CGAP also noted*

the continued efforts towards improving the ease of installation and user-friendliness of iSupport. CGAP encouraged Members to draw from the experience of Germany and Sweden with a view to assessing the possibility of implementing iSupport in their own operations." (**emphasis added**).

Currently, iSupport is implementing functional developments about payments and technical improvements, with EU funding. Some countries have expressed that their decisions on the implementation of iSupport depend on further developments of the system's Application Programming Interface – API. An API could be described as a set of definitions and protocols that allows one application to access the features or data of another application.

iSupport is now entering a phase of development based on a new EU-funded project, called R2G, which stands for Ready to Go. It involves simplified installation and setup, improved interface, and training, as well as enhanced support and guidance.

Many countries have recently expressed interest in implementing iSupport soon, including Estonia, Finland, France, Hungary, Portugal, and Spain. It is worth noting that at 2025 CGAP the increase in States using iSupport (an electronic case management and secure communication system for the cross-border recovery of maintenance obligations) was noted, as well as the advances of the software concerning the transfer of maintenance funds. As a result, in its C&D, 2025 CGAP encouraged Members to use the support offered by the PB and contribute to the improvement of iSupport by sharing their requirements for the software. (para. 32)

3.9 Final Remarks

The electronic transmission of international legal cooperation requests is not yet the norm in international legal cooperation in civil matters, including maintenance or child support cases, but it is past due. Brazil is deeply involved in finding solutions for attracting other countries to implement electronic procedures. When it comes to international legal cooperation in maintenance or child support cases, iSupport is an especially important initiative to achieve the electronic transmission of these requests.

Brazil is closely following the latest developments and the start of iSupport operation, while domestic measures are being taken to make it possible to implement it internally.

The relevance of iSupport shall rise considerably when its implementation is spread to other countries other than the ones that already use it.

4 Chronicle: Two Topics about the Apostille Convention: the counterintuitive exclusion of customs and commerce documents from its scope and the rise of e-Apostille. (Gustavo Ferreira Ribeiro)

4.1 Introduction

Conceptualized in the 1950s and in force since 1965[47], the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (the "Apostille Convention") is one of the leading international legal instruments developed by the Hague Conference on Private International Law (HCCH), in terms of contracting parties and practical use[48].

Brazil internalized the Apostille Convention in 2016[49] and became the 110th Contracting Party to the Convention. Worldwide, the number of signatories reached 127. The recent accessions include Bangladesh (March 30, 2025), Canada (January 11, 2024), China (November 7, 2023), Pakistan (March 9, 2023), Rwanda (June 5, 2024), and Senegal (March 23, 2023)[50].

[47] GRAVESON, R. H. The ninth Hague Conference of Private International Law**.** *International and Comparative Law Quartely,* v. 10, p. 19, Jan. 1961.

[48] HCCH. Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. Hague, Oct. 5, 1961. Available in: https://www.hcch.net/en/instruments/conventions/full-text/?cid=41. Last access: Feb. 28, 2025.

[49] BRASIL. Decree nº 8.660, of Jan. 29, 2016. Promulgates the Convention on the Elimination of the Requirement of Legalization for Foreign Public Documents, signed by the Federative Republic of Brazil, in The Hague, on October 5, 1961. DOU: Section 1, Brasília, DF, p. 3, 1 Feb. 2016. Available in: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8660.htm. Last access: Feb. 28, 2025.

[50] The two main HCCH Conventions, in terms of Contracting Parties, are the Apostille Convention (127 parties) and the Convention on the Civil Aspects of International Child Abduction (103 parties). For a comparison of the Conventions, see: HCCH. *Status Chart*. Available in: https://www.hcch.net/pt/instruments/status-

But what exactly is an Apostille procedure? In the context of world document circulation between different countries, the procedure serves as a specific form of legalization that authenticates the signature of public documents without requiring diplomatic or consular intervention. According to the Apostille Handbook, "a document for which an Apostille has been issued under the Apostille Convention is referred to as having been 'apostillised'[51]. The procedure does not certify anything about the substantive content of the document.

As we have already discussed in a previous chronicle, the Apostille Convention reduces bureaucracy, simplifies processes, and seeks to reduce the costs inherent to legalization by establishing procedures to eliminate the requirement for diplomatic or consular legalization of public documents[52].

In Brazil, a significant business newspaper recently reported a record number of Apostille procedures in the country in 2024. An estimated 2.8 million procedures were recorded in that year, many of which related to citizenship processes or the inclusion of evidence abroad in cases of transnational litigation. The newspaper article also mentioned the routine use of apostilles for corporate documents, such as when companies participate in foreign bidding processes, and the foreign authority demands a "negative certificate"[53] from a Brazilian public authority[54].

Indeed, the Apostille Handbook highlights numerous situations in which the Apostille is applicable, including:

> international marriages; international relocations; applications for studies, residency or citizenship in a foreign place; intercountry adoption procedures; international business transactions and foreign investment procedures; enforcement of intellectual property rights abroad; and foreign legal proceedings[55].

Another author adds documents such as purchase and sale agreements, joint operation agreements, drilling contracts, payment orders, and confidentiality agreements to the list[56].

In this context, this chronicle aims to explore two specific aspects of the Apostille Convention. The first is the counterintuitive exclusion of the Apostille Convention for foreign trade, as Article 1(3)(b) of the Convention explicitly states that it does not apply to commercial and customs documents[57]. Would it not be precisely those documents (such as import and export licenses, certificates of origin, health certificates, and invoices) that would benefit most from the Convention? The second aspect is practical. It concerns the ongoing modernization of the Convention by implementing the Electronic Apostille Programme (e-APP).

This research adopts bibliographical review methodology, including an analysis of doctrinal texts, preparatory works of the Convention, and the latest technical materials prepared by the Apostille Section of the HCCH Secretariat, such as the C&D. It is important to note that the C&D, among other things, encouraged States to join the Apostille Convention and to implement the e-APP[58].

charts. Last access: Feb. 28, 2025.

51 HCCH. *Apostille Handbook:* Practical Handbook on the Operation of the Apostille Convention. Hague, Secretariat, 2023, paragraph. 7. Available in: https://assets.hcch.net/docs/a19ae90b-27bf-4596-b5ee-0140858abeaa.pdf. Last access: Feb. 28, 2025.

52 ARAUJO, Nadia; DE NARDI, Marcelo; RIBEIRO, Gustavo; POLIDO, Fabrício LOPES, Inez; OLIVEIRA, Matheus. Crônicas de Direito Internacional Privado: destaques do trabalho da HCCH nos últimos dois anos. *Revista de Direito Internacional*, Brasília, v. 19, n. 2, p. 14, 2022. Available in: https://www.publicacoesacademicas.uniceub.br/rdi/article/view/8688/pdf. Last access: Feb. 28, 2025.

53 A negative certificate, in Brazil, is equivalent to a "Debt Clearance Certificate" or a "Certificate of Good Standing". They are provided electronically by the competent tax authorities.

54 LAURA, I. Cartórios bateram recorde de apostilamentos no ano de 2024. *Valor Econômico*, São Paulo, Feb. 22, 2025. Available in: https://valor.globo.com/legislacao/noticia/2025/02/22/cartorios-bateram-recorde-de-apostilamentos-no-ano-de-2024.ghtml. Last access: Feb. 28, 2025.

55 HCCH. *Apostille Handbook:* Practical Handbook on the Operation of the Apostille Convention. Hague, Secretariat, 2023, paragraph. 7. Available in: https://assets.hcch.net/docs/a19ae90b-27bf-4596-b5ee-0140858abeaa.pdf . Last access: Feb. 28, 2025.

56 ADAMS JR, James W. The Apostille in the 21th Century: international document certification and verification. *Houston Journal of International Law,* v. 3, n. 3, p. 520, 2012.

57 Apostille Convention, article 1:(3)b: "(…) However, the present Convention shall not apply: (…) b) to administrative documents dealing directly with commercial or customs operations."

58 See 2025 CGAP, C&D para. 63 to 67: "63.CGAP encouraged Members and Contracting Parties interested in translating the Apostille Handbook to contact the PB. 64 CGAP welcomed the C&R of the 13th International Forum on the e-APP and thanked the Republic of Kazakhstan and the Maqsut Narikbayev University for their generous support in hosting the event. 65 CGAP noted that the methodology underlying the World Bank Group's Business Ready Report identifies the Apostille Convention and the e-APP as factors that improve an economy's business environment. CGAP encouraged States to join the Apostille Convention and to implement the e-APP. 66 CGAP mandated the PB to convene an online brainstorming session to discuss the acceptance of electronic Apostilles in circumstances where Contracting Parties, under their domestic law, cannot accept electronic public documents. 67 CGAP will consider the specific timing for the next meeting of the SC on the practical

4.2 The Counterintuitive Exclusion of Commercial and Customs Documents from the Scope of the Apostille Convention

The Apostille Convention defines four categories of public documents within its scope:

> a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");
>
> b) administrative documents.
>
> c) notarial acts.
>
> d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that.[59]

The term "public document" in the Convention originates from the French term "actes publiques", which was deemed adequately represented in English as "public documents"[60]. However, the Convention does not apply to "administrative documents dealing directly with commercial or customs operations"[61].

At first glance, the Convention's language leaves no doubt regarding its non-applicability to commercial or customs transactions. However, this exclusion is peculiar and should be interpreted restrictively.

This is because the provision is rooted in the composition of European countries that primarily negotiated the Convention. At that time, these countries did not require legalizing documents related to commercial and customs operations, aligning their spirit with Article VIII:1(c) of the 1947 General Agreement on Tariffs and Trade (GATT)[62].

In contrast, Zablud highlights a different reality outside Europe, where most countries used to require consular legalization of documents related to imported goods, a process known as *consular invoice* or *consular visa*. According to Zablud, this form of legalization took place at the destination country's consulate, located in the exporting country. Despite being gradually phased out, this practice persisted over time, as consulates generated substantial revenue from these services, often causing procedural delays[63].

Thus, two contrasting views emerged: European countries, which had already abandoned the requirement for legalizing trade-related documents, and countries that maintained "consularization" for such documents[64].

During the preparatory work for the Apostille Convention, as noted in the explanatory report by Professor Loussouarn, the exclusion in Article 1(3)(b) was introduced after extensive debate. A proposal was even considered to create an exception to the exclusion ("*une exception à cette exclusion*"), allowing documents such as certificates of origin and import/export licenses to be apostillised. However, a general exclusion prevailed for two reasons. First, such documents were typically already exempt from legalization. Second, where formalities were required, they did not serve to authenticate documents but to verify their content and apply substantive control by the competent authority[65].

Professor Loussouarn points out that the Commission sought to avoid too generic exclusion. The term administrative, which describes documents, would allow commercial documents, such as contracts and powers of attorney related to trade, to be subject to Apostille. Furthermore, the adverb "directly" would restrict the exclusion to documents whose content expresses a commercial or customs purpose, except those that may occasionally be used for commercial transactions. Professor Loussouarn illustrates these types of docu-

operation of the Apostille Convention at CGAP 2027, noting that it is expected to take place before the end of 2029".

59 Apostille Convention, article 1.

60 GRAVESON, R. H. The ninth Hague Conference of Private International Law**.** *International and Comparative Law Quartely,* v. 10, p. 20, Jan. 1961.

61 Apostille Convention, article 1(3)b.

62 This GATT provision provides that Contracting Parties should minimize the complexity and incidence of import formalities. This includes simplifying documentation requirements for imports and exports.

63 ZABLUD, P. *Aspects of the Apostille Convention:* a position Paper. 5 nov. 2012. Available in: https://assets.hcch.net/upload/wop/2012apostille_info05.pdf. Last access: Feb. 28, 2025.

