

Title	Report on developments in the area of Transnational Litigation
Document	Prel. Doc. No 8 of December 2021 – <i>provisional edition, pending the completion of the French version</i>
Author	PB
Agenda Item	Item TBD
Mandate(s)	C&D Nos 34-36 of CGAP 2021
Objective	To report on ongoing work carried out by the Transnational Litigation Team, including the HCCH a Bridged Edition 2021, and the preparations for the envisaged 2023 Meeting of the SC on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions
Action to be Taken	For Decision <input checked="" type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
Annexes	Annex I: Summary of the Responses to the Questionnaire on the 2005 Choice of Court Convention, prepared for the HCCH a Bridged Edition 2021
Related Documents	N/A

Table of Contents

- I. Introduction 1
- II. Progress on the work conducted by the Transnational Litigation Team..... 1
 - A. 2005 Choice of Court Convention..... 1
 - B. 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions..... 2
 - 1. Status 2
 - 2. Country Profiles review 3
 - 3. Promotional and training activities 3
 - 4. Translations of the Guide to Good Practice on Video-Link into all EU languages 3
 - 5. Update of the designated webpages 4
 - C. 2019 Judgments Convention 4
 - 1. Status 4
 - 2. Post-Convention assistance 4
 - 3. Other promotional activities 5
 - 4. Inviting endorsement from international organisations..... 6
 - 5. Following developments in the field of enforcement of judgments..... 6
- III. HCCH a|Bridged: Innovation in Cross-Border Litigation and Civil Procedure..... 6
- IV. Preparation for the 2023 SC Meeting..... 7
 - A. Scheduling and format 7
 - B. Preparatory work..... 7
- V. Proposal for CGAP 8
- Annex I – Summary of the Responses to the Questionnaire on the 2005 Choice of Court Convention .. 10

Report on developments in the area of Transnational Litigation

I. Introduction

- 1 This document reports on the development of certain core HCCH instruments that contribute to effective access to justice and cross-border cooperation in the area of transnational litigation. These instruments are the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (1965 Service Convention), the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (1970 Evidence Convention), the *Convention of 25 October 1980 on International Access to Justice* (1980 Access to Justice Convention), the *Convention of 30 June 2005 on Choice of Court Agreements* (2005 Choice of Court Convention), the *Principles on Choice of Law in International Commercial Contracts* (2015 Principles), and the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (2019 Judgments Convention). The effective implementation and operation of these instruments are supported by the Transnational Litigation Team (Team) at the Permanent Bureau (PB), which currently consists of one First Secretary (Diplomat Lawyer), one Senior Legal Officer and two temporary Secondedes from the Republic of Korea and the Hong Kong SAR of the People's Republic of China, respectively. In this context, the Team, where relevant with the assistance of the regional offices, provides post-Convention assistance; it also carries out general activities and services, including the preparation of Special Commission (SC) meetings, the publication of documents, such as guides to good practice and practical handbooks, maintaining and updating databases for case law and bibliographies, promotional activities and providing other day-to-day advice and assistance to Members, Contracting Parties of the Conventions and other stakeholders.
- 2 This document, in section II, reports on work carried out, and progress made, in relation to the relevant instruments under the portfolio of the Team (with the exception of the 2015 Principles).¹ Section III reports on *HCCH a|Bridged Edition 2021: Enabling Party autonomy with the HCCH 2005 Choice of Court Convention*. The document then briefly outlines in section IV the planning and preparatory work for the Meeting of the SC on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions, to be held in the second quarter of 2023 (the 2023 SC). Finally, section V lays down proposals for CGAP's consideration.

II. Progress on the work conducted by the Transnational Litigation Team

- 3 The instruments reported on below follow the sequence of the lifecycle of transnational civil or commercial litigation, where the instruments often serve the same stakeholders, either to facilitate processes or to expedite procedures for cross-border litigation, from choice of law and choice of court, to service of process, from taking of evidence, to recognition and enforcement of foreign judgments.

A. 2005 Choice of Court Convention

- 4 32 HCCH Members are bound by the 2005 Choice of Court Convention, namely Mexico, Singapore, the European Union (EU), all EU Member States, Montenegro and the United Kingdom. In March 2021, Israel signed the Convention.

¹ The development of the 2015 Principles is reported on in "2015 Principles on Choice of Law in International Commercial Contracts: Impact, Promotional Work and Possible Future Work", Prel. Doc. No 9 of December 2021 for the attention of CGAP 2022, available on the HCCH website at < www.hcch.net > under "Governance" then "Council on General Affairs and Policy".

- 5 At its March 2021 meeting, CGAP approved, “subject to available resources, the circulation of a brief questionnaire to elicit reasons as to why more States have not become party to the Convention”.² The PB, in line with CGAP's mandate, circulated two Questionnaires, one for Contracting Parties and the other for non-Contracting Parties. A total of 22 responses were received, 16 from³ and six from non-Contracting Parties⁴ to the Convention.
- 6 The PB has prepared a summary of the responses received (see Annex I), which assisted with the identification of key issues to be discussed at the HCCH a|Bridged Edition 2021, took place on 1 December 2021. The event is reported in section III of this document. However, in light of the relatively low overall response rate of less than 25%, the PB may consider reopening the Questionnaire in the future to garner further responses.

B. 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions

1. Status

- 7 In 2021, the 1965 Service and 1970 Evidence Conventions witnessed an increase in the number of Contracting Parties. The 1965 Service Convention has 79 Contracting Parties, with the most recent treaty action being Georgia's ratification (HCCH Member) on 31 May 2021. In relation to the 1970 Evidence Convention, it has currently 64 Contracting Parties, with the latest Contracting Party, Georgia, having acceded to the Convention on 31 May 2021. Currently, the number of acceptances of accessions accounts for roughly two-thirds of the total number of acceptances required in order for the 1970 Evidence Convention to become fully operational amongst all Contracting Parties.⁵ In this regard, the PB encourages Contracting Parties to revisit their pending acceptances so as to further enhance the usefulness and operation of the 1970 Evidence Convention.
- 8 In 2021, there were no amendments to, or withdrawals of, declarations made under Article 23 concerning the execution of Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. Currently, 29 Contracting Parties have made a general declaration (“full exclusion”); 19 have made a particularised declaration qualifying the circumstances in which they will or will not execute such Letters of Request (“qualified exclusion”); and 16 have made no declaration. In this regard, the PB recalls the Recommendation of the 2009 SC Meeting that Contracting Parties revisit their general, non-particularised declarations under Article 23, if any, taking into account terms such as those contained in the United Kingdom declaration.⁶
- 9 Additionally, in respect to the application of Chapter II of the 1970 Evidence Convention, five Contracting Parties have excluded in whole the application of Chapter II; 18 have excluded in part the application of Chapter II; and 41 have made no reservation in respect of Chapter II.⁷
- 10 The 1980 Access to Justice Convention currently binds 28 Parties. The most recent treaty action was the accession by Costa Rica on 16 March 2016.

2 C&D No 35 of CGAP 2021, (see path indicated in note 1).

3 Croatia, Czech Republic, the EU, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Mexico, Romania, Singapore, Sweden and the United Kingdom.

4 Argentina, Brazil, the People's Republic of China, Israel, Switzerland and Viet Nam.

5 More details are available on the HCCH website at < www.hcch.net > under “Evidence” then “Acceptances of accessions”.

6 C&R No 51 of the 2009 SC on the Practical Operation of the Hague Apostille, Service, Taking of Evidence and Access to Justice Conventions; See also, C&R Nos 29-34 of the 2003 SC on the Practical Operation of the Hague Apostille, Evidence and Service Conventions.

7 Of those parties that have excluded in part the application of Chapter II, one party has also excluded the application of Art. 15; 14 have excluded the application of Art. 16; 12 have excluded the application of Art. 17; and 14 have excluded the application of Art. 18.

2. Country Profiles review

- 11 With a view to facilitating access to information and to further enhancing the implementation and operation of the 1970 Evidence Convention, the PB initiated a review of the Country Profiles and, more specifically, of the practical information provided by the Contracting Parties in response to the 2017 Questionnaire on the use of video-link under the 1970 Evidence Convention. For this purpose, the PB has invited relevant Contracting Parties to complete or update their respective Country Profiles, especially with regard to the established practice in the last two years. The Country Profiles review will be completed in the first quarter of 2022.⁸

3. Promotional and training activities

- 12 On 1 June 2021, the PB and the Asian Business Law Institute (ABLI) co-hosted a webinar, “HCCH 1970 Evidence Convention and Remote Taking of Evidence by Video-link”, in celebration of the 50th anniversary of the Convention. The webinar was attended by participants from 30 different jurisdictions, including representatives of Central Authorities, Members of the HCCH, practitioners, international public service officers and other professionals. The experts discussed contemporary issues in relation to the application of the 1970 Evidence Convention, such as whether the Convention may be used in aid of arbitration proceedings; whether the Convention has to be used when a witness is willing to give evidence by video-link in Singapore International Commercial Court (SICC) proceedings; and how, in practical terms, evidence can be taken remotely. The experts also exchanged views on why the majority of the Association of Southeast Asian Nations (ASEAN) Member States have not joined the Convention, and encouraged these States to become a Party to it.⁹
- 13 Based on the success of the event, ABLI will be cooperating with the PB in organising a second ABLI-HCCH webinar, this time dedicated to the 2005 Choice of Court Convention. The event is envisaged to take place in the first half of 2022.
- 14 On 27 October 2021, the PB (through its Regional Office for Latin America and the Caribbean (ROLAC)) and the Supreme Court of Nicaragua co-organised a hybrid training for Nicaraguan Judges, representatives of the Ministry of Foreign Affairs, Public Defenders and other judicial officers on the HCCH Service and Evidence Conventions. During the event, the ROLAC Representative made a general presentation of both Conventions and the Central Authorities of Brazil and Nicaragua shared their experiences and challenges in the operation of both Conventions. There was fluent interaction with participants who expressed their satisfaction with the training.

4. Translations of the Guide to Good Practice on Video-Link into all EU languages

- 15 Following its publication in both English and French, the two official languages of the HCCH, in April 2020, and thanks to the generous support of the Directorate-General for Justice and Consumers of the European Commission, the *Guide to Good Practice on the Use of Video-Link* (the GGP) is now also available in all other official languages of the EU.¹⁰ The GGP examines the latest developments in relation to the use of video-link in the taking of evidence under the 1970 Evidence Convention and outlines good practices in this field.

⁸ State responses to the Country Profiles are available on the HCCH website at < www.hcch.net > under “Evidence” then “Country Profiles”.

⁹ Extracts of the webinar and the summary of the event are available on the designated webpage for the Evidence Convention (see path indicated in note 5).

¹⁰ The publications, which exist in Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish, are available on the Evidence Convention webpage, then “HCCH Publications” (see path indicated in note 5).

5. Update of the designated webpages

- 16 With a view to enhancing the availability and accessibility of information in relation to both the 1965 Service and 1970 Evidence Conventions, the PB is making the designated webpages more accessible, covering the respective relevant bibliographies and over 600 cases. The updating of the webpages will be completed in the first quarter of 2022.

C. 2019 Judgments Convention

1. Status

- 17 The 2019 Judgments Convention continues to draw interest from different stakeholders. In addition to Uruguay and Ukraine, the 2019 Judgments Convention has three more signatories: Israel, Costa Rica and the Russian Federation. These States are working on their respective ratification – for example, the Government of Uruguay has submitted a bill to Parliament for approval of ratification of the Convention.
- 18 Several other Members have also taken steps to join the Convention. In July 2021, the European Commission submitted a proposal to the European Council proposing the EU's accession to the Convention.¹¹ Brazil has concluded public consultations on the joining of the Convention and is now carrying out interdepartmental consultations. In addition, a working group instituted by the Government of Uzbekistan has recommended the ratification of the Convention.
- 19 On the occasion of celebrating the 2nd anniversary of the adoption of the Judgments Convention, the Secretary General (SG) issued a letter inviting Members to give additional consideration to joining the Convention. In the letter, the SG stressed the benefits of the Convention, including on how it could assist States in achieving United Nations Sustainable Development Goal 16, and highlighted the importance of the Convention in strengthening the multilateral treaty framework in the field of international trade law.

2. Post-Convention assistance

- 20 As reported last year, the PB continued its engagement with the GIZ project, “Cross-border enforcement of judgments”, financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) and its Open Regional Fund for South East Europe-Legal Reform (ORF-LR). The project is aimed at promoting the 2019 Judgments Convention in South East Europe (SEE).
- 21 Further to last year's efforts, a book entitled "Cross-border Recognition and Enforcement of Foreign Judicial Decisions in SEE and Perspectives of HCCH 2019 Judgments Convention" was published in 2021. This publication compiles six Reports of the SEE jurisdictions and provides a comprehensive overview of the scope of application for the recognition and enforcement of foreign judicial decisions; types of judicial decisions which are eligible for recognition and enforcement; compatibility of the national provisions regarding international jurisdiction with the 2019 Judgments Convention; procedure for recognition and enforcement of foreign judicial decisions; the main legal sources and stakeholders with regard to the recognition and enforcement of foreign judgments and the adoption of the 2019 Judgments Convention. The publication is available in English, Macedonian, Serbian and Albanian.¹²

¹¹ Proposal for a decision – Brussels, 16.7.2021 COM (2021) 388 final – 2021/0208 (NLE) (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12166-International-enforcement-of-court-rulings-Judgments-Convention-en>).

¹² The publication will be soon available on the HCCH website at <www.hcch.net> under “Post-Convention Project” (the webpage is currently being redesigned).

22 Under the framework of the GIZ project, national champions were appointed in each jurisdiction, to promote the 2019 Judgments Convention in their respective jurisdictions. In addition, the PB participated in six webinars on cross-border enforcement of foreign judgments, scheduled for each SEE jurisdiction. During these webinars, national champions and government officials of each SEE jurisdiction were informed about the benefits of the 2019 Judgments Convention and of other HCCH Conventions in the area of transnational litigation to the SEE.

3. Other promotional activities

23 The PB continues its endeavours in promoting the 2019 Judgments Convention, including maintaining and updating the repository of articles about the Convention.¹³

24 The PB coordinated translations of the Convention and the Explanatory Report. At the time of writing, the Convention is available in Albanian, Arabic, Bosnian-Serbian-Montenegrin, German, Macedonian, Russian and Spanish.¹⁴ The Explanatory Report is available in Albanian, Bosnian-Serbian-Montenegrin and Macedonian, forming parts of the post-Convention assistance delivered under the GIZ project.

25 In addition, the PB actively participated in promotional activities, in diverse formats, both online and offline, often in cooperation with, or for, different stakeholders and in combination with other instruments in the area of transnational litigation. Furthermore, the PB regularly delivered lectures on the 2019 Judgments Convention at various universities.

26 The PB closely cooperated with the International Union of Judicial Officers (UIHJ) to promote both the 1965 Service and 2019 Judgments Conventions in a series of activities. In March 2021, the PB delivered several training sessions on both Conventions. In July 2021, in a Roundtable – EU Enforcement Atlas, co-organised by the UIHJ and the Centre for European Constitutional Law, the PB delivered a presentation on the role and importance of the 2019 Judgments Convention in cross-border enforcement. At the 24th UIHJ Congress, held in Dubai in November 2021, the PB presented the 2019 Judgments Convention and other HCCH work, as well as contributed a chapter on the Judgments Convention for the proceedings of the Congress.

27 In July 2021, the PB engaged with the World Trade Organization to promote the relevance of its litigation instruments in the context of cross-border trade between micro-, small- and medium-sized enterprises (MSMEs). In this endeavour, the PB contributed with explanatory texts on international contracts and dispute settlement, which are featured on both the MSME portal and on the Policymaker portal, of the Trade4MSMEs platform. The texts explained briefly the relevance of HCCH Conventions and made a reference to the *Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales*.

28 At the first HCCH-ASEAN Masterclass hosted in August 2021, together with the Council of ASEAN Chief Justices, the PB and its representatives introduced the relevance of the HCCH's work for ASEAN, including the 1970 Evidence and 2019 Judgments Conventions.

29 In September 2021, the PB, including ROLAC, had a joint meeting with the Legal Advisors on Private International Law of OAS Member States. The purpose of this meeting was to further strengthen the work and cooperation of both Organisations. On this occasion, the PB also provided information about the HCCH Conventions in transnational litigation, namely the 1965 Service, 1970 Evidence, 2005 Choice of Court and 2019 Judgments Conventions.

¹³ The bibliography of the 2019 Judgments Convention is available on the HCCH website at < www.hcch.net > under “Judgments”, then “Bibliography”.

¹⁴ The translations of the 2019 Judgments Convention are available on the designated webpage for the Judgments Convention, then “Translations” (see path indicated in note 13).

