

Brand, “The Circulation of Judgments Under the Draft Hague Judgments Convention”

The 2018 draft of a Hague Judgments Convention adopts a framework based largely on what some have referred to as “jurisdictional filters.” Article 5(1) provides a list of thirteen authorized bases of indirect jurisdiction by which a foreign judgment is first tested. If one of these jurisdictional filters is satisfied, the resulting judgment is presumptively entitled to circulate under the convention, subject to a set of grounds for non-recognition that generally are consistent with existing practice in most legal systems. This basic architecture of the Convention has been assumed to be set from the start of the Special Commission process, and will be key to the Convention’s acceptability to countries which might ratify or accede to any final Convention. An alternative approach to convention architecture, which would allow the test for judgment circulation to be built on as few as four rules, was considered and passed over in the earlier Working Group which preceded the Special Commission process.

Ronald Brand’s new article discusses the advantages and disadvantages of each of the 2018 draft Convention text as well as the alternative approach. It then suggests that, no matter which approach one considers to be better, the 2019 Diplomatic Conference should begin with an awareness of both options, and an understanding of the advantages and disadvantages of each, and move forward with a clear decision that the option chosen is the best alternative. Such consideration may (1) lead to the conclusion that the choices already made are the best for a multilateral treaty; (2) result in a determination that an alternative approach is a better option; or (3) demonstrate that one approach works best for some legal systems while another approach works best for other legal systems – leading to dual texts that could form the bases for differing bilateral and multilateral treaty relationships across the globe, while still improving the global framework for the recognition and enforcement of foreign judgments.

It is available [here](#)