‘Salami-slicing’ and Issue Estoppel: Foreign Decisions on the Governing Law

One of the requirements for issue estoppel is identity of issue. However, the process of ‘refining down’ or ‘salami-slicing’[1] is not always clear. The argument that the issue is different because the two courts would arrive at different conclusions on the governing law is increasingly being utilised as a litigation strategy. If the first court applied its choice of law rules to determine that the governing law of the claim is Utopian law, would an issue estoppel arise over this decision in the second court if under the second court’s choice of law rules, Ruritanian law is the governing law? The answer depends on whether the ‘slice’ is thick or thin. Is the relevant issue ‘What law governs the dispute or issue?’ or ‘What law is identified by our (forum) choice of law rules to govern the dispute or issue?’

For example, there is considerable difference in tort choice of law rules. Some jurisdictions apply the double actionability rule.[2] Most jurisdictions adopt the *lex loci deliciti* or *lex loci damni* rule,[3] with differences on how the relevant *locus* is identified and whether a flexible exception in favour of the law of closer connection is present. Party autonomy is also permitted in certain jurisdictions.[4] Thus, in tort claims, the issue could be framed in different ways: eg, ‘what is/are the law(s) governing the tort?’, ‘what is the lex loci delicti?’, ‘where in substance did the tort arise?’, or ‘where was direct damage suffered’? It will be obvious that only the first, broad, framing of the issue, or, in other words, a ‘thick’ slice, will result in there being identity of issue. In essence, the question is: does a difference in choice of law rules matter for issue estoppel purposes?

The Hong Kong Court of Final Appeal in *First Laser v Fujian Enterprises (Holdings) Co Ltd*[5] took the view that an issue estoppel can arise over a foreign decision on the governing law of the dispute. However, there is a suggestion in the Singaporean Court of Appeal decision of *Gonzola Gil White v Oro Negro Drilling Pte Ltd* that a difference in the two laws is relevant.[6] Arguably, the Court’s views were limited to the specific situation where the Singaporean court as the second court would have arrived at Singaporean law after application of

Singaporean choice of law rules. This is because the Singaporean court views it as part of its constitutional responsibilities to safeguard the application of Singaporean law.[7] If this is correct, it is doubtful that the same approach would be adopted by at least the English courts, as English courts are prepared accord preclusive effect to a judgment of a foreign court even where that foreign court had made an error on English law in its judgment.[8]

The English Court of Appeal in *Yukos Capital Sarl v OJSC Rosneft Oil Co (No 2)*[9] held that no issue estoppel will arise over a question involving forum international public policy. This is entirely explicable as each country's public policy differs. It has also been suggested that no estoppel arises over an issue which is subject to a forum overriding mandatory rule.[10] Decisions on sensitive matters which give rise to comity considerations should also be excluded.[11]

The question is whether decisions on the governing law merit the same treatment. It is argued that for most private law claims, a foreign decision on the governing law of the dispute or on a specific issue in the claim is generally capable to giving rise to an issue estoppel. A contrary conclusion would disregard the policies underlying estoppel and allow forum shopping. However, some choice of law categories – eg, choice of law for consumer contracts or employment contracts, or for environmental torts – are underpinned by public policy considerations. For these special choice of law categories, it is suggested that the forum court retains the prerogative to decide on the issue of the governing law for itself, despite a prior foreign decision on the same point. In other words, a narrow 'slice' is appropriate.

The same broad-narrow question arises in other contexts. It could arise in the jurisdictional context: would the first court's decision on the applicability of the personal equities exception for the *Mocambique* rule give rise to an estoppel in subsequent proceedings in a different court? What about a decision on which court is *forum (non) conveniens*? How about arbitration, where the balance of competing considerations may lie differently compared to international litigation? For example, should an issue estoppel arise over a foreign decision on subject-matter arbitrability?[12] Is it relevant if the first court decided this issue at the pre-award stage or at the post-award stage pursuant to proceedings to enforce an arbitral award? Does it matter if the first court is the court of the seat?[13]

These, and other questions, are considered in the open access article Adeline

Chong, ‘Salami-Slicing’ and Issue Estoppel: Foreign Decisions on the Governing Law’, International and Comparative Law Quarterly (FirstView).

