Building a Global Framework for Recognition and Enforcement of Foreign Judgments
- the Hague Judgments Project -

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Outline

2018 draft Convention: characteristics and operation

Next steps
Recognition and Enforcement in general

Recognition and enforcement (R&E) of foreign judgments is dealt with in:

- **national law**
- **bilateral agreements**
  
  *e.g.*, Trans-Tasman Agreement, China Mainland and Hong Kong Arrangements, etc
- **other international (including regional) and supranational agreements**
  
  *e.g.*, Brussels I Recast Regulation, 1993 Minsk Convention, 1992 Las Leñas Protocol, 1983 Riyadh Arab Agreement; etc

*Which rules apply if a judgment given in the EU needs to be enforced in Japan or the US (for instance)?*

- **no** applicable international instrument
Ecuadorian Courts

Rendered a judgment of 8.646 billion dollars in favor of the plaintiff

The court held that the Ecuadorian judgment was the product of fraud and racketeering activity

The Court in Ontario found that Chevron Canada Limited is a separate entity from Chevron Corporation, not a party to the Ecuadorian lawsuit and not a debtor to the judgment

*National Civil Court No. 61 in in Buenos Aires*: “the plaintiffs failed to prove that the case had any connection to Argentina”

*Superior Court of Justice* cited the lack of jurisdiction
The Judgments Project - continuation of the Project

April 2012 Council
Mandate given to re-launch work on the Judgments Project

2011-2013 Experts’ Group meetings
Advised on the feasibility of a new instrument

2012-2015 Working Group meetings
Focused on the recognition and enforcement of foreign judgments. The Group produced a Proposed Draft Text

2016-2018 Special Commission meetings
Met four times and produced the 2018 draft Convention, to be submitted for negotiation at the Diplomatic Session

Mid-2019 Diplomatic Session
Final round of negotiation - to adopt a Hague Convention on the recognition and enforcement of foreign judgments in civil or commercial matters

Directly after Experts’ Group meeting
To focus on direct jurisdiction

Developing a global instrument to facilitate the recognition and enforcement of foreign judgments
Two main objectives:
- to promote trade and investment
- to enhance access to justice

Main features:
- **complementary** Convention to the Choice of Court Convention
- only deals with **recognition and enforcement** (between Contracting States) of foreign judgments
- has only **indirect** (jurisdictional) basis
- allows refusal of recognition and enforcement only on the grounds specified in the draft Convention
- **does not prevent** recognition and enforcement under national law
Judgments from one Contracting State within the **Scope** (Articles 1 and 2) of the Convention will be recognised and/or enforced in another Contracting State if any one of the **Bases** (Article 5) of indirect jurisdiction is satisfied, provided that the court did not rule on a matter within the **Exclusive Jurisdiction** (Article 6) of another State, and the **Defences** (Article 7) do not apply.
2018 draft Convention
– scope

**Includes:**
• Civil or commercial matters
• Consumer and employment related judgments

**Excludes (among others):**
• Status and legal capacity of natural persons
• Maintenance obligations
• Other family law matters
• Certain maritime claims
• Carriage of passengers and goods
• Defamation
• [IP, privacy, anti-trust related matters]
A judgment is **eligible** for recognition and enforcement if at least **one** of the 15 requirements (bases) in Article 5 is met.

**Article 5(1) alternative** jurisdictional filters based on
- connections with the defendant
- consent
- connections between the claim and the State of origin

**Article 5(2) judgments against consumers and employees**

[**Article 5(3) IP judgments on infringement, and on validity of non-registered IP rights**]
2018 draft Convention – eligible judgments (Art. 5)

State of Origin

- Defendant’s habitual residence
- Submission
- The property is situated
- The act directly causing harm

[Both infringement & grant of patent took place]

Requested State

- tenancy of immovable property
- tort claim
- [patent infringement]
### Exclusive bases: A judgment is eligible for recognition and enforcement, if and only if, it meets one of the three exclusive bases in Article 6.

<table>
<thead>
<tr>
<th>Exclusive bases</th>
<th>Condition</th>
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<tbody>
<tr>
<td>(registration or) validity of IP rights required to be granted or registered</td>
<td>judgment rendered in the State in which grant or registration has taken place</td>
</tr>
<tr>
<td>rights <em>in rem</em> in immovable property</td>
<td>judgment rendered where the property is situated</td>
</tr>
<tr>
<td>tenancy of immovable property for a period of more than 6 months</td>
<td>will not be R&amp;E if the property is not situated in the State of origin and the courts of the Contracting States in which it is situated have exclusive jurisdiction under the law of that State</td>
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## 2018 draft Convention
– grounds for refusal

<table>
<thead>
<tr>
<th>Grounds for Refusal</th>
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<tbody>
<tr>
<td><strong>Traditional grounds:</strong> defective service, fraud, public policy and procedural fairness, inconsistent judgments (Art. 7)</td>
</tr>
<tr>
<td>In contradiction with a designated court in an agreement or in a trust document (Art. 7)</td>
</tr>
<tr>
<td><strong>[Applicable law control only in IP infringement]</strong> (Art. 7)</td>
</tr>
<tr>
<td>Punitive damages (Art. 10)</td>
</tr>
</tbody>
</table>

A judgment **may** only be refused for the recognition and enforcement based on the grounds provided in the draft Convention.
A sued B for the payment of goods delivered in another State, and obtained a favorable judgment.