64 In fact, the composition of the Special Committee formed to discuss the Apostille Convention was predominantly European. Professor Loussouarn, from the Faculty of Rennes, in France, was the Commission's rapporteur. The ten other members came from Germany, Japan, Yugoslavia, Belgium (2), the Netherlands, Luxembourg, Türkiye, Italy and Spain. See HCCH. *Actes et Document de La Neuvième Session*: Tome II. Hague: Secretariat, Oct. 5th, 1960, p. 15. Available in: https://assets.hcch.net/docs/3ecef86a-5af4-481f-9a68-63d6b8d6c6ef.pdf. Last access: Feb. 28, 2025.

65 HCCH. *Actes et Document de La Neuvième Session*: Tome II. Hague: Secretariat, Oct. 5. 1960, p. 175. Available in: https://assets.hcch.net/docs/3ecef86a-5af4-481f-9a68-63d6b8d6c6ef.pdf. Last access: Feb. 28, 2025.

ments with the certificates issued by Patent Offices at this point[66].

Zablud, based on the distinctions made in Loussouarn's report, emphasizes that two types of administrative documents directly related to commercial, or customs operations can be distinguished for exclusion from the Convention's coverage. Those issued by governments or government institutions and those issued privately, of an administrative nature, and related to commercial or customs operations. The first group would include import and export licenses, health certificates, and product registration certificates. The second group would consist of documents typically issued by non-governmental sources in some countries, such as certificates of origin, certificates of conformity, end-user certificates, and commercial invoices. According to Zablud, this second group would be covered by the Convention's Apostille and could be subject to Apostille[67].

However, the different legal concepts regarding administrative and directly related terms and the possible institutional arrangements (governmental or private) for issuing countries' foreign trade documents can raise complexities.

Consequently, the interpretation of the scope of the exclusion in Article 1(3)b of the Convention has been attracting the attention of the Special Commission of the HCCH since 2003. In 2016, the Special Commission even suggested that the exclusion be interpreted "extremely narrowly"[68].

According to the Special Commission, among the parties to the Convention, there are three approaches to commercial documents of private origin: (i) some parties maintain the exclusion and do not require legalization procedures; (ii) others require the Apostille procedure, often because they require, before the Convention comes into force, some form of legalization or authentication; and (iii) finally, a small number apply the Convention not issuing or accepting Apostilles, thus requiring the traditional legalization procedure[69].

Seeking more guidance on the interpretation of exclusion, the HCCH Secretariat sent a questionnaire to several countries in 2021. In total, 84 responses were obtained: 79 from Contracting Parties, including Brazil, and five from non-parties[70].

As we already had the opportunity to quote in a previous chronicle,

> roughly 88% of responses indicated that this exclusion does not present any difficulties in the operation of the Convention. When asked if the Article 1(3)(a) exclusion is justified in the modern context of the operation of the Convention, 66% agreed and 19% disagreed. A slightly lower proportion of responses (74%) indicated that the exclusion in Article 1(3)(b) on administrative documents dealing directly with commercial or customs operations does not present any difficulties in the operation of the Convention. Approximately 58% of respondents consider that the exclusion is justified in the modern context of the Convention, while 25% do not. Thus, while the majority of respondents in both instances did not report difficulties related to the Article 1(3) exclusions, a minority do not consider the exclusions justified in the modern operation of the Convention[71].

The questionnaire results reflected mixed levels of interpretation of the Contracting Parties, with distinct rates of issuance and acceptance of specific categories of documents subject to Apostille. Health and safety certificates, product registration certificates, and certificates of origin were the most apostilled documents (in terms of issuance)[72]. Thus, we concluded in the pre-

[66] HCCH. *Actes et Document de La Neuvième Session*: Tome II. Hague: Secretariat, Oct. 5. 1960, p. 175-176. Available in: https://assets.hcch.net/docs/3ecef86a-5af4-481f-9a68-63d6b8d6c6ef.pdf. Last access: Feb. 28, 2025.

[67] ZABLUD, P. *Aspects of the Apostille Convention:* a position Paper. 5 nov. 2012, op. 3-4. Available in: https://assets.hcch.net/upload/wop/2012apostille_info05.pdf. Last access: Feb. 28, 2025. In a recent note from the HCCH Secretariat, on the scope of exclusion, this second group of commercial documents subject to apostille is illustrated with the following elements: contracts, powers of attorney and certificates issued by patent offices. HCCH. Info. Doc. N. 3. *Note on Article 1(3) Exclusions.* Hague: Secretariat, Oct. 2021, p. 2. Available in: https://assets.hcch.net/docs/e84b8f1c-3756-4784-9167-a377d481a5b1.pdf. Last access: Feb. 28, 2025.

[68] HCCH. Info. Doc. N. 3. *Note on Article 1(3) Exclusions.* Hague: Secretariat, Oct. 2021, p. 19. Available in: https://assets.hcch.net/docs/e84b8f1c-3756-4784-9167-a377d481a5b1.pdf. Last access: Feb. 28, 2025..

[69] HCCH. Info. Doc. N. 3. *Note on Article 1(3) Exclusions.* Hague: Secretariat, Oct. 2021, p. 3. Available in: https://assets.hcch.net/docs/e84b8f1c-3756-4784-9167-a377d481a5b1.pdf. Last access: Feb. 28, 2025.

[70] HCCH. Prel. Doc. n. 2. REV. *Summary of Responses to the Apostille Questionnaire.* Hague: Secretariat, Oct. 2021, para. 19. Available in: https://assets.hcch.net/docs/562ae0df-8797-47e6-85e6-6055e7689639.pdf. Last access: Feb. 28, 2025.

[71] HCCH. Prel. Doc. n. 2. REV. *Summary of Responses to the Apostille Questionnaire.* Hague: Secretariat, Oct. 2021, para. 13-15. Available in: https://assets.hcch.net/docs/562ae0df-8797-47e6-85e6-6055e7689639.pdf. Last access: Feb. 28, 2025.

[72] HCCH. Prel. Doc. n. 2. REV. *Summary of Responses to the Apostille Questionnaire.* Hague: Secretariat, Oct 2021, para. 18. Avail-

vious chronicle that the big picture reveals that the purpose of the Convention and the restricted exclusion are not fully agreed upon among the respondents[73].

Additionally, the latest version of the Apostille handbook posits that.

> [i]n practice, a number of Contracting Parties apply the Convention to administrative documents that are essential to the operation of cross-border trade and commerce, such as import/export licences, certificates of origin and health and safety certificates. This is on the basis that these documents are considered to be of a public nature under their national law or policy, and that these documents previously required legalisation. The application of the Convention to these documents is considered valid because it is the Convention's purpose of abolishing legalisation and facilitating the use of public documents abroad. This interpretation has been endorsed by the Special Commission, which has recognised the importance of facilitating the circulation of these in international trade and commerce. Where a free trade agreement applies, documents relating to customs operations are often not subject to legalisation or other equivalent formality due to the simplification and harmonisation of customs procedures. In most cases, customs administrations verify these documents by contacting the relevant authorities in the exporting country[74].

In conclusion, despite the non-homogeneous application of the Convention by Contracting Parties, the PB suggests a pragmatic view of the exception. Some countries still apply the Apostille to commercial or customs documents. However, this would be preferable rather than legalization itself and would be in line with facilitating international trade.

4.3 The Rise of the Apostille Programme (e-APP)

While the previous section debated a substantive issue (an exclusion of scope) of the Apostille Convention, the current one refers to a practical aspect of the Convention: its anachronistic form. After six decades of operation, a completely different world emerged regarding available technology. However, not all countries have implemented an electronic apostille procedure and continue to operate with analog procedures.

Hasanova states that a model for implementing the electronic procedure dates to the early 2000s when the HCCH, in cooperation with some member states, developed the e-APP program. The author also reminds us that the electronic apostille has seen a surge considering the COVID-19 pandemic when the Secretary General of the HCCH emphasized a greater need for electronic authentication and recognition of public documents during the health crisis[75].

A preliminary report for the 2025 CGAP meeting indicates that in 2024, multiple Contracting Parties, including the Philippines, Russia, Panama, Ecuador, and Morocco, successfully implemented both components of the e-APP: issuing e-Apostilles and establishing e--Registers. The report also notes that certain U.S. states, such as Kentucky, Minnesota, and Washington, have fully adopted the system[76].

In total, the report points out that 56 Contracting Parties (44% of all Contracting Parties) have implemented at least one component, and 36 (28.3%) have deployed both, making the digital shift to rise and gain momentum[77].

The report also brings some insights from the 13th International Forum on the e-APP, held in Astana, Kazakhstan, marking the first forum in Central Asia. Attended by over 300 participants from 70 Contracting and three non-Contracting Parties, the Forum provided a platform for knowledge-sharing on the e-APP's implementation. Panel discussions explored the best

able in: https://assets.hcch.net/docs/562ae0df-8797-47e6-85e6-6055e7689639.pdf. Last access: Feb. 28, 2025.

73 ARAUJO, Nadia; DE NARDI, Marcelo; RIBEIRO, Gustavo; POLIDO, Fabrício LOPES, Inez; OLIVEIRA, Matheus. Crônicas de Direito Internacional Privado: destaques do trabalho da HCCH nos últimos dois anos. *Revista de Direito Internacional*, Brasília, v. 19, n. 2, p. 27, 2022. Available in: https://www.publicacoesacademicas.uniceub.br/rdi/article/view/8688/pdf. Last access: Feb. 28, 2025.

74 HCCH. *Apostille Handbook:* Practical Handbook on the Operation of the Apostille Convention. Hague, Secretariat, 2023, paragraph. 136-138. Available in: https://assets.hcch.net/docs/a19ae90b-27bf-4596-b5ee-0140858abeaa.pdf. Last access: Feb. 28, 2025.

75 Nazrin Hasanova. The electronic Apostille in worldwide circulation of public documents. *Baku State University Law Review*, v. 4, n. 1. Feb. 2023, p. 24-29. One should note that Brazil, under the auspices of the National Council of Justice (CNJ), presented in October 2019, at the 11th International Forum of the Electronic Apostille Program, its national platform. See: CONSELHO NACIONAL DE JUSTIÇA. Agência CNJ de Justiça. Brasil disponibiliza nova plataforma de apostilamento. 2019. Available in: https://www.cnj.jus.br/brasil-disponibiliza-nova-plataforma-de-apostilamento-para-comunidade-internacional/ Last access: Feb. 28, 2025.

76 HCCH. Prel. Doc. n. 12 of December 2024. 1961 Apostille Convention: Update. Hague: Permanent Bureau, Dec. 2024, para. 7. Available in: https://assets.hcch.net/docs/fe013755-6580-4701-a97c-99abf376bf78.pdf. Last access: Feb. 28, 2025.

77 Ibidem, para. 7.

practices, technological advancements, and integration strategies for new digital authentication tools. The conclusions and recommendations from the Forum underscored the need for continuous innovation and cooperation in adopting the e-APP[78].

The report calls attention to the active engagement of the Permanent Bureau (PB) in promoting the Apostille Convention through targeted assistance and promotional initiatives. Bilateral engagements with officials from Bangladesh, Pakistan, Spain, and Thailand, among others, facilitated discussions on best practices for implementation. Additionally, per the report, the PB contributed to various regional and international events, including the Asian African Legal Consultative Organization session in Bangkok and the Montana Notary Conference in the U.S., further amplifying awareness of the Convention and the e-APP[79].

Notably, the report stresses a notable development in 2024, with the inclusion of the Apostille Convention and the e-APP in the World Bank's Business Ready Report[80]. Recognized as key factors in the dispute resolution scoring methodology, these elements highlight the Convention's role in enhancing global business environments.

Finally, the report notes that the Apostille was not included in the CGAP 2024 agenda. However, future digital innovations and integration with emerging authentication technologies will shape the next phase of the Convention's development. For the CGAP 2025 agenda, the Apostille Convention was scheduled as a section topic concerning "Transnational Litigation & Apostille," and was part of the C&D, para. 63 to 67[81].

