

## Report on the 2023 activities of the Hague Conference on Private International Law (HCCH)

### **Judgement Convention / a game changer**

I start with the most important issue of our cooperation with HCCH.

On 1 September 2023, the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention) entered into force, just over four years after its adoption on 2 July 2019. As of today, the Convention has effect between the European Union (EU), including its Members States (except Denmark), and Ukraine.

On this same day, Uruguay deposited its instrument of ratification of the 2019 Judgments Convention, becoming a new Contracting Party to the Convention, which will enter into force for Uruguay on 1 October 2024.

The Judgments Convention establishes a common framework for the global circulation of judgments in civil or commercial matters, overcoming the complexities arising from differences in legal systems. By providing a minimum standard for the circulation of foreign judgments among Contracting Parties, the Convention promotes access to justice for all and facilitates international trade, investment, and mobility by reducing the risks and costs of cross-border litigation.

With the ratification of Uruguay, 29 HCCH Members will be bound by the Convention, namely, the EU, all EU Member States (with the exception of Denmark), Ukraine and Uruguay. Six additional States have signed the Convention but have not yet ratified it.

More information on this Convention is available on the [Judgments Section](#) of the HCCH website.

### **Conference**

I attended a Conference on The HCCH 2019 Judgments Convention: Cornerstones, Prospects, Outlook, which was co-organised by the University of Bonn and the Permanent Bureau HCCH, with the support of the Federal Ministry of Justice of Germany. The Conference was held on 9 and 10 June 2023 at the University of Bonn, Germany.

The Conference drew together internationally renowned scholars, practitioners, and experts from academic institutions and organisations around the world. Speakers retraced the genesis and examined key features of the 2019 Judgments Convention. Speakers also shared views on how the Convention is expected to fare in each of the regions around the world and the Convention's general prospects and outlook for the future. I attach for the very interested the Conclusions of the Conference as an Annex to this Report.

I spoke there with Melissa Ford of the permanent bureau of HCCH, on their following request:  
*“With a view to raising awareness about the Judgments Convention and to enhancing its acceptance, the PB, on a regular basis, provides training and delivers presentations on the Convention to diverse stakeholders, including judges or practitioners. Such activities are carried out at a national, regional or international level, depending on the need and request.*

*The PB is keen to explore cooperation opportunities with you and with the IAJ, including providing training on the operation of the Judgments Convention. Judges, as key users of the Convention, will play an important role in its successful operation.”*

It was a good meeting and we will speak later again. If you have suggestions, please let me know.

And I continue with the more usual activities.

### HCCH meeting of the Council on General Affairs and Policy (CGAP)

On 7-10 March 2023 I attended the CGAP meeting of HCCH.

For health reasons I was not able to travel to The Hague and I attended the meeting mostly by videoconference.

I give a short overview of the subjects.

#### II. Work relating to possible new legislative instrument

##### *II.1 Parentage/surrogacy*

Nothing relevant to mention.

##### *II.2 Jurisdiction*

This was the most important subject for us. Regarding the HCCH [Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#) (Judgments Convention). More information about the status of the Convention is available [here](#).

##### *II.3 Insolvency and II.4 IP*

Nothing relevant to mention.

##### *II.5 Digital Economy*

Important subject [for example: Central Bank Digital Currencies (CBDCs)] but not quite clear yet. CGAP mandated the PB, in partnership with relevant subject-matter experts and Observers, to study the PIL implications of CBDCs. The PB will report to CGAP at its 2024 meeting on the outcomes of this study, including proposals for next steps. CGAP also mandated the PB to prepare for and organise an online colloquium on this topic.

#### III. Post-Convention work

##### *III.2 Transnational litigation*

The WG on matters related to jurisdiction in transnational civil or commercial litigation is – under art. 3 (International obligations) working on Rules for Parallel Proceedings. There is discussion about art. 9 (rules of [priority] jurisdiction/ basis for [priority] connection). And also about art. 8 (exclusive [or priority] jurisdiction / connection). The state where the immovable property is situated shall have priority. Further will be considered to expand the exclusive jurisdiction / connection to lease or tenancy. On art. 10 (Rules for determination of the more appropriate / better forum) there was discussion for providing clarity (having an exhaustive list) versus (having a non-exhaustive list, providing guidance) flexibility for courts.

The WG noted the importance of avoiding a denial of justice when dealing with parallel proceedings.