[1] *Desert Sun Loan v Hill* [1996] 2 All ER 847, 859 (Evans LJ).

[2] Eg, Singapore: *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (Singapore

CA); Hong Kong: *Xiamen Xinjingdi Group Co Ltd v Eton Properties Ltd* [2020] 6 HKC 451; Japan: Act on General Rules for Application of Laws (Act No 78 of 2006), art 22.

[3] Eg, Rome II Reg, art 4(1).

[4] Eg Rome II Reg, art 14; Swiss Federal Code on Private International Law, art 132.

[5] [2013] 2 HKC 459 (HKCFA).

[6] [2024] 1 SLR 307 [87] (Singapore CA).

[7] Ibid [78]-[79].

[8] *Good Challenger Navegante SA v MetalExportImport SA, (The “Good Challenger”)* [2003] EWCA Civ 1668, [54]–[55]. See also *Godard v Grey* (1870) LR 6 QB 139.

[9] [2012] EWCA Civ 855.

[10] *Merck Sharp & Dohme Corp v Merck KGaA* [2021] 1 SLR 1102 [55] (Singapore CA).

[11] See the reference to ‘matters of high policy’ in *Yukos* [2012] EWCA Civ 855 [151].

[12] *Diag Human SE v Czech Republic* [2014] EWHC 1639 (Comm) [58].

[13] See *The Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56 (Singapore CA).

The Conflict-of-Law Rules in the UAE's New Civil Transactions Act: Yet Another Missed Opportunity!

I. Introduction

On 1 January 2026, the Legislative Decree No. 25/2025 promulgating a new Civil Transactions Act (hereafter 'NCTA') entered into force. The NCTA repeals and replaces the former Federal Civil Transactions Act of 1985 (hereafter 'the 1985 Act'). The adoption of the NCTA forms part of the State's broader and ongoing effort to comprehensively update and modernize its legal system, an effort that has already touched major legislative instruments, including, among many others, the 2022 Civil Procedure Act, the 2024 Personal Status Act, the 2023 Competition Act, and the 2022 Commercial Transactions Act.

Since the 1985 Act contained a codified set of conflict-of-laws rules, its replacement necessarily entails a re-examination of the UAE's private international law framework and, at least in principle, the introduction of new or revised choice-of-law provisions. Against this background, this note offers a preliminary and necessarily tentative assessment of the modifications introduced by the NCTA. It focuses on the main features of the new law in relation to choice-of-law regulation, highlighting both the changes introduced and the limits of the

reform.

II. The Choice-of-Law System under the 1985 Act and its Evolution

1. Choice of Law Rules under the 1985 Act

It is worth recalling that the first codification of conflict-of-laws rules in the UAE was introduced in 1985 as part of the 1985 Act. This codification consisted of 29 provisions (Arts. 10–28), incorporated into the Preliminary Part of the Act. In both structure and substance, the UAE codification closely followed the Egyptian model. Remarkably, despite the 37 years separating the two codifications, most of the Egyptian rules were retained almost unchanged. Some divergences nevertheless existed. For instance, while renvoi is entirely excluded under Egyptian law (Art. 27 of the Egyptian Civil Code), it is permitted under the 1985 Act only where it leads to the application of UAE law (Art. 26 of the 1985 Act).

The codification was relatively simple, comprising general choice-of-law rules structured by reference to broad legal categories, dealing in particular with status and capacity (Art. 11); marriage, its effects, and dissolution (Arts. 12–14); maintenance (Art. 15); guardianship and other measures for the protection of persons with limited capacity and absentees (Art. 16); succession and wills (Art. 17); real rights (Art. 18); contractual obligations (Art. 19); non-contractual obligations (Art. 20); and procedure (Art. 21).