- 30 Furthermore, the PB delivered a briefing on its Litigation Conventions at the 81st meeting of the Focal Points for Civil or Commercial Matters of the Network of Judicial International Cooperation of the Portuguese-speaking countries (*Rede Judiciária da CPLP*). The meeting was attended by judicial representatives of Angola, Brazil, Cabo Verde, Guinea-Bissau, Portugal, Sao Tome and Principe and Timor-Leste. Explanatory content on these Conventions in the Portuguese language was made available by the Network on their online Atlas.
- 31 Under the EU project “Pravo-Justice”, the PB participated in a series of online seminars on the “Application of the instruments of the Hague Conference on Private International Law”, conducted in Ukraine. These seminars aimed to ensure proper application and interpretation of the provisions of the HCCH Conventions by Ukrainian judges. The first seminar, which took place on 7 October 2021, was dedicated to the 1965 Service and 1970 Evidence Conventions, and the second one, held on 10 December 2021, focused on the 2005 Choice of Court and 2019 Judgments Conventions. The seminars, which were moderated by both representatives of the PB and the Ukraine Supreme Court, discussed practical challenges and best practices for the Conventions, as well as the importance of the Conventions for Ukraine. Experts from Central Authorities of Germany and the United States of America for both the 1965 Service and 1970 Evidence Conventions shared their practical experiences with Ukrainian judges.
- 32 In October 2021, the PB hosted a webinar, “Birth of an International Treaty: the 2019 Judgments Convention”. Over 80 participants from around the world, representing government, private sector, civil society and academia, joined remotely.
- 33 Due to the COVID-19 pandemic, the joint conference of the University of Bonn, Germany, and the HCCH, “The HCCH 2019 Judgments Convention: Cornerstones – Prospects – Outlook”, has been rescheduled to 9 and 10 September 2022, hopefully to take place in person. A book for the joint conference is currently being prepared and is intended to be published ahead of the Conference.

4. Inviting endorsement from international organisations

- 34 In an effort to seek their endorsement of the 2015 Principles from international organisations which aim at promoting international trade, commerce or investment,¹⁵ the PB also invited MERCOSUR and OHADA to endorse both the 2005 Choice of Court and 2019 Judgments Conventions.

5. Following developments in the field of enforcement of judgments

- 35 The PB followed closely the UNIDROIT project on “Best Practices for Effective Enforcement”, and participated in three Working Group meetings as Observer. The PB will continue to follow this project and to provide technical support, where required, and to ensure that the UNIDROIT project does not overlap with the 2019 Judgments Convention. Similarly, the PB attended the UNCITRAL expert group meeting on civil asset tracing and recovery as Observer, given the potential relevance of the UNCITRAL project for the 2019 Judgments Convention.

III. HCCH a|Bridged: Innovation in Cross-Border Litigation and Civil Procedure

- 36 The HCCH a|Bridged series, which since 2019 explores innovation in cross-border litigation, civil procedure and dispute resolution, provides an annual forum for experts and stakeholders from around the world to discuss and debate contemporary issues and solutions.

¹⁵ See Prel. Doc. No 9 of December 2021 for the attention of CGAP 2022, *supra*, note 1, para. 8.

- 37 At its March 2021 meeting, CGAP endorsed the proposal to dedicate HCCH a|Bridged Edition 2021 to the 2005 Choice of Court Convention.¹⁶
- 38 As the third event in the series, the HCCH a|Bridged Edition 2021, entitled “Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention”, was generously sponsored by the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice of Germany. To include participation from the Latin American and Caribbean region, the event was hosted in the region, albeit virtually, and was co-sponsored by CARICOM, ASADIP and the CCJ Academy of Law.
- 39 The event was successfully held online on 1 December 2021, with simultaneous interpretation in Spanish. With the keynote speech delivered by Professor Trevor Hartley, one of the co-Reporters of the Explanatory Report on the 2005 Choice of Court Convention, invited speakers, including judges, practitioners and scholars, discussed the role that the Convention plays in the emerging litigation market of international commercial courts. They also confirmed the benefits of the Convention for States and business, including those in the Latin American region, and shared information on the legislative and consultation processes in their respective countries.
- 40 Over 100 participants attended the event which included representatives from National Organs of the HCCH, the diplomatic corps, practitioners, academics, and students from 39 countries, with a predominant majority from Latin America and Europe.¹⁷
- 41 A post-event publication resulting from the Edition 2021 HCCH a|Bridged event is being prepared and, once finalised, will be published on the dedicated webpage of the HCCH website.

IV. Preparation for the 2023 SC Meeting

- 42 This section briefly outlines the preparatory work carried out in the lead up to the 2023 SC Meeting.

D. Scheduling and format

- 43 The PB envisages to hold the SC Meeting for at least three meeting days during the second quarter of 2023. The format of the meeting is envisaged to be in-person.

E. Preparatory work

- 44 The PB carried out a number of tasks for the preparation of the 2023 SC Meeting. Building upon the work done in the last reporting year, and with a view to gathering relevant statistical information and to informing the discussions of the 2023 SC Meeting, the PB will be circulating questionnaires requesting information from Contracting Parties and HCCH Members on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions. The questionnaires will also invite respondents to provide updated legislations, case law, bibliography and information on the operation of the Conventions in the past years, as well as to suggest topics to be addressed at the SC Meeting. Members and Contracting Parties are encouraged to respond to the questionnaires.
- 45 Upon receiving the responses, the PB will prepare updated drafts of the respective Practical Handbooks on the Operation of the Service and Evidence Conventions. It is envisaged that the draft revised Handbooks are to be reviewed by the SC and submitted to CGAP, leading to the

¹⁶ C&D No 35 of CGAP 2021 (see path indicated in note 1).

¹⁷ 2% of the participants are from the African continent; 25% from Asia Pacific; 36% from Europe; 37% from Latin America and North America.

Error! Reference source not found.

publication of the Fifth Editions of the respective Practical Handbooks on the Operation of the Service and of the Evidence Conventions.

- 46 The draft Agenda of the SC Meeting and other supporting documents will be prepared and circulated in the lead up to the meeting in 2023. The PB will report on the preparation of the SC Meeting at CGAP in 2023.

V. Proposal for CGAP

- 47 Based on the foregoing, the PB proposes the following Conclusions and Decisions:

CGAP welcomed and endorsed the efforts of post-Convention assistance and promotional activities in respect to the transnational litigation instruments.

CGAP endorsed the work plan for the preparation of the next meeting of the Special Commission to consider the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions in the first half of 2023, including the circulation of a questionnaire and the respective revisions of the Practical Handbooks on the Service and Evidence Conventions.

ANNEX

Annex I – Summary of the Responses to the Questionnaire on the 2005 Choice of Court Convention

- 1 At its March 2021 meeting, the Council on General Affairs and Policy (CGAP) endorsed the proposal to dedicate HCCH a|Bridged Edition 2021 to the Convention of 30 June 2005 on *Choice of Court Agreements* (Convention) and, “subject to available resources, the circulation of a brief questionnaire to elicit reasons as to why more States have not become party to the Convention” (Questionnaire).¹
- 2 In line with this mandate, on 27 July 2021, the Permanent Bureau (PB) circulated two Questionnaires on the Convention,² one for Contracting Parties and the other for non-Contracting Parties, with a deadline of 8 October 2021. The information and views provided in States’ responses assisted the PB in defining the key issues to be addressed and discussed at the HCCH a|Bridged Edition 2021, which took place on 1 December 2021.
- 3 A total of 22 HCCH Members, 16 Contracting Parties³ and six non-Contracting Parties⁴ to the Convention, ⁵ responded to the Questionnaires. The responses, including the information and materials provided in support of certain questions, ⁶ are available on the Secure Portal of the HCCH website.
- 4 The PB extends its gratitude to the Members, both Contracting and non-Contracting Parties, for their time and efforts in responding to the Questionnaires.
- 5 This document summarises the findings of (i) the General Section (required) of the two Questionnaires, which raised the same set of questions for both Contracting and non-Contracting Parties (Part I), (ii) Section A (optional) of the Questionnaire for Contracting Parties (Part II), and (iii) Section A (required) and Section B (optional) of the Questionnaire for non-Contracting Parties (Part III).⁷ Please note that, for the purpose of readability, where a question simply requested general information from respondents (such as caselaw, citations of publications), the responses are not included in this summary.

1 See C&D No 35, “Conclusions & Decisions adopted by Council (1 to 5 March 2021)” available on the HCCH website at <www.hcch.net> under “Governance” then “Council on General Affairs and Policy”.

2 Via Focused Circular No 29 of 2021 dated 27 July 2021.

3 Croatia, Czech Republic, European Union, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Mexico, Romania, Singapore, Sweden and the United Kingdom.

4 Argentina, Brazil, the People’s Republic of China, Israel, Switzerland and Viet Nam.

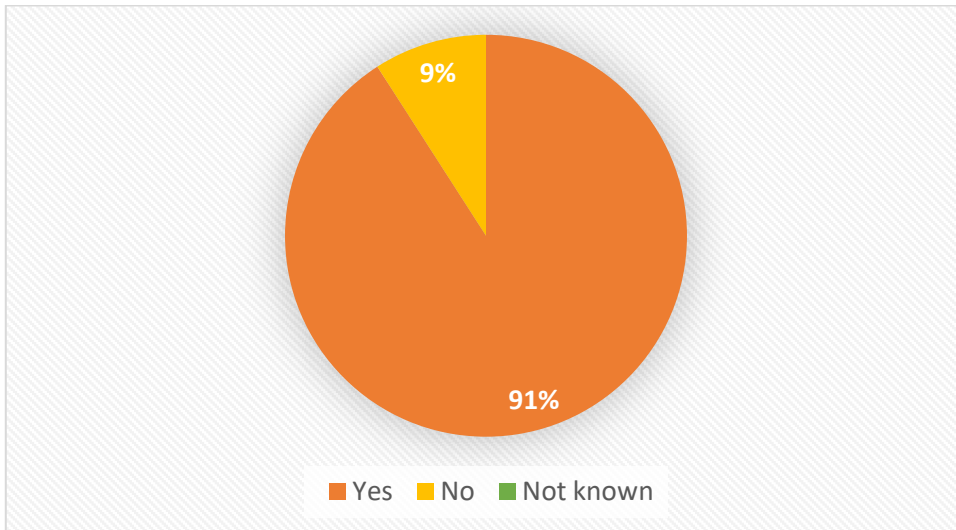
5 For the purposes of the Questionnaire, non-Contracting Parties include States which have signed but not yet ratified or approved the Convention.

6 Recommended books and articles relating to the Convention are available under “[Bibliography](#)” of the HCCH website; cases in relation to the operation of the Convention or referring to the Convention are available under “[Case Law](#)” of the HCCH website.

7 In this summary, pie charts are used to show percentages, whereas bar charts are used to indicate the number of responses for specific options or items, especially where Members can check multiple boxes.

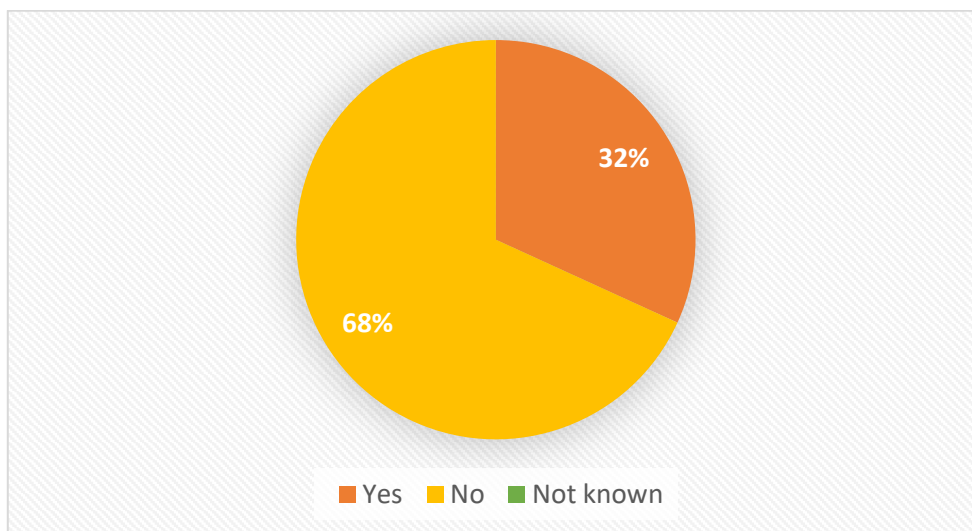
VI. General Section

1. Is your State a party to any bilateral and / or regional agreements / arrangements equivalent to the jurisdictional and recognition and enforcement rules of the Convention. If yes, please specify / enumerate the most important ones:



- 6 For the bilateral and / or regional agreements / arrangements identified by the respondents, please refer to their individual responses available on the Secure Portal of the HCCH website.

3. Has your State established (or intends to establish) international commercial court(s) (or tribunal(s)) or the equivalent:



If yes, please select the features which these courts or tribunals possess (multiple boxes can be checked):

- 7 The most common features of international commercial courts or tribunals, as indicated by the respondents, are their admissibility of foreign expert advice and evidence in languages other than the official one of the State. A few respondents indicated that their courts or tribunals allow appointment of international judges, representation of foreign lawyers, and

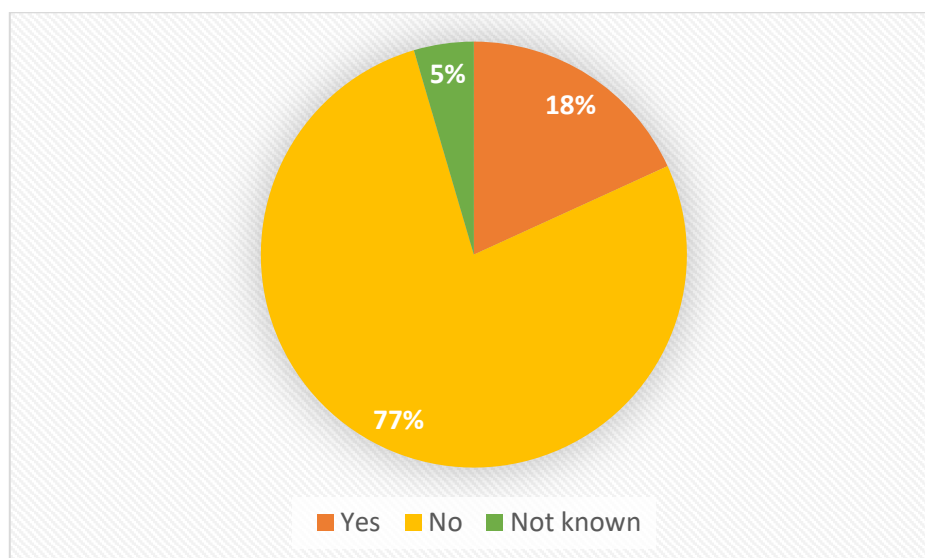
are equipped with advisory council with foreign experts. Court judgments in languages other than the official one of the Stat is also one of the features.

- 8 The respondents indicated that it is uncommon for international commercial courts to conduct their proceedings in a language(s) other than the official language of their State. A number of respondents selected the option “other”, without indicating precise features, when answering this question.

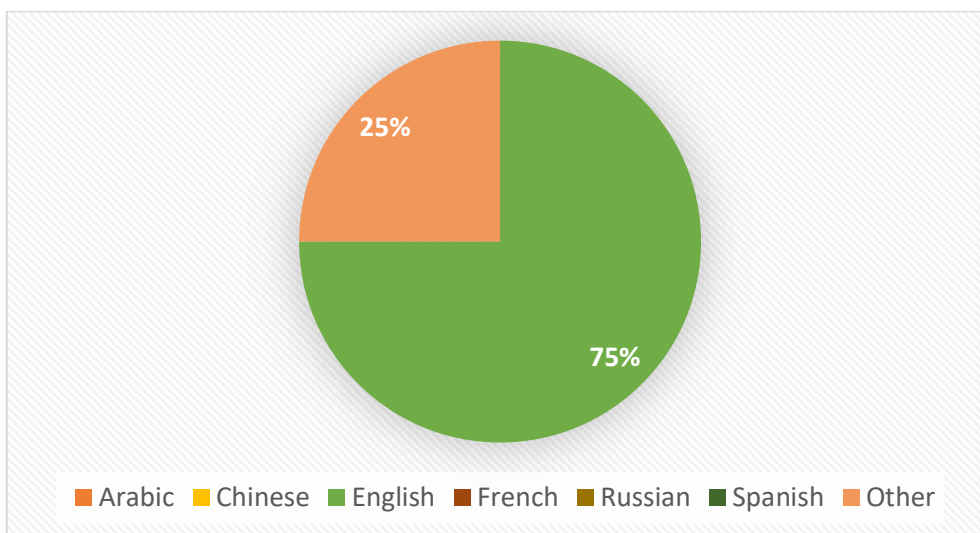
If possible, please specify relevant details (e.g., the date of establishment or intended establishment of the court or tribunal, the appointment procedures for judges and members of any adjacent advisory council(s), the nationalities of judges or experts, the languages used) and attach relevant statutes and procedural rules to this questionnaire:

- 9 Four Contracting Parties, namely France, Germany, Ireland and Singapore, and two non-Contracting Parties, namely the People’s Republic of China and Switzerland, replied to this question (detailed information can be found in their respective replies available on the Secure Portal of the HCCH website).