For the rest of the subjects it is not necessary to mention

Special Meeting on the 1980 Child Abduction and the 1996 Child Protection Conventions

In the fall I will probably attend the Eighth Meeting of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions.

NB when you have input on this subject, please let me know.

Mr. M.F.J.N. (Tijn) van Osch, Observer at HCCH.

The Netherlands, September 1, 2023.

ANNEX

## **Conclusions Conference Judgment Convention, Bonn, June 9-10 2023**

based on:

General Synthesis and Future Perspectives (June 10th, 2023)

Hans van Loon (Former SG HCCH)

### **I. General Synthesis**

#### **A. Introduction**

The conference, and the recent published book, offers a rich variety of insights into the genesis, scope, structure and intended practical operation of the HCCH 2019 Convention, its relationship with the HCCH 2005 Choice of Court Convention and with international commercial arbitration, as well as potential challenges and benefits of the Convention from the perspective of many parts of the world: ASEAN, China, the Arab countries, Africa, South-East Europe, the European Union (EU), the United States of America (USA), Canada, and Latin America. There is a keen interest in the Convention, and the circumstance that the various regional comments all take a positive attitude towards the treaty bodes well for its chances as a basic global instrument for the circulation of judgments. The fact that the EU and Ukraine both joined the Convention on 29 August 2022, which will lead to its entry into force on 1 September 2023, reinforces this positive outlook.

That said, the contributions also make it clear that much work, including promotion, explanation, and support will be needed to convince and enable a significant number of jurisdictions to join the Convention. In more than a few countries, its implementation may well be a laborious process. And beyond the stage of embracing the Convention lies the further challenge of ensuring its uniform and effective application in a rapidly changing world.

A number of themes emerge from the discussion and assessment of the Convention by the contributors: The Current Situation regarding Recognition and Enforcement of Judgments in Different Parts of the World (Section B); the Definitions (Section C); the Exclusions from Scope (Section D); often related to: The Convention's Relationship with Other International Instruments (Section E); The Jurisdictional Filters or Indirect Bases of Jurisdiction (Section F); The Grounds for Refusal (Section G); and, the Bilateralisation option (Section H)

#### **B. Current Situation in Different Parts of the World**

The various contributions vividly illustrate the current diversity of legal systems regarding the recognition and enforcement of foreign judgments.

- i. No specific rules on "Recognition"
- ii. Differing Attitudes towards Recognition and Enforcement
- iii. Reciprocity Often Required
- iv. Effect Given to Non-Monetary Judgments.  
What generally is not admitted under common law.
- v. Required Connections to the State of Origin.  
Three traditional categories of connections to the State of origin" which are considered sufficient for a foreign judgment to be recognized and enforced: "connections between

the State of origin and the defendant, connections established by consent, and connections between the claim and the State of origin”.

#### C. Definitions

- i. No Definition of Courts
- ii. Judgments
- iii. Finality/res judicata
- iv. Habitual Residence

#### D. Exclusions from Scope

- i. **Articles 2, 8, 18** (exclusions of defamation, privacy, intellectual property (IP) and the partially anti-trust or competition matters)
- ii. **Arbitration**, Article 2 (3)

#### E. The Convention’s Relationship with Other International Instruments

- i. The HCCH 2005 Choice of Court Convention (to which is complimentary).
- ii. Other International Instruments

#### F. The Jurisdictional Filters or Indirect Bases of Jurisdiction

Art. 5 and 6 are the core Articles of the Convention.

- i. **Article 5.** The jurisdictional filters in Article 5 (1) are more extensive than those found under the national laws of the ASEAN Member States. It was f.e. concluded that most Chinese judgments will be eligible for recognition and enforcement under it. On the other hand, from an Arab perspective the jurisdictional filters of Article 5 appear “excessively restrictive and overly complex”. For the USA and Canada the “most of the filters in Article 5(1) should be uncontroversial”.
- ii. **Article 5 (3) and Article 6.** Art. 5 (3) limits the recognition and enforcement of judgments on residential tenancies to decisions rendered by a court of the State where the immovable property is situated, this does not apply to judgments on non-residential (commercial) tenancies, and that such judgments are likewise not addressed by Article 6. Therefore, they fall under Article 5 (1). This contradicts the EU policy objective, reflected in the Brussels Ia Regulation, which prompted the EU to avail itself of Article 18 and make the declaration.
- iii. **Article 15.** The Convention provides a floor, not a ceiling and permits broader recognition and enforcement of judgments covered by the Convention under national law. Especially important for USA and Canada.