The codification also included general provisions governing characterization (Art. 10); the priority of international conventions (Art. 22); general principles of private international law (Art. 23); national law (Art. 24); multi-jurisdictional legal systems (Art. 25); renvoi (Art. 26); public policy (Art. 27); and the application of UAE law in cases where the content of the applicable foreign law cannot be ascertained (Art. 28).

2. The 2020 Reform

It was not until 2020 that the choice-of-law rules were partially reformed through

the Legislative Decree No. 30/2020, which amended certain provisions of the 1985 Act. This reform was not comprehensive but instead targeted four key areas.

First, the rule on substantive and formal validity of marriage was amended to replace the former connecting factor based on the *lex patriae* of each spouse with the *lex loci celebrationis* (Art. 12).

Second, the rule on personal and patrimonial effects of marriage and its dissolution based on the *lex patriae* of the husband was similarly abandoned in favor of the *lex loci celebrationis*.

Third, Article 17, relating to succession and wills, was revised to allow *professio juris* for both the substantive and the formal validity of wills. As regards the former, the will is governed by the law chosen by the testator, failing which the *lex patriae* of the deceased at the time of death applies. As for formal validity, *professio juris* now operates as an additional alternative connecting factor.

Finally, the reform addressed public policy. For reasons that remain unclear, Article 27 expressly limited the operation of the public policy exception by excluding matters traditionally associated with personal status – such as marriage, divorce, filiation, maintenance, guardianship, succession, and wills – from its scope, despite the fact that these matters are generally regarded as having a strong public policy character (Art. 3).

Other provisions, however, were left unchanged, notwithstanding the fact that many of them are outdated and no longer reflect contemporary developments in private international law, in particular the persistence of traditional connecting factors such as the common domicile of the contractors and the *locus contractus* in contractual matters or double actionability rule for non-contractual obligations. More fundamentally, the reform failed to address the interaction between the conflict-of-laws rules contained in the 1985 Act and the provisions delimiting the scope of application of the 2005 Personal Status Act, which was subsequently replaced by the 2024 Personal Status Act. This unresolved issue of articulation continues to generate significant legal uncertainty (for an overview, see my previous posts here).

III. The New Reform under the NCTA

It was therefore with genuine enthusiasm that the reform of the existing legal framework was awaited, particularly in light of the ongoing efforts to modernize the UAE legal system and align it with international standards. However, while the reform does present some positive aspects (1), it is with considerable regret that the NCTA appears to have devoted only very limited attention to the modernization of the UAE conflict-of-laws regime (2).

This assessment is grounded in two main observations:

First, the existing system has largely been maintained with only some minor changes, including changes in wording.

Second, the very limited modifications that were introduced reflect a legislative approach that, at best, appears insufficiently informed by contemporary developments in private international law.

1. Positive Aspects of the Reform

Three main positive aspects can be identified:

The first concerns the clear affirmation of party autonomy as a guiding principle in contractual matters. Under the 1985 Act, although party autonomy was formally recognized, its formulation tended to present it as an exception rather than as a genuine principle. This shortcoming has now been remedied in the NCTA. The new provision expressly states that *"contractual obligations, as to both form and substance, are governed by the law expressly chosen by the parties."* In addition, the NCTA abolishes the place of conclusion of the contract as an objective connecting factor applicable in the absence of a choice of law by the parties, thereby moving away from a traditional and often criticized criterion.

Second, the questionable rule allowing the application of UAE law when one of the parties has multiple nationalities is now abandoned. According to the new rule, in case a person has multiple nationalities, the law of nationality under which that person entered the UAE would apply.

The third important modification concerns public policy. As noted above, the 2020 reform introduced considerable confusion and ambiguity in the application of the public policy exception by unduly restricting its scope and excluding matters that

have traditionally been regarded as falling within public policy. The NCTA addresses this difficulty by removing the limitation introduced in 2020 and by restoring the public policy exception to its more general function within the UAE conflict-of-laws system.

