

The Hague Convention on Choice of Court Agreements: A Rival to the New York Convention and a ‘Game-Changer’ for International Disputes?

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In a 2014 [speech delivered in Sydney](#) entitled “Commercial Courts and International Arbitration – Competitors or Partners?”, Michael Hwang SC, referring to the New York Convention on the Recognition and Enforcement of Arbitral Awards (‘New York Convention’), described the Hague Convention on Choice of Court Agreements (‘Hague Convention’) as “*a sort of mini version of the New York Convention for the enforcement of court judgments*”.

Similarly, in a 2015 [speech delivered in Dubai](#) at the signing of memoranda between the courts of the Dubai International Financial Centre and the Singapore Supreme Court and entitled “International Commercial Courts: Towards a Transnational System of Dispute Resolution”, Chief Justice Sundaresh Menon of Singapore described the Hague Convention as a “*game-changer in the international enforceability of court judgments*”, which “*aims to do for court judgments what the New York Convention has done for arbitral awards*”. [Singapore](#) signed and ratified the Hague Convention earlier this year (the ratification took place on 2 June 2016).

What does the Hague Convention mean for international arbitration, and is it on track to have the kind of radical impact envisaged for international disputes?

Background to the Hague Convention

The Hague Convention was concluded in 2005, and came into force on 1 October 2015 and was designed to promote international trade and investment by encouraging judicial co-operation in multi-jurisdictional litigation, and the enforcement of foreign judgments.

It applies to cases that are international in nature (Article 1) but also outlines several matters that do not fall within its scope of application. They include disputes about employment, consumer contracts, family law, insolvency and the validity of intellectual property rights other than copyright and related rights (Article 2).

There are three key features of the Hague Convention:

- **First**, where parties have stipulated an exclusive choice of court agreement in their contracts, the Hague Convention requires that a court selected by parties must act in every case as long as the choice of court agreement is not null and void (Article 5). There is no discretion (on *forum non conveniens* or other grounds) in favor of courts of another State.
- **Secondly**, the Hague Convention provides that any other court seized but not chosen must dismiss the case unless the exceptions listed in the Hague Convention apply (Article 6). A jurisdiction agreement is thus effectively enforced and avoids parallel proceedings.
- A **third** key feature of the Hague Convention is that it provides an international framework to recognize and enforce judgments. A judgment rendered by the court of a member State must be recognized and enforced by the courts of other member States (Article 8) unless one of the exceptions established by the Hague Convention applies (Article 9). This is the feature highlighted by Michael Hwang SC and Menon CJ in their speeches.

It must be borne in mind that the recognition and enforcement of judgments between member States are limited to judgments made by courts designated by the parties under the choice of court agreement.

Which States have ratified the Hague Convention?

Other than Singapore, Mexico and the European Union (except for Denmark) have ratified The Hague Convention. The United States and Ukraine have both signed the Hague Convention and it is expected that ratification will follow soon, which will widen the scope of application of the convention to a total of 31 countries.

The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971

The Hague Convention should not be confused with the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 ('1971 Convention'). Although both contain mutual enforcement provisions, the latter is a multilateral treaty which is not limited to exclusive jurisdiction clauses, and aims to promote more broadly mutual recognition and enforcement of judicial decisions. However, it has not been widely ratified.

In any event, the Hague Conference on Private International Law is currently working on a new international convention to regulate the jurisdiction and recognition of international judgments ('Judgments Convention'). If it comes to fruition, the new Judgments Convention will replace the 1971 Convention and is intended to complement the Hague Convention.

The future Judgments Convention seeks to establish uniform legal rules on the recognition and enforcement of judgments which will provide international litigants with certainty in cross-border transactions.

The draft text of the Judgments Convention will be reviewed at a Special Commission meeting in The Hague in February 2017 and an overview of the status of the Convention can be found [here](#).

However at present, as currently drafted, the Judgments Convention provides that:

- A judgment of a court of a Contracting State shall be recognized and enforced in all other Contracting States without a review of the merits (Article 4).
- Recognition or enforcement may be refused only on the grounds specified by the 2016 preliminary

draft Convention (Articles 5 to 7).

- Some specific rules (judicial settlements, punitive damages, etc.) correspond to the articles currently in force in the Hague Convention.
- Subject to Article 6 (which lays down exclusive bases for recognition and enforcement), the 2016 preliminary draft Convention does not prevent the recognition or enforcement of judgments under national law (Article 16).

A copy of the 2016 preliminary draft Convention is publicly available on the website of The Hague Conference on Private International Law.

It will be interesting to monitor development of the future Judgments Convention. If it is approved and widely ratified, it will serve as an equivalent to the New York Convention in international litigation. By eliminating differences arising from countries applying their own national laws, the future Judgments Convention will provide predictability, and a mechanism to streamline the recognition and enforcement of civil and commercial judgments on an international scale.

Conclusion

Although the Hague Convention is a step in the right direction in facilitating the international enforcement of court judgments, it has not yet had a radical impact on international disputes due to:

- its limited scope, as it applies only to judgments of courts specified by parties in a dispute resolution clause; and
- the limited number of countries which have ratified the Hague Convention. 29 countries have ratified the Hague Conventions so far, as compared to a total number of 156 States which are parties to the New York Convention.

Unless a larger number of countries sign up to the Hague Convention, it may struggle to diminish the appeal of international arbitration based on the wide enforceability of international arbitral awards, and consequently may not have the radical impact envisaged.

The real game-changer could be the Judgments Convention. By providing for the mutual enforcement of court judgments not limited to exclusive jurisdiction clauses, the Judgments Convention, if ratified by a large number of States, could have a wide-ranging impact on the world of international disputes as we know it. If States recognize the value in ratifying the Judgments Convention, it could undoubtedly give international arbitration – and the New York Convention – a run for their money, as it would provide an alternative global instrument that meets the practical needs of international litigation.