4. In international cases, do the courts in your State publish decisions and / or executive summaries in a language other than the official one:



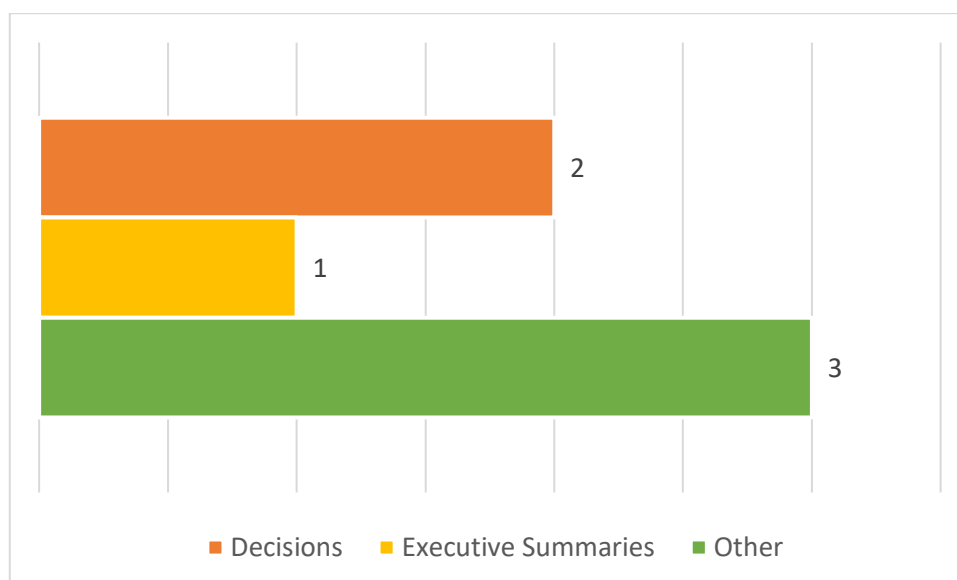
If yes, in which language(s):



If other, please specify:

- 10 The European Union (EU) explained that the Court of Justice (CJEU) publishes most of its judgments, including judgments delivered in preliminary ruling proceedings, in all of the EU Member States languages. The General Court, on the other hand, only publishes some of its judgments in the languages mentioned above (e.g., judgments of the Grand Chamber and of Chambers of five Judges and on a case-by-case basis with other judgments). Where a decision given by one of the courts is not published in all languages, it is typically accessible at least in French and in the original language of the case.⁸

If yes, select any of the following that may apply (multiple boxes can be checked):



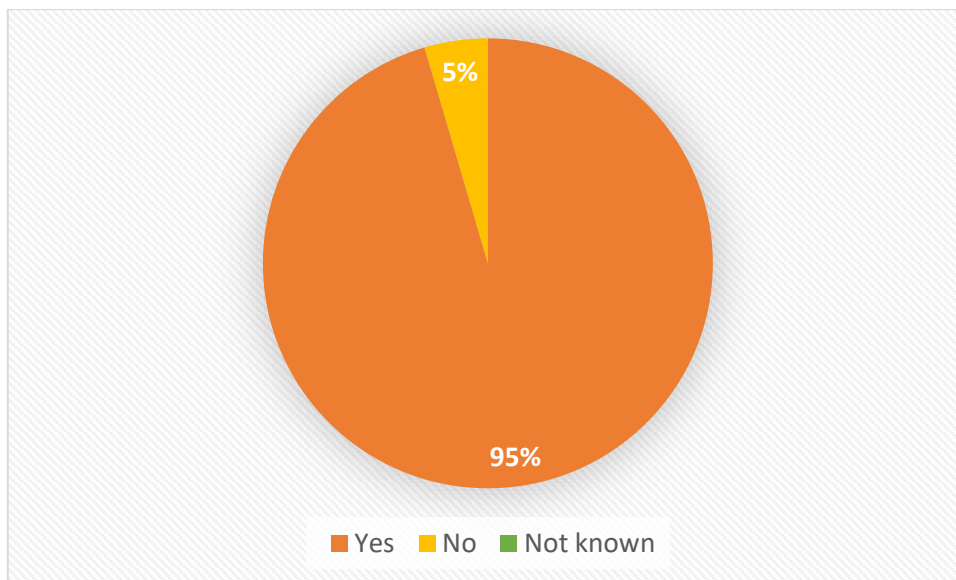
⁸ For details, see Title I, Chapter 8 - Languages - of the Rules of Procedure of the Court of Justice and Title II - Languages - of the Rules of Procedure of the General Court.

If other, please specify:

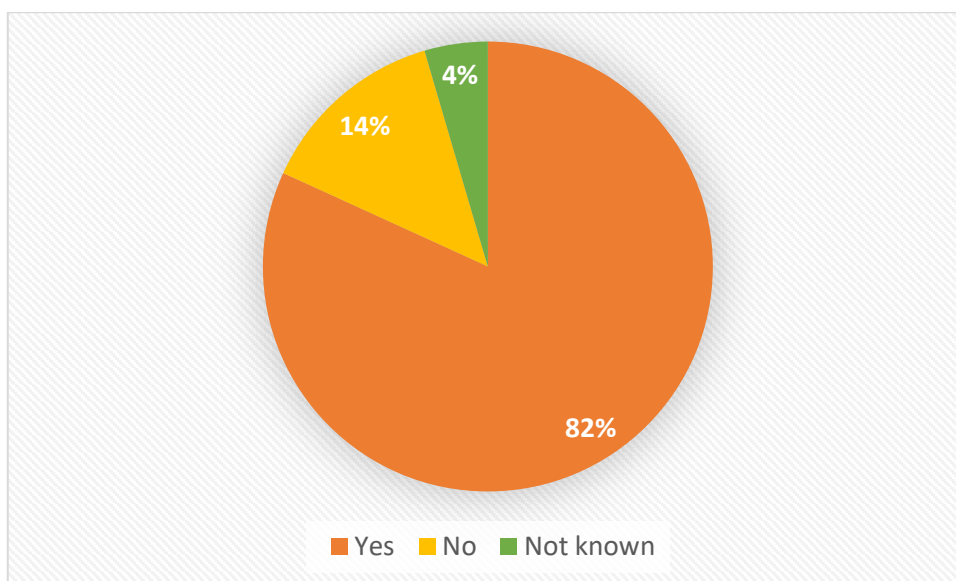
11 It is noted that, in Finland, “[t]he Supreme Court publishes unofficial summaries of some of its precedents in English. The selected precedents usually contain either issues from the standpoint of the law of the European Union or of human rights or other international interests”.

12 The EU further referred to the Opinions of Advocates-General.

5. In international cases, do the courts in your State make public the identity of the acting judge(s):



6. Under your State's national law, is it possible for the parties to challenge the designation of a judge in international civil or commercial cases:



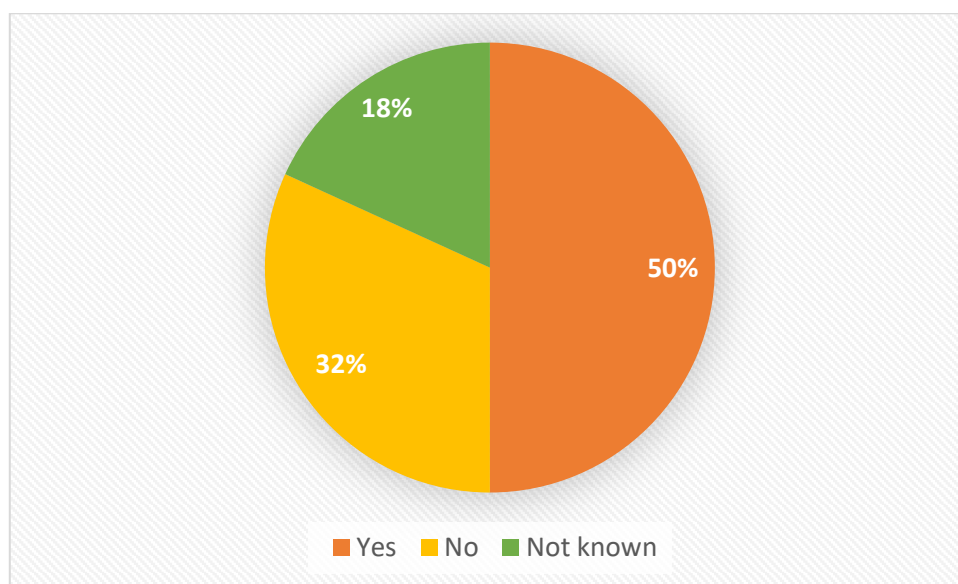
If yes, please specify:

13 Respondents referred in detail to their respective national laws. In general, it is possible for parties to challenge the designation of a judge, be it in an international or domestic case.

Grounds of challenge include the judge’s partiality or bias (e.g., the judge’s personal interests, rights or obligations may be effected by the outcome of the action, or the judge may not be expected to form an objective view of the case), disqualification, friendship, family or other relationship (e.g., agent or employer) with any other parties, and previous involvement in the case (e.g., as a counsel, advocate, witness, expert, or mediator). A time-limit is generally imposed on application for such challenges. Broadly speaking, applications can be made by the parties or judges can recuse themselves on their own volition.

14 Several respondents highlighted that, *procedurally*, a judge is excluded from second instance (appeal), review or retrial of a case.

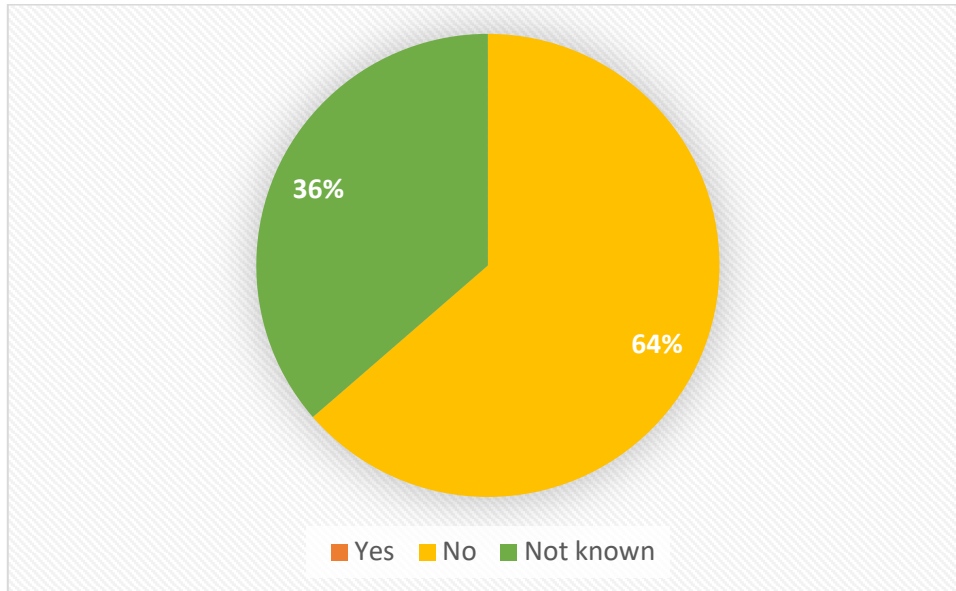
7. Do the courts in your State have rules on mitigation of conflicts of interest in cases involving foreign parties and your State (including a government, a governmental agency or any person acting for your State):



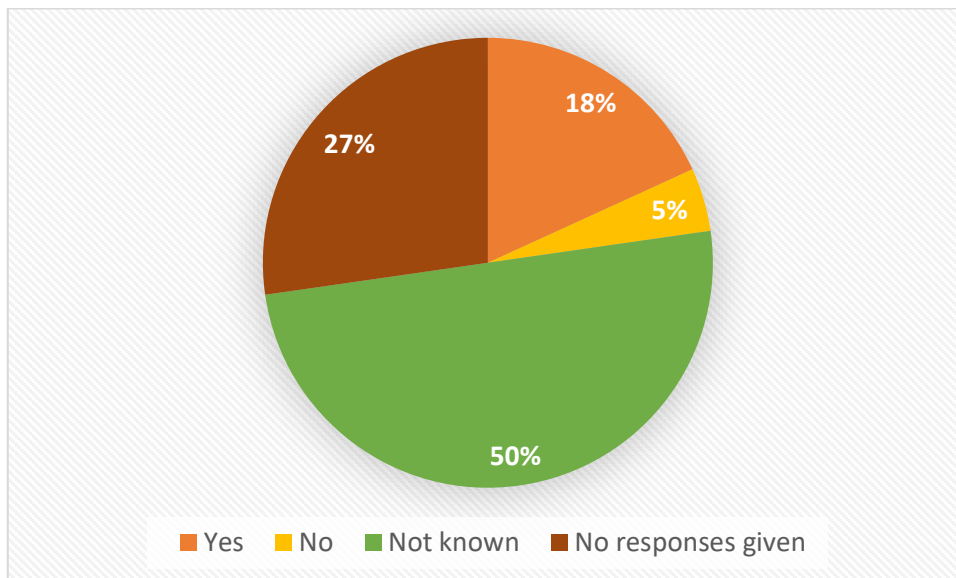
If yes, please specify:

15 Respondents referred in detail to their respective national laws. It is of interest to note that the answers were related to the rules on recusal of judges or judicial conduct of judges, rather than elaborating on rules mitigating conflict of interests between foreign parties and States. A respondent specifically refers to its judicial codes of conduct for judges.

8. Since 2015, have there been any reported cases of judicial corruption in relation to international civil or commercial cases:



9. Would your State agree that nothing in the Convention prevents it from being used to settle contractual disputes between foreign investors and States, under an exclusive choice of court agreement (i.e., disputes not covered by any investment protection agreements or treaties, and / or to be settled under the exhaustion of local remedies rule):



If not, please explain:

16 Several respondents mentioned that the 2005 Choice of Court Convention applies only to civil and commercial matters. Contractual disputes between foreign investors and States may often have a public law character (at least partially), for instance where the State acted within its sovereign powers. Therefore, the nature of the dispute would be a defining element for the assessment of the applicability of the Convention and the Convention would only apply as long as the dispute is on a civil and commercial matter. It was also

highlighted that only the CJEU has the final word on the interpretation of the Convention as far as the EU Member States and Union institutions are concerned.

10. Please attach a copy of any rules or conditions relating to transfer of proceedings to another court within your State:

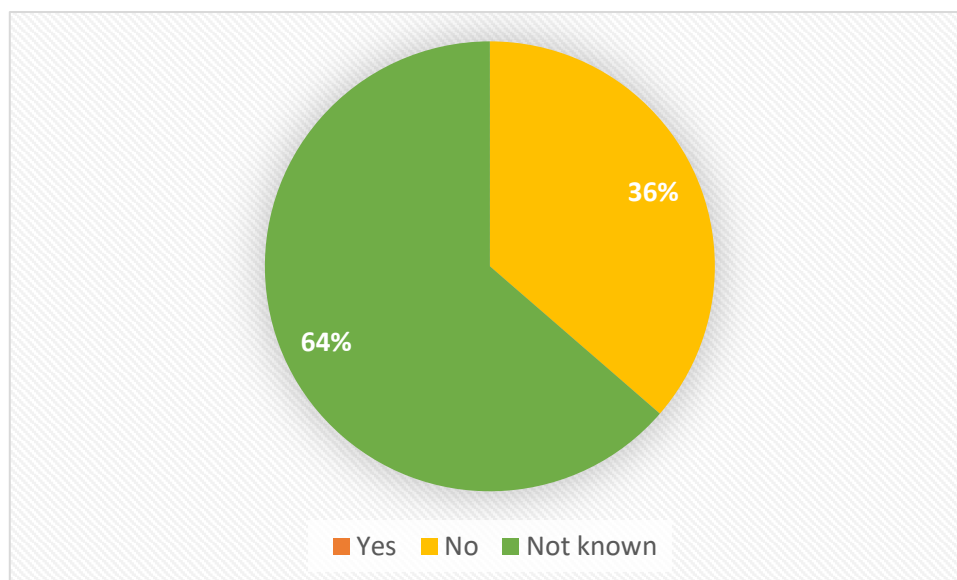
- 17 Respondents referred in detail to their respective national laws. Some of the most common rules or conditions for transfer include situations where (1) the adjudication of the action falls within the competence or jurisdiction of another court, (2) recusal or removal of the judges or their replacement in the same court is impossible, (3) there is *lis pendens* or consolidation of legal actions, (4) while different legal actions are submitted to different judges, since these actions are connected, they can be judged in a single trial. It is observed that these rules or conditions are of general nature and not confined to international cases.
- 18 The EU noted that the Brussels Ia Regulation⁹ does not contain rules on transfer of proceedings to other courts. However, to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, the Brussels Ia Regulation includes an exception to the general *lis pendens* rules in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings. This exception does not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised first. In such cases, the general *lis pendens* rule of this Regulation should apply.
- 19 Therefore, under the Brussels Ia Regulation (Recital 22 and Art. 31(2)), it is possible, where there is an exclusive jurisdiction agreement in favour of the second seised court, that the first seised court stays its proceedings unless and until the chosen court declares that it has no jurisdiction under the agreement.
- 20 Notably, there are no similar provisions in the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention).