4.4 Final Remarks

This chronicle addressed two aspects of the Apostille Convention. The first dealt with the so-called article 1(3)(b) exception, and the second related to the use of e-APPs.

One can identify the Article 1(3)(b) exception's historical roots and verify that the practice among Contracting Parties remains diverse. However, the PB adopts a pragmatic view when the exclusion seems not to be working, i.e., Contracting Parties do issue or require Apostille procedure in commercial or customs documents. In this case, the Apostille procedure would be better and less bureaucratic than the legalization itself, fulfilling the objective of facilitating trade.

The second point is that the digital transformation of the Apostille process, driven by the e-APP, represents a critical step forward in modernizing document legalization. Despite significant progress, the uneven implementation of e-apostilles among Contracting Parties indicates the need for further harmonization and cooperation.

Ultimately, the Apostille Convention remains a cornerstone of international legal cooperation, reducing bureaucratic burdens and enhancing efficiency in document verification. The record number of Apostille procedures in Brazil in 2024 contributes to the argument, though a more comprehensive comparative study of its use could be carried out.

5 **Chronicle:** Return or Protection? Article 13(1)(b) of the 1980 Hague Convention and Domestic Violence in Parental Abduction Cases. (Inez Lopes)

5.1 Introduction

Before the 8th Meeting of the Special Commission in 2023, several non-governmental organizations (NGOs) contacted the Permanent Bureau of the Hague Conference on Private International Law (HCCH) and expressed concerns, particularly regarding the application of Article 13(1)(b) of the 1980 Convention on the Civil Aspects of International Child Abduction[82] in the context of domestic violence. The Secretary-General emphasized that, according to HCCH norms and regulations, only international NGOs can act as observers in

[78] Ibidem, para. 9-10.

[79] Ibidem, para. 17.

[80] Ibidem, para. 18. For the full report, see: WORLDBANK. Business Ready, 2024. Available in: https://www.worldbank.org/en/businessready Last access: Feb. 28, 2025.

[81] HCCH. Prel. Doc. n. 12 of December 2024. 1961 Apostille Convention: Update. Hague: Permanent Bureau, Dec. 2024, para. 19-20. Available in: https://assets.hcch.net/docs/fe013755-6580-4701-a97c-99abf376bf78.pdf. Last access: Feb. 28, 2025.

[82] Promulgated by Decree No. 3,413 of 14 April 2000, approved by the National Congress through Legislative Decree No. 79 of 15 September 1999.

the meetings of this international organization. For this reason, the NGOs were unable to participate in the 2023 meeting. In this context, the Secretary-General of the HCCH suggested the organization of a Forum, which would represent an excellent opportunity for the exchange of information and perspectives on the jurisprudence relating to the application of Article 13(1)(b), aiming to discuss good practices and effective strategies[83].

The Council on General Affairs and Policy (CGAP) approved the organization of a Forum on Domestic Violence and the Application of Article 13(1)(b) of the 1980 Convention. The Forum took place in Sandton, South Africa, from 18 to 21 June 2024, co-organized with the Government of South Africa and the Centre for Child Law at the University of Pretoria[84]. Also on 2025 CGAP the report on the 2024 Forum was noted, and the holding of a Second Forum was welcomed. The Second Forum will be held in Brazil, in October 2025[85]. Like the first, the 2025 CGAP observed that the Second Forum will not result in any HCCH Conclusions and Recommendations.

This article aims to analyze the main discussions on domestic violence within the scope of private international law (PIL), with emphasis on the debates at the Forum on Domestic Violence and the application of Article 13(1)(b) of the 1980 Hague Convention on International Abduction in transnational family relations. Using a qualitative method through bibliographical review and analysis of HCCH documents, this work seeks to contribute to new discussions on domestic violence in transnational family relations, considering that it remains an open topic. From a human rights perspective, this study presents the dialogue between international sources, the principle of the best interests of the child, and gender issues in cross-border private relations.

5.2 The Main Discussions of the Forum on Domestic Violence and the Application of Article 13(1)(b) of the 1980 Convention

In the opening session, Mandisa Muriel Lindelwa Maya, Deputy President of the Supreme Court of South Africa, stated that while the Convention prioritizes the safe return of children, the instrument contains exceptions to the general rule, including the "grave risk" provision in Article 13(1)(b), which establishes that a child should not be returned if such return would expose them to physical or psychological harm or otherwise place them in an intolerable situation[86]. The Chief Justice also emphasized that the Guide to Good Practice acknowledges that harm to the mother can be equivalent to harm to the child and that for the exception in Article 13(1)(b) to apply, the child does not need to be the direct victim of harm. However, she added that despite the clarity of the guidance provided by the Guide to Good Practice, there is still no judicial consensus on the application of Article 13(1)(b)[87].

One of the central discussions addressed the role of key actors in the application of Article 13(1)(b)[88]. The session highlighted the importance of careful assessment of domestic violence allegations and the need for well-trained judicial systems to handle such sensitive situations. Many experts emphasized that domestic violence is often difficult to prove, especially in transnational contexts where evidence of abuse, such as medical or police records, is not always available.

The psychological impact of domestic violence on victims, particularly children, was another relevant topic. Psychologists and trauma specialists discussed the long-term effects of exposure to domestic violence, such as post-traumatic stress disorder (PTSD), anxiety,

83 HCCH. Prel. Doc. No 8A September, 2024, p. 4.

84 Ibid, p. 5.

85 See 2025 CGAP, C&D, para 25 and 26: 25. CGAP took note of the reporting on the Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, held in June 2024, in Sandton, South Africa and thanked the Government of South Africa and the Centre for Child Law of the University of Pretoria for having hosted the Forum. 26 CGAP welcomed the holding of the second Forum in late October 2025, organized by the Government of Brazil and with the support of the PB, within available resources. In accordance with previous arrangements between the Government of Brazil and the PB, a Steering Committee will develop the substantive programme, with the understanding of the importance of ensuring balanced and diverse participation from all relevant actors. CGAP noted that, while in-person participation is encouraged, passive online participation will be ensured. CGAP also noted that the second Forum, like the first, will not result in any HCCH Conclusions and Recommendations (C&R). The PB will prepare a report on the second Forum for consideration by CGAP 2026. Any proposal for an additional Forum involving the HCCH, including the PB, shall be presented to CGAP for consideration. CGAP expressed its gratitude to the Government of Brazil for its initiative in hosting the second Forum. CGAP encouraged other States and interested parties to consider making a voluntary contribution to cover the costs of the second Forum.

86 Ibid.., p. 8.

87 Ibid., p. 9.

88 Ibid., p. 9 e ss.

and behavioral disorders. Studies have shown that children exposed to domestic violence, even if they are not direct victims of abuse, often suffer serious emotional and psychological harm. Godbold noted that trauma is central to the Forum's discussions, as both the separation of parents and children and experiences of domestic violence are inherently traumatic[89].

During the discussion, it was emphasized that even if a child is not directly assaulted, merely witnessing violence places him or her at significant risk of psychological harm, which should be considered in judicial decisions.

The Forum also provided a space for emotional testimonies from mothers who fled abusive situations and were forced to return their children despite clear evidence of domestic violence. These mothers, often labeled as "abducting mothers", were portrayed as protectors fighting to save their children from dangerous situations. However, the inadequate recognition of domestic violence in courts and the improper application of protective measures frequently result in the re-victimization of mothers, placing children in even more perilous circumstances.

The Forum further addressed the complexity of judicial decisions regarding the return or non-return of children in cases involving domestic violence. Judges and experts shared their experiences on how allegations of domestic violence influence decisions and the difficulty of ensuring the child's safety during the return process. It was pointed out that while Article 13(1)(b) of the Hague Convention provides a mechanism to prevent return in cases of grave risk, the implementation of protective measures is not always effective. In many cases, protective measures intended to safeguard victims of domestic violence fail, leaving children and women in dangerous situations. The stories, through audio recordings of children, revealed traumas and accounts of violence and abuse, as well as the impact of return decisions[90].

Testimonies were also shared by mothers who fled abusive situations and were forced to return their children despite allegations of domestic violence[91]. The issue of ineffective protective measures and the risks of re-victimization of mothers was a central concern. Although protective measures are often applied, they were deemed insufficient in many cases to prevent harm to victims.

The Forum underscored that while the 1980 Hague Convention remains an essential tool for addressing international child abduction, its application needs to be adapted to better protect victims of domestic violence. Key conclusions include the need for a more skilled judiciary to handle domestic violence cases and their implications for child return proceedings.

Additionally, the importance of considering "the best interests of the child" was highlighted, which must include protection from physical and psychological violence, even when the child has not been directly assaulted. The Forum further emphasized the urgency of improving protective measures and implementing more effective national protocols to support victims of domestic violence, especially migrant women, who are particularly vulnerable.

Considering the Forum's outcomes, the need for judicial training stands out, as judges must be better trained to deal with the complexity of domestic violence cases, especially when involving international issues. This training is essential for authorities to gain a deeper understanding of the effects of domestic violence on children and thus consider appropriate protective measures to ensure their safety in such delicate contexts.

Another relevant point was the revision of the interpretation of "grave risk". The Forum suggested that the definition of this concept should be expanded to include exposure to domestic violence as a form of grave risk to the child, even if they have not been directly assaulted. Domestic violence often affects the child in profound psychological ways, and this reality must be considered in decisions regarding the international return of children.

Furthermore, the need to enhance protective measures was emphasized. Although such measures are commonly applied in many cases, the Forum pointed out that, in several situations, they are insufficient to ensure the safety of victims. The implementation of more robust measures was advocated, as well as the necessity of continuous evaluation of their effectiveness over time to ensure they genuinely fulfill their role in protecting victims of domestic violence. The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Pa-

89 Ibid., p. 13.
90 Ibid., p. 17.
91 Ibid., p. 16 e ss.

rental Responsibility and Measures for the Protection of Children constitutes a key international instrument to ensure the effectiveness of protective measures[92].

The implementation of national protection protocols[93] is crucial for safeguarding victims of domestic violence. The Forum stressed the importance of countries adopting more effective domestic protection mechanisms that provide support both for victims and for preventing international child abduction. Such protocols should be applied both before and after any potential international abduction, ensuring that victims receive protection throughout the entire process of escape and return.

5.3 The Dialogue Between Legal Sources: The Conventions on the Rights of the Child, Women's Rights, and International Child Abduction

The dialogue between international sources, such as the 1980 Convention on the Rights of the Child (CRC)[94], the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[95], and the 1980 Hague Convention on International Child Abduction, is a central and relevant theme in the context of private international relations and human rights protection. These three conventions address interrelated issues, albeit often with different emphases, which generate challenges in their simultaneous application, particularly in cases of domestic violence and international child abduction.

According to General Recommendation No. 19 of the CEDAW Committee during its eleventh session in 1992, "gender-based violence is a form of discrimination that seriously impairs the ability of women to enjoy rights and freedoms on an equal footing with men"[96].

The application of Article 13(1)(b) of the 1980 Hague Convention must consider the context of domestic violence, as indicated in CEDAW, and must also respect the rights of the child as established in the CRC, particularly concerning their right to live in a safe and violence-free environment.

Article 3 of the CRC establishes that the best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies.

In the context of the 1980 Hague Convention, the principle of the best interests of the child is also fundamental, especially when interpreting Article 13(1)(b), which provides for an exception to the child's return in cases where there is a grave risk of physical or psychological harm, such as in situations of domestic violence.

Furthermore, based on CEDAW's approach, which recognizes gender-based violence as a form of discrimination, this reinforces the need to consider women's safety when applying provisions such as those of the 1980 Hague Convention.

