

Title	Transnational Litigation: Update
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Transnational Litigation: Update

I. Introduction

- 1 This document reports on the work carried out by the Transnational Litigation & Apostille Division (the Division) at the Permanent Bureau (PB) and some key developments regarding the core HCCH Conventions that aim to enhance access to justice and facilitate cross-border cooperation in the area of transnational litigation. These Conventions are listed below:
 - *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (1965 Service Convention);
 - *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (1970 Evidence Convention);
 - *Convention of 25 October 1980 on International Access to Justice* (1980 Access to Justice Convention);
 - *Convention of 30 June 2005 on Choice of Court Agreements* (2005 Choice of Court Convention); and
 - *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (2019 Judgments Convention).
- 2 The Division is also responsible for the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (1961 Apostille Convention).¹
- 3 The PB has endeavoured to raise awareness of the Conventions and to promote and support the effective implementation and operation of these Conventions through a range of activities, some of which are outlined in this document.

II. Key developments

- 4 One of the key developments for 2023 was the entry into force of the 2019 Judgments Convention on 1 September 2023, which occurred slightly over four years after its adoption in July 2019. Following the Convention's entry into force, the *Proceedings of the Twenty-Second Session* (the Proceedings) were published in October 2023.²
- 5 In 2023, the Division dedicated more resources to the preparation of the upcoming meeting of the Special Commission (SC) on the practical operation of the 1965 Service, 1970 Evidence, and 1980 Access to Justice Conventions. The meeting of the SC is scheduled to take place at the beginning of the second half of 2024. Prel. Doc. No 12B provides information about the preparations for this meeting.³

¹ The work carried out in relation to the 1961 Apostille Convention is reported on separately in "1961 Apostille Convention: Update", Prel. Doc. No 13 of December 2023 for the attention of CGAP 2024, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy".

² The Twenty-Second Session of the HCCH, held from 18 June to 2 July 2019, resulted in the adoption of the 2019 Judgments Convention. The Proceedings are available on the HCCH website at www.hcch.net under "Publications & Studies". English and French texts are presented side by side in the Proceedings.

³ "1965 Service, 1970 Evidence, and 1980 Access to Justice Conventions: Plans for the next meeting of the Special Commission", Prel. Doc. No 12B of December 2023 for the attention of CGAP 2024, available on the HCCH website at www.hcch.net (see path indicated in note 1).

III. Progress on the work conducted by the Division

A. 2005 Choice of Court and 2019 Judgments Conventions

1. Treaty actions

- 6 On 28 April 2023, Ukraine deposited its instrument of ratification of the 2005 Choice of Court Convention, and the Convention entered into force for Ukraine on 1 August 2023. With this treaty action, a total of 33 HCCH Members are bound by the Convention, namely the European Union (EU), all EU Member States, Mexico, Montenegro, Singapore, Ukraine, and the United Kingdom (UK). In addition, there are four signatories to the Convention, namely, the People’s Republic of China (China), Israel, North Macedonia, and the United States of America (USA).
- 7 On 1 September 2023, the 2019 Judgments Convention entered into force. As of this date, the Convention has effect between the EU, including all EU Member States (with the exception of Denmark) and Ukraine. Also on 1 September 2023, Uruguay deposited its instrument of ratification of the Convention. The Convention will enter into force for Uruguay on 1 October 2024. There are six signatories to the Convention, namely Costa Rica, Israel, Montenegro, North Macedonia, the Russian Federation, and the USA.
- 8 The UK has also determined that it will seek to join the 2019 Judgments Convention. On 23 November 2023, the UK Government published its response to the public consultation on the Convention, “The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019) Response to Consultation”.⁴ In this response, the UK Government has concluded that “it is the right time for the UK to join [the] Convention” and has announced that it “will seek to do so as soon as practicable”.

2. Post-Convention project update

- 9 In 2023, the PB continued the post-Convention project in Southeast Europe to promote the 2019 Judgments Convention. Following the successful high-level Regional Forum held in North Macedonia in June 2022, the HCCH and the Center for International Legal Cooperation (CILC), co-organised a seminar, “Recognition and Enforcement of Foreign Judgments in the Western Balkan Region: HCCH 2019 Judgments Convention”, in The Hague, on 15 and 16 May 2023. The seminar provided an opportunity for participants to further refine their knowledge of the 2019 Judgments Convention and to discuss the importance and prospects of the Convention in the region. The seminar was attended by 30 participants from six jurisdictions in the Western Balkans, representing Ministries of Justice, Ministries of Foreign Affairs, and national champions for the promotion of the Convention. Representatives from the European Commission and the Ministry of Justice of the Netherlands also attended and delivered presentations on the Convention. It should be highlighted that Montenegro and North Macedonia signed the Convention in advance of and during this seminar; in April and May 2023, respectively.
- 10 As part of the PB’s continuing support for this project, in 2024 CILC and the PB will further explore opportunities to promote the Convention and will provide training for policy makers and other stakeholders from Western Balkan jurisdictions, where requested.