⁹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

11. Please attach a copy of your State's domestic law or rules regarding the "registration" / "exequatur" of a judgment for the purpose of recognition and enforcement. Please also share the general timeline for completing such "registration" / "exequatur" procedures:

- 21 Respondents referred in detail to their respective national laws. It is noted that in the intra-EU relations under the Brussels Ia Regulation, exequatur proceedings have been abolished. However, the exequatur procedure is still required under the Lugano Convention. In the absence of any EU-level harmonisation of the recognition and enforcement of third-country judgments, the exequatur procedure may also be required by national law of the Member States for third-country judgments.
- 22 Respondents with common law background generally noted that foreign judgments in civil or commercial matters may be enforced under either statutory registration scheme or at common law. Broadly speaking, finality of judgment by a competent court would be a common condition.
- 23 With respect to the timeline for completing registration / exequatur procedures, no general timeline had been provided by all the other respondents. The EU however remarked that such timeline differs throughout the Union.

12. Would your State consider the HCCH 1931 [*Protocole pour reconnaître à la Cour Permanente de Justice Internationale la compétence d'interpréter les Conventions de La Haye de droit international privé*] to be in force:



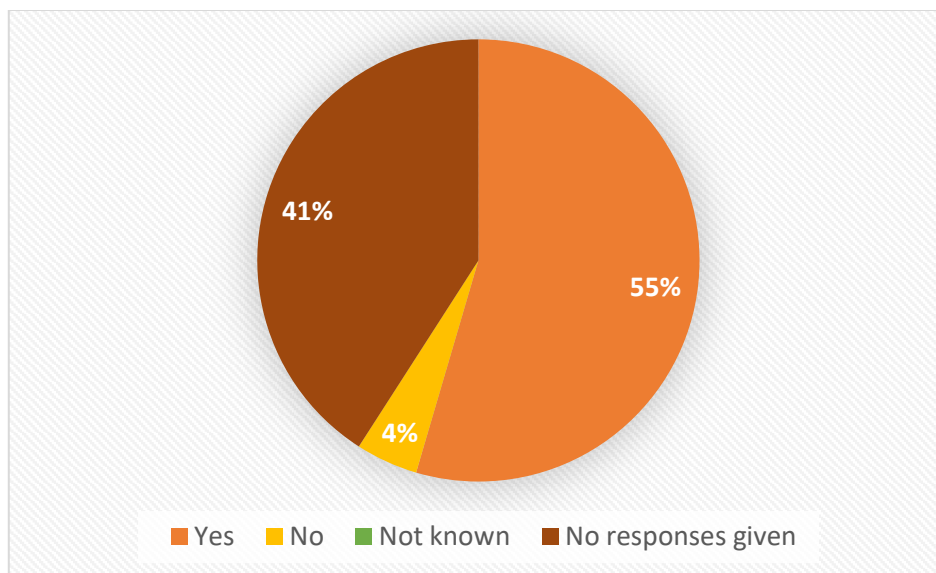
13. Please provide below any suggestions you may have which would assist the PB in encouraging more States to join the Convention (e.g., assistance in drafting policy briefs; organisation of judicial roundtables, seminars or conferences; preparation of case law digests):

- 24 The vast majority of respondents agreed with the examples given in the question. It was suggested to offer such activities to different stakeholders, such as to students by the inclusion of the Convention in the academic programmes of universities, to judges or practitioners by special courses organised by the HCCH or National Organs. It was also

suggested that contests or research assignments be organised to discuss the merits of the Convention but with a link to other substantive fields, such as Intellectual Property.

- 25 Several respondents mentioned the importance of raising awareness on the Convention and sharing good practices on its application by, for example, organising seminars / conferences on the benefits of the Convention, and providing assistance in drafting implementing legislation.

14. Would your State support the establishment of an online database of case law relevant to the application of the Convention:



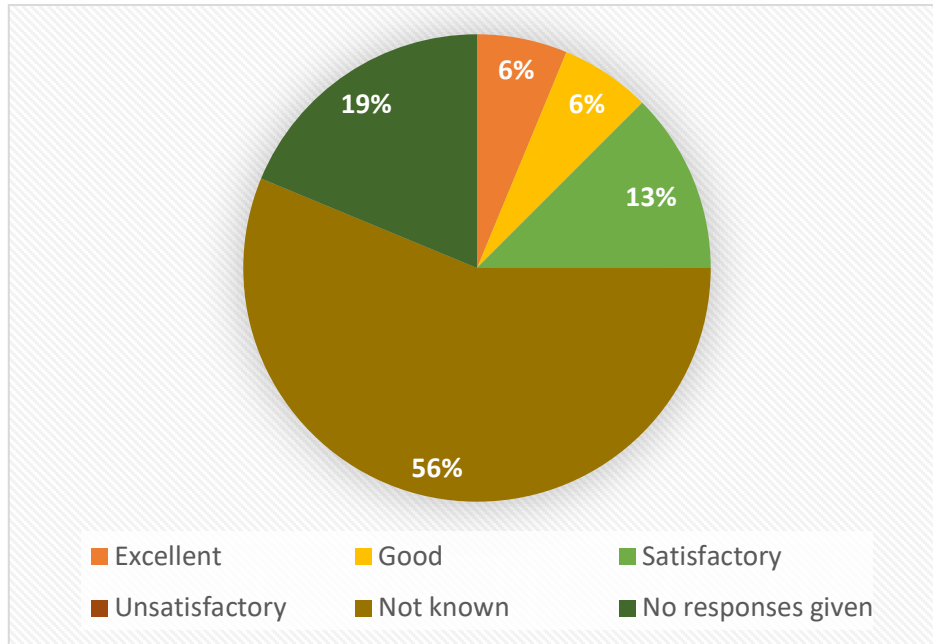
15. Are there any specific topics or practical issues that your State would like to be addressed at the HCCH a|Bridged Edition 2021:

- 26 In response to this question, certain non-Contracting Parties suggested the following topics or issues:

- the relationship between the Convention and the 2019 Judgments Convention;
- preparation of a valid choice of court agreement and model choice of court agreement (or clauses) in a contract;
- choice of court clauses and cross-border online commerce and activity. Israel, for example, stated that “[i]n some cases, such clauses are not limited to consumer transactions so the Convention might arguably apply. This could be controversial as there could be significant bargaining power gaps between the disputing parties. It could be interesting to share experiences, case law and best practices between member and non-member states to the Convention”.

VII. Contracting Parties

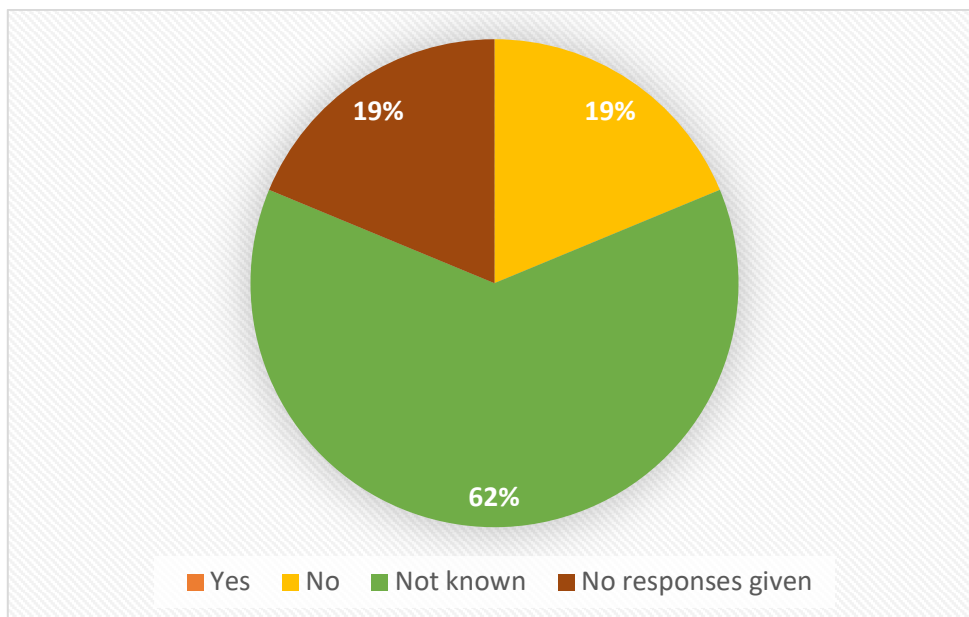
16. How is the general operation of the Convention rated in your State:



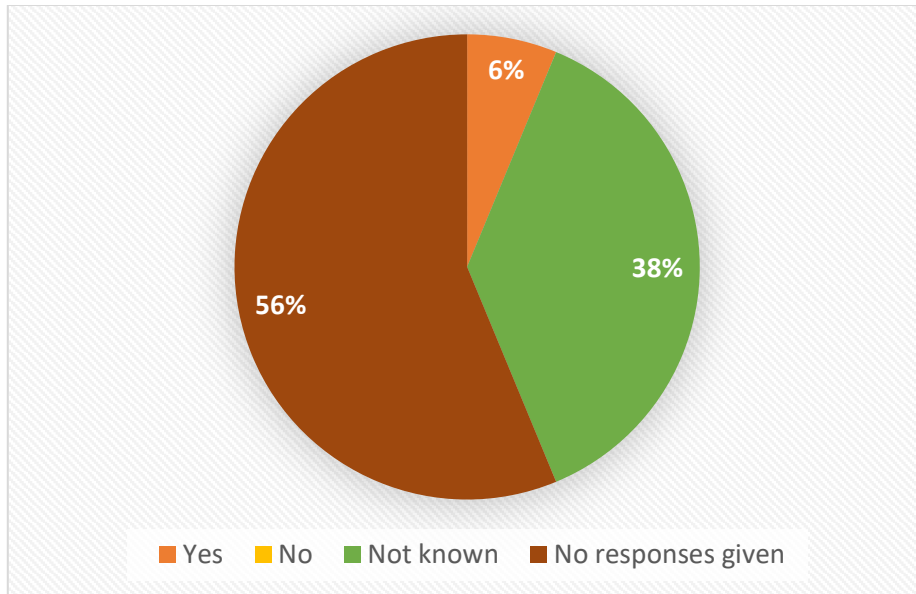
Additional comments, if any:

27 Several respondents stated that it is too premature to assess the operation of the Convention given the relatively short period of time since the Convention's entry into force.

18. Have the courts in your State encountered difficulties in the application or interpretation of the Convention:

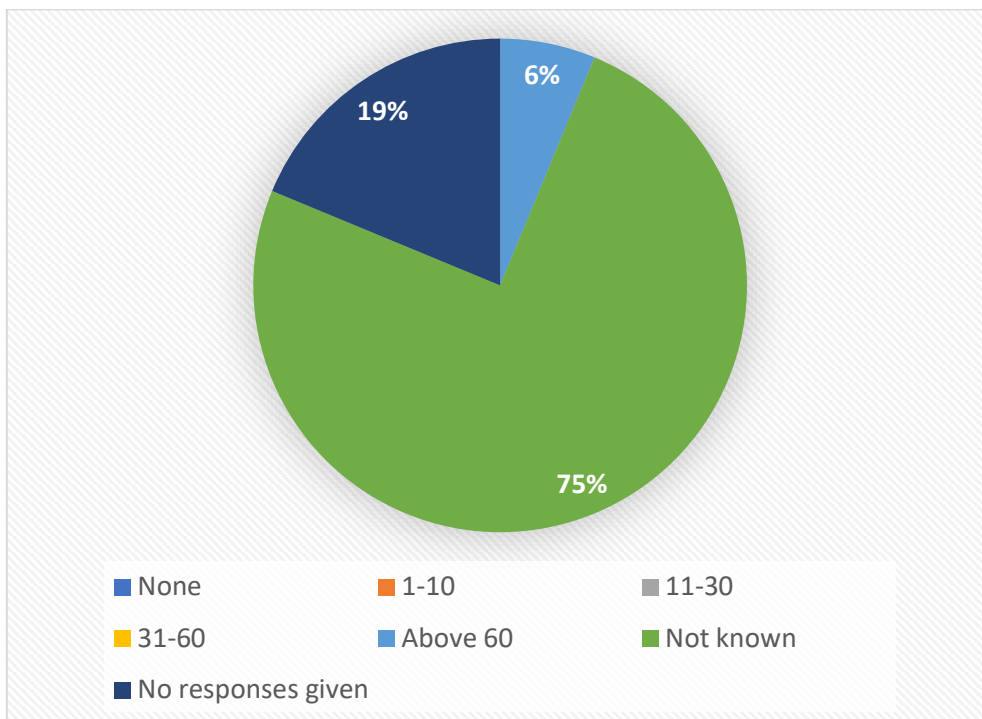


19. Would your State agree with the view that finding a choice of court agreement “null and void” as outlined in Articles 5(1) and 6(a) extends to issues of formation and consent (see reference in the Explanatory Report on the Convention, paras 94, 110-114, 125, 126 and 149):



28 A few respondents stated that the CJEU has the final word on the interpretation of the Convention, as far as EU Member States and Union institutions are concerned.

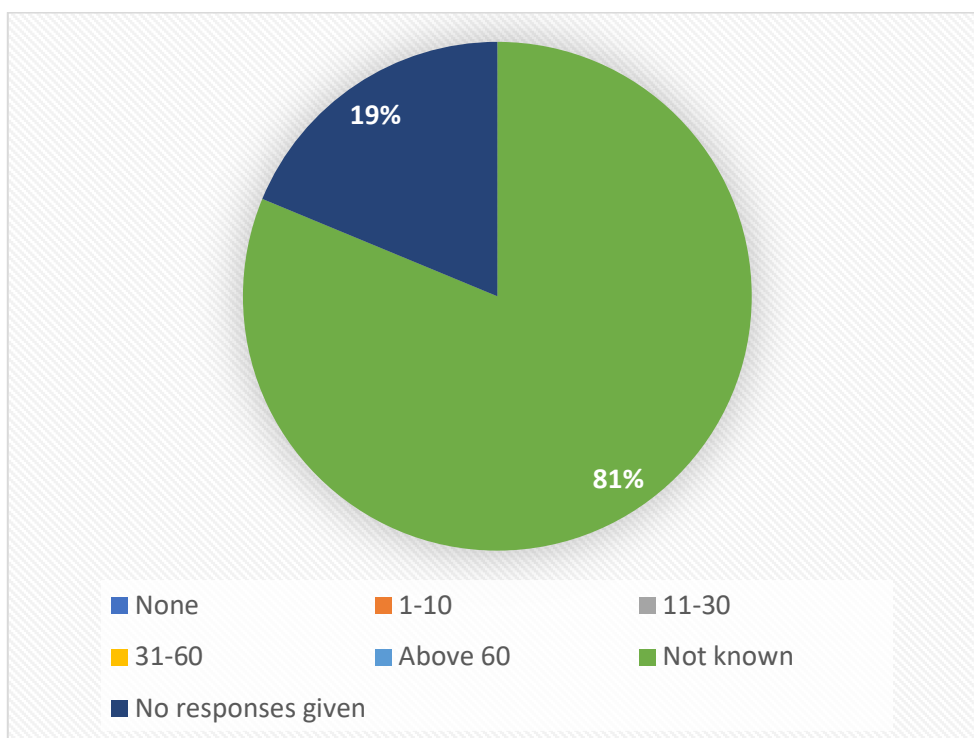
20. In the last five years, in how many cases of a civil or commercial nature and involving foreign parties has your State (including a government, a governmental agency or any person acting for your State) been involved:



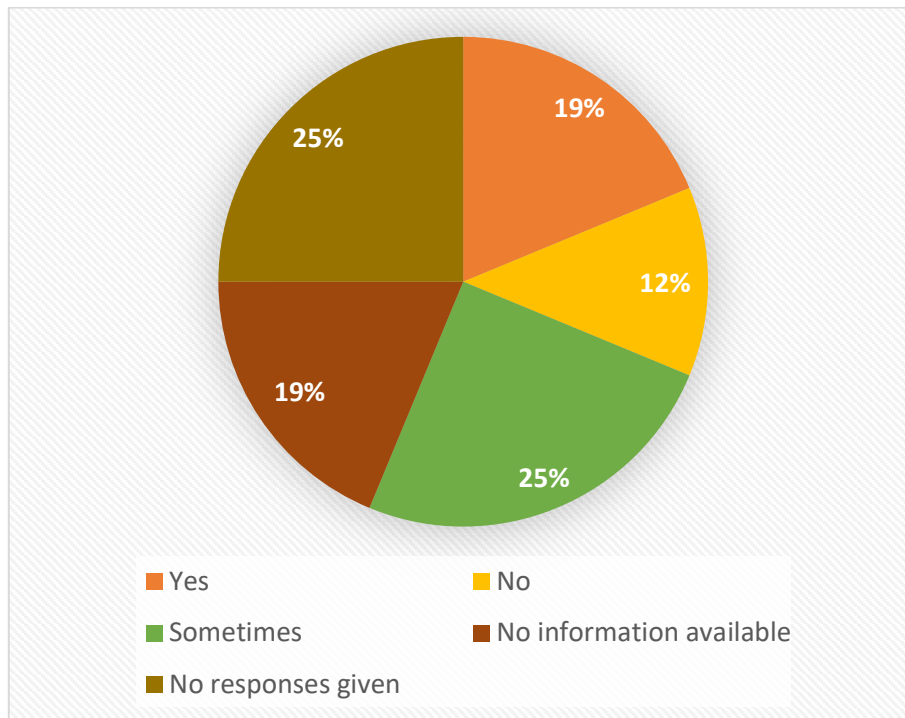
What were the subject matters of the cases:

- 29 Certain respondents answered that, in the EU, in the absence of a specific choice-of-court agreement in a contract concluded by or on behalf of the Union, the Union institutions may be involved in proceedings before the national courts pursuant to Article 274 TFEU. The overall number of such cases, where the Union institutions or its personnel and foreign parties were involved, is not known.
- 30 With regard to actions brought before the General Court of the EU pursuant to Article 272 TFEU in situations where a choice-of-court agreement to the benefit of the Union courts was concluded by or on behalf of the Union, responses showed that if a clause included in the contract confers the exclusive right on the CJEU to hear and determine disputes concerning a contract, courts in EU Member States must decline jurisdiction. As mentioned above, such choice-of-court clauses are included not only in numerous rental or insurance agreements or agreements for the purchase of movable or immovable property, but are also used to directly implement some of the EU policies (grant agreements, subsidies and aids, development assistance, etc.). The number of cases decided under choice-of-court agreements pursuant to Article 272 TFEU is increasing. It is estimated that the General Court dealt with over 80 cases concerning said Article in the last five years. However, it should be highlighted that the actions under Article 272 TFEU cover not only contracts governed by private law but also contracts governed by public law. Most of these contracts are also concluded with parties resident in the EU rather than parties from third countries.