5.4 Gender, Domestic Violence, and Child Abduction: An Evolving Issue

Trimmings et al. reveal statistical data on the application of the 1980 Hague Convention: 73% of parental child abductions are committed by mothers. Many of these mothers are fleeing domestic violence situations, reinforcing the urgent need for a more appropriate approach that prioritizes the safety of victims and their children[97].

Thus, international child abduction, often motivated by the need to escape domestic violence situations, is increasingly becoming a complex phenomenon, vastly different from when the convention was adopted over four decades ago. Gender and human rights issues call

92 Brazil is not yet a party to this convention.

93 The development of national protection protocols for victims of domestic violence, with particular emphasis on the protection of migrant women, was presented by Silva (HCCH, ibid., p. 11). Hunter highlighted the importance of ensuring the child's well-being following a return or non-return decision, emphasizing the need to implement security protocols and protective measures in return decisions, as well as to ensure meaningful access/contact in non-return decisions (Ibid., p. 28).

94 Promulgated by Decree No. 99,710 of 21 November 1990, approved by the National Congress through Legislative Decree No. 28 of 14 September 1990.

95 Promulgated by Decree No. 4,377 of 13 September 2002, approved by the National Congress through Legislative Decree No. 26 of 22 June 1994.

96 UNITED NATIONS. Committee on the Elimination of Discrimination against Women. Available in https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm

97 TRIMMINGS, Katarina; DUTTA, Anatol; HONORATI, Costanza; ŽUPAN, Mirela (Ed.). *Domestic Violence and Parental Child Abduction: The Protection of Abducting Mothers in Return Proceedings.* Cambridge: Intersentia, 2022, p. 222.

for a review of the application of Article 13(1)(b). Domestic violence, traditionally considered a private matter, has been progressively recognized as a human rights violation, with direct consequences for the safety and well-being of children, even when they are not direct victims of abuse.

In the context of international abduction, many mothers fleeing abusive situations are labeled as "abducting mothers" when they are seeking to protect their children from a violent environment. This scenario raises critical questions about how international norms address domestic violence allegations and their implications for the safety of both the child and the mother, which is often exacerbated by migration status.

Uatanabe asserts that the exception based on Article 13(1)(b) has generated extensive debate, particularly concerning the interpretation of "grave risk" and how domestic violence against the mother can affect the child, even if there is no direct abuse against him or her. The author points out "the difficulty of areas such as private international law adapting their theory and practice to the social dimension of problems like this"[98].

Furthermore, Uatanabe asserts that the supposed neutrality of the convention regarding the particularities of the States that are parties to it cannot serve to reinforce situations of injustice for women in family relations[99]. The discussion on the application of Article 13(1)(b), therefore, is not limited to the issue of immediate return but involves a deeper analysis of the social reality and legal conditions affecting victims of domestic violence.

The Forum highlighted that courts worldwide face difficulties due to varying interpretations of "grave risk" and whether domestic violence against one parent should automatically be considered grounds for the child's non-return. Consequently, different interpretations have been adopted by national courts, which at times recognized and at other times rejected the exception provided for in Article 13(1)(b) when the violence was directed exclusively at the mother, as noted by Schuz[100].

5.5 Challenges in the Use of Protective Measures in Cases of Domestic Violence and the Application of Article 13(1)(b) of the 1980 Hague Convention

Freeman and Weiner assert that both domestic violence and international child abduction have increasingly drawn the attention of lawmakers, policymakers, and society, prompting responses to offer greater protection and reparation to victims[101]. However, despite the frequent adoption of protective measures, they are often insufficient, particularly when court-ordered protective measures are difficult to implement or monitor in an international context. This factor limits the effectiveness of the 1980 Hague Convention and exposes domestic violence victims to greater risks, especially when the child's return process is prioritized.

The concept of "protective measures" needs to be understood broadly, according to Trimmings, encompassing not only access to courts and legal services in the requesting state but also social assistance services provided by the state of residence, such as financial support, healthcare services, shelters for women, housing assistance, and other forms of aid for domestic violence victims[102], regardless of migration status. Furthermore, the responses of local authorities, such as the police and the criminal justice system, must be assessed to ensure the existence of protective measures, such as restraining orders against violence, in the requesting state.

Judicial and administrative cooperation should be widely utilized to ensure that the support mechanisms available in the requesting state are not merely theoretical but practically accessible to the accompanying parent[103]. This is crucial to ensure that protective measures are not merely formalities but can be effectively implemented, offering a tangible and effective support network to victims facing the threat of violence.

The POAM Project (*Protection of Abducting Mothers in Return Proceedings: Intersection between Domestic Violence and Parental Child Abduction*[104]), conducted between 2019

98 UATANABE, Thassila. *A desigualdade de gênero e o direito internacional privado.* 2019. Dissertação (Mestrado) – Universidade de Brasília (UnB), Brasília, 2019.p. 101.

99 Ibid., p. 103.

100 SCHUZ, Rhonda. Disparity and the Quest for Uniformity in Implementing the Hague Abduction Convention. Journal of Comparative Law. v. 9, n. 1, 2014, p. 3-48, p. 17.

101 FREEMAN, Marilyn; TAYLOR, Nicola**.** Domestic violence as an aspect of 1980 Hague Child Abduction Convention return proceedings, p. 49.

102 TRIMMINGS, Katarina. The interface between domestic violence and international parental child abduction: focus on the protection of abducting mothers in return proceedings, p. 36 e 37.

103 Ibid., p. 37.

104 See at https://research.abdn.ac.uk/poam/.

and 2021, developed a *Best Practices Guide*[105] to address the intersection of domestic violence, international child abduction, and the protection of mothers who are victims of gender-based violence. The project acknowledges that many women fleeing abusive relationships. The guide highlights the need for a gender perspective in the application of international law, particularly when interpreting Article 13(1)(b) of the Hague Convention, which allows for the non-return of the child in cases where there is "grave risk" to their safety.

Furthermore, the guide orients the application of European Union legal instruments, such as Regulation 606/2013, on the mutual recognition of protection measures in civil matters[106], and Directive 2011/99/EU, which governs the European Protection Order[107], allowing for the cross-border enforcement of protective measures for victims of gender-based violence. These mechanisms are essential to prevent women from being forced to return to situations of violence under the pretext of international cooperation in family law.

The POAM project reinforces the importance of integrating the protection of women's rights into the interpretation of international norms, ensuring that gender-based violence is a central criterion in child return decisions, thereby preventing re-victimization.

5.6 Mediation and Appropriate Dispute Resolution Methods

The autonomy of the parties in family matters is often approached with great care and caution, according to Lopes[108], particularly when there is a power imbalance in negotiations or when one of the parties is in a vulnerable situation due to domestic violence.

The Forum on Domestic Violence and the Application of Article 13(1)(b) of the 1980 Hague Convention highlighted the challenges of mediation in cases of international child abduction involving domestic violence[109]. The Forum also stressed that power imbalances, coercion, and the lack of documented evidence can render mediation unfair. The use of shuttle mediation to prevent intimidation and the implementation of specialized training for mediators may be the most appropriate approach.

Furthermore, the need for an international mediation system adapted to cases of domestic violence was emphasized, along with the expansion of a global network of trained mediators, ensuring greater safety and effectiveness in resolving such disputes, particularly in cases of international child abduction.

5.7 Final Remarks

The Forum on Domestic Violence and the Application of Article 13(1)(b) of the 1980 Hague Convention highlighted the need for a more sensitive approach to gender issues and domestic violence in cases of international child abduction. The discussions underscored that a child's exposure to domestic violence should be considered a grave risk under Article 13(1)(b), even when the violence is directed exclusively at the mother. Additionally, the lack of a uniform interpretation of the grave risk exception and the inadequacy of protective measures place women and children in situations of vulnerability and re-victimization. The state of habitual residence must provide legal protection services and social assistance for victims of domestic violence, including both woman and children.

The autonomy of the party's will and the challenges of mediation in the context of power imbalance were also addressed, emphasizing that alternative dispute resolution methods should be applied with caution to avoid compromising the safety of victims. Another key point was the need for a more integrated dialogue between international treaties, ensuring that the protection of women who are victims of violence is considered when interpreting the best interests of the child principle.

There ought to be no dilemma between returning or protecting in domestic violence and child abduction cases, as human rights should be paramount. Howe-

105 See at https://research.abdn.ac.uk/wp-content/uploads/sites/15/2020/11/POAM-Best-Practice-Guide.pdf.

106 European Union, Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R0606

107 European Union, Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0099

108 LOPEZ, Inez. Reconhecimento transfronteiriço e execução de acordos em disputas familiares envolvendo crianças: a ferramenta da Conferência da Haia, p.38.

109 HCCH, Ibid, p. 20-21.

ver, courts continue to struggle to balance the Hague Convention's return principle with safeguarding victims. The lack of uniformity in interpreting "grave risk" under Article 13(1)(b) leads to inconsistent rulings, often exposing mothers and children to re-victimization. Strengthening protective measures, judicial training, and international cooperation is essential to ensure child welfare and justice. Thus, the holding of the Second Forum in Brazil, in 2025 will be welcomed.

6 Chronicle: Towards a new international instrument on the recognition of decisions on legal parentage: update on the HCCH's Parentage/Surrogacy Project. (Lalisa Froeder Dittrich)

6.1 Introduction

The Hague Conference on Private International Law (HCCH) - an intergovernmental organization with a long history of harmonizing private international law (PIL) - is currently engaged in a complex legislative project: exploring the feasibility of provisions for a new international instrument on the recognition of legal parentage, including parentage derived from international surrogacy arrangements. This text aims to provide an overview of the progress and key debates of the HCCH work on the Legal Parentage/Surrogacy Project, to the extent possible, since the Working Group's[110] (WG) final report is only expected to be published by the end of 2025. It is important to note that at 2025 CGAP C&D the progress of the WK was welcomed and add in-person meeting in 2025 to the already scheduled April 2025 meeting[111].

As Brazil has appointed a representative to participate in the discussions on this future instrument, taking part, first, in the Experts' Group and, currently, in the Working Group, the text will also briefly examine the current domestic legal framework and how a future treaty could be of interest for families living in Brazil or abroad.

6.2 Context

Family life has dramatically transformed in recent decades, characterized by increased mobility, evolving social norms, and advancements in reproductive technologies. These developments have led to the formation of various family configurations, including those established through international surrogacy arrangements (ISAs). Such arrangements raise additional legal considerations due to the involvement of multiple jurisdictions. The absence of clear and harmonized rules creates legal uncertainty, sometimes resulting in limping parentage for children born from surrogate mothers in a different country from that of their intended parents. Furthermore, the movement of individuals between different countries has also heightened the challenges faced by cross-border families, particularly regarding the legal status of children, which can significantly affect their rights.

For instance, a child born from a relationship between a mother residing in State A and a father residing in State B who has not acknowledged paternity in either State A or State B will experience not only a lack of child support but also a deprivation of all other rights stemming from this relationship, such as the right to obtain nationality in State B and inheritance rights. In such a case, the mother or the child would need to present a case in court, where paternity can be established either voluntarily or judicially, sometimes using DNA tests. The first challenge involves determining the appropriate jurisdiction and applicable law to ascertain parentage, which is typically based on the child's place of birth or habitual residence. However, there exists the possibility to request the establishment of parentage and child support in State B through an application made from State A under the Convention of 23 November 2007 on the International Recovery of Child Support and Other

[110] 25 HCCH Member States, including Brazil, and three Observers are party to the Working Group.