Another modification of particular significance should also be highlighted, although it must be acknowledged that its practical impact may be more symbolic than substantive. This concerns the abandonment, in the current reform, of any explicit reference to Islamic Sharia in the context of public policy, even though such a reference, which appeared in the original provision in 1985, was expressly maintained in the 2020 reform. This omission marks a notable shift in legislative technique and appears to signal a move toward a more neutral formulation of public policy, at least at the level of statutory language.

The removal of the explicit reference to Islamic Sharia may thus be understood as part of a broader trend toward the modernization and internationalization of the UAE's private international law framework. This interpretation is further supported by the redefinition of the role of Islamic Sharia as a formal source of law under the NCTA. Indeed, whereas former Article 1 of the 1985 Act set out a detailed hierarchy of rules prioritizing specific schools of jurisprudence (most notably the Maliki and Hanbali schools), the new Article 1 of the NCTA adopts a more open-ended formulation, granting judges greater discretion to select "the solution that is most appropriate in light of the interests at stake," without specifying any particular school of reference. A similar approach was adopted in the 2024 reform of the Personal Status Act.

2. Limits of the Reform and Persisting Issues

Notwithstanding the positive aspects identified above, the reform also presents a number of significant shortcomings. These concern both certain newly introduced provisions, whose design or content raises serious difficulties, and important issues that the legislature chose not to address or appears to have overlooked altogether. Taken together, these weaknesses considerably limit the extent to which the reform can be regarded as a genuine modernization of the UAE conflict-of-laws regime.

a) New Solutions Introduced in the NCTA

i) The The Conflict-of-Law rule in Matters of Marriage and its Dissolution: The Further Extension of the Scope of the Nationality Privilege

As noted above, prior to the entry into force of the NCTA, the *lex loci celebrationis* governed the substantive and formal validity of marriage (Art. 12), as well as its personal and patrimonial effects and its dissolution (Art. 13). Marriages concluded between foreigners, or between a foreigner and a UAE citizen, could also be recognized as valid in form if they complied with the formalities of the place of celebration, or if they respected the formal requirements prescribed by the law of each of the spouses (Art. 12). The application of these rules was, however, subject to an important exception: they did not apply if one of the parties was a *UAE citizen at the time of the marriage*, except with respect to capacity (Art. 14).

First, it should be noted that the NCTA failed to resolve the inconsistency between Articles 12 and 14. While Article 12 allows the formal validity of marriages concluded by UAE citizens abroad to be governed by the *lex loci celebrationis*, Article 14 removes this possibility by subjecting all matters relating to the formation of marriage, its effects, and its dissolution exclusively to UAE law when one of the parties is a UAE citizen.

Second, and more importantly, the NCTA extends the scope of the exception in a problematic manner. Under the new rules, the exception now applies not only to persons who were UAE citizens at the time of the marriage, but also to those who *subsequent to their marriage acquired UAE citizenship, and retained that citizenship up to the time the action is brought*.

On its face, this rule raises two main concerns. First, it introduces retrospective effects by applying UAE law to marriages concluded before the acquisition of citizenship. This potentially affects the validity, formalities, and effects of marriages that were lawfully concluded under foreign law. Second, it may create uncertainty in cross-border matrimonial relations, as spouses who acquire UAE nationality after marriage could inadvertently subject themselves to UAE law even if all formal and substantive requirements were originally satisfied abroad. Such

an extension of the nationality privilege, while it may be of very limited practical relevance, represents a questionable departure from traditional conflict-of-law principles based on the ideas of acquired rights, and the respect of the legitimate expectations of the parties.

ii) The Conflict-of-Law rule in Contractual Matters

Despite the positive aspects noted above, the new rule suffers from significant shortcomings. These shortcomings relate, first and foremost, to the scope and the regime of party autonomy. In particular, the provision remains silent on several crucial issues: whether the chosen law must have any connection with the parties or the contract; whether an initial choice of law may be modified at a later stage; and whether techniques such as *dépeçage* or the choice of non-State law are permissible. All these uncertainties undermine the effective operation of party autonomy and weaken legal certainty.