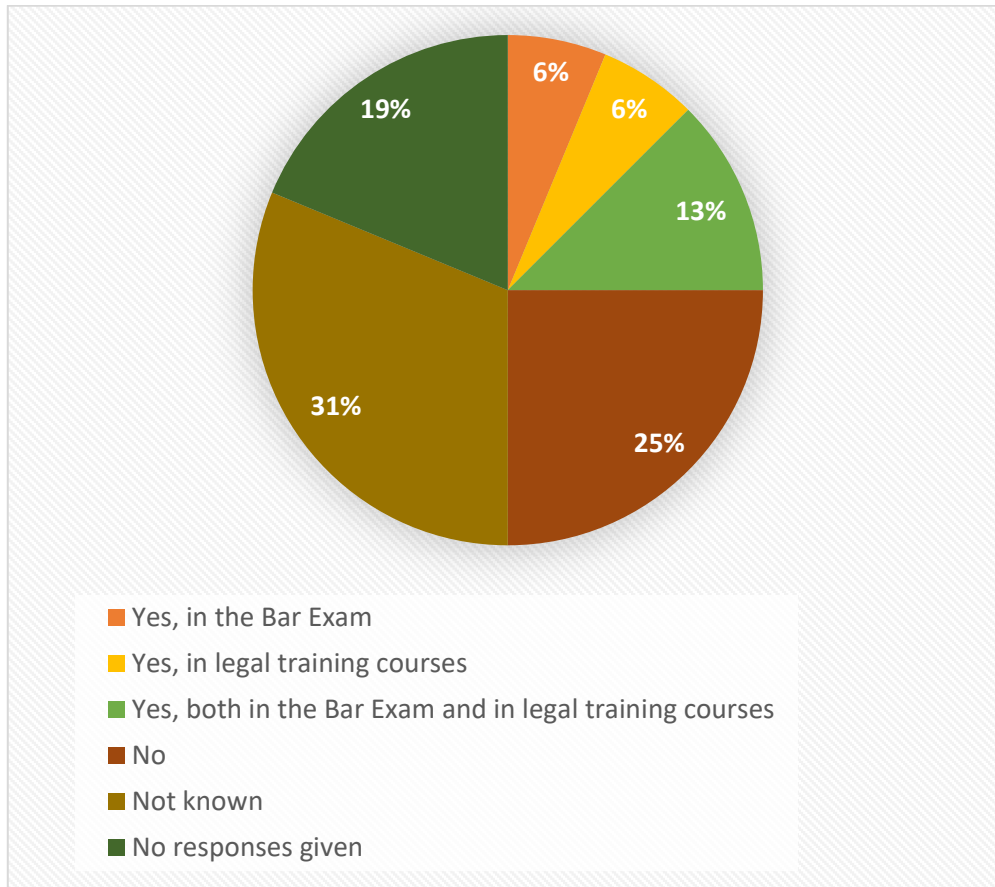
21. In how many of those cases was there an exclusive choice of court agreement:



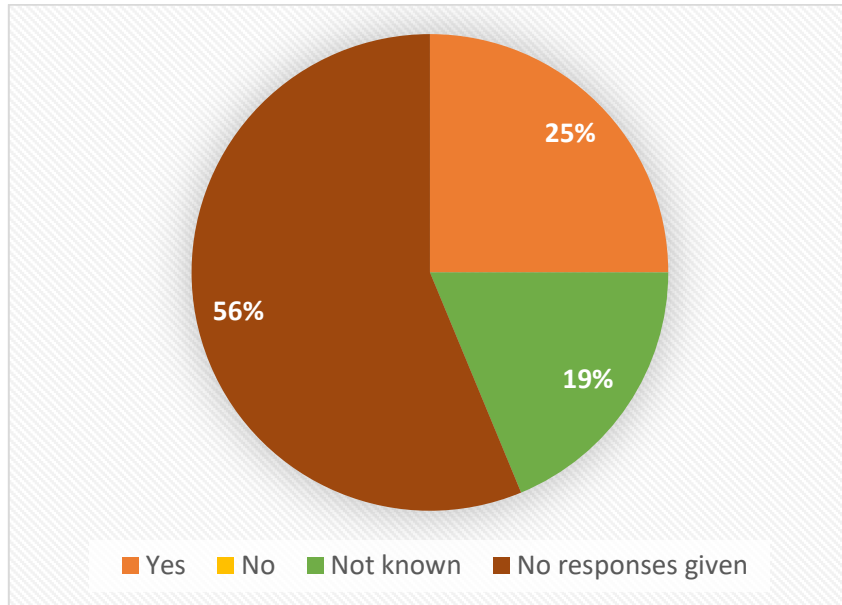
22. Is the Convention included in the curricula of judicial training or equivalent professional development schemes for judges in your State:



23. In the Bar Exam or in legal training courses for lawyers, solicitors or barristers, are the participants required to demonstrate knowledge about the Convention:



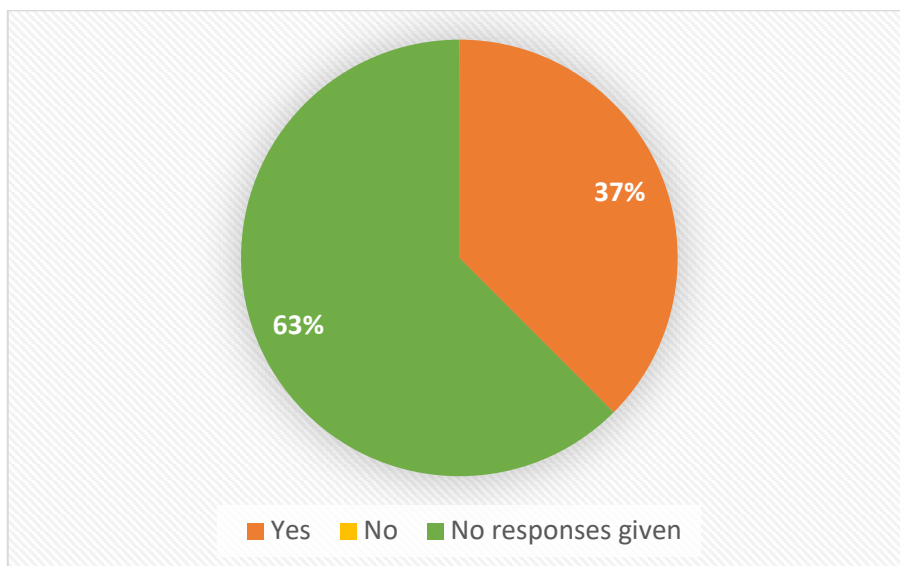
24. Would your State support efforts by the PB, in cooperation with institutions representing legal operators and businesses, to develop model dispute clause(s) for the application of the Convention: If yes, please specify any particular preferences:



31 While considering that such ready-to-use model dispute clause(s) could potentially facilitate international business dealings, several respondents suggested that the PB first examine whether there is a real need for such model dispute clauses(s) in practice, in particular, because choice-of-court clauses are rather commonplace in international business dealings; the Convention leaves the conditions for the possible nullity of the choice-of-court clauses to national law (Art. 5), and the formal requirements for such clauses under Article 3 of the Convention are rather minimal.

32 They also recalled that such efforts should not require significant resources from the PB.

25. Would your State support the creation of a country profile to be published on the HCCH website:



If yes, please specify any particular information to be included (multiple boxes can be checked):



If other, please specify:

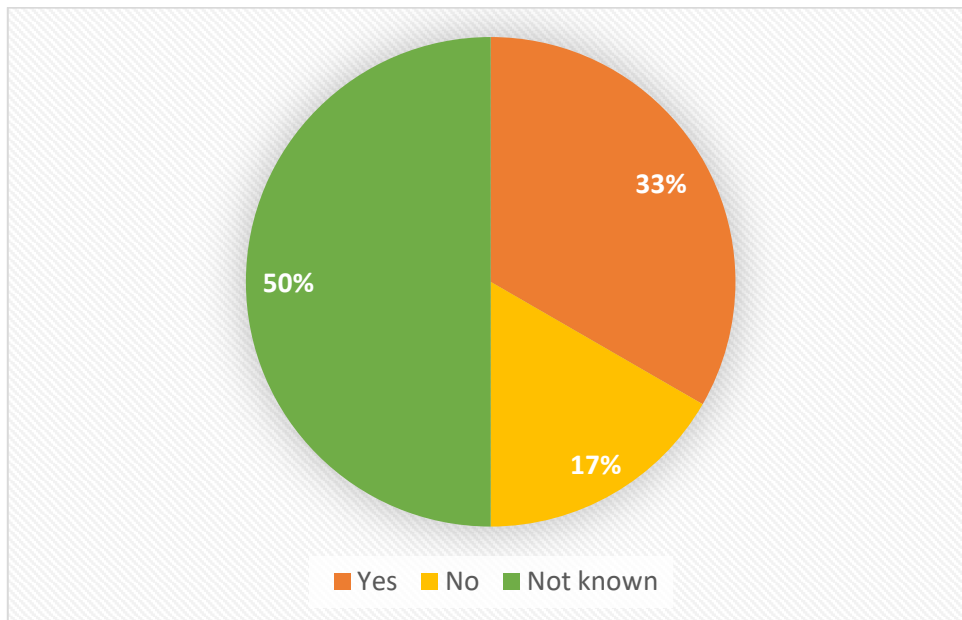
33 Several respondents stressed that any future work on the creation of country profiles should not require significant resources from the PB and the HCCH Members, or at the expense of other projects currently being developed under the umbrella of the HCCH.

34 However, should such country profiles be considered, the respondents indicated that they should be tailor-made for the purposes of the Choice of Court Convention in order to

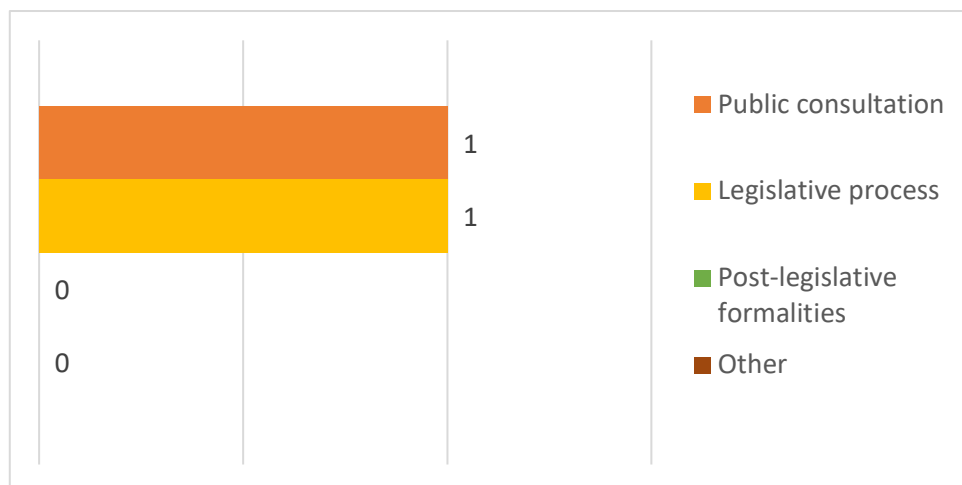
ensure added value and should include information strictly relevant for the purposes of the Convention (for instance, indicating which courts are competent to deal with exequatur proceedings or indicating the possible time-limits for the recognition and enforcement of judgments, or indicating the circumstances under which the choice-of-court agreements would be considered null and void under the law of each Contracting State in the context of Art. 5).

VIII. Non-Contracting Parties

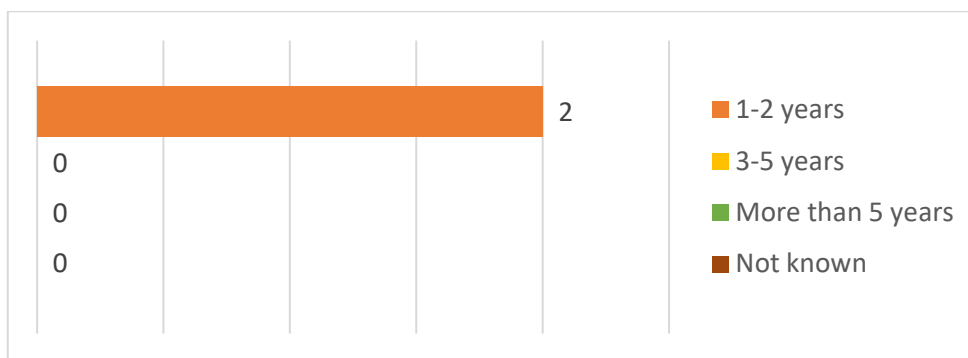
16. Does your State plan to become a Contracting Party to the Convention over the coming five years:



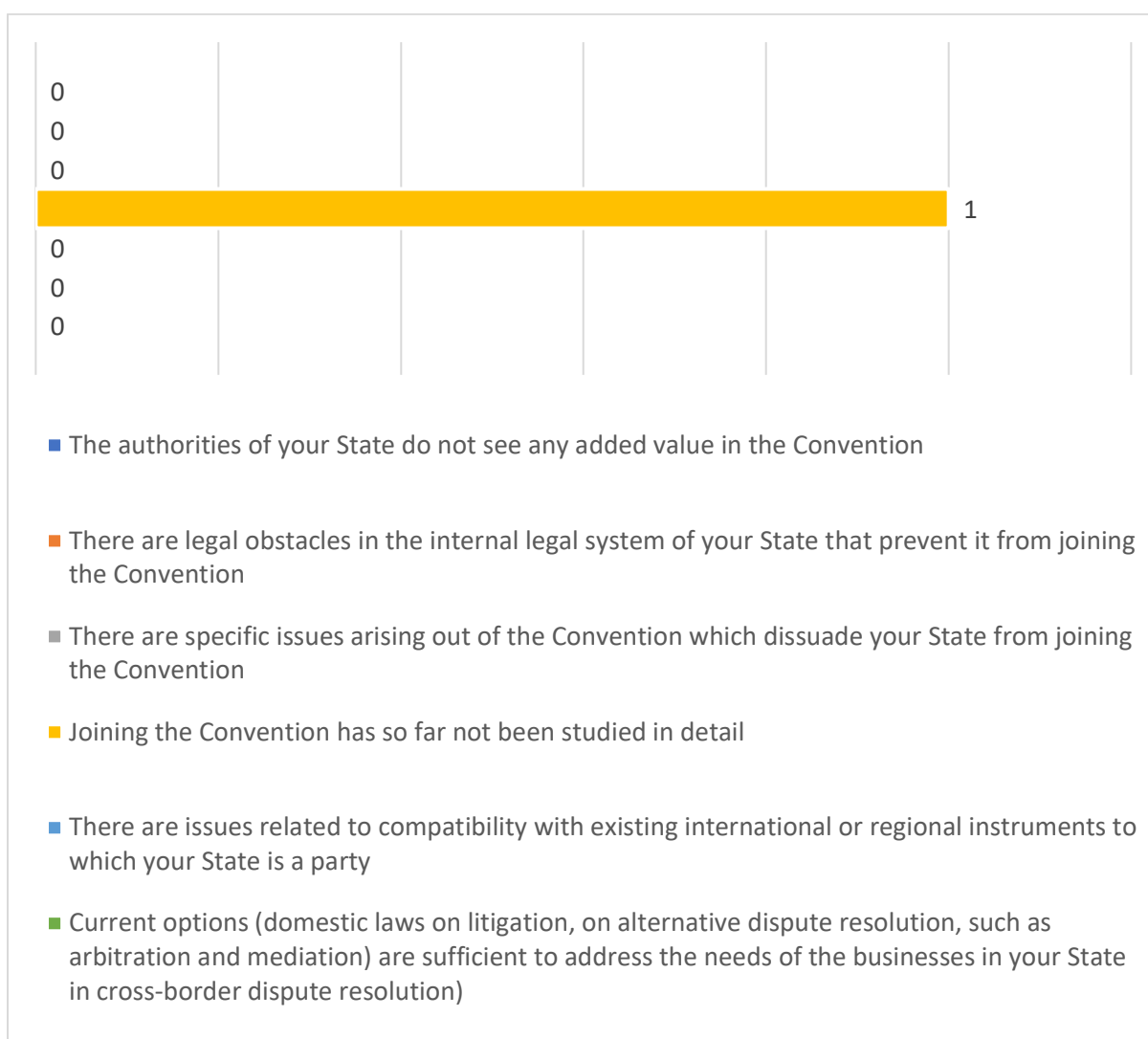
At what stage of the process of joining the Convention is your State:



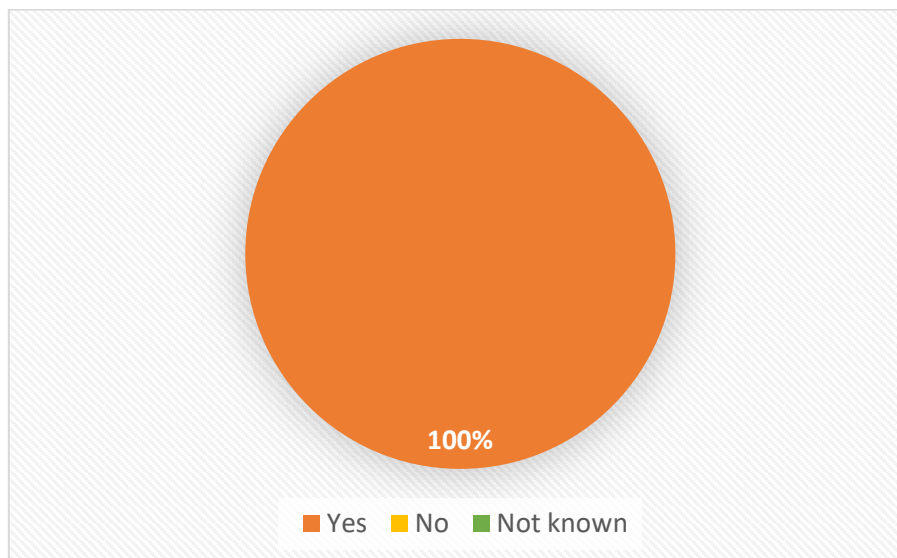
What is expected timeline to complete the process:



Are any of the following considerations relevant for your State in deciding whether or not to join the Convention (multiple boxes can be checked):

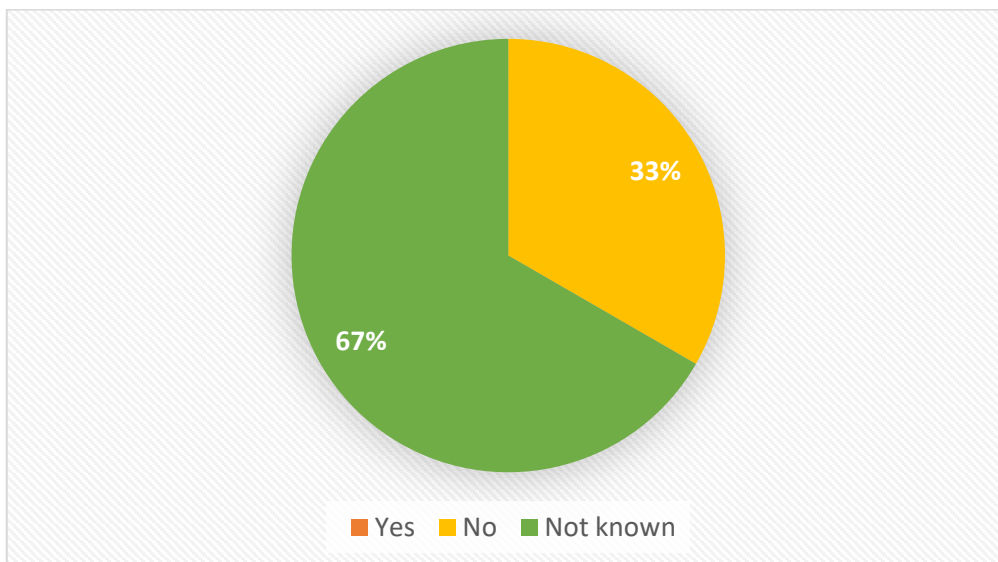


17. Do the courts of your State generally give effect to exclusive choice of court agreements:

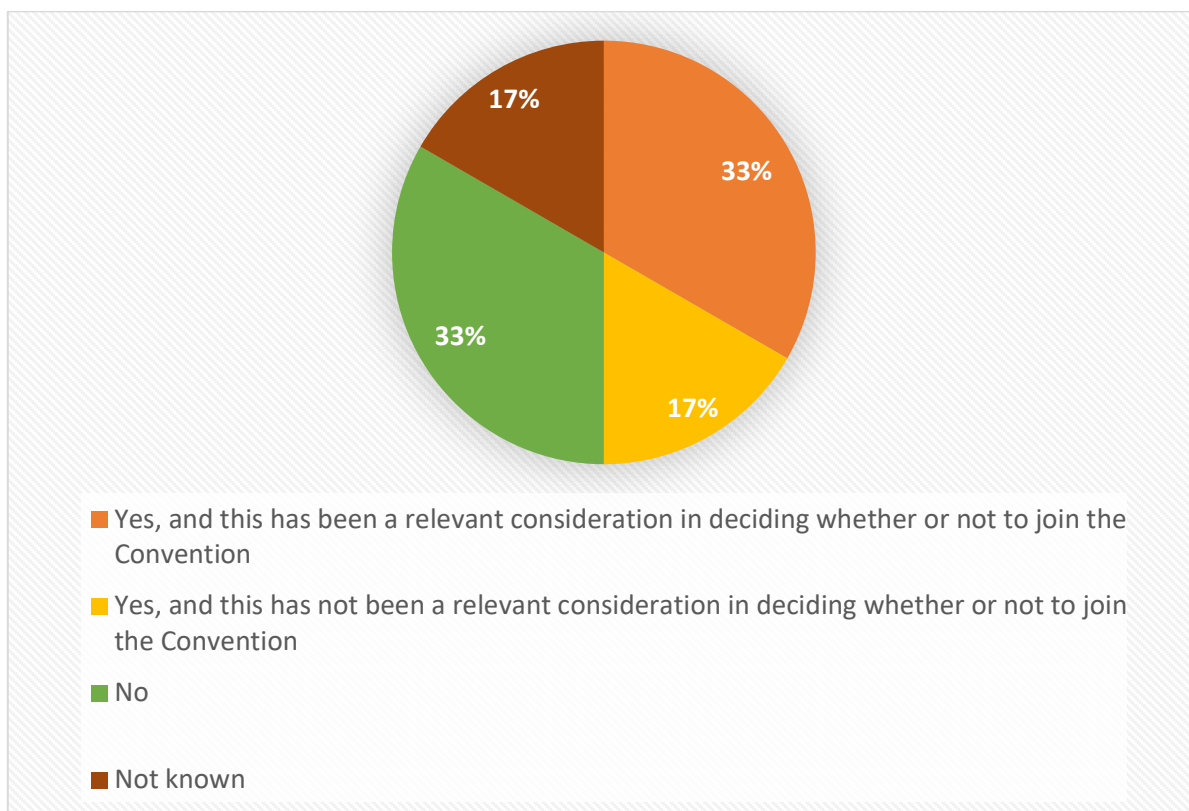


- 35 In the response from the People’s Republic of China, “[according to] Civil Procedure Law of the People’s Republic of China Article 34[,] Parties to a dispute over a contract or any other right or interest in property may, by a written agreement, choose a people’s court at the place of domicile of the defendant, at the place where the contract is performed or signed, at the place of domicile of the plaintiff, at the place where the subject matter is located or at any other place actually connected to the dispute to adjudicate the dispute, but the provisions of this Law regarding hierarchical jurisdiction and exclusive jurisdiction shall not be violated”.
- 36 In the response from Viet Nam, “Vietnamese laws allow parties to choose a foreign court to settle their disputes in some foreign-related civil cases: e.g.,[,] contractual disputes in maritime issues. In these circumstances, the Vietnamese court has to refuse to accept the case in accordance with Article 472(1)(a) Civil Procedure Code [(CPC)]. Moreover, Article 470(1)(c) CPC provides for the exclusive jurisdiction of Vietnamese court:
 ‘Another civil case which the parties are entitled to select the Vietnamese court to settle in accordance with Vietnamese law or a treaty to which the Socialist Republic of Vietnam is a contracting party and they agree to select the Vietnamese court to settle’.”
- 37 In the response from Israel, “[t]he courts of Israel generally give effect to exclusive choice of court agreements. Pursuant to Section 7(a) of the Civil Procedure Regulations, 5779-2018, local jurisdiction is determined in accordance with a choice of court agreement, if there is one. However, the court may choose to exercise or decline jurisdiction contrary to a choice of court agreement under certain special circumstances, in accordance with the arguments raised by the parties, as set out in case law. These include cases in which there is a substantial fear of a lack of a fair trial or injustice in the chosen court (PCA 165/60 *Moshe v. Union* (18/3/1963)). A choice of court agreement might also be disregarded if it is part of a standard form contract and is found by the court to be an unfair contract term (PCA 5860/16 *Facebook v. Ben Hamo* (31/5/2018))”.

18. Is the subject matter of the Convention a relevant reason for your State in not joining the Convention:



19. Does the domestic law of your State require a sufficient connection between the parties / the dispute and your State when parties select your State's courts in a choice of court agreement:



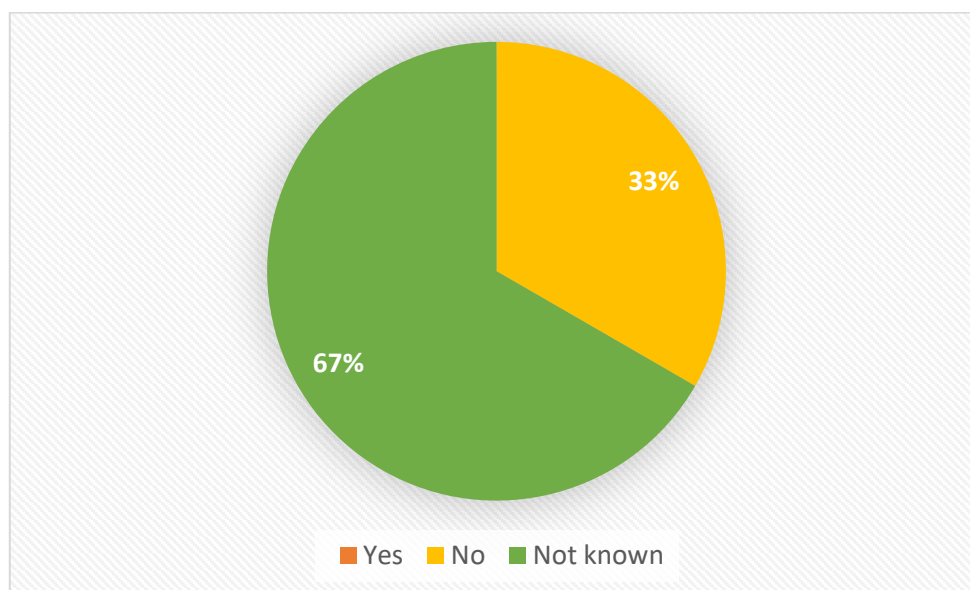
If yes, please specify the rules and how these rules are applied in practice:

38 According to the response from the People's Republic of China: pursuant to Article 34 of Civil Procedure Law of the People's Republic of China, parties may choose the court by a written agreement which is at the place of domicile of the defendant, at the place where

the contract is performed or signed, at the place of domicile of the plaintiff, at the place where the subject matter is located or at any other place actually connected to the dispute. However, the “actual connection” is interpreted liberally in Chinese judicial practice, not equivalent to “sufficient connection”.¹⁰

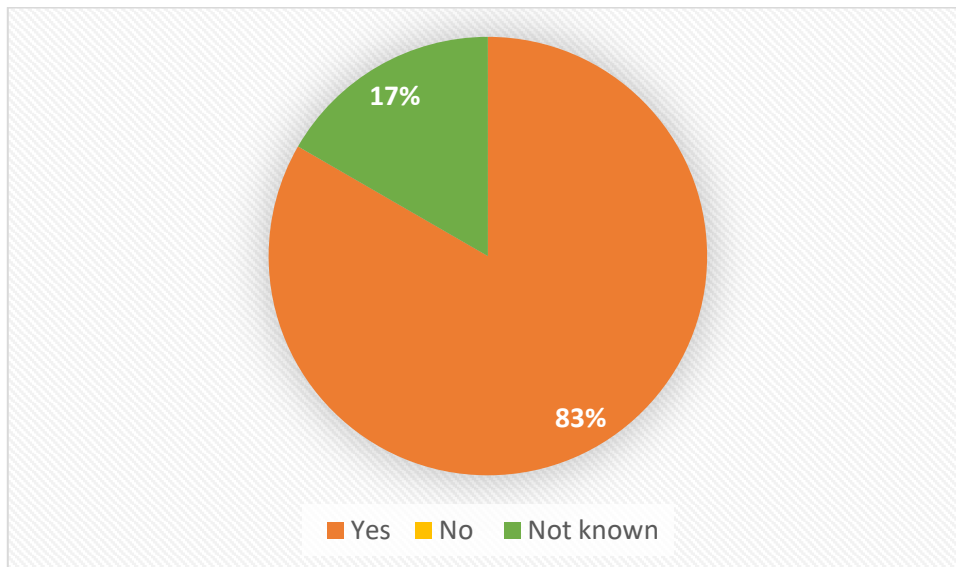
- 39 In the response from Viet Nam: CPC has no provision specifically requiring the connection between the parties / the dispute and Viet Nam when selecting a Vietnamese court in a choice of court agreement. However, Article 469 CPC provides for general jurisdiction of Vietnamese court which sets the requirement that the dispute must have some relations to Viet Nam (defendant’s habitual residence, defendant’s property, subject matter is a property or a work in Viet Nam, the dispute affecting the rights and obligations of persons in Viet Nam...). Hence, a majority of practitioners and judges share the same view that the Vietnamese court may refuse to accept the case even when a choice of court agreement selecting the Vietnamese court exists. The problem is that after the Vietnamese court is chosen, the jurisdiction becomes exclusive, and the Vietnamese court will not deny its exclusive jurisdiction (Art. 470(1)(c) CPC). The controversy should be eliminated, especially when Viet Nam decides to accede to the Convention.
- 40 The response from Israel stated that courts in Israel can acquire jurisdiction according to process of service performed outside the State, which can be based on a choice of court agreement between the parties pursuant to Section 166(1) of the Civil Procedure Regulations, 2018. Nevertheless, the court may decline jurisdiction if it deems itself not to be the proper forum for proceedings, in accordance with the *forum non conveniens* doctrine. The court may take into consideration the connection between the parties and the dispute to Israel.

20. Are there any cases in your State which refused to recognise or enforce a foreign judgment in which the court’s jurisdiction was based on an exclusive choice of court agreement:

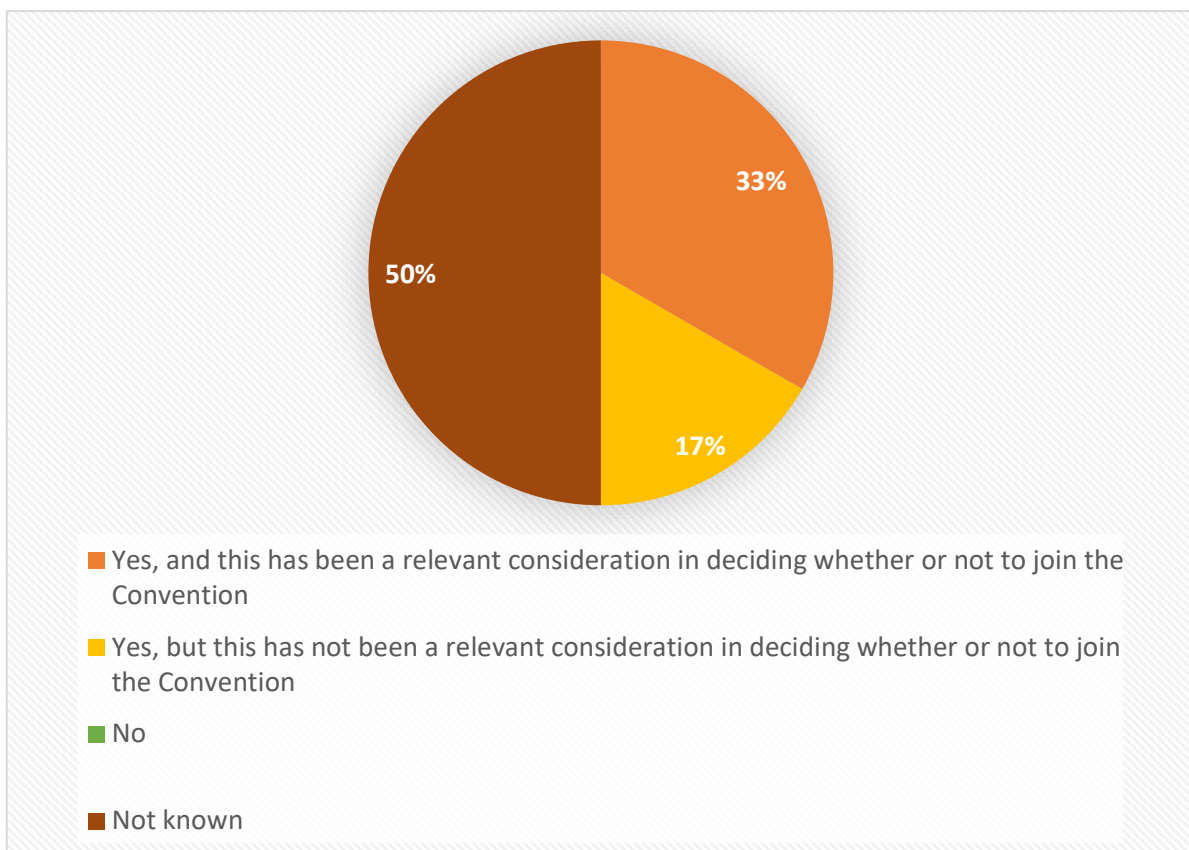


¹⁰ People’s Republic of China.