[111] See 2025 CGAP C&D, para. 3 and 4: 3.CGAP noted the Aide-mémoire of the Chair of the Working Group (WG) and welcomed the progress made by the WG. To further develop provisions for a draft instrument and draft a final report of the work of the WG, CGAP invited the PB, in addition to the April 2025 meeting, to convene one further in-person meeting, with the possibility for online participation, within Financial Year (FY) 2025- 2026, possibly in the second half of 2025, with intersessional work as required, as well as, if necessary, one online meeting before CGAP 2026. Intersessional work should take place online. 4. CGAP reiterated that any work by the HCCH in relation to private international law (PIL) matters related to legal parentage resulting from surrogacy arrangements should not be understood as supporting or opposing surrogacy.

Forms of Family Maintenance (2007 Child Support Convention)[112]. This Convention can help with the establishment of parentage in State B, but only to obtain a decision on child support. After the confirmation of paternity in State B, it may also be necessary to recognize the decision in State A for the obtention of a new birth certificate for the child or the obtention of other rights derived from paternity, which can be burdensome for families, resulting in limping parentage for the child.

In another example, a same-sex couple living in State A, where surrogacy is not available or not permitted by law, wants to have a child and enters an ISA with a surrogate mother from State B. After the birth of the child, the family may decide to remain living in State B, move to State C or back to State A. In this case, establishing legal parentage in State A or C may be necessary to guarantee the child's rights to nationality, immigration status, custody, and other rights derived from the parental relationship. Again, the absence of PIL rules to navigate the complexities of different legislations may pose risks for the child, such as becoming stateless or deprived of other rights.

Therefore, recognizing the urgent need for a more robust and coherent international framework, HCCH embarked on the challenging project of discussing the viability and desirability of a new instrument on the recognition of legal parentage decisions in cases involving the use of ISAs back in 2010[113]. After reviewing studies[114] that showed that surrogacy had been increasingly being used in different countries, where rules varied, and considering that problems related to legal parentage following ISAs have been reported, the HCCH's Council on General Affairs and Policy (CGAP) mandated the designation of an Experts' Group on the Parentage/ Surrogacy, in its 2015 meeting[115].

The Expert's Group, composed of members representing different contracting States, met twelve times between 2016 and 2022 and presented its final report to the CGAP[116] in 2023. In its conclusions, the group indicated that elaborating private international rules for legal parentage, in general, could pose feasibility problems given the different approaches to ISAs in different Contracting States; two approaches were therefore suggested: a) the elaboration of two separated instruments, with ISAs being treated in an optional Protocol or b) the elaboration of one instrument, with rules for ISAs treated in a separate chapter[117].

In March 2023, CGAP mandated the establishment of a Working Group on PIL matters concerning legal parentage generally. The group's mission is to explore provisions for a new instrument that covers both general parentage and parentage arising from ISAs as a primary task, with the potential for developing two separate instruments should consensus on a single instrument be deemed unfeasible. The objective of the new instrument, according to the mandate, is *"(…) 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*[118].

The mandate also emphasizes that HCCH's work on legal parentage arising from international surrogacy arrangements should not be interpreted as either opposing or supporting ISAs[119]. In conclusion, the aim is to assist in finding common ground between Member States and Contracting Parties to prevent limping parentage and its detrimental effects on issues related to the non-recognition of a person's legal status. At 2025 CGAP C&D this interpretation was reiterated. At 2025 CGAP C&D this interpretation was reiterated.

112 HCCH. *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*. In.: https://www.hcch.net/en/instruments/conventions/full-text/?cid=131. Accessed on 12/02/2025.

113 HCCH. *Preliminary Document Nº 1 of November 2022. Parentage / Surrogacy Experts' Group: Final Report "The feasibility of one or more private international law instruments on legal parentage.* Pg. 7. In.: https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf . Accessed on 12/02/2025.

114 HCCH. *Preliminary Document nº 3C (The Study) of March 2014*. In.: https://assets.hcch.net/docs/bb90cfd2-a66a-4fe4-a05b-55f33b009cfc.pdf. Accessed on 12/02/2025.

115 The Experts' Group on Legal Parentage/ Surrogacy comprised representatives of 24 HCCH Member States, including Brazil, and four observers.

116 HCCH. *Preliminary Document nº 1 of November 2022.*

117 Ibid Idem.

118 HCCH, *Conclusions and Decisions of the 2023 Council on General Affairs and Policy (CGAP)* In.: https://assets.hcch.net/docs/5f9999b9-09a3-44a7-863d-1dddd4f9c6b8.pdf.

119 Ibid Ibidem.

6.3 Key Aspects of the Parentage/Surrogacy Project

Taking into consideration its mandate and the principles that should guide its work, the challenge of the WG is to examine and discuss different aspects of provisions for a new instrument. The key aspects can be summarized as follows:

a) Jurisdiction and Connecting Factors: Determining the appropriate jurisdiction for establishing legal parentage in cross-border situations is complex. The Working Group has grappled with defining suitable connecting factors, such as the habitual residence of the child, the surrogate mother, or the intended parents, to prevent the removal of the surrogate mother to less strict jurisdictions. The challenge has been to elaborate provisions to avoid forum shopping and violations of women's and children's rights.

b) Interplay with other conventions: A key consideration is the interplay between the proposed instrument and the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Adoption Convention)[120]. This ensures that the two instruments operate harmoniously and avoid unintended overlaps or conflicts. The WG has sought to clarify the distinction between domestic and international adoptions, with the latter falling under the 1993 Adoption Convention and the former being covered by the new instrument.

c) Possible Safeguards and Rights of the Parties: A central challenge lies in defining and discussing the feasibility of including safeguards in the provisions to protect the rights and interests of the child, the surrogate mother, and the intended parents. The WG has engaged in extensive discussions regarding the concept of consent, particularly the surrogate mother's informed and freely given consent to the surrogacy arrangement. The complexities of ensuring genuine consent, free from coercion or undue influence, have been examined. Alongside all parties' consent, another critical area related to safeguards is the child's right to identity, which includes access to information about their origins, medical history, and genetic parents.

d) Grounds for Non-Recognition: The WG has explored possible grounds for refusing recognition of legal parentage decisions issued in different Contracting States. The inclusion of a public policy exception is generally accepted as necessary to ensure the treaty's viability. However, the specific circumstances that would justify invoking the public policy exception remain a subject of discussion. Other potential grounds for non-recognition include procedural irregularities, such as a lack of due process or failure to provide an opportunity for all parties to be heard. All parties' consent can also be included as grounds for refusal to recognize a decision on legal parentage.

e) Public Documents and Applicable Law: The inclusion of rules on the treatment of public documents, such as birth certificates and parentage acknowledgments, is also an issue that has been debated, along with the idea of creating an international certificate to help the circulation among states of these documents. There is concern about not creating any barriers to the acceptance of public documents in the context of international legal cooperation involving other international instruments, such as the 1980 Child Abduction and the 2007 Child Support Convention, as birth certificates and parentage acknowledgments are regularly used to sustain the right to apply for the return of the child or to recover or obtain child support.

f) Applicable Law: rules on the applicable law for recognizing parentage decisions is another complex issue, particularly considering the various conditions for recognition and grounds for non-recognition. Therefore, the group has been exploring whether automatic recognition is feasible, given the need to analyze these conditions and grounds in each case.

g) Models of Treaty Relations: there are different models for how states will interact with the treaty that can be considered, particularly to surrogacy arrangements. One proposed model is an "opt-in/opt-out" system, allowing states to choose whether to apply the treaty to parentage decisions arising from ISAs. This approach reflects the wide divergence in national laws and policies on this issue. Other models derived from different Hague Conventions, such as the 2019 Convention on Judgments and the 1980 Convention on Child Abduction, can be used in the new instrument.

6.4 Brazil's Participation in the WG

Imbued with the same objectives as the HCCH regarding the protection of children's rights in all their dimensions, the Ministry of Justice and Public Safety, through its Department of Assets Recovery and International Legal Cooperation (DRCI), has actively participated in the Parentage/Surrogacy Project since 2016. This participation aims to ensure that a future text on legal parentage conforms to Brazilian law to the extent possible.

In Brazil, even though the use of Artificial Reproductive Techniques (ART) is seen as highly developed and has been aiding individuals in successfully achieving

120 HCCH. *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. In.: https://www.hcch.net/en/instruments/conventions/full-text/?cid=69

their goal of having a child for decades, there are still no laws regulating the practice of surrogacy. Due to the lack of legislative action on this matter — drafts of bills have been pending discussion for years in Parliament[121] — there are currently Resolutions from the Federal Council of Medicine (CFM) establishing standards for the use of ART and surrogacy in Brazil. According to the latest CFM regulation, which dates from 2022[122], doctors may only provide ART in surrogacy arrangements when it does not involve compensation for the surrogate mother ("solidary surrogacy"), who must be related to one of the prospective parents up to the fourth degree. These guidelines, which do not possess the status of law, have been the subject of court disputes, and there is no legal certainty for individuals wishing to become parents through domestic or international surrogacy that does not comply with the CFM regulation[123].

In complement to the CFM's Resolution, the Council of National Justice has set forth rules (Provisions 63/2017 and 83/2019)[124] to harmonize the registration of children born via ART by Brazilian Civil Registry Offices in the country. Those provisions and regulations follow the same principles that base the Parentage/Surrogacy Project and reflect a common concern to set standards to minimally guarantee respect for the rights of the parties, especially the child, who must have his/her legal parentage immediately defined following ART[125]. The non-commercial nature of surrogacy, along with the necessity for obtaining free and informed consent from all parties involved, also permeates the discussions of the working group and is evident in the conversations surrounding the need for safeguards and grounds for refusal regarding decisions on legal parentage involving ISAs.

On the other hand, there is also a need to provide more certainty and predictability in the recognition of decisions on legal parentage that do not involve ISAs. As a signatory of different Hague Conventions, including the 2007 Child Support, Brazil can benefit from PIL rules for easier recognition of legal parentage cross-borders, considering that it is estimated that more than 5% of the children born in Brazil do not have legal paternity established[126] and that around 5 million Brazilians are living abroad.

It is important to highlight the progressive nature of Brazilian family law, which tends to be quite liberal about family relations, embracing and acknowledging all kinds of its configurations. For instance, the Brazilian Federal Constitution of 1988, in Article 227, paragraph 6, already prohibited any discrimination or differentiation of children's legal rights based on their parents' civil status or how parentage was established. Meanwhile, the Brazilian Civil Code of 2002, in Article 1.596, established that all children, regardless of their origin, possess the same rights. This may facilitate the internalization of a future instrument on legal parentage, and no relevant conflicts between a future instrument and domestic law are expected at this point.

6.5 Progress and Future Direction

The Working Group on Parentage/Surrogacy has made significant progress in identifying the key issues,

[121] CÂMARA DOS DEPUTADOS. Projeto de Lei 1184/2003. In.: In.:https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=118275#:~:text=PL%201184%2F2003%20Inteiro%20teor,Projeto%20de%20Lei&text=Disp%C3%B5e%20sobre%20a%20Reprodu%C3%A7%C3%A3o%20Assistida,os%20experimentos%20de%20clonagem%20radical. Accessed on 10/02/2025. The Draft of Bill defines rules for carrying out artificial insemination and in vitro fertilization, prohibiting surrogate pregnancy (surrogacy) and radical cloning experiments. In the years that followed since the presentation of this bill, 20 other suggestions were appended to the project, the last one dating from 2023. The draft pends analysis of the Constitution, Justice and Citizenship Committee (CCJC).

[122] CONSELHO FEDERAL DE MEDICINA. Resolução No. 2.320 de 1º de Setembro de 2022. In.: https://in.gov.br/web/dou/-/resolucao-cfm-n-2.320-de-1-de-setembro-de-2022-430447118. Accessed on 10/02/2025.

[123] For a more in-depth presentation of the Brazilian legal framework on legal parentage involving ART see, for example, DIAS, Maria Berenice; OPPERMANN, Marta Cauduro. As inconstitucionalidades da Resolução 2.294/2021 do CFM sobre a utilização das técnicas de reprodução assistida. In.: https://berenicedias.com.br/as-inconstitucionalidades-da-resolucao-2-294-2021-do-cfm-sobre-a-utilizacao-das-tecnicas-de-reproducao-assistida/. Accessed on 10/02/2025.