Second, in the absence of a choice of law by the parties, the NCTA not only retains the outdated reference to the parties' common domicile as the primary objective connecting factor, but also introduces a new connecting factor whose application is likely, in practice, to lead systematically to the application of UAE law. Under the new rule, where there is neither a choice of law nor a common domicile, the contract is governed by the law of the State in which the *principal obligation* is to be performed. Unlike the traditional test of the "characteristic obligation", which typically leads to the identification of a single governing law presumed to have the closest connection with the contract, the notion of "principal obligation" is inherently problematic in the field of choice of law. This is because bilateral contracts, which constitute the main instruments of international trade, by their very nature involve more than one principal obligation, such as the delivery of goods and the payment of the price in a contract of sale. As a result, in contracts involving a UAE party, whether as obligor or obligee, the performance of at least one principal obligation will often take place in the UAE, thereby triggering the systematic and largely indiscriminate application of UAE law. Even if the term "principal obligation" is understood as referring to the "characteristic obligation," the new provision departs from the general approach adopted in leading recent codifications by designating the place of performance (*locus solutionis*) of that obligation, rather

than the more widely accepted and more predictable connecting factor of the habitual residence of the party performing the characteristic obligation.

Of course, the parties may seek to avoid this difficulty by choosing the law applicable to their contract. However, given the very weak status of foreign law in the UAE, where it is treated as a mere question of fact, and the considerable hurdles imposed on the parties in establishing its content in judicial practice, the practical relevance of party autonomy is largely illusory. This assessment is once again confirmed by several recent Supreme Court decisions in which the law chosen by the parties was not applied on the grounds that the chosen law was not ascertained as required (see Dubai Supreme Court, Appeal No. 720 of 13 August 2025; Appeal No. 1084 of 22 October 2025; Appeal No. 1615 of 23 December 2025). The same difficulties arise in family law matters, as discussed in a previous post, but they are identical in substance in civil and commercial cases as well.

b) Persisting Issues

Notwithstanding the few positive developments highlighted above, the conflict-of-laws rules incorporated in the NCTA largely preserve the traditional Egyptian model introduced into the region in 1948. As a result, they remain significantly disconnected from contemporary developments and comparative trends in private international law and fail to fully reflect the principles increasingly adopted in other jurisdictions to address the needs of cross-border transactions, family relations, and international commercial practice. The reform also preserved a traditionally rigid approach, leaving little room for flexibility and excluding exception clauses that would allow courts to depart from the designated applicable law in favor of a more closely connected one. In particular, the NCTA does not introduce tailored conflict rules designed to reflect the specific characteristics of certain legal relationships. This omission is especially noticeable with regard to protective regimes for weaker parties, including employees and consumers. Unlike many modern conflict-of-laws systems, the NCTA does not limit the role of party autonomy in these contexts, nor does it provide specific choice-of-law rules for employment or consumer contracts. Similar shortcomings can be observed in the absence of specialized rules governing particular categories of torts or addressing specific aspects of family relationships.

Finally, as was already the case following the 2020 reform, the NCTA fails to resolve the longstanding and fundamental issue concerning the articulation between the rules delimiting the scope of application of the Personal Status Act and the choice-of-law rules set out in the NCTA. This problem has become even more acute with the recent introduction of "civil personal status" legislation at both the federal level and the local level in the Emirate of Abu Dhabi, thereby further complicating the overall normative landscape (for an overview see my previous posts here and here).

