

Overview of the Judgments Project

The origins of the Judgments Project

The cross-border circulation of judgments raises numerous legal issues, mainly relating to the disparities between national rules concerning the recognition and enforcement of judgments abroad. To overcome these difficulties, uniform rules aiming to guarantee the enforcement of judgments of State courts in other nations have already been codified in numerous bilateral, regional, and international instruments. However, the applicability of these instruments is often limited by its substantive scope¹ and / or territorial scope.²

Facilitating the establishment of efficient and dependable mechanisms for regulating cross-border litigation is one of the fundamental roles of the Hague Conference on Private International Law. Indeed, as was said in 1862 by the proponent of the Conference, Nobel Prize recipient Tobias Asser:

*Truly fortunate is the nation, which sets itself the goal of finding the means to improve [...] all in its current legislation that still hampers trade, [...] and does so with the intent [...] of seeing accepted the principle of mutual recognition of judgments...*³

The “Judgments Project” refers to the work done by the Hague Conference on Private International Law since 1992 in the context of transnational disputes in civil and commercial matters, particularly concerning both the international jurisdiction of courts and the recognition and enforcement of their decisions abroad. Initially, the Judgments Project sought to develop a broad convention on international jurisdiction and recognition and enforcement rules, which was subsequently scaled down to focus on international cases involving choice of court agreements. This led to the conclusion of the **Convention of 30 June 2005 on Choice of Court Agreements** (2005 Choice of Court Convention).

In 2012, the Council on General Affairs and Policy of the Conference (the Council) decided to relaunch the work on the Judgments Project.⁴

The Council invited the Judgments Experts’ Group to reconvene in order to consider and make recommendations on matters of jurisdiction.⁵ The Council also “acknowledged that in working towards a future instrument, it will be important to begin by working on an agreed core of essential

¹ Notably: *Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations* (divorce decisions); *Convention of 25 October 1980 on International Access to Justice* (decisions concerning expenses); *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (adoption decisions); *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (decisions relating to the protection of children – jurisdiction, recognition and enforcement); *Convention of 13 January 2000 on the International Protection of Adults* (idem relating to the protection of vulnerable adults); *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (decisions relating to maintenance).

² There are regional instruments (*i.e.*, in Europe and in Latin America) concerning the recognition and enforcement of judgments abroad.

³ E. Hirsch Ballin (ed.), *A mission for his time: Tobias Asser's inaugural address on commercial law and commerce, Amsterdam 1862* (The Hague: T.M.C. Asser Press, 2012) pp. 33-34.

⁴ See, respectively, “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (17 to 20 April 2012)”, [hereinafter, “C&Rs of the 2012 Council”] Conclusion and Recommendation (C&R) No 16, and Conclusions & Recommendations of the Experts’ Group on Possible Future Work on Cross-border Litigation in Civil and Commercial Matters (Work. Doc. No 2 of April 2012 for the attention of the Council on General Affairs and Policy of the Conference).

⁵ C&Rs the 2012 Council, C&R No 18.

provisions”.⁶ Consistent with that acknowledgment, the Council established a Working Group whose initial task was to “prepare proposals for consideration by a Special Commission in relation to provisions for inclusion in a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters”.⁷ Between 2012 and 2015, the Working Group met five times and completed its work on a Proposed Draft Text in November 2015.⁸

In 2016, the Council welcomed the completion by the Working Group of a Proposed Draft Text. The Council decided to convene a Special Commission on the Judgments Project to prepare a draft Convention and instructed the Secretary General to convoke the first meeting in June 2016. The Special Commission met in The Hague from 1 to 9 June 2016. The outcome of this meeting is embodied in the 2016 preliminary draft Convention.⁹ The Council also endorsed the recommendation of the Working Group that matters relating to direct jurisdiction (including exorbitant grounds and *lis pendens* / declining jurisdiction) should be put for consideration to the Experts’ Group with a view to preparing an additional instrument. The Experts’ Group will be convened soon after the Special Commission has drawn up a draft Convention.¹⁰