[124] CONSELHO NACIONAL DE JUSTICA. Provimento 63 de 14/11/2017, in https://atos.cnj.jus.br/atos/detalhar/2525 and Provimento 83 de 14/08/2019, in https://atos.cnj.jus.br/atos/detalhar/2975. Accessed on 11/02/2025.

[125] Part IV, 3, C of the CFM Resolution of 2022 states that the surrogate mother needs to sign a "*Commitment term between the patient(s) and the temporary donor of the uterus who will receive the embryo in her uterus, clearly establishing the issue of the child's filiation (…)".* CFM, op. cit.

[126] BRASIL. Transparência Civil. In.: https://transparencia.registrocivil.org.br/painel-registral/pais-ausentes. Accessed on 10/02/2025. According to the data, bbetween 2016 and 2025, 1,371,329 children in Brazil were registered without their father's name on their birth certificate.

exploring potential solutions, and drafting preliminary provisions for a new international instrument per the CGAP's mandate. The upcoming meetings of the Working Group in 2025 will focus on the drafting of the Final Report, which is expected to be concluded by the end of the year for consideration, as 2025 CGAP approved two meetings with intersessional work before the report on 2026 CGAP.

6.6 Final Remarks

The HCCH's objective of exploring the feasibility of a new international instrument on parentage represents a crucial step towards addressing the legal complexities of modern family life and filling the gaps not addressed by the existing Hague Conventions. The active participation of Member States and observers in the Working Group has been vital in ensuring that a new instrument reflects a broad range of perspectives and meets the needs of all parties affected in these complex situations. Continued dialogue, compromise, and a genuine commitment to protecting the rights and well-being of all parties, particularly children, will be essential for achieving a treaty that effectively helps to prevent incomplete parentage.

7 **Chronicle:** Hague Conference on Private International Law and Codifi: an overview of the Expert Group on Digital Currencies (CBDCs) and the Digital Tokens Project (Fabricio Bertini Pasquot Polido)

7.1 Digital economy and the future of HCCH at Codifi

Since 2020 the Hague Conference has been exploring several sectoral issues involving the interface between Private International Law, new technologies, and the digital economy, taking into account the developments of emerging technologies (e.g. distributed ledgers (DLTs), blockchain, crypto assets and tokenization) on their original institutional mandate at global level, which is to promote the progressive unification of the PIL standards[127]. In 2021, HCCH's efforts were formalized under the rubric of a broader Digital Economy project, from which the initiatives conducted by the Permanent Bureau (the 'PB') emerged, such as the series of events of the HCCH Conference on Cross-Border Commercial, Digital and Financial Law, also known as 'Codifi'[128], led by the Division of International, Digital and Financial Trade Law of the Permanent Secretariat and following a mandate from the General Affairs and Political Council (CGAP)[129].

The initiative under Codifi allowed six thematic axes to be structured, conceived from the responses of HCCH Members to a survey carried out by the Permanent Secretariat at the end of 2021. Of these thematic axes, three focus on existing instruments of the Conference, while the other three address PIL issues related to the digital economy[130]. The axes related to the existing instruments focus on (i) the 1985 Trusts Convention; (ii) Securities Convention 2006, specifically on the law applicable to certain rights relating to securities held with intermediaries; and (iii) Hague Principles on Choice of Law in International Commercial Contracts

[127] Cf. art. 1 of the Statute of the Hague Conference on Private International Law, adopted during the Seventh Session of the Conference on 31/10/1951, in force since 15/07/1955. Available at: <Available at: https://www.hcch.net/pt/instruments/conventions/full-text> After the decision of the Council on General Affairs and Policy of the HCCH (CGAP), the Permanent Bureau was mandated to study the impact of recent developments in the fields of distributed ledger technology on PIL ("CGAP invited the PB, subject to available resources, to monitor developments with respect to the private international law implications of DLT. The PB will report to CGAP at its 2021 meeting"). See HCCH. *Conclusion and Decisions of the Council on General Affairs and Policy.* 3-6 March, 2020. Available at: <https://assets.hcch.net/docs/70458042-f771-4e94-9c56-df3257a1e5ff.pdf>

[128] The CODIFI Conference was held between September 12 and 16, 2022, online, an opportunity in which participants discussed implications of the digital economy for Private International Law, such as those related to digital platforms, applications of 'Distributed Ledger Technology' (DLT) and fintechs.

[129] A relatoria completa encontra-se em HCCH. *Digital Economy and the HCCH Conference on Commercial, Digital and Financial Law Across Borders* (CODIFI Conference): Report. Prel. Doc. No 3A of January 2023. Available in: <https://www.hcch.net/en/governance/council-on-general-affairs>

[130] It is important to highlight that PB is currently tasked, and subject to available resources, to monitor developments with respect to the digital economy, with a view to identifying private international law issues for potential future work. The mandate also deals with the monitoring of developments with respect to digital platforms, artificial intelligence and automated contracting, and immersive technologies (in partnership with subject-matter experts and with UNCITRAL. See HCCH. . *Conclusion and Decisions of the Council on General Affairs and Policy.* March 2024. Esp. No 11.

2015 (the 'Hague Choice of Law Principles')[131]. The other thematic axes related to new PIL issues in the digital economy cover issues of jurisdiction, applicable law, choice of forum, party autonomy, recognition and enforcement, and international cooperation mechanisms[132], in three pillars.

- **Frameworks**: PIL issues in the decentralized economy, e.g., applications based on distributed ledgers which are decentralized and operate in a cross-border manner, so objective connecting elements based on traditional geographic locations will not be applicable in most cases. Likewise, transactions on the DLT can be immutable (with no possibility of on-chain intervention) and highly automated, which can challenge existing legal structures and complexify the exercise of the rights of asset holders or possessors in a system of such magnitude.

- **Relationships**: the use of DLT and other emerging technologies in the digital economy can serve as building blocks for corporate governance, offering new dynamics and interactions for parties based in different States, in the legal business, financial services, dispute resolution, transaction management, and sustainable development.

- **Redefine *("Reset"):*** Redefine is at the forefront of PIL in tackling certain innovations, for example, in the Fintech sector[133], including perspectives and approaches specific to home systems in relation to digital commerce, data- and machine learning-driven applications, Artificial Intelligence (AI), Internet of Things (IoT), regulatory technologies services, tokenization of physical goods for authentication purposes or management of the supply chain, financial services, and augmented reality and metaverse.

Distinct groups of experts and exploratory projects flourished within the scope of the thematic axes involving new technologies and the digital economy under HCCH Codifi, currently sequenced under mandates established by the CGAP, such as in Expert Group on Central Bank Digital Currencies (CBDCs) and the Digital Tokens Project. Some of their main nuances and development will be explored in the sections below. Brazil has actively participated in HCCH's work in these areas, to offer practical input and technical contributions based on the nascent legislative experiments in force at the domestic level, specifically the Brazilian Virtual Assets Act[134], the Guidelines for 'Drex', the Brazilian digital currency developed by the Central Bank of Brazil ('Bacen')[135], and the rules issued by the Brazilian Securities and Exchange Commission providing for cryptoassets, which have become a reference in regulatory sandboxes and processes related to tokenization[136]. It is

[131] Regarding the 1985 Trust Convention, the experts present at Codifi agreed that the instrument can play a role in relation to DLTs, blockchain, and tokenized assets. Regarding the Choice of Law Principles, the experts considered it possible to apply the rules of the instrument to new issues, such as smart contracts based on DLT systems and to transactions involving international data transfers, which remain largely subject to different national privacy and data protection laws and regulations. For in-depth discussion, see News from the Hague Conference on Private International Law (HCCH). *Uniform Law Review*, v. 27, n. 4, p. 622-631, 2022;

[132] A esse respeito, ver distintas abordagens em BONOMI, Andrea; LEHMANN, Matthias; LALANI, Shaheeza. Introduction: The Blockchain as a Challenge to Traditional Private International Law. In: *Blockchain and Private International Law*. The Hague: Brill, 2023. p.1-9; ESCOLAR, Gérardine Goh. The Role and Prospects of Private International Law Harmonisation in the Area of DLT. In: *Blockchain and Private International Law*. The Hague: Brill, 2023. p. 10-48; e VERSTAPPEN, Jasper. Private International Law. In: *Legal Agreements on Smart Contract Platforms in European Systems of Private Law*. Cham: Springer, 2023. p. 321-389.

[133] In the academic literature, fintechs are generally characterized as companies that intensively use new technologies to innovate and improve the development and supply of financial services, providing efficient and affordable alternatives compared to traditional or incumbent models. In this regard, cf. SCHUEFFEL, Patrick. Taming the beast: A scientific definition of fintech. *Journal of Innovation Management*, v. 4, n. 4, p. 32-54, 2016. For PIL, the more decentralized, cross-linked or cross-border the relationships based on fintechs (goods, services, solutions) and their offer in different domestic markets, the greater the interactions with varieties of connecting elements, and therefore, issues of applicable law, jurisdiction and recognition.

[134] Cf. Law 14,478/2022, which establishes the guidelines to be observed in the provision of virtual asset services and in the regulation of virtual asset service providers and Regulatory Decree – Decree 11,563/2023. Available at: <https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/l14478.htm>

[135] Cf. BACEN Guidelines for Drex 2023. Available at: <https://www.bcb.gov.br/estabilidadefinanceira/drex> The guidelines refer to a series of commands relevant to the sector: (i) compliance with guarantees to the principles and rules of privacy and security, banking secrecy legislation and the General Data Protection Law / LGPD; (ii) full compliance with international recommendations and legal standards on combating money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction; (iii) adoption of a DLT-based technological solution that allows registration of assets of different natures, decentralization in the provision of products and services, as well as interoperability with legacy domestic systems and with other systems of registration and transfer of information and trading of regulated digital assets and the integration of Drex with systems in other jurisdictions, for cross-border payments.

[136] Cf. CVM Guidance Opinion No. 40/2022 establishing the current CVM's understanding of the rules applicable to cryptoassets considered securities, characterization of different types of tokens, such as payment, utility and asset-referenced tokens, and provides guidance on the need for registration and compliance with current legislation for public offerings of these assets. Available at: <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/pareceres-orientacao/anexos/Pare040.pdf>

important to note that 2025 CGAP C&D (para. 13 to 19) approved the reports presented and mandated the EG to continue its work.

7.2 EG on Central Bank Digital Currencies (CBDC 2024)

An Expert Group on Central Bank Digital Currencies was established under the mandate established after the 2024 CGAP Meeting in March. The mandate was set to review the issues of jurisdiction and applicable law related to the cross-border use of CBDCs[137] CBDCs are designed and issued by state central banks, such as Drex in Brazil, and have the potential for various applications, including cross-border payments and smart contracts. However, domestic regulation still faces challenges, especially regarding the prevention of financial crimes at the global level, such as money laundering, tax evasion, and fraudulent transactions. The application of PIL rules and categories to CBDCs raises questions about the law applicable to cross-border payments, the reversal of improper transactions, possession of illicitly stolen coins, as well as PIL aspects involving cross--border succession and bankruptcies. Similarly, the absence of a global consensus on the legal classification or characterization of 'cryptocurrency' and the use of blockchain-based technologies offer further uncertainties from a domestic regulatory perspective, which makes normative harmonization in the PIL even more truncated[138].

The Permanent Secretariat organized the kick--off meeting of the Expert Group of CBDC in May 2024, following a structured and collaborative process, to analyze emerging PIL issues associated with digital currencies, considering the absence of global consensus on their legal classification and the effects of decentralization on determining applicable law and jurisdiction. Throughout the year, discussions were held in two meetings (24-26 June and 12-14 November 2024) and intersessional work[139].