IV. Some Concluding Remarks

Taken as a whole, while the adoption of the NCTA could have provided an opportunity to undertake a thorough and forward-looking reform of the UAE's private international law framework by drawing inspiration from the most recent developments in the field and from general trends observed in comparative law. Such a reform would have helped consolidate the UAE's position and ambitions as a leading hub not only for international finance and business transactions, but also as a melting pot of multiple nationalities living harmoniously within its territory. However, the reform ultimately falls short of this ambition. It largely preserves an outdated structure and introduces only limited, and at times problematic, adjustments. Moreover, the reform does nothing to address the strong *homeward trend* observed in judicial practice, which significantly limits the practical relevance of choice-of-law rules. This trend is particularly evident in personal status legislation and in the very weak status accorded to foreign law. In this respect, the NCTA represents a missed opportunity to align the UAE's conflict-of-laws regime with modern comparative standards and to enhance legal certainty, predictability, and coherence in an increasingly international legal environment.

Enforceability of foreign judgments for punitive damages under English law and South African law

This post is posted on behalf of Jason Mitchell, barrister at Maitland Chambers in London and Group 621 in Johannesburg.

In *Motorola Solutions v Hytera Communications Corporation*, the Court of Appeal held that a judgment that includes a punitive damages component is unenforceable in its entirety (the judgment is available here). The punitive component cannot be severed so that the judgment creditor can enforce non-punitive components.

Motorola sued Hytera in the U.S. One of its causes of action was under the Defend Trade Secrets Act, a federal statute that allows for punitive damages of up to double any compensatory damages. On that cause of action, the U.S. court awarded Motorola compensatory damages of $135 million and punitive damages of $270 million. Motorola tried to enforce the U.S. judgment in England.

Enter the Protection of Trading Interests Act. Section 5 precludes recovery of "any sum payable" under a "judgment for multiple damages" (later defined as "a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the person in whose favour the judgment is given").

Motorola argued that s.5 did not preclude enforcement of the compensatory component of the judgment, just the punitive component. The Commercial Court and the Court of Appeal rejected that argument: the language of s.5 "is clear and unambiguous in barring enforcement of the whole of multiple damages claim including its compensatory part."

The Court of Appeal also noted that this interpretation of s.5 "acts as a discouragement to the claimant from seeking an award of multiple damages in the first place". One wonders whether that aligns with the usual concern over comity:

why should an English court project its own view of public policy onto foreign litigants and how foreign litigants choose to conduct litigation in foreign courts (and choose to ask for remedies under foreign statutes that expressly allow punitive damages). A few years ago, the Fourth Circuit's Judge Wilkinson did not mince his words about the (in his view, exorbitant) effect of an English anti-suit injunction (here). An English court attempting to apply English public policy to create ex ante incentives and disincentives for how a U.S. litigant litigates under a U.S. statute may again raise eyebrows (and ire).

Motorola would have had better luck if Hytera had had some assets farther south. The equivalent statute in South Africa, the Protection of Businesses Act, also precludes enforcement of a "judgment … directing the payment of multiple or punitive damages". On its plain text, the Act, like the English equivalent, seems to bar a judgment in its entirety. However, South African courts have effectively interpreted the Act out of existence. The Act says it applies to judgments "connected with the mining, production, importation, exportation, refinement, possession, use or sale of or ownership to any matter or material, of whatever nature, whether within, outside, into or from the Republic", which seems broad. But courts have interpreted that phrase to mean that the Act applies only to judgments about raw materials used to make other things: *Tradex Ocean Transportation SA v MV Silvergate* 1994 (4) SA 119 (D); see also *International Fruit Genetics LLC v Redelinghuys* 2019 (4) SA 174 (WCC) (here) (holding that the Act does not even apply to a foreign judgment about a licensing agreement over grape varieties: grapes are raw materials, but, apparently, they aren't made to use other things). So it should come as no surprise that, according to the leading practitioner text, "there is in fact no recorded instance in which the Act has been successfully invoked as a defence to enforcement" (C F Forsyth *Private International Law* (5th ed. 2012). The Act is, however, remarkable for this reason: if the Act applies, it precludes enforcement of *any* judgment (not just judgments that include punitive damages) without the permission of the "Minister of Economic Affairs" (now, presumably, the Minister of Trade, Industry and Competition). That is almost certainly unconstitutional (it probably survives only because the narrow interpretation of the Act's ambit means that there has not been any need to challenge it—see *International Fruit Genetics*, above, noting that the constitutionality of the permission requirement is "questionable").