In 2017, the Special Commission met for a second time in The Hague, from 16 to 24 February, and produced the **February 2017 draft Convention**. In March 2017 the Council welcomed the very good progress made on this Project, which was confirmed as a priority for the Organisation, and the successful completion of two meetings of the Special Commission on the Judgments Project towards the preparation of a draft Convention. The Council instructed the Secretary General to convene a third meeting of the Special Commission, tentatively scheduled from 13 to 17 November 2017. The Council took note of the Special Commission’s recommendation that a Diplomatic Conference may be convened towards the end of 2018 or early 2019. Finally, the Council recalled its decision of 2016 that the Experts’ Group of the Judgments Project addressing matters relating to direct jurisdiction (including exorbitant grounds and *lis pendens* / declining jurisdiction) will convene soon after the Special Commission has drawn up a draft Convention.¹¹

Current work

The future Convention, which is currently being developed, will apply to the recognition and enforcement, in a Contracting State, of judgments rendered by a court of another Contracting State in respect of civil and commercial matters (Art. 1 of the February 2017 draft Convention). The scope of the future Convention does not extend to revenue, customs, or other administrative matters, as well as other, more specific matters (status and legal capacity, wills and succession, etc.) (Art. 2). The term “judgment” includes all decisions on the merits given by a court, whatever

⁶ *Id.*, para. 17.

⁷ *Ibid.*

⁸ “Report of the Fifth Meeting of the Working Group on the Judgments Project (26-31 October 2015) and Proposed Draft Text Resulting from the Meeting”, Prel. Doc. No 7A of November 2015 for the attention of the March 2016 meeting of the Council on General Affairs and Policy of the Conference. The reports of the Working Group’s meetings, along with the other documentation and information concerning the developments of the Judgments Project from 2010 to date, are available on the Hague Conference website < www.hcch.net > under “Judgments” then “Continuation of the Judgments Project (2010-2015)” as well as under “Judgments” then “Special Commission”.

⁹ The text of the 2016 preliminary draft Convention is available on the Hague Conference website < www.hcch.net > under “Judgments” then “Special Commission”.

¹⁰ C&Rs adopted by the Council of 15 to 17 March 2016, paras 11-14.

¹¹ C&Rs adopted by the Council of 14 to 16 March 2017, paras 5 and 7.

it may be called, even, under certain conditions, a court's determination of costs or expenses (Art. 3).

Further, the February 2017 draft Convention proposes certain basic rules regarding the operation of the future Convention, including:

- A judgment of a court of a Contracting State to which this Convention applies shall be recognised and enforced in all other Contracting States without a review of the merits (Art. 4).
- Articles from 5 to 7 lay down further rules on the recognition and enforcement scheme under the Convention, namely as concerns bases for recognition and enforcement and grounds for the refusal thereof.
- Some specific rules (judicial settlements, punitive damages, etc.) correspond to the articles currently in force in the context of the 2005 Choice of Court Convention.
- Subject to Article 6 (which lays down exclusive bases for recognition and enforcement), the February 2017 draft Convention does not prevent the recognition or enforcement of judgments under national law (Art. 17).

Finally, the February 2017 draft Convention lays down a set of general and final clauses, respectively at Articles from 18 to 26 and from 27 to 34.

Advantages of developing a convention on the recognition and enforcement of foreign judgments

In contemporary times, the number of international transactions has increased and only continues to increase, just as cross-border commerce and foreign investments are becoming more and more important. A uniform legal process for the recognition and enforcement in one State, of judgments rendered in another State would help reduce the legal obstacles encountered by individuals and corporations in cross-border transactions. Thus, a future convention on the recognition and enforcement of foreign judgments in civil and commercial matters will offer numerous advantages.

By establishing uniform rules on the recognition and enforcement of judgments, a future convention will provide parties with a simple, efficient, and predictable structure. This will ensure a higher level of certainty in the context of cross-border exchanges and will create a more reliable judicial infrastructure that supports international transactions and investments. In addition, an international regime for recognising and enforcing judgments could simplify the enforcement process and reduce the related costs as a result.