The Expert Group went on to analyze types of CBDCs, current and emerging legal frameworks, taxonomy, and key public policy issues related to CBDCs. As to the intersections with PIL, participants expressed different approaches to connecting factors, intermediaries, and third parties, the relevant approaches to characterization in CBDCs, the (non-)recognition of digital currencies as legal tender in different legal systems, and their use as a means of payment. From the PIL perspective, issues of applicable law and jurisdiction must be attuned to the functions of digital currencies, the roles of the actors (including intermediaries and third parties) that can participate in CBDC systems, and the relationship between the parties in these systems[140]. Likewise, a possible conflict rule in applicable law for cross-border transactions involving digital currencies should be discussed in the future, in addition to interfaces with public policy and mandatory rules of the forum and bases of jurisdiction to determine the competent courts in the States for settling cross-border disputes involving digital currencies and related transactions[141]. The Expert Group recommended that the CGAP approve the continuation of EG's work in 2025, as well as intersectional work, basically in two PIL sectors, namely applicable law and jurisdiction[142]. The 2025 CGAP C&D approved the continuation of the work and a report for 2026.[143]

137 HCCH. *Conclusions and decisions of the General Affairs and Political Affairs Council* (CGAP) of 5-8 March 2024. Available at: <https://www.hcch.net/en/governance/council-on-general-affairs>.

138 In this regard, see also HCCH. *Exploratory Work: Private International Law Aspects of Central Bank Digital Currencies (CBDCs).* (Prel. Doc. No 4 of January 2024). *Available at: www.hcch.net* ("Governance" then "Council on General Affairs and Policy" and "Archive (2000-2024).

139 A full description of the mandate and sequence of meetings under the CBDC legislative project is available at: <https://www.hcch.net/en/projects/legislative-projects/cbdcs>

140 During the November 2014 Meeting, for example, there was a presentation by the Bank for International Settlements (BIS) on cross-border payments using tokenized deposits, as well as PIL challenges related to the legal status of smart contracts, including different types of smart contracts and whether they should be subject to PIL rules that would normally apply to an equivalent off-chain legal contract.

141 Cf. HCCH, Experts' Group on Central Bank Digital Currencies: Report (Prel. Doc. No 3 of December 2024). Available in: https://assets.hcch.net/docs/bb682dbc-2029-458c-b29e-05a9a9091465.pdf

142 Here it is worth noting that the EG recommended continuing to fork the work to focus first on the issues of applicable law and jurisdiction around CBDCs ('Wholesale CBDCs') before moving on to consider retail digital currencies ('Retail CBDCs'). The former are types intended primarily for transactions between financial institutions, such as banks and other licensed entities. They are used for interbank payments and securities transactions, unlike retail digital currencies, which are used by the general public for current transactions. EG also considered whether the language of relevant existing frameworks could be used as a model for EG's future work in drafting certain PIL rules on CBDCs, in particular regarding definitions, public order, and imperative rules.

143 See 2025 CGAP C&D para. 13: "CGAP took note of the reports of the Experts' Group (EG) on CBDCs and mandated the

Regardless of future work, the legal nature of digital currencies – as opposed to fiat currencies – brings difficulties in framing aspects of the PIL issues related to the applicable law, and it is not clear whether they should be classified as hybrid assets, 'sui generis' property rights or movable property (for legal purposes). One solution could involve adapting existing rules on monetary, contracting, and succession at domestic levels to create a balance between emerging technologies and regulatory intervention, on which PIL policy choices will also depend. The harmonization of PIL rules for digital currencies must also consider potential 'regulatory conflicts' with other legal regimes, including securities, anti-corruption, anti-money laundering, data protection, and cybersecurity, as well as technical aspects related to recognition in different jurisdictions[144].

7.3 Digital Tokens Exploratory Project (2024)

Initiated in March 2024, HCCH's Digital Tokens Exploratory Project was established to study private international law issues related to digital tokens, coping with the mandate conferred by CGAP at its March 2024 meeting[145].

Under the supervision of the Permanent Bureau, the work brought together experts and observers to identify the main intersections between PIL and tokenization of the economy and cross-border trade and financial relations. In May 2024, a kick-off meeting was held, with the discussion of a preliminary document (iterated Scope Paper,) outlining the main topics of discussion that served as the basis for the scope of the exploratory project: (i) preliminary mapping of PIL issues related to digital tokens, including jurisdiction, applicable law, recognition and enforcement of judgments; (ii) identification of regulatory challenges from national jurisdictions, such as the debate on the decentralization of tokens and the obstacles to the application of traditional PIL rules; (iii) discussion of priority use cases, with the selection of concrete examples of digital token applications for analysis, considering their legal features and main impacts on cross-border transactions; (iv) avenues of cooperation with other organizations, such as proposals to align the topic with ongoing normative agendas of UNCITRAL, UNIDROIT and other international organizations to avoid normative fragmentation in the field of digital assets.

The first meeting (June 10-14, 2024) and the second meeting (October 7-8, 2024) of experts were held, in addition to the inter-sessional work with the presentation of joint research between HCCH and the American Association of Private International Law (ASADIP) to gather contributions from Latin America on the legal aspects of digital tokens and potential PIL issues involved. Throughout the work, potential categories of tokens were discussed, for characterization in the PIL, the use cases of digital tokens, and associated regulatory challenges. Participants expressed different views and approaches on the PIL implications for decentralization and tokenization, considering that PIL analytical methods based on objective connecting factors and the "situs" (location) could be challenged by the decentralized structure of cross-border transactions[146]. Similarly, during the meetings, participants explored a range of issues involving the types of tokens and functional classifications (e.g. payment, utility, and asset-backed); the potential normative distinctions between tokens and financial instruments and securities; the category

EG to continue its study of the applicable law and jurisdiction issues raised by the cross-border use and transfers of CBDCs. CGAP invited the PB to convene two further EG meetings before CGAP 2026, the first in March 2025 and the second before the end of 2025, with intersessional work as required. These meetings should preferably be held in person and intersessional work should take place online. The EG will report to CGAP 2026".

144 The experts concluded that it is essential to develop PIL frameworks that ensure legal certainty and predictability in transactions with CBDCs, especially when intermediated by private digital wallets. They also emphasized the need to enhance legal and regulatory frameworks to protect users' privacy and strengthen the cybersecurity of these systems. Cf, e.g. HCCH, *Experts' Group on Central Bank Digital Currencies: Report* (Prel. Doc. No 3 of December 2024), items 25, 52

145 HCCH. Report on Exploratory Work: Digital Tokens Project (Prel. Doc. No 4 of November 2024). Available at: https://assets.hcch.net/docs/8aad1b4d-c3a7-46b5-99c4-1ee589115685.pdf. Cf. Conclusion and Decision, n.12: "Recognising the importance of avoiding fragmentation among legal instruments developed by different intergovernmental organisations on related subject matters, including the UNIDROIT Principles on Digital Assets and Private Law, CGAP mandated the PB, in partnership with relevant subject-matters experts and Observers, to study the PIL issues relating to digital tokens".

146 Decentralization minimizes the influence of central actors or institutions in a network, especially because decentralized systems are omni- and multi-territorial par excellence, making it difficult to identify a single main headquarters or location that characterizes and inspires objective connection rules in PIL. Likewise, the use of pseudonymous addresses makes it difficult to identify relevant parties/subjects and institutions in the chain of tokenization relationships. On this, see HCCH. *Report on Exploratory Work: Digital Tokens Project*, cit., item IV.34.

of 'linked assets', with the caveat that "link-specific aspects" are excluded from the scope of the Project[147], as well as functional categories of issuers, service providers, and platforms[148], and debates on party autonomy and connecting factors[149]. A preliminary conclusion was reached by the exploratory project, namely around a description of digital tokens for further discussion should CGAP decide to establish an Expert Group (EG), as recommended by the participants: (i) exclusively assigned data, including data representing a right or title; (ii) that are stored electronically; (iii) with characteristics based on decentralized mechanisms, such as distributed ledger (DLT)-based technologies[150].

7.4 Final Remarks

With the conclusion of the work of the Expert Group on Digital Currencies and Exploratory Project on Digital Tokens, 2025 CGAP has approved the continuation of the work of experts, from different perspectives. In the case of CBDCs, the EG is expected to decide on the continuation of the study of the applicable law and jurisdiction issues raised by the cross-border use and transfers of CBDCs, with a first meeting in March 2025 and a second in September 2025, with intersessional work as needed. The EG will focus its work on the existing intersection between CBDCs, applicable law and jurisdiction, with a particular interest in intersectoral issues involving PIL, cross-border uses, and mobility of digital currencies (e.g. exchange transactions and cross-border digital payments), as highlighted by the experts and stakeholders.

In the case of the Digital Tokens Project, there is a recommendation for CGAP to establish an Expert Group (EG) to further study PIL issues related to digital tokens, to conduct them according to a holistic approach, considering jurisdiction, applicable law and recognition/enforcement of decisions, that was approved. Likewise, the importance of developing an international cooperation mechanism to address the legal challenges arising from the use of digital tokens is emphasized.

8 **Chronicle:** Current Scope of the Jurisdiction Project. (Marcelo De Nardi and Nereida de Lima Del Águila)

8.1 Introduction

The Hague Conference on Private International Law is an international intergovernmental organization whose statutory objective is to work towards the progressive unification of the rules of Private International Law. Its origins of all back to the significant international conferences sponsored by the Government of the Netherlands at the end of the nineteenth century, a discipline of law in rapid development at that era. The first conference on PIL of 1893, chaired by the lawyer Tobias Asser, 1911 Nobel Peace Prize winner for that initiative, resulted in the 1896 Convention on Civil Procedure (not in force anymore), the content of which would today be classified as international legal cooperation. Following a history of meetings conducted in the format of international conferences, with irregular periodicity and without institutionalization, the international organization was formally established by treaty in 1951, entering into force in 1955 with the establishment of a permanent Secretariat with headquarters in The Hague. Brazil has been a member of the HCCH since 2001 and is a party to seven conventions and an additional protocol.

The Jurisdiction Project has its origins in an ambitious proposal from 1992, formulated by the lawyer and scholar Arthur von Mehren, from the United States of America, after some studies in Europe. His proposal suggested the development of a dual convention on jurisdiction, which would involve establishing rules of direct jurisdiction and for recognition and enforcement of foreign judgments. These rules were envisaged to harmo-

147 This is one of the main objections brought by virtue of Principle 5 of the Unidroit Principles on Digital Assets, with linked or connected assets being those that are in some way linked to digital tokens, with whose applicable law they are not to be confused

148 The scope of the Project is to study PIL issues related to digital tokens (and not digital platforms); there is recognition of the ongoing work at UNCITRAL in relation to digital platforms, but also the perception of platform decentralization as one of the reasons why existing PIL rules are insufficient for tokens. HCCH. *Report on Exploratory Work: Digital Tokens Project*, cit., item 16(d).

149 Idem, items 20 ff.

150 Cf. HCCH. *Report on Exploratory Work: Digital Tokens Project*, cit., item 24. At the end of the exploratory phase, the participants unanimously agreed to recommend to CGAP the continuation of the studies through the creation of an Expert Group to analyze PIL issues related to digital tokens.

nize the conditions under which Courts of Contracting States would assume jurisdiction over cases and would defer jurisdiction to other States, as well as outline the conditions for the recognition and enforcement of judgments from one Contracting State in others. The project effectively commenced in 1995, with the first stage concluding in 2001 in a debacle, when a convention was not adopted at the HCCH Diplomatic Conference that year. Subsequently, the initiative was split into smaller projects, leading to the 2005 Convention on the Choice of Court Agreements and the 2019 Convention on the Recognition and Enforcement of Foreign Judgments.