3. Specific promotional activities

- 11 The entry into force of the 2019 Judgments Convention was celebrated during the HCCH Asia Pacific Week 2023 which had as its conference theme “Access to Justice and Sustainable

⁴ See <https://www.gov.uk/government/consultations/hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-2019> (last consulted on 24 November 2023).

Development: The Impact of the HCCH in an Inter-Connected World”, held from 11 to 14 September 2023, in Hong Kong Special Administrative Region (SAR), China.

- 12 On 9 and 10 June 2023, the University of Bonn and the PB co-organised a conference, “The HCCH 2019 Judgments Convention: Cornerstones, Prospects, Outlook”, in Bonn, Germany, with the generous support of the Federal Ministry of Justice of Germany. The conference drew together scholars, practitioners, and experts from academic institutions and organisations from around the world. Distinguished participants provided a comprehensive analysis of the 2019 Judgments Convention, assessed its possible implications in various regions of the world, and exchanged views on the Convention’s general prospects and outlook for the future. A collection of essays on the Convention, written by the experts involved in the conference, was published ahead of the conference.
- 13 The PB contributed to the World Bank Group’s development of its recently released *Business Ready* project⁵ by providing information on the 2019 Judgments Convention and other relevant HCCH Conventions. The *Business Ready* project includes a Methodology Handbook that establishes the framework and the indicators for annual benchmarking and reporting on business and investment climates in 180 economies worldwide. Recognition and enforcement of foreign judgments is listed in this Methodology Handbook as one of the indicators to assess States’ readiness and attractiveness to foreign investment.⁶ The 2019 Judgments Convention is explicitly referred to in this indicator. The PB will continue to collaborate with the World Bank Group on this project where possible and will refer to this project to promote the 2019 Judgments Convention.
- 14 The PB followed the UNIDROIT project on “Best Practices for Effective Enforcement” and participated in both the 6th and 7th Working Group meetings as an Observer to ensure that the UNIDROIT project did not inadvertently overlap with the 2019 Judgments Convention and to provide technical support where required.
- 15 The PB continues to promote the 2005 Choice of Court and the 2019 Judgments Conventions by maintaining and updating its repository of articles about the Conventions.⁷ The PB encourages Members to notify the PB of any recent and relevant articles, cases, or domestic legislation pertaining to these Conventions.
- 16 The PB also coordinates translations of the Conventions and associated Explanatory Reports. The PB encourages Members to consider preparing translations and requests that interested Members contact the PB in advance to receive further information on copyright issues and key steps that may assist in arranging translations.
- 17 As part of promotional activities planned in 2024 for the 2005 Choice of Court and 2019 Judgments Conventions, the PB envisages the following activities:
- Subject to sufficient voluntary contributions, the PB proposes to dedicate the 2024 Edition of HCCH a|Bridged to the 2019 Judgments Convention. This would follow previous editions of this series that were dedicated to the 1965 Service Convention (in 2019), the 1970 Evidence Convention (in 2020), and the 2005 Choice of Court Convention (in 2021). This event is proposed to be held in the second half of 2024.

⁵ More information about the *Business Ready* project is available at: <https://www.worldbank.org/en/businessready> (last consulted on 10 November 2023).

⁶ The Methodology Handbook is available at: <https://thedocs.worldbank.org/en/doc/357a611e3406288528cb1e05b3c7dfda-0540012023/original/B-READY-Methodology-Handbook.pdf>, see indicator 1.1.4 Foreign Judgments (last consulted on 10 November 2023).

⁷ The bibliographies of the 2005 Choice of Court and the 2019 Judgments Conventions are available on the HCCH website at www.hcch.net under “Choice of Court” / “Judgments” then “Bibliography”.

- The PB will develop a list of Frequently Asked Questions (FAQs) for both Conventions which will be made available on the HCCH website.

18 The PB invites interested States and organisations to co-organise events to promote the 2005 Choice of Court and the 2019 Judgments Conventions, and to keep the PB updated on any initiatives.

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

1. Treaty actions

19 The 1965 Service Convention has 82 Contracting Parties following the accession of three new Contracting Parties in 2023. The Convention entered into force for Azerbaijan on 1 September 2023, following Azerbaijan's accession on 17 February 2023; the Convention entered into force for Singapore on 1 December 2023, following Singapore's accession on 16 May 2023; the Convention will enter into force for Paraguay on 1 January 2024, following Paraguay's accession on 23 June 2023.