State of Origin

- shall not review the merits
- check the eligibility of the judgment under Art. 5(1)
  - B’s habitual residence; or
  - B consented to the jurisdiction; or
  - B’s branch (if relevant); or
  - Place of the payment (noting the safeguard in Art. 5(1)(g))

Requested State

Is the judgment?
- delivered by a court?
- on the merits?
- not an interim measure of protection
- a civil or commercial matter under the scope

Is one of the grounds for refusal applicable under the Convention?

Yes

The judgment shall be recognised and enforced.

No
## 2018 draft Convention – a comparative perspective

<table>
<thead>
<tr>
<th></th>
<th>2018 draft Convention</th>
<th>Other national / regional R&amp;E regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim measures</td>
<td>x</td>
<td>x/✓</td>
</tr>
<tr>
<td>Final and conclusive</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>Non-monetary judgments</td>
<td>✓ (IP infringement?)</td>
<td>x/✓</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>No review of merits</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Notice and procedure</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Public policy</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Parallel litigation</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>No applicable law control</td>
<td>✓ (IP infringement?)</td>
<td>✓/x</td>
</tr>
</tbody>
</table>
For the Diplomatic Session

- All articles are open for negotiation
- Square-bracketed issues require more attention
- Five main issues require intersessional work
  - IP
  - Common courts (Art. 4(5) and beyond)
  - Declarations with regard to judgments pertaining to governments (Art. 20)
  - Relationship with other international instruments (Art. 24)
  - Possible exclusion of anti-trust matters (Art. 2(1)(p))
- Introducing bilateralisation in the Convention?
Next steps

Up to mid-2019
Informal Working Group meetings
To discuss five issues

Mid-2019
Diplomatic Session
Final round of negotiation
To adopt a Hague Convention on the recognition and enforcement of foreign judgments in civil or commercial matters

Soon after
Experts’ Group meeting
To consider the matter of direct jurisdiction
The Hague Conference on Private International Law
The World Organization for Cross-border Cooperation in Civil and Commercial Matters

About the Judgments Project

The "Judgments Project" refers to the work undertaken by the Hague Conference since 1992 on two key aspects of private international law in cross-border litigation in civil and commercial matters: the international jurisdiction of courts and the recognition and enforcement of judgments.

The Judgments Project focused on developing a broad convention, which was subsequently scaled down to focus on international costs involving choice of court agreements. This led to the conclusion of the Hague Convention of 30 June 2015 on Choice of Court Agreements ("Choice of Court Convention"). For more information on the Choice of Court Convention, see the Choice of Court Homepage.

Overview of the Judgments Project

Mandate

In 1991, the Council on General Affairs and Policy agreed that an Expert Group should be established to assess the possible merits of resuming the Judgments Project.

In 2012, the Council agreed that work on the Judgments Project should proceed. The Council established a Working Group to prepare proposals on the recognition and enforcement of judgments, including jurisdictional issues, and requested the Expert Group to further study and discuss the desirability and feasibility of making provisions in relation to jurisdiction in each of the years 2013-2015 (inclusive). The Council noted the useful progress made by the Working Group and invited the Working Group to continue its work.

In 2016, the Council on General Affairs and Policy welcomed the completion of the Working Group's Report on a Proposed Draft Text, and decided to set up a Special Commission to prepare a draft Convention. The Council also endorsed the recommendation of the Working Group that matters relating to direct jurisdiction (including jurisdictional grounds and its persons'{'-'}clashing jurisdiction) should be put for consideration to the Expert Group of the Judgments Project, and that the Special Commission should be held after the Special Commission has drawn up a draft Convention. The first meeting of the Special Commission took place from 1 to 9 June 2016 and produced the 2016 preliminary draft Convention.

In 2017, the second meeting of the Special Commission took place from 16 to 22 February 2017 and produced the 2017 draft Convention. In March 2017, the Council on General Affairs and Policy welcomed the very good progress made on the Project, which was confirmed as a priority for the Organization, and decided that the third meeting of the Special Commission be held. The Council endorsed the recommendation of the Special Commission that, in preparation for the next meeting, further international work on certain issues was necessary.

The third meeting of the Special Commission took place from 10 to 13 November 2017 and produced the November 2017 draft Convention. The Special Commission will recommend to the Council at its March 2018 meeting that it have a further meeting in mid-2018 and that a Diplomatic Session be convened in mid-2019.

In 2018, the Council on General Affairs and Policy welcomed the very good progress of the Project and mandated the Permanent Bureau to continue preparations for a Fourth and Final Meeting of the Special Commission in May 2018. The Permanent Bureau was also mandated to make arrangements for the preparation of a Diplomatic Session in mid-2019 and for a further meeting of the Expert Group addressing matters relating to direct jurisdiction, shortly after the conclusion of the Diplomatic Session.

The Fourth and Final Meeting of the Special Commission took place from 24 to 29 May 2018 and produced the 2018 draft Convention. The Special Commission considered that it has completed the mandate conferred on it by the Council and that, as contemplated by the Council, work on the draft Convention has reached the point where a Diplomatic Session can be convened in mid-2019.

Chronology of the Judgments Project (including relevant documentation)
Thank you!

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