

The 2019 Hague Judgments Convention

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This special issue of *NIPR* is dedicated to the new 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ('Judgments Convention') of the Hague Conference on Private International Law (HCCH). And rightly so. 2019 was an important year for the HCCH. On 2 July 2019, the new Convention was signed at the Peace Palace. The signing of the text of the Judgments Convention marked the successful ending of intense and exciting negotiations during the two-week (18 June to 2 July) Diplomatic Session on the subject. It also marked the end of the era on the work of the HCCH on recognition and enforcement which originally started in 1992. Although the scope of the Convention is rather limited, its importance for the HCCH cannot be easily overestimated. In 2018 the HCCH celebrated its 125th anniversary with all kinds of festivities. But the celebration had an undertone of concern about the HCCH's ability to be successful in its core business: making conventions in the field of Private International Law. The last Convention (on maintenance) dated back to 2007.¹ During its annual General Affairs meetings of the past few years there were difficult discussions about budgets and future topics. Therefore, the HCCH was in urgent need of success. Although a date had already been set for the Diplomatic Session in 2019 for the conclusion of the Judgments Convention, there were still quite a few controversial outstanding issues. Many of the various speakers who spoke on the occasion of the anniversary celebration expressed the hope that the more than 80 members of the HCCH would negotiate in a spirit of compromise and finalise the Judgments Convention during the Diplomatic Session in 2019.

The high political pressure to succeed may or may not have had an influence on the negotiations during the Diplomatic Session. At the start of the Diplomatic Session most of those present said that the Convention stood a fair chance of succeeding but that certain outstanding issues could still turn out to be serious obstacles to reaching an agreement.

On the first day of the Diplomatic Session, the speech delivered on behalf of the Dutch Minister for Legal Protection pointed out that participants were entrusted with the important task of simplifying the lives of citizens and companies through successful negotiations and a signed convention at the end of the Diplomatic Session. The HCCH aimed at a text with a maximum amount of support from its members. With more than 80 members with different legal cultures from around the world it took a lot of hard work, flexibility and compromise and also leadership by the Chair of the Commission of the Diplomatic Session on the Judgments Convention, David Goddard QC, to reach an agreement.

Negotiations during the two weeks of the Diplomatic Session generally took place between 9:30 and 18:00. The European Commission spoke on behalf of the member states of

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1 Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance: <https://assets.hcch.net/docs/14e71887-0090-47a3-9c49-d438eb601b47.pdf>.

the European Union, since the European Union has exclusive external competence on most points in respect of the Judgments Project. In order for the European Commission to be able to do so, it needed a mandate from the Council of Ministers which had been previously agreed. As a result of this, not many member states took the floor during the plenary sessions of the Diplomatic Session. Although this *modus operandi* has now been used for many years in the context of the Hague Conference, it still leads to an interesting dynamic. Since the EU is the only regional organisation which is a HCCH member, it is also the only regional organisation that speaks on behalf of its members. Others, like the South Americas, have their members speak for themselves. Thus, the actual number of states intervening/having their flags raised during the plenary in support of a text proposal is not always completely representative of the total support for such proposal within the HCCH.

Any developments regarding the draft text would require an updated mandate for the European Commission. For this purpose, the EU had its daily coordination meetings to discuss any new text proposals made by other states in the plenary or during breakout sessions in special working groups. Depending on the developments in the plenary, such coordination meetings could take place either prior to or after a plenary session or even during a lunch or coffee break. The coordination meetings were modelled on a Council working party in the sense that member states discussed proposals prepared by the European Commission for a (revised) EU position. The European Commission had been intensively involved in the drafting process for the text of the draft convention in preparation for the Diplomatic Session. For most individual EU member states, it was difficult to be as well informed about every detail of every part of the draft text. This made serious discussions and an actual influence somewhat more difficult. Fortunately, the European Commission's negotiation team acted with great expertise and skill which made it easier for the EU member states to 'lean back'.

As already mentioned, breakout sessions took place in addition to the daily negotiations and the coordination meetings, dealing with specific, complicated or sensitive topics in working groups. Under the guidance of a chair, designated by the plenary, such topics were discussed and resolved *en petit comité*, either during the lunch break or at the end of the day. Each participant of the Diplomatic Session was free to join a breakout session, after having notified the relevant chair of the participant's interest in joining. Topics which were discussed in breakout sessions included the bilateralisation issue, the issue of the inclusion or exclusion of IP rights within the scope of the Convention and the issue of judgments on immovable property.

Towards the end of the Diplomatic Session, the participants were invited to attend a festive dinner at the Sociëteit de Witte in The Hague city centre. This was a great opportunity to become acquainted with other delegations on a more informal level, to discuss the similarities and differences between legal systems and cultures, and to create an atmosphere of cooperation and a willingness to succeed.

And finally, on 2 July, after two weeks of intensive negotiations, there was a text that all delegations had agreed upon and were able to sign. The Dutch Minister of Foreign Affairs made a speech during the signing ceremony in his capacity of the depositary of the HCCH conventions. After that, all delegations were invited to sign the text of the convention for agreement. Because of the ceremonial nature of the signatures, all member states' delegations were allowed to sign the text, in addition to the European Commission (on behalf of the EU). In addition to signing the text for agreement, Uruguay decided to sign the convention for accession. At that moment Uruguay was the only participant to do so. Very recently, Ukraine has also signed the

Judgments Convention and hopefully many others will follow soon. In any event, the European Commission has already expressed its wish to proceed with accession and ratification as soon as possible. This will require new negotiations and agreement within the EU, so let us hope that the European Commission will indeed publish a proposal for ratification shortly!

In this special issue we are proud to have contributions from authors who have been involved in the negotiations on the Judgments Convention, some of them from the very beginning in 1992. Hans van Loon was already working at the HCCH in 1992 and was Secretary General from 1996 until 2013. His contribution was originally written before the Diplomatic Session took place and is therefore from a historical perspective. It describes the choices made in the Draft of the Judgments Convention prepared in 2018. Catherine Kessedijan was Deputy Secretary General of the HCCH from 1996 until 2000. She was in charge of the preparation and monitoring of the negotiations for a worldwide Convention on jurisdiction and enforcement of judgments in commercial matters. The focus of her contribution is on the added value of the Judgments Convention for companies conducting international activities. Michael Wilderspin and Lenka Vysoka both work at the European Commission's Legal Service. Their perspective is that of the EU and the EU's instruments on recognition and enforcement. Together these contributions give a pretty good overview of the various aspects of the Judgments Convention. We also expected to publish an article focusing on the Chinese perspective on the Judgments Convention. Unfortunately, due to the outbreak of the Covid-19 virus our Chinese authors, Xiao Yongping and Long Weidi from Wuhan University School of Law, have not been able to finish their contribution before this issue has gone to print. We hope to be able to publish their contribution at a later stage.

Last but not least, we have a case note by Floor Veldhuis (in Dutch) on the Dutch Supreme Court's preliminary questions about State immunity in relation to the preservation of assets and the Brussels I Regulation (Recast) (Regulation (EU) 1215/2012, *OJ* 2012, L 351/1).²

2 HR 21 December 2018, ECLI:NL:HR:2018:2361 and HR 22 February 2019, ECLI:NL:HR:2019:292, *NIPR* 2019, 64 (*Shape/Supreme*).