



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

Dr Ning Zhao LLM
Senior Legal Officer, the HCCH

Background of the Questionnaire

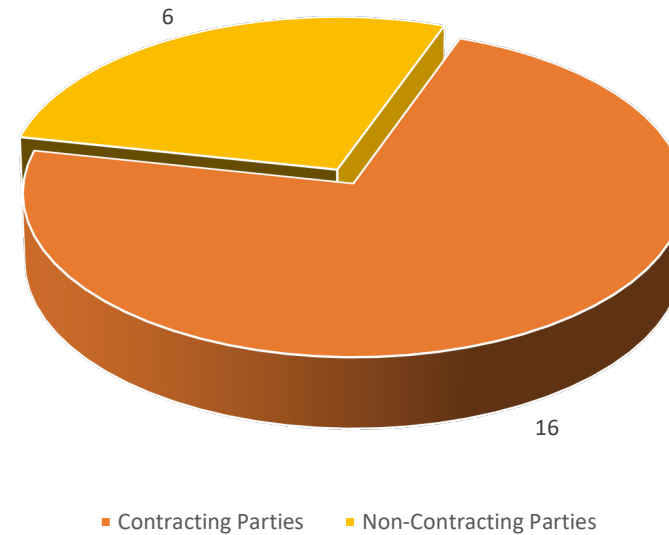


Mandate

- 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

95%

possibility to challenge the designation of a judge

82%

rules on mitigation of conflicts of interest

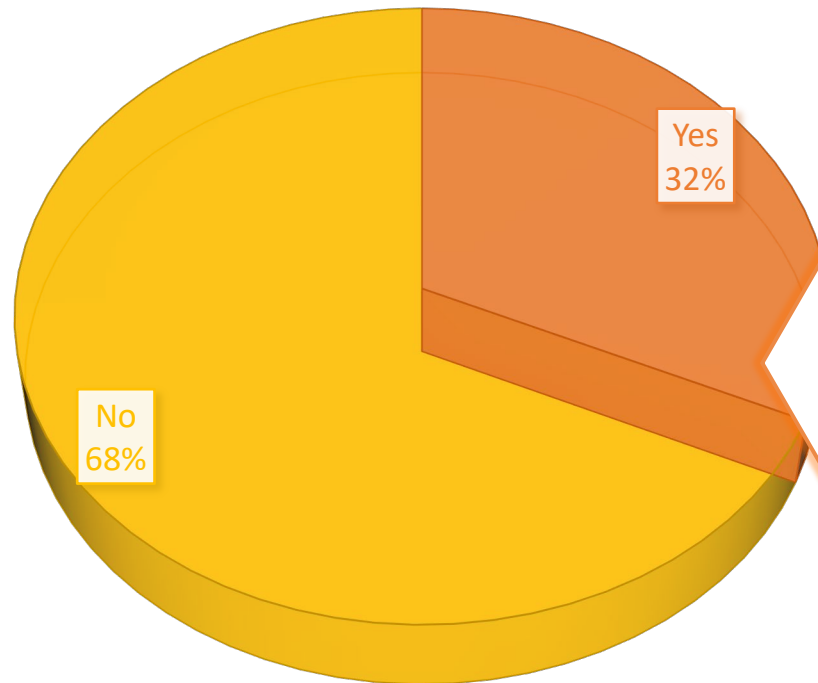
50%

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

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

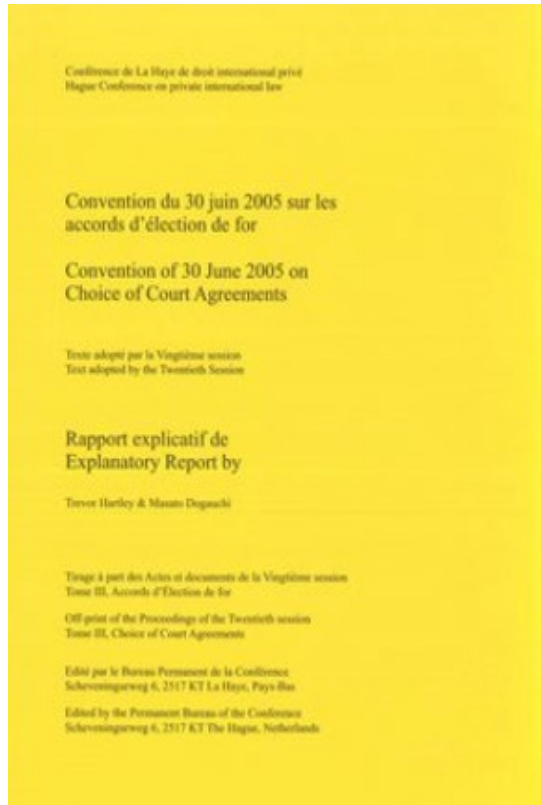


General Assessment

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 unsuitable
	refusing to enforce a judgment given by a chosen court that the State considers to be unsuitable (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

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