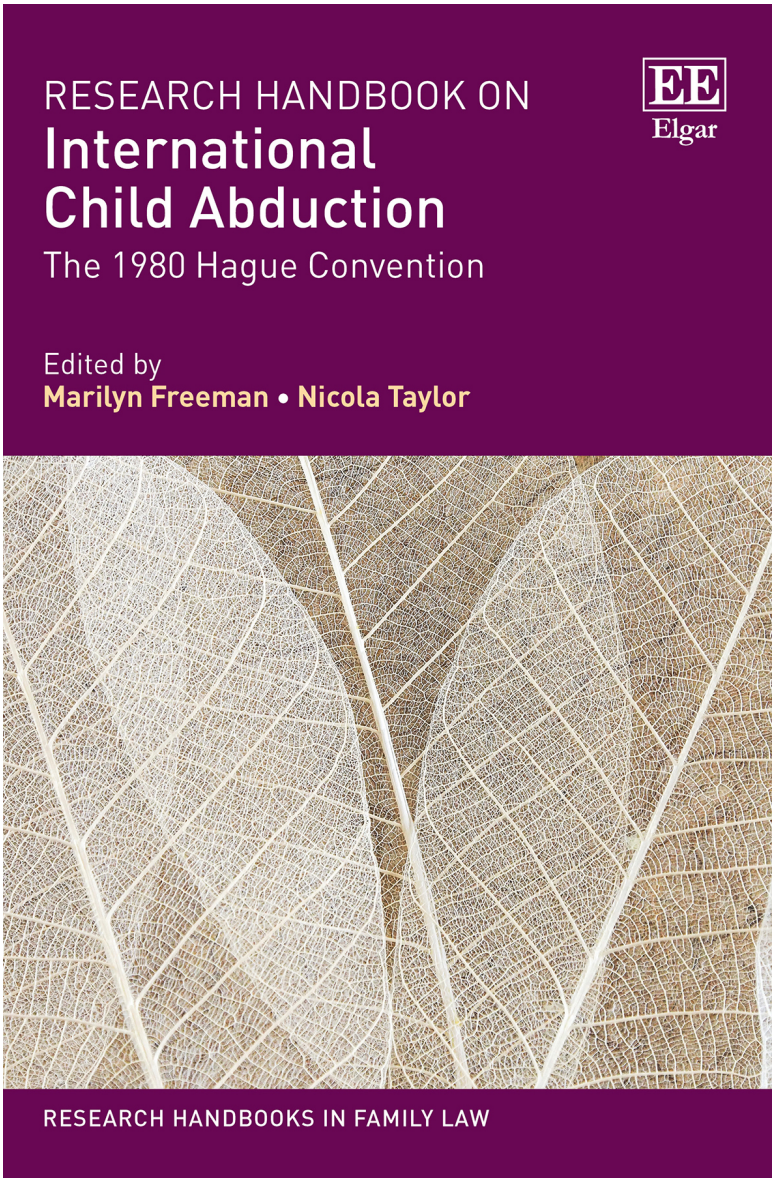
With the Protection of Businesses Act out of the way, the common law would

govern the enforceability of Motorola's U.S. judgment (South Africa has an Enforcement of Foreign Civil Judgments Act, which sounds promising enough, but it applies only to "designated" countries: a list with just Namibia on it). There is no appellate authority on this, but High Courts seem to agree that an order for punitive damages is contrary to South African public policy, but disagree about how to characterise damages as punitive (unenforceable) or compensatory (enforceable). In *Danielson v Human* 2017 (1) SA 141 (WCC) (here), the High Court held (probably on shaky ground) that an order for treble damages under RICO is not punitive but compensatory (based on expert U.S. evidence on how U.S. law characterises treble damages under RICO—query why that should matter to a South African court, and, if so, query also whether that should have been a matter of U.S. federal or state law). *Danielson* distinguished *Jones v Krok* 1996 