20 El Salvador and Paraguay acceded to the 1970 Evidence Convention in 2023, bringing the total number of Contracting Parties to this Convention to 66. The Convention entered into force for El Salvador on 20 March 2023, following El Salvador's accession to the Convention on 19 January 2023; the Convention entered into force for Paraguay on 22 August 2023, following Paraguay's accession on 23 June 2023. Currently, the number of acceptances of accessions accounts for approximately 68% of the total number of acceptances required in order for the 1970 Evidence Convention to become fully operational amongst all Contracting Parties.⁸ In this regard, the PB encourages Contracting Parties to revisit their pending acceptances so as to further enhance the usefulness and broader operation of the 1970 Evidence Convention.

21 With respect to the application of Chapter II of the 1970 Evidence Convention, seven Contracting Parties have excluded the application in whole, 18 have excluded the application in part, and 43 have made no declaration regarding the application of Chapter II.⁹

22 The PB recalls the Conclusion and Recommendation of the 2009 meeting of the SC, that Contracting Parties revisit their general, non-particularised declarations under Article 23, if any.¹⁰

23 The 1980 Access to Justice Convention has 28 Contracting Parties. The last treaty action was the accession by Costa Rica in 2016.

2. Specific promotional and training activities

24 One of the key promotional activities for the 1965 Service Convention was the online webinar, "Cross-border Commercial Dispute Resolution – HCCH 1965 Service Convention", co-organised by the Asian Business Law Institute (ABLI) and the PB on 27 June 2023. This webinar followed two previous successful HCCH-ABLI webinars. These focused on the 1970 Evidence Convention in 2021, and the 2005 Choice of Court and 2019 Judgments Conventions in 2022.

⁸ More details are available on the HCCH website at www.hcch.net under "Evidence" then "Acceptance of accessions".

⁹ Of those Contracting Parties that have excluded in part the application of Chapter II, one Party has excluded the application of Art. 15; 14 have excluded the application of Art. 16; 12 have excluded the application of Art. 17; and 13 have excluded the application of Art. 18. When calculating the number of declarations, Hong Kong SAR and Macao SAR were calculated separately in addition to Mainland China.

¹⁰ [C&R No 51](#) of the 2009 SC on the Practical Operation of the HCCH 1961 Apostille, 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions; see also [C&R Nos 29-34](#) of the 2003 SC on the Practical Operation of the HCCH 1961 Apostille, 1965 Service and 1970 Evidence Conventions, all available on the HCCH website at www.hcch.net under "Service Convention" / "Evidence Convention" / "Access to Justice Convention" then "Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions".

C. General promotion of the Conventions of the Division

25 With a view to raising awareness of the Conventions of the Division and enhancing their operation, the PB cooperated with various stakeholders including government officials, judiciaries, practitioners and academics at diverse events, either in person (at the PB or other locations), online or via hybrid meetings, across many regions, and, where necessary, with the assistance of the Regional Office for Asia and the Pacific (ROAP) or the Regional Office for Latin America and the Caribbean (ROLAC). The PB endeavoured to promote the Conventions as a package wherever possible. However, depending on the needs of the stakeholders involved, the Conventions were also promoted jointly or individually.

- In February 2023, the PB participated in a panel discussion on the 2019 Judgments Convention at the Franco-British Lawyers Society (FELS) seminar relating to the UK's public consultation on its possible ratification of the Convention.
- In May 2023, the PB organised a workshop for Viet Nam, encouraging Viet Nam to consider joining the 2005 Choice of Court and 2019 Judgments Conventions; a workshop for the Philippines encompassing the 1965 Service, 1970 Evidence and 2019 Judgments Conventions; and a workshop for Kazakhstan on the 1970 Evidence Convention.
- Also in May, the PB participated in the Half-Year May Conference of the International Association of Young Lawyers (AIJA). The 2019 Judgments Convention was discussed in detail at this Conference.
- In June 2023, the PB hosted a workshop for senior government officials from the Democratic Republic of Congo, covering various Conventions of the Division, including the 1965 Service, 1970 Evidence, 2005 Choice of Court, and the 2019 Judgments Conventions. Similarly, in June and September 2023, the PB met with Indonesian delegations, where various Conventions under the portfolio of the Division were discussed.
- Throughout the year, the PB delivered lectures on these Conventions at various universities and institutions.

IV. Proposals for the Council on General Affairs and Policy (CGAP)

26 Based on the above report, the PB proposes the following Conclusions and Decisions:

- CGAP welcomed and endorsed the PB's efforts to support the promotion, effective implementation, and operation of the Conventions supporting transnational litigation;
- CGAP welcomed the entry into force of the 2019 Judgments Convention on 1 September 2023 and supported the proposal, subject to available resources, to dedicate the 2024 Edition of HCCH a|Bridged to the 2019 Judgments Convention;
- CGAP encouraged Members to make voluntary contributions to support the proposed 2024 Edition of HCCH a|Bridged;
- CGAP welcomed the development of FAQs on the 2005 Choice of Court and the 2019 Judgments Conventions to further assist with the promotion and implementation of these Conventions;
- CGAP encouraged Members to suggest activities to promote the Conventions of the Division and to consider hosting regional events to promote these Conventions.