

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

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# Outline

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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**

# Case



Ecuadorian Courts

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

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2014

*Southern District of New York (974 F.Supp.2d 362*

2016

*(S.D.N.Y.2014))*



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

2017



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

# 2018 draft Convention

## – in a nutshell

### Two main objectives:

- to promote trade and investment
- to enhance access to justice

### Main features:

- is a **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

# 2018 draft Convention

## – general scheme

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]



# 2018 draft Convention

## – eligible judgments (Art. 5)

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



## Requested State



Defendant's habitual residence

Submission

The property is situated

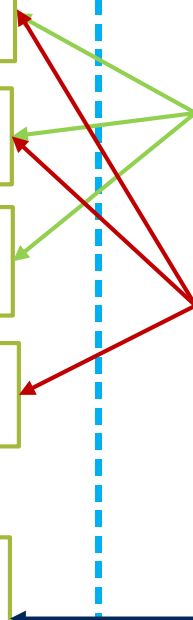
The act directly causing harm

[Both infringement & grant of patent took place]

tenancy of immovable property

tort claim

[patent infringement]



# 2018 draft Convention

## – eligible judgments (Art. 6)

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.

[(registration or) validity of IP rights required to be granted or registered]

judgment rendered in the State in which grant or registration has taken place

rights *in rem* in immovable property

judgment rendered where the property is situated

tenancy of immovable property for a period of more than 6 months

will not be R&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

# 2018 draft Convention

## – grounds for refusal

A judgment **may** only be refused for the recognition and enforcement based on the grounds provided in the draft Convention.

Traditional grounds: defective service, fraud, public policy and procedural fairness, inconsistent judgments (Art. 7)

In contradiction with a designated court in an agreement or in a trust document (Art. 7)

[Applicable law control **only** in IP infringement] (Art. 7)

Punitive damages (Art. 10)

# 2018 draft Convention

## – basic operation

A sued B for the payment of goods delivered in another State, and obtained a favorable judgment

### State of Origin



### Requested State



- 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))



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?



The judgment **shall be** recognised and enforced

# 2018 draft Convention

## – a comparative perspective

	2018 draft Convention	Other national / regional R&E regimes
Interim measures	x	x/✓
Final and conclusive	x	✓
Non-monetary judgments	✓ (IP infringement?)	x/✓
Jurisdiction	✓	✓
No review of merits	✓	✓
Notice and procedure	✓	✓
Public policy	✓	✓
Parallel litigation	✓	✓
No applicable law control	✓ (IP infringement?)	✓/x

# 2018 draft Convention

## – outstanding issues

### **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





# HCCH website



The screenshot shows the HCCH website homepage. At the top, there is a navigation bar with the HCCH 125 logo, language options (Français, Other languages), a Secure Portal link, and a search bar. Below the navigation bar is a large banner image of a modern building with the text "Hague Conference on Private International Law" and "The World Organisation for Cross-border Co-operation in Civil and Commercial Matters".

Below the banner, there is a "News" section with a grid of news items. Each item includes a small image, a title, and a date. The items are:

- The Protection of Adults Convention enters into force for Portugal...** (02-Jul-2018)
- Benin signs and ratifies the 1993 Hague Intercountry Adoption...** (28-Jun-2018)
- Fiji accedes to the Protection of Children Convention...** (11-Jun-2018)

There is a "SEE ALL NEWS" link. Below the news section, there are several categories of work, each with a list of items and an icon:

- Adoption** (Icon: Family): Child Abduction, Child Support, Protection of Adults, Protection of Children.
- Access to Justice** (Icon: Court): Apostille, Choice of Court, Evidence, Form of Wills, Service.
- Choice of Law in Contracts** (Icon: Scales): Securities, Trusts.
- INCADAT** (Icon: Globe): Support, e-APP.
- Legislative Projects** (Icon: Document): Cohabitation outside marriage, Family agreements involving children, Judgments, Parentage/Surrogacy, Protection Orders, Protection of tourists, Convention Projects.
- Upcoming meetings** (Icon: Calendar): Special Commission on the Judgments Project, Council of Diplomatic Representatives.




The screenshot shows the "THE JUDGMENTS PROJECT" page on the HCCH website. The page has a header with the HCCH 125 logo, navigation bar, and search bar. Below the header, there is a breadcrumb trail: Home / Projects / Legislative Projects.

The main content area is titled "Special Commission on the Judgments Project". It contains the following sections:

- About the Judgments Project**: A paragraph explaining the project's focus on cross-border litigation in civil and commercial matters, mentioning the Hague Convention of 30 June 2005 on Choice of Court Agreements.
- Overview of the Judgments Project**: A section detailing the project's progress, including the establishment of a Working Group in 2012 and the Special Commission in 2016.
- Mandate**: A section describing the Council's decision in 2011 to establish an Experts' Group to assess the merits of resuming the project.
- 2016**: A section detailing the Council's decision to welcome the completion of the Working Group's draft text and the establishment of the Special Commission.
- 2017**: A section detailing the Council's decision to endorse the recommendation of the Special Commission and to hold a third meeting.
- 2018**: A section detailing the Council's decision to endorse the recommendation of the Special Commission and to hold a fourth and final meeting.

On the right side of the page, there is a "Legislative Projects" sidebar with a list of projects: Cohabitation outside marriage, Family agreements involving children, Judgments, Parentage / Surrogacy, Protection Orders, Protection of tourists, Post-Convention Projects, and Upcoming meetings. Below the sidebar is an image of a scale of justice.

At the bottom of the page, there is a section titled "Chronology of the Judgments Project (including relevant documentation)".



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# Thank you!

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