

# Key Findings from the HCCH Questionnaire on the 2005 Choice of Court Convention

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## Background of the Questionnaire



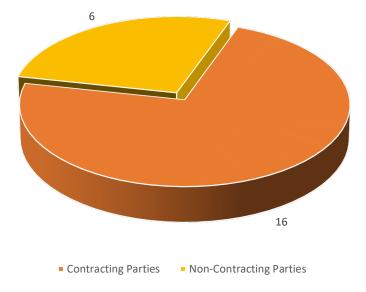
### Mandate

- In preparation of the 2021 Edition of HCCH a | Bridged
- Circulating a Questionnaire eliciting reasons why not more States are joining the Convention

#### **Process**

2 questionnaires:

for Contracting Parties and for non-Contracting Parties





## Responses to General Questions

## Transparency



make public the identity of the acting judges

possibility to challenge the designation of a judge

rules on mitigation of conflicts of interest

reported **judicial corruption** cases in relation to international civil or commercial disputes since 2015

95%

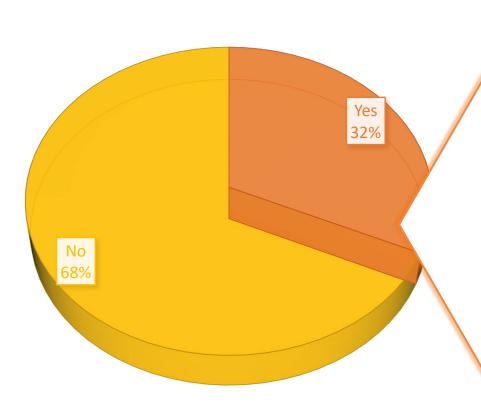
82%

50%

0

## International Commercial Courts





#### **Common features**

- admissibility of foreign expert advice, and evidence in foreign languages

#### **Other features**

- appointment of international judges, or
- representation by foreign lawyers, or
- are equipped with advisory council with foreign experts, or
- court judgments in foreign languages

#### **Uncommon feature**

conduct proceedings in foreign language(s)



# Responses to *Specific Questions* to Contracting Parties

## General Assessment



Confirence de La Hepe de droit international privé Hague Conference on private international law

Convention du 30 juin 2005 sur les accords d'élection de for

Convention of 30 June 2005 on Choice of Court Agreements

Texts adopte par la Vergtième session Text adopted by the Twestieth Session

Rapport explicatif de Explanatory Report by

Torror Hartley & Masain Dogaschi

Tirage à part des Actes et documents de la Vingtième session. Tonse III, Accords d'Élection de for

Off-print of the Proceedings of the Twentieth session. Tome SE, Choice of Court Agreements

Edité par le Planea Permanent de la Conférence Scheveningseweg 6, 2517 KT La Heur, Pays Blas

Edited by the Permanent Bureau of the Conference Scheveningseweg 6, 2517 ET The Huyse, Notherlands It is still too early to have a thorough assessment

In the past 5 years, there have **not** been **many** civil or commercial **cases**, involving foreign parties, to which a State is also party

The Convention has often been **included** in the training programmes or bar exams for judges, practitioners and other professionals



# Responses to *Specific Questions* to non-Contracting Parties

## Practice



Giving effects to exclusive choice of court agreements

there are **no cases** where a court established its **jurisdiction despite** an exclusive choice of court agreement designating courts of another State

there are **no cases** where a court **refused** to **recognise or enforce** a foreign judgment in which the court's jurisdiction was based on an exclusive choice of court agreement

Rules on recognition and enforcement

**grounds for refusal** provided in the Convention align with national law

# Considerations for Joining the Convention



#### Areas for consideration that may affect the decision of joining the Convention

Subject matters	
Jurisdiction	requiring a sufficient connection between the parties / the dispute and their States when choosing a court
Recognition and enforcement	internationality
	enforcing a judgment for exemplary or punitive damages
Others	declining jurisdiction in circumstances where the State considers the court chosen to be <b>unsuitable</b>
	refusing to enforce a judgment given by a chosen court that the State considers to be <b>unsuitable</b> (note: "unsuitable", in the responses, referring to the situation where a choice of court agreement violates the exclusive jurisdiction of the court in the State addressed)

Note: only a few States raised the above considerations.



## **Suggested Future Work**

## Suggested Future Work



