

# **Review of Ronald A. Brand, Michael S. Coffee, and Paul Herrup, The 2019 Hague Judgments Convention, Oxford: Oxford University Press, 2023, 416pp, hb £125**



The book by Brand, Coffee, and Herrup offers a thorough examination of the Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments (commonly referred to as “The Hague Judgments Convention”). Concluded on July 2, 2019, the Convention currently has 31 Contracting States, including all 27 EU member states, the European Union, and Ukraine. Uruguay has signed and ratified the Convention, which will enter into force on October 1, 2024. The United Kingdom has ratified the Convention, with the Convention taking effect there on July 1, 2025.

The book primarily focuses on the interpretation of The Hague Judgments Convention, offering 226 pages of substantive content spread across 11 chapters (excluding the table of contents, appendix, and index). It is largely intended as a practitioner’s guide. The three authors, all from the United States, and also all member of the U.S. Delegation to Special Commissions and the Diplomatic Sessions of the Hague Conference on Private International Law that adopted the 2005 Convention on Choice of Court Agreements (“Hague 2005 Convention”) and the Hague Judgments Convention. They strive for objectivity but on few occasions critique the Convention through the lens of U.S. conflict of laws. They particularly challenge the Convention’s approach to recognition and enforcement, which relies on rigid rules predominantly linked to physical presence—a methodology influenced by the Brussels I Recast Regulation.

Chapter 1 provides an introduction to The Hague Judgments Convention, highlighting its three core functional provisions. First, Article 4(1) stipulates that recognition and enforcement of judgments can only occur between Contracting States, as outlined in Chapter II of the Convention, and subject to other provisions. Second, Article 5(1) sets forth the eligibility criteria for recognition and enforcement of foreign judgments, listing thirteen specific provisions, with an additional criterion in Section 6. Third, Article 6 establishes the requirement that foreign judgments in rem (concerning property) are only recognised and enforced if the property was located in the court of origin. Regardless of national law, if the property in question was not situated in the country of origin, the Convention mandates that such judgments be denied recognition and enforcement.

The authors in the Introduction highlight the significance of the Hague 2019 Convention in five key ways. First, it facilitates globalisation by supporting the transnational movement of people, goods, and services. Second, the Convention should be viewed as a global instrument that complements the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Hague 2005 Convention on Choice of Court Agreements, as these other instruments do not specifically address the broad spectrum of issues—including non-contractual obligations—covered by the recognition and enforcement of foreign judgments. Third, the Hague 2019 Convention governs the recognition and enforcement of foreign judgments by courts, indicating that it involves the judicial exercise of State powers and necessitates judicial cooperation among contracting states. Fourth, the Convention does not address the jurisdiction to adjudicate (“direct jurisdiction”) but rather assesses how the court of origin exercised jurisdiction based on minimum acceptable conditions (“indirect jurisdiction”). Finally, unlike the Brussels I Recast, which relies on rigid classifications of subject matters, the Hague Judgments Convention adopts a broader approach to eligibility criteria, focusing on the connections between the judgment debtor and the country of origin, the subject matter and the country of origin, as well as consent.

The introduction concludes with reflections on how the Hague Judgments Convention may be interpreted in the future, particularly regarding concepts that are not clearly defined within the Convention.

Chapter 2 offers a concise overview of judgment recognition in the absence of a judgment’s convention, emphasising historical perspectives on the global

recognition and enforcement of foreign judgments, as well as national and regional initiatives, particularly in the United States and the European Union. A notable point is the commendation of Article 15 of The Hague Judgments Convention, which permits Contracting States to apply their national rules for recognising and enforcing foreign judgments if those rules are more favourable than the Convention's provisions. Essentially, the Convention establishes only the minimum criteria for the recognition and enforcement of foreign judgments.

Chapter 3 provides a brief history of the negotiations that led to the formation of The Hague Judgments Convention. Notably, Professor Arthur von Mehren initially proposed a model combining direct and indirect jurisdiction rules for the Convention—a mixed or double Convention model similar to Brussels I Recast. However, unlike Brussels I Recast, these jurisdictional rules were intended to be neither exhaustive nor exclusive. Following the entry into force of The Hague 2005 Convention, which focused on exclusive choice of court agreements related to both jurisdiction and enforcement of foreign judgments, the Hague Experts Working Group was tasked with developing separate conventions: one for recognition and enforcement and another for jurisdiction. Consequently, on July 2, 2019, the Diplomatic Session concluded The Hague Convention on the Recognition and Enforcement of Foreign Judgments.

Chapter 4 centres on the interpretation of The Hague Judgments Convention, making it a crucial part of the book given its overall focus on interpretation. The authors explain that their approach is primarily text-based, adopting a positivist and autonomous methodology. However, they acknowledge several challenges, such as determining the “correct” autonomous interpretation and grappling with terms that are not clearly defined within the Convention. In the absence of a “Global Court” to resolve these ambiguities, there is a risk of divergent interpretations by the courts of Contracting States, which could hinder the realisation of Article 20 of the Convention, which aims to ensure that interpretation respects its international character and promotes uniformity.

The authors also argue that, since the Convention was forged through consensus, any provisions not grounded in clear, established agreement may be subject to varying national interpretations. Despite these challenges, they propose alternative methods for interpreting the Convention, including considering the preamble, extra-textual sources of consensus, the explanatory report, statements from the plenary sessions of the diplomatic conference, and other sources within

the Judgments Project, as well as drawing parallels with The Hague 2005 Convention.