#### G. The Grounds for Refusal

- i. **Article 7**  
Article 7, including a discussion of the Articles 8 to 10 (preliminary questions, severability and damages).  
Most important and discussed is the public policy exception of Article 7 (1) (c). In a recent decision the New York Supreme Court suggests: “The fact that Chinese judicial system is subject to the macro-control of the [Chinese Communist Party] does not suggest that each single judgment is tainted by the direct influence of the CCP and the government, and thus lacks independent and impartial trial”. There are two ways a state can object to a Court decision of a new State where the Rule of Law is not upheld. The first is notifying under Article 29 (we do not accept you as Member of the Convention with us) or the use of the rule

of Article 7 (1) (c) as a refinement – within the context and for the purpose of the Convention only – of a more far-reaching ground of refusal under national law.

ii. **Article 7 (2) (Lis pendens, procedures elsewhere).**

Arabic Countries do not know a Rule as these. Also not in USA and Canada.

H. Bilateralisation

The mechanism set out at Article 29 contributes to the pursuit of an advanced international cooperation characterized by coherent and more virtuous universal spaces of judicial cooperation and integration, for the benefit and the progress of international legal relations.

## II. Future Perspectives

### A. Introduction

The availability of the HCCH 2019 Convention will enlarge businesses' strategic options for cross-border dispute settlement.

### B. The Broader Normative Context: UN Sustainable Development Goals, Human Rights, Corporate Social and Environmental Responsibility.

Once in force, the Convention, will increasingly be invoked to obtain recognition and enforcement of foreign judgments on matters relating, directly or indirectly, to human rights, pollution, nature loss and climate change. This development will reveal the possibilities which the Convention offers, but also its limitations. Some of these can probably be overcome by (creative) interpretation, others may require additional, possibly treaty, work. A few examples may illustrate both pathways.

i. **Enhancing the Convention's Effectiveness through Interpretation**

a) *Judgments in Collective Actions*

Collective actions with a transnational aspect are assuming increasing importance. Lots of legal discussions could be solved by interpretation.

b) *Judgments on Non-Contractual Obligations*

The indirect ground of jurisdiction of Article 5 (1) (j) has a restricted substantive scope: it only applies to judgments that ruled on non-contractual obligations 'arising from death, physical injury, damage to or loss of tangible property'. Probably this provision will play a limited role in commercial tort litigation, which often revolves around economic and financial loss rather than personal injuries and damage to property. Here also interpretation could help.

c) *Public Policy*

Article 7 (1) (c), which overlaps with sub-paragraphs (a) (notification) and (b) (fraud), refers to "the public policy of the requested State". As the Explanatory Report points out, this defence should not be triggered by every mandatory rule of the requested State ("internal public policy"), but only "where such a mandatory rule reflects a fundamental value, the violation of which would be manifest if [recognition or] enforcement was permitted..." ("international public policy").

ii. **Need for further Work where Interpretation falls short**

Through interpretation the courts may resolve some of the limitations and ambiguities of the Convention's text. However, not all its limitations can be resolved through interpretation and that may require fresh work. Once more, a few examples may illustrate the point.

a) Parallel proceedings

b) Collective Actions

c) Environmental Proceedings

#### D. Post-Convention Work: Ensuring Uniform Interpretation, Promotion and Support

i. **Ensuring Uniform Interpretation**

Interpreting the Convention “in an international spirit to promote uniformity of its application”, so that it can fully serve its purpose, will help ensure that the Convention functions in a diverse and rapidly changing global environment. Such a system obviously requires a database of case law that is freely accessible. To help feed this database, and select important judgements, a network of liaison judges, or courts, of States Parties could be established. In due course, a practical handbook could systematize the case law, elucidate concepts not defined by the Convention such as “employee” , “contractual obligation” or “non-contractual obligation” and over time grow into a good practice guide.

ii. **Promotion and Support.**

More than a few countries may be, or feel, unable to join the Convention, possibly also because they fear the risk that their accession might trigger the sanction of Article 29 by some States. Promoting the Convention to such States may therefore need to be accompanied by efforts to enhance their capacity to implement and operate the treaty properly.