Upon the adoption of the 2019 Convention on Foreign Judgments, the HCCH Council on General Affairs and Policy (CGAP), the body that directs the international organization's activities, formed an Experts Group (EG) to address jurisdiction-related issues and prepare a new instrument. In HCCH's legislative production system, the EG is composed of renowned experts in the specific subject to suggest guidelines for action on future international instruments, including the analysis of the feasibility and desirability of pursuing these efforts. The EG convened twice to continue the work that was interrupted in 2013 to give room to what became de 2019 Judgments Convention, thereby advancing the project on judgments and recommending its continuation.

In 2021 CGAP noted the recommendations of the EG and established the current Working Group (WG)[151], composed of government representatives and experts from interested HCCH Members, which met eight times between October 2021 to February 2025, with the mandate to address *matters related to jurisdiction in transnational civil or commercial litigation*, and to *develop draft provisions on the 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*. The WG was recommended to conduct its work *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*, and also 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*[152]. This chronicle authors were part of both the EG and the WG as members of the Brazilian Delegation in all events and the inter-sessional discussions.

The activities of the WG seem to be coming closer to completion, with the next step involving HCCH's convening of a Special Commission to prepare a draft convention for eventual adoption at a future Diplomatic Conference. The Special Commission responsible for drafting the convention typically meets three times, each for two weeks, while the Diplomatic Conference takes one meeting on a three-week session.

At the conclusion of the eighth meeting of the WG, a preliminary document was sent to CGAP with recommendations for the Council's information and decision, along with two annexes: 1) the WG Chairman's report, which was collaboratively prepared by all participants and summarizes the key points discussed in the last two meetings held after the previous report; and 2) the draft text as it was at that point, including alternative provisions and notes for future consideration. The report recommended holding at least one more meeting of the WG, concentrating on a specific theme. At its March 2025 meeting, CGAP granted authorization to conduct another WG meeting in 2025[153]. Additionally, the WG's Chairman, following informal consultations among the WG members, sent another preliminary document to CGAP seeking the Council's clarification on the extension of the mandate

This study examines sensitive issues through the lens of the Brazilian State and its interests.

151 HCCH. C&D nº 8. CGAP 2021.

152 According to the conclusions and decisions of the CGAP2021-HCCH, items 8 and 9. Available at: https://assets.hcch.net/docs/94e2d886-1cbf-4250-b436-5c1899cb942b.pdf. Accessed on: 20Feb.2025.

153 See 2025 CGAP C&D, para. 5 to 7: 5 CGAP noted the Report of the Chair of the WG on matters related to jurisdiction in transnational civil or commercial litigation, and the progress made by the WG to further develop provisions for a future Convention. 6 CGAP thanked the Government of Japan for hosting the seventh WG meeting in Tokyo, Japan. 7 CGAP invited the PB to convene one additional WG meeting in the second half of 2025, with a targeted agenda specifically focused on Article 8(2) of the Draft Text. In this meeting the WG will also review and fine-tune the entire Draft Text, without reopening or introducing discussion on policy issues. This meeting will be held in person, with the possibility for online participation.

8.2 A Sensitive Issue: the mandate

The contents of the mandate to the WG, extensively debated during CGAP's meeting of 2021, are a sensitive point of interest and require careful analysis. At the Seventh Meeting of the WG, held in Tokyo, Japan, an informal discussion among WG members addressed the issue of the substantive extension of the mandate granted to the WG, particularly if it encompassed the drafting of direct jurisdiction rules. These rules would establish the factors connecting the case to national courts, thereby legitimizing their actions, akin to Articles 21 to 23 and 25 of the Brazilian Code of Civil Procedure of 2015 (BCCP 2015). The debate presented various opinions, notably, on three viewpoints: a) the mandate does not cover the development of direct jurisdiction rules; b) the development of direct jurisdiction rules is included in the mandate; and c) the mandate covers the development of direct jurisdiction rules to resolve concurrent procedures problems. Based on the progress and the preliminary draft rules prepared by the WG to date, it is the opinion of the here authors that it is no longer necessary or feasible to develop rules of direct jurisdiction under the current legislative exercise. The effort to reach a minimum consensus over the current draft text, limited to resolving questions on parallel proceedings and on related actions, and to establish a communication system among the Courts involved seem to have exhausted the WG's ability to produce content further possible to be interpreted within the mandate.

In this context, the group proposed that the rules of direct jurisdiction could be formulated in a separate and subsequent project, subject to the decision of CGAP. That was the recommendation embedded in the second document prepared by the WG's Chairman, and it was adopted by CGAP in its March 2025 meeting.

The WG recurrently discussed the mandate's scope concerning direct jurisdiction. The mandate is broad, as one can read from the above transcription. While it could encompass the issue of direct jurisdiction, most members of the WG present at the meetings, including the Brazilian Delegation (particularly regarding the topic of jurisdiction on proceedings related to real estate), rejected the elaboration of rules on this topic.

Delegations of common law traditions rejected vehemently the inclusion of direct jurisdiction rules in the draft text, disputing the extension of the mandate. That position gathered support from delegates of some States within the civil law system; few delegations, however, advocated for addressing direct jurisdiction rules in the current draft text.

The decision not to support the inclusion of direct jurisdiction in this instrument may lead to the need for the insertion of rules to prevent the effect of exorbitant grounds for jurisdiction. These rules could hinder Courts in a Contracting State from exercising its jurisdiction according to national rules of a specific nature or force them to proceed on cases that they would not typically accept under its national law. This effect needs to be further clarified during discussion, with the view to fostering a minimum agreeable set of rules on the topic. For Brazil, the real estate rule of direct jurisdiction is sensitive due to the provisions of exclusive jurisdiction from limb I of article 23 of the BCCP2015, as has been extensively discussed in the meetings of the Judgments Project, which culminated in the 2019 Convention on Judgments.

From the outset of the meetings, the Brazilian delegation concurred to refrain from addressing direct jurisdiction rules during the working group's discussions, since those rules might compromise the sovereignty of the Brazilian State, particularly regarding jurisdiction over real estate situated in Brazilian territory.

Given the situation presented above, it appears reasonable that the rules of direct jurisdiction are not included in this future instrument, which will solely tackle parallel proceedings and related actions problems, along with the Courts communications mechanism.

As already mentioned, the authors of this chronicle believe that the best way to proceed is to endorse the solution pointed by the majority of the WG members, in the sense that, considering the divergent views on the development of direct jurisdiction rules, following the completion of the current WG efforts and any potential continuation until a convention is established, the consideration of direct jurisdiction rules could be developed in a separate and subsequent draft, but not within this project and without any limitation on the proposed instrument to be developed. That was CGAP's decision in March 2025.

8.3 Draft text structure

The revised draft text considers parallel proceedings and related actions as the scope of application for the new document, along with a court communication mechanism.

On the issue of parallel proceedings, the model situation underlying is that the future convention shall encompass cases in which the Courts of two or more Contracting States have been seized for identical legal cases. If only one Court has jurisdiction to proceed according to the connecting factors listed in the draft text, it will be given priority to proceed, and the others shall stall their cases. If more than one Court has jurisdiction according to these rules the Court to proceed is identified according to chronological priority (*first in time rule*).

Where two or more Courts in different Contracting States are seized for related actions, meaning that they are connected among them by relevant facts, the draft rules give each Court the powers to decide whether they are the most appropriate forum to hear the case, based on considerations from the *forum non conveniens* doctrine, mostly. Any discrepancy in the Courts' rulings would be resolved through the first-in-time rule.

Regarding communications in the specific cases in which the convention would apply, the understanding stands out that there must be cooperation between the courts based on exchanging information at any time through the communication mechanism established in the text. The communication mechanism values flexibility in the ways to exchange information between Courts in different States, which can be i) directly (Court to Court), ii) indirectly, through a competent authority, iii) a combination of the preceding forms, or iv) indirectly through the parties, this last one suggested to be the default means of communication when the Contracting State does not indicate which ones are allowed by it. The issue remains under debate.

At the Eighth Meeting, the group reviewed the introductory text reached at the Seventh Meeting, but its content still needs improvement. To date, the structure has 23 articles in 5 chapters, namely: Chapter I Scope and Definitions (Articles 1 to 4), Chapter II Parallel Proceedings (Articles 5 to 10), Chapter III Related Actions (Articles 11 to 15), Chapter IV Cooperation and Communication (Articles 15 to 18) and Chapter V General Clauses (Articles 19 to 23).

8.4 Status of the project

To date, 55 working documents have been analyzed, including some study documents of the WG's Chairman and studies brought by the Secretariat and the observers International Bar Association and the Union Internationale des Avocats.

The documents included proposals on several complex and challenging issues relevant to developing the draft for a future instrument. The WG members made solid progress on the draft over the seventh and eighth meetings and worked on some of the future instrument's key mechanisms and features.

The WG Chairman's report highlights the points on which consensus was reached during these meetings and identifies issues that still require further analysis. The report also describes the next steps recommended by the WG to complete the development of the preliminary project and proposes the next steps for the Jurisdiction Project.

During the seventh and eighth meetings, the WG's Chairman reordered several articles and paragraphs of the draft text, in an action to organize the content. The most recent version is referred to in the latest report as the "revised draft text".

At its March 2025 meeting, CGAP followed WG's recommendations to convene an additional meeting to review the draft text with a focus on Article 8(2) that lists the connecting factors that resolve jurisdictional priority at the first tier of the future convention's operation, and also, that the text resulting from this additional meeting be subject to a written consultation process to be monitored by the Secretariat, with the assistance of the WG members. A virtual event will be held to discuss the practical operation of the project, the result of which will be presented to all HCCH members prior to the March 2026 meeting of CGAP.

The WG comprises specialists from states with extensive participation in HCCH's activities, including Brazil. It is a heterogeneous group composed of countries with *civil law* and *common law* systems, which, although of very different legal cultures, have arrived at a base text incorporating procedural elements from both.

Another essential point that draws attention is whether the text was mature enough to be taken to the Special Commission. The group, for the most part, un-

derstood that more debates were needed, at least in one more meeting, although some experts understood that the step towards the Special Commission could already be taken at that point. The Brazilian delegation initially was in the position to proceed to the Special Commission, however, considering that the draft text was not sufficiently evolved and contained many reservations and alternatives, and taking into account the issue of the budget allocated to the project by the HCCH, the position taken was in favor of having another meeting to examine points that do not involve questions of conceptual policy of the Preliminary Draft.

The group then agreed to suggest holding a further meeting focusing on Article 8(2), which establishes the connecting factors to a Contracting State, drawn from the acknowledged bases of jurisdiction, the content of which derives from the bases for recognition and enforcement contained in Articles 5 and 6 of the 2019 Convention on Judgments.

Holding written consultations in the states participating in the WG is an interesting idea, as it may bring more subsidies to support the discussions on the subject at the Special Commission level, particularly.

Likewise, the suggested online event has value because it can give the stakeholders on the subject visibility on the draft text of the convention proposal that is under discussion. The recommendations were adopted by CGAP at its March 2025 meeting.

8.5 Final Remarks

The work accomplished thus far is noteworthy, as considerable discussion has taken place in pursuit of developing a draft that can be utilized by States with different legal systems.

The recommendations of the Working Group reflect the thorough analysis conducted by the experts, ensuring that States may benefit from an international treaty that grants advantages to its signatories, particularly by reducing litigation costs through the promotion of predictability and legal certainty for parties involved in civil and commercial disputes across different Contracting States. That view of the benefits of a future convention on parallel proceedings and related actions, as well as on Courts communications mechanism, was addressed by the Member States of HCCH with some reservations, but the WG's recommendations were fully adopted by CGAP in its meeting of March 2025. CGAP 2026 will be of utmost importance for the project to gather the support of the members, driving momentum to proceed to the Special Commission stage.

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