Chapters 5 through 9 offer a detailed analysis of the substantive provisions of the Hague Judgments Convention, providing commentary on each Article and its subsections. Each chapter begins by quoting the relevant Article, followed by a precise analysis.

Chapter 5 focuses on Chapter I of the Hague Judgments Convention, which addresses the scope and definitions outlined in Articles 1 to 3. Article 1 establishes that the Convention applies exclusively to civil and commercial matters and pertains to judgments from Contracting countries, excluding interstate judgments. Article 2 enumerates the matters that are excluded from the Convention's scope, while Article 3 provides definitions, including the specific meaning of "judgment."

Chapter 6 delves into Chapter II of the Hague Judgments Convention, which addresses the obligations for recognition and enforcement and the criteria for eligibility outlined in Articles 4 to 6. The authors identify these Articles as the operational core of the Convention, forming the essential framework for the recognition and enforcement of foreign judgments. They emphasize that the Convention is primarily concerned with regulating the process of recognition and enforcement, rather than directly mandating the recognition and enforcement of judgments.

Chapter II of the Convention begins with Article 4, which stipulates that a judgment rendered by a court in a Contracting State must be recognised and enforced in other Contracting States in accordance with the provisions of Chapter II. Article 5 outlines the specific and often narrow criteria for eligibility for the recognition and enforcement of judgments that possess certain characteristics. Article 6 establishes obligations that both regulate and restrict the recognition or enforcement of certain judgments, overriding other provisions of the Convention in the process.

Chapter 7 explores additional provisions related to the obligations of recognition and enforcement, as outlined in Articles 7 to 15 of the Hague Judgments Convention. Article 7 introduces discretionary grounds for refusing the recognition or enforcement of judgments that fall within the Convention's scope

and meet the eligibility criteria of Article 5(1). In some cases, these grounds are broader than those listed in the Hague 2005 Convention. The authors emphasize that the Convention is designed to regulate the recognition and enforcement of judgments within its defined scope, rather than to establish a comprehensive policy for all judgments.

Article 8 deals with the status of certain judgments that may include content outside the Convention's scope, such as preliminary questions. Article 9 introduces a severability rule, while Article 10 addresses the handling of damages awards. Article 11 brings judicial settlements under the Convention for enforcement purposes. Article 12 outlines the documents required when seeking recognition or enforcement, and Article 13 covers additional procedural points. Article 14 deals with the costs of proceedings. Lastly, Article 15 preserves the right of Contracting States to recognise or enforce judgments under their national law, including their conflict of law rules, but prohibits this in cases involving judgments on rights in rem in immovable property that fall under Article 6.

Chapter 8 examines the general clauses outlined in Articles 16 to 23 of The Hague Judgments Convention. The authors note that these "General Clauses" have the potential to significantly influence the outcome of specific requests for recognition or enforcement. Article 16, for instance, contains transitional rules that determine when the Convention's provisions will apply to the recognition and enforcement of judgments, based on the date the Convention takes effect between the State of origin and the requested state.

Articles 17 to 19 allow States to make certain declarations that can tailor the application of specific Convention rules under particular circumstances. Article 20 emphasizes the importance of promoting uniformity in the interpretation and application of the Convention. Article 21 authorizes a review of the Convention's operation. Article 22 provides rules for applying the Convention in "non-unified legal systems," while Article 23 addresses the relationship between the Convention and other international instruments.

Chapter 9 covers the final clauses outlined in Articles 24 to 32 of The Hague Judgments Convention. The authors explain that these "Final Clauses," found in Chapter IV of the Convention, establish the rules governing the Convention as a treaty. Article 24 specifies the procedures for States to sign, ratify, accept, approve, or accede to the Convention. Article 25 allows States with two or more

territorial units, where different legal systems apply to matters covered by the Convention, to adapt the application of the Convention to those units.

Articles 26 and 27 set forth rules for Regional Economic Integration Organizations (REIOs). Article 28 details the provisions regarding the entry into force of the Convention, while Article 29 outlines the effects of the Convention between Contracting States. Article 31 provides the procedure for a Contracting State to denounce the Convention, and Article 32 outlines the rules for depositary notifications.

Chapter 10 examines the role of the Convention within the context of current practices in the United States. The authors note that while the U.S. has generally been receptive to recognising and enforcing foreign judgments, U.S. judgments have not always received reciprocal treatment in other countries. They suggest that the Convention could help address this issue by improving the treatment of U.S. judgments abroad. The chapter also briefly explores the potential impact of the Convention's implementation in the U.S., particularly considering whether Article 15 might encourage U.S. courts to adopt an even more liberal approach to the recognition and enforcement of foreign judgments.

Chapter 11 serves as the conclusion, summarising the authors' key points. They make three general observations: First, they argue that the 2019 Hague Judgments Convention, on balance, represents a significant positive development for transnational litigation, offering a comprehensive framework for the recognition and enforcement of a wide range of foreign judgments. Second, they caution that some of the Convention's central provisions may eventually be seen as flawed and outdated. Third, they suggest that there are measures that could be explored and utilised to mitigate these potential issues.

Overall, the book leaves a positive impression. It is accessible and easy to understand, particularly for those with a background in private international law. The writing is clear and free from typographical errors.