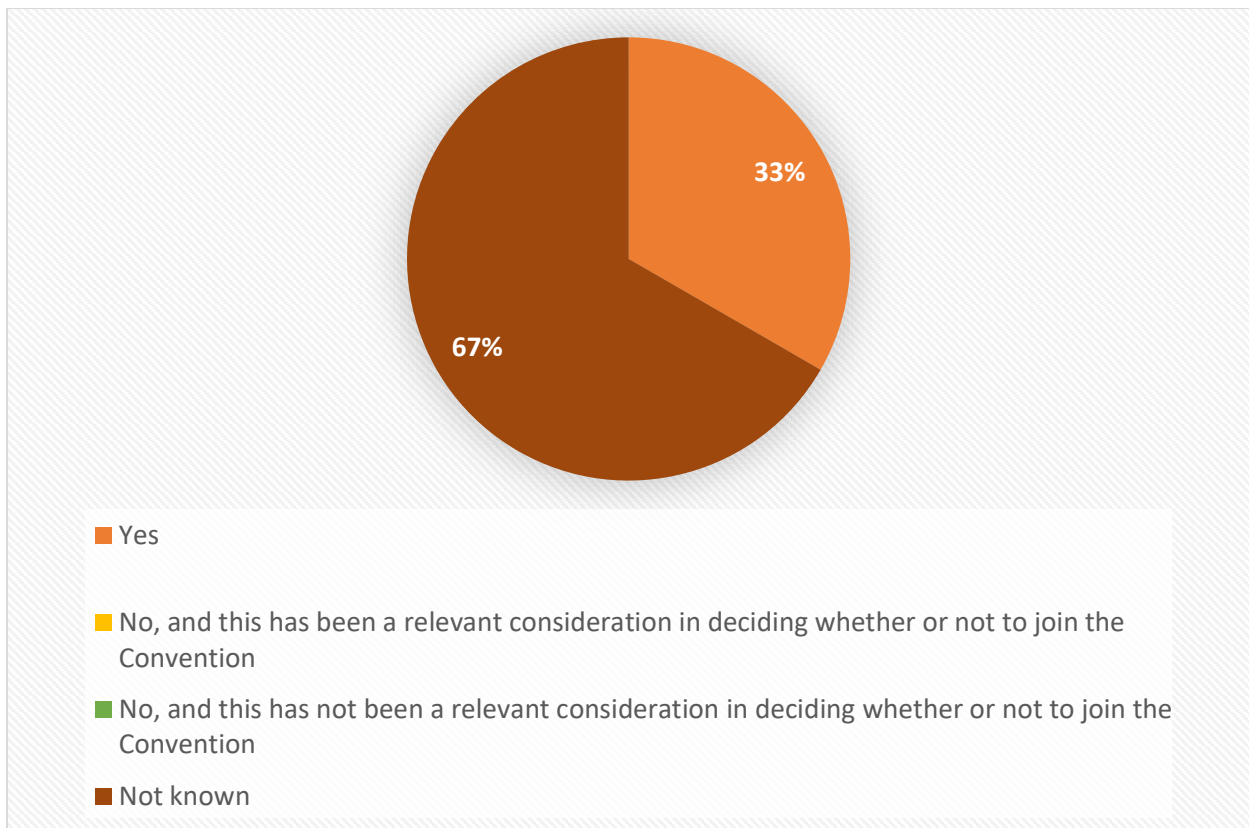
21. Do the grounds for refusal provided in the Convention align with your State's domestic rules for recognition and enforcement of foreign judgments:



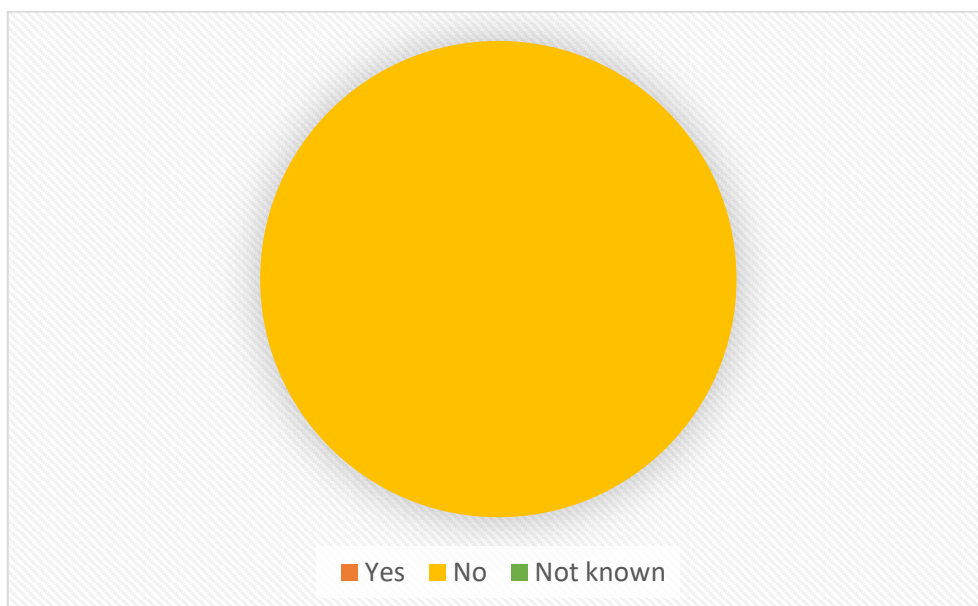
22. Would your State be concerned about enforcing a judgment for exemplary or punitive damages:



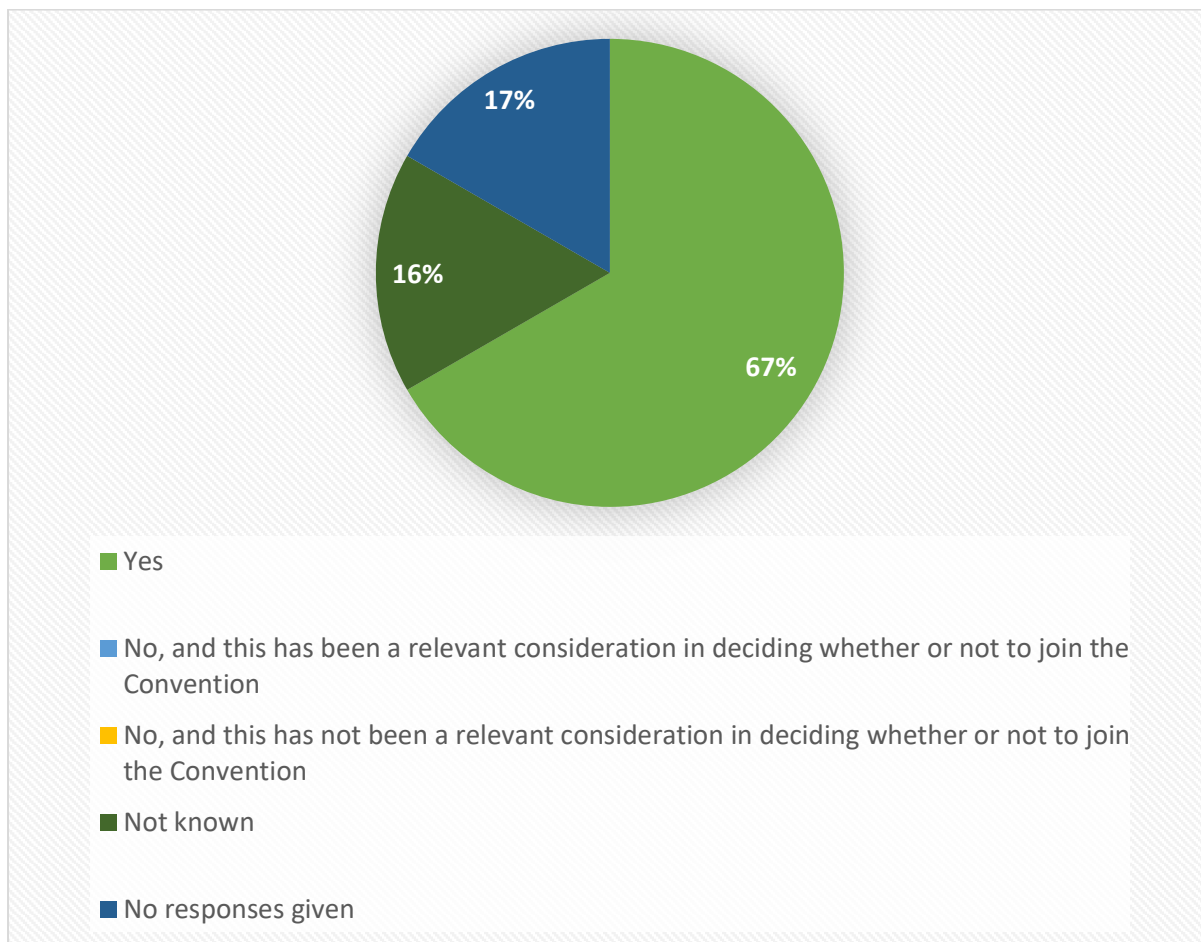
23. Is your State satisfied that the appropriate court to determine the existence, validity or scope of a choice of court agreement is the court putatively chosen in the agreement (see reference in the Explanatory Report on the Convention, paras 94, 125, 126 and 149):



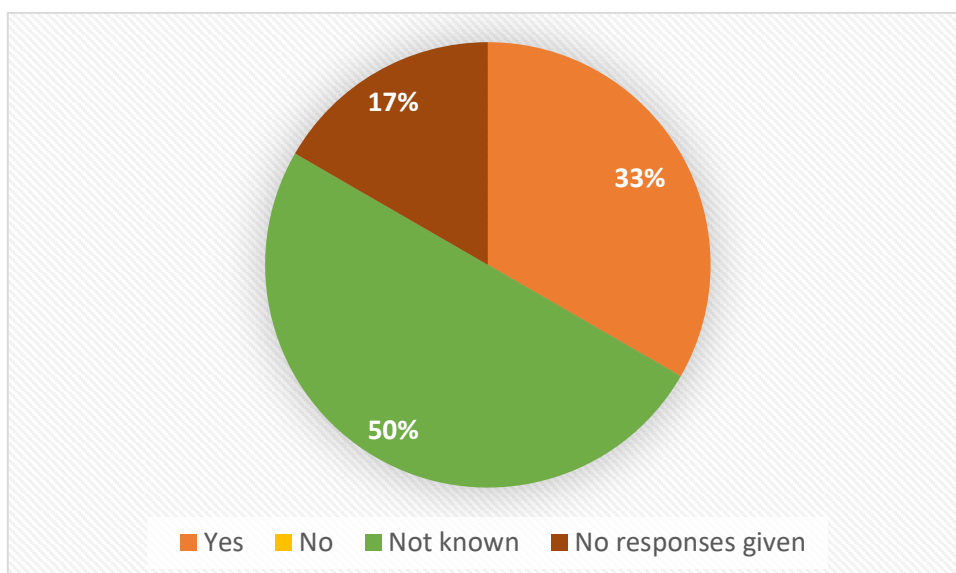
24. Has your State faced, or is likely to face, challenges with joining the Convention due to the non-unified legal system of your State:



25. As a matter of your State’s domestic law, is there a general presumption that a choice of court agreement is exclusive:

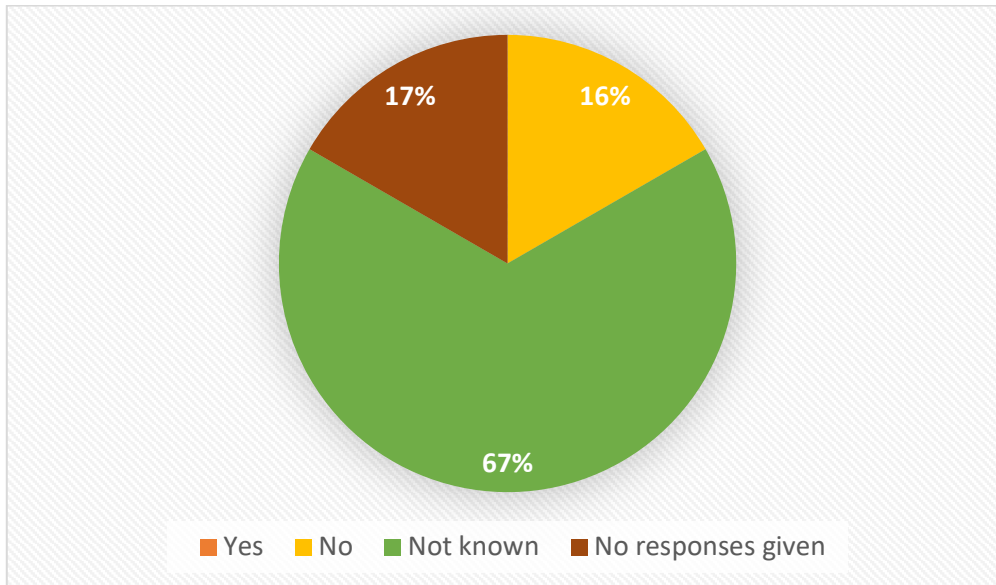


26. As a matter of domestic law, do the courts of your State generally give effect to asymmetric choice of court agreements (i.e., choice of court agreement is exclusive as regards proceedings brought by one party but not as regards proceedings brought by the other party, see reference in the Explanatory Report on the Convention, paras 105 and 106):

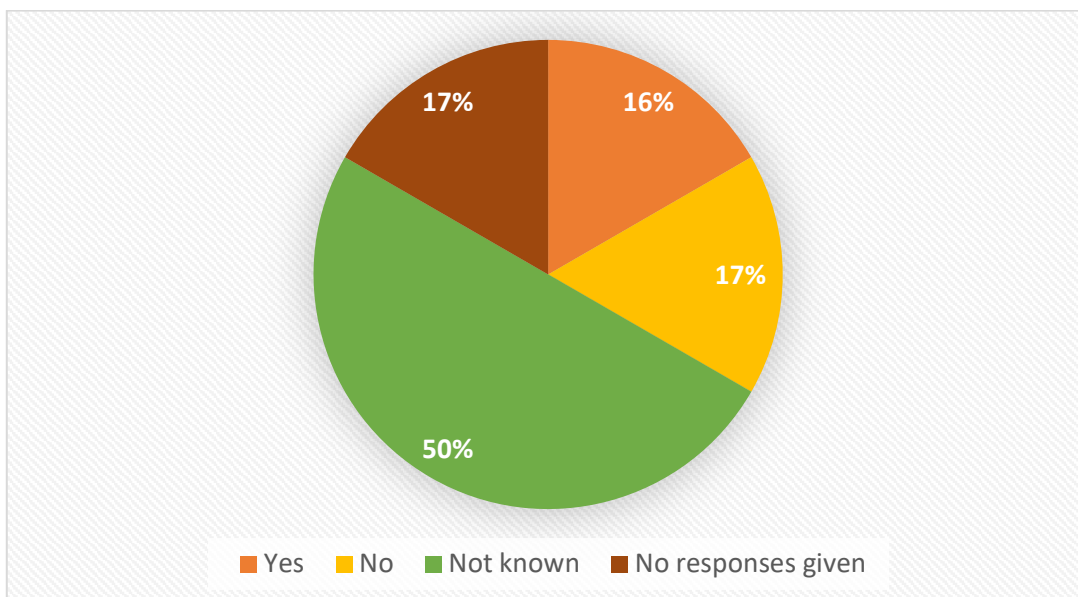


41 One respondent stated that although the nullity issue of such agreements is not explicitly dealt with under their national law, in practice the court would give effect to an asymmetric jurisdiction agreement as long as it does not violate mandatory provisions of law and it is the true intention of the parties.

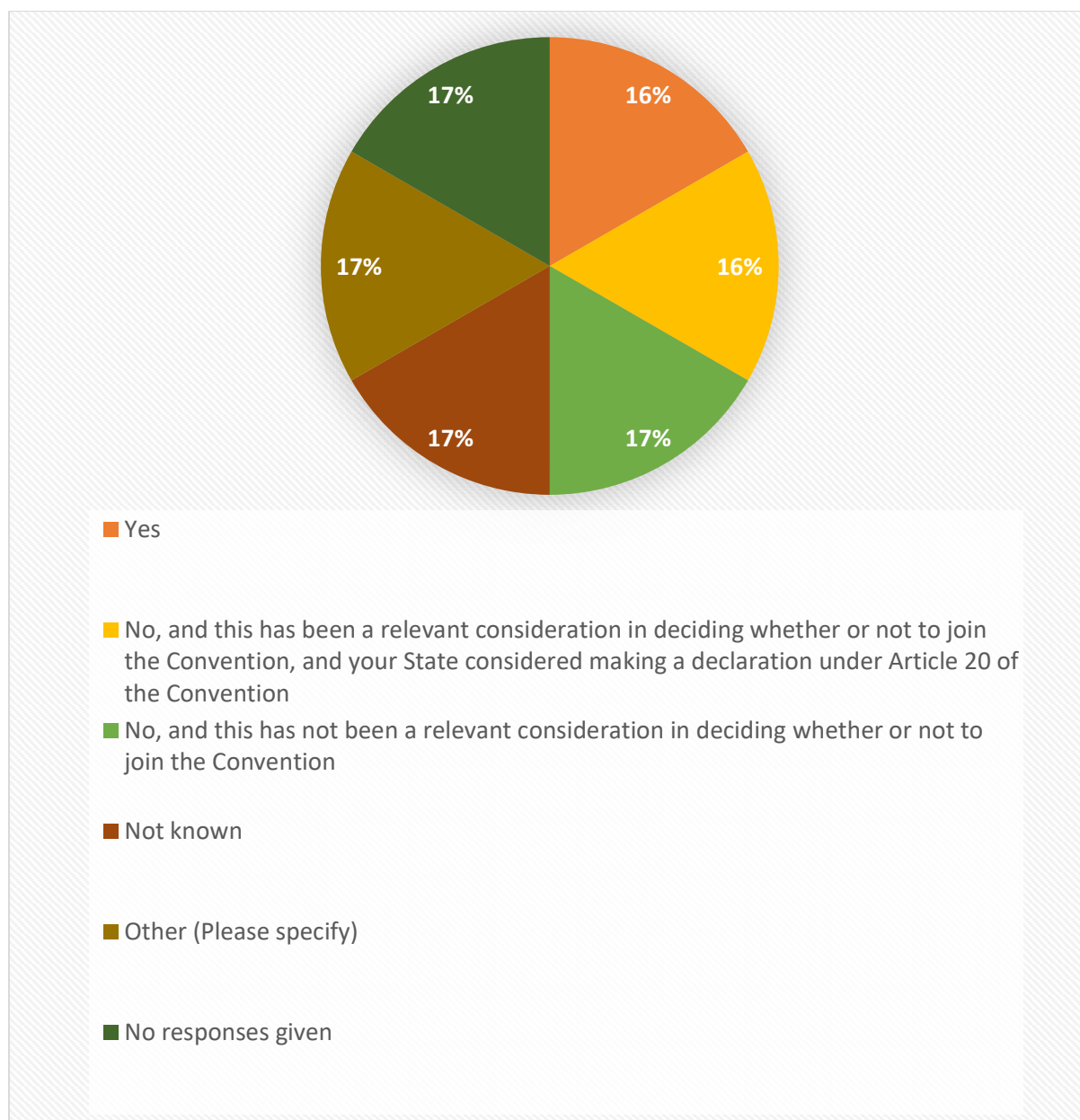
27. Are there any cases in your State in which the court established its jurisdiction despite an exclusive choice of court agreement designating courts of another State:



28. In deciding whether or not to join the Convention, has your State considered making a declaration under Article 19 of the Convention, i.e., that your State's courts may refuse to determine disputes if, except for the location of the chosen court, there is no connection between your State and the parties or the dispute:



29. As a matter of your State’s domestic law, would your State’s courts recognise or enforce a judgment rendered by a chosen court where all elements of the dispute are connected with your State and there is no connection with the chosen court other than the parties’ choice of court agreement:

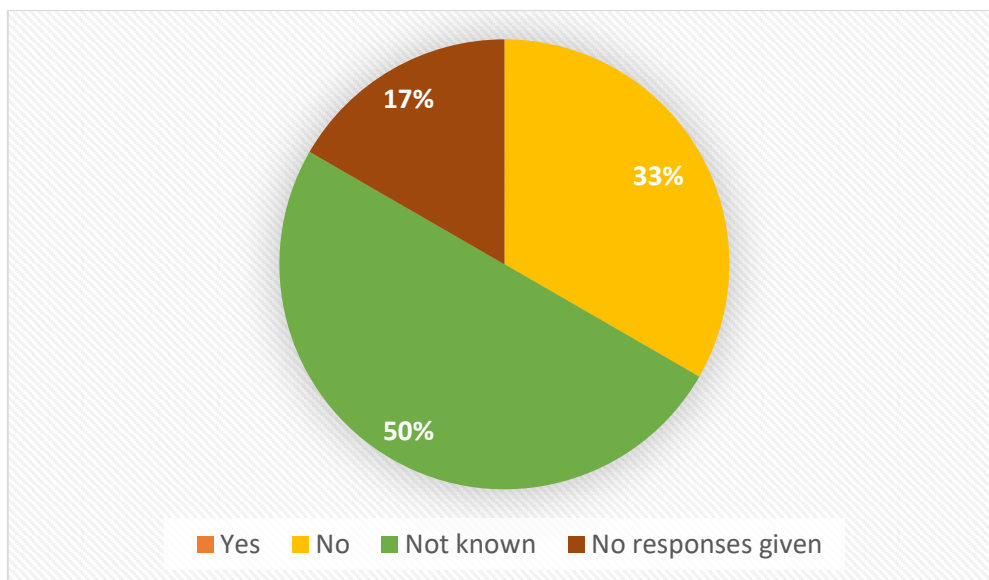


Please provide any further relevant details:

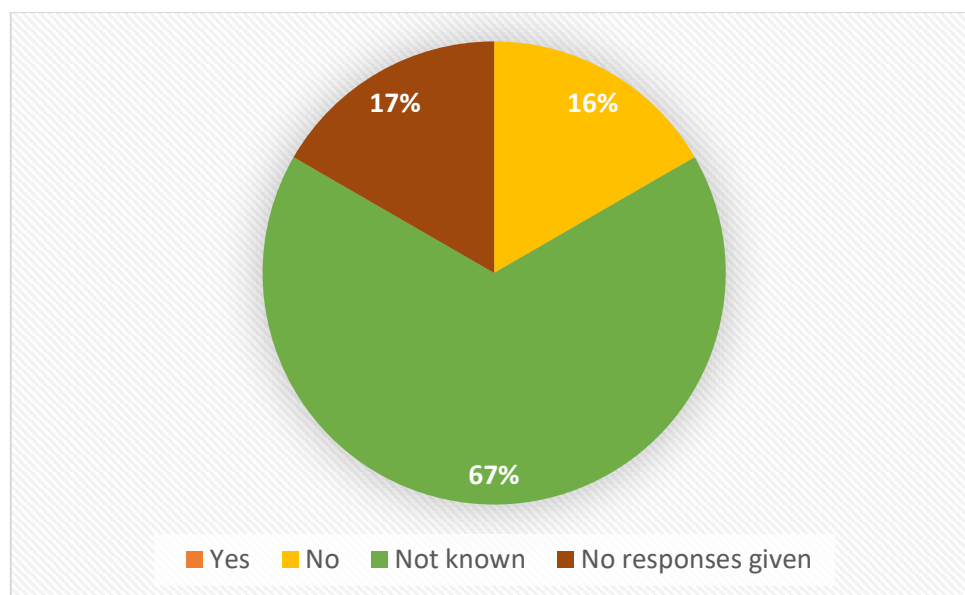
42 Pursuant to Article 34 of the Civil Procedure Law of the People’s Republic of China, parties may only choose the court actually connected to the dispute. As for the International Commercial Court, Article 2 of the Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court reaffirms that the International Commercial Court may accept cases when the parties choose the jurisdiction of the Supreme People’s Court according to Article 34 of the Civil Procedure Law. Thus, recognising or enforcing a judgment rendered by a chosen court without actual connection to the dispute might violate the provisions of a choice of court agreement in the People’s Republic of China.

43 In Viet Nam, Articles 439 and 440 of CPC on the grounds of refusal of recognition and enforcement of foreign judgments do not cover this ground, thus a foreign judgment can still be recognised and enforced in Viet Nam. However, as stipulated above, if the choice of court agreements violate the exclusive jurisdiction of Vietnamese courts, the foreign judgments will not be recognised or enforced in Viet Nam.

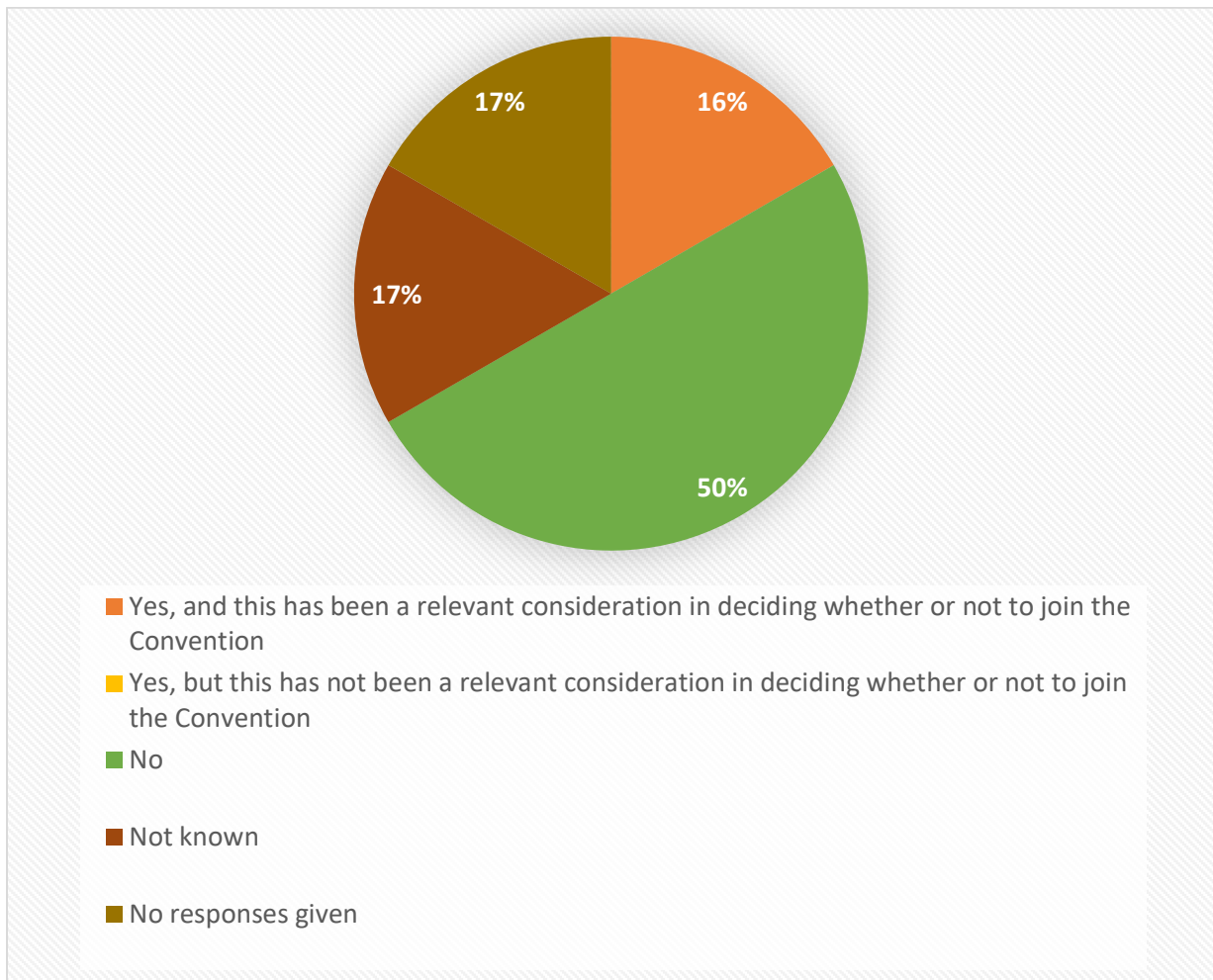
30. Are there any cases in your State which refused to recognise or enforce a foreign judgment in which the court's jurisdiction was based on a non-exclusive choice of court agreement:



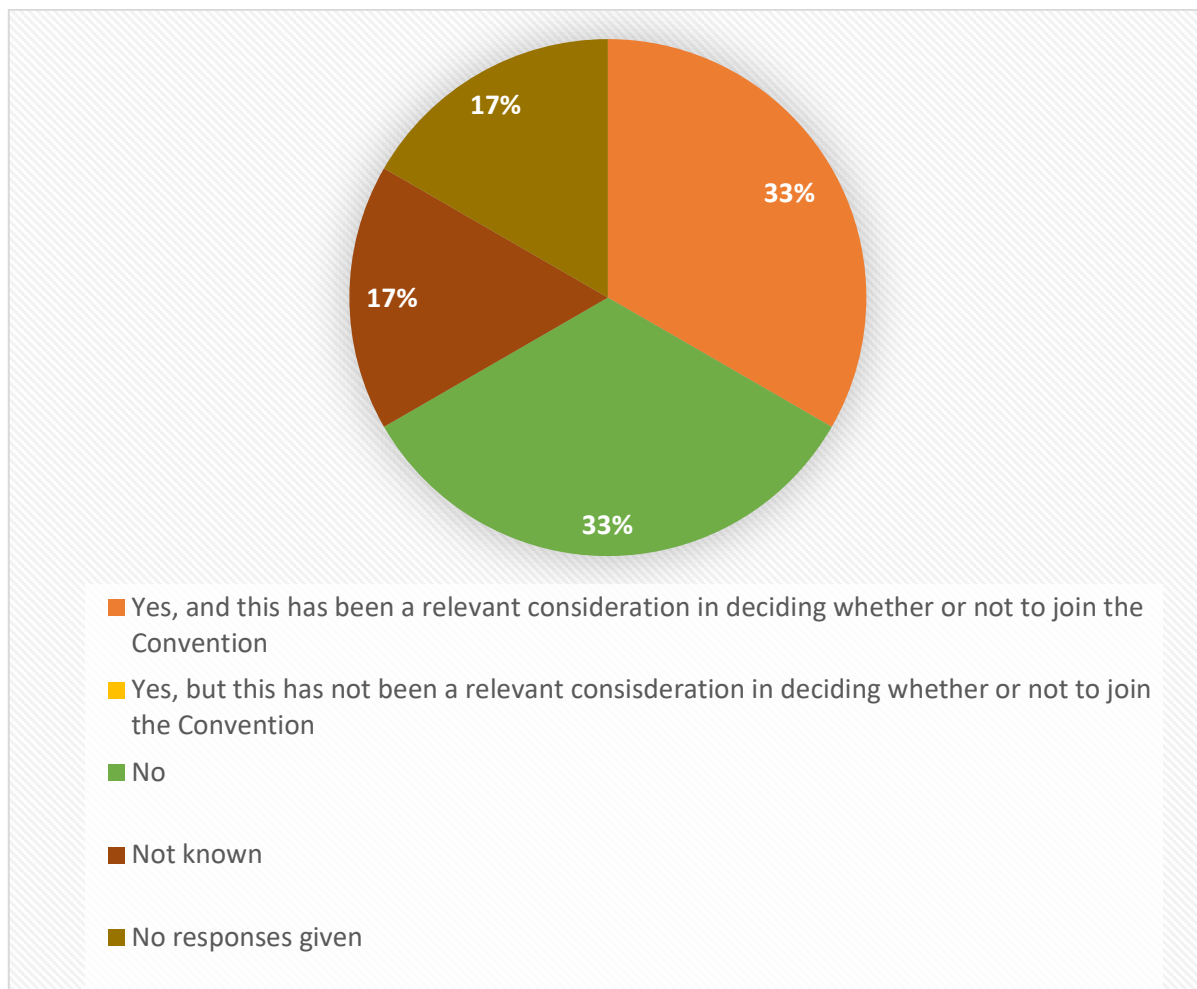
31. In deciding whether or not to join the Convention, has your State considered making a declaration under Article 22 of the Convention to extend the application of the Convention to cover the recognition and enforcement of judgments based on a non-exclusive choice of court agreement:



32. Recognising that a choice of court agreement is concluded between two private parties, is your State concerned about declining jurisdiction in circumstances where it considers the court chosen to be unsuitable:



33. Recognising that a choice of court agreement is concluded between two private parties, is your State concerned about enforcing a judgment rendered by a chosen court that it considers to be unsuitable:



If yes, please attach relevant domestic cases on this issue, and indicate the reasons for the concern, including the circumstances where the court rendering the judgment is considered unsuitable, and how this would be dealt with as a matter of domestic law in your State:

44 Several respondents specified the situation where a choice of court agreement violates the exclusive jurisdiction of the court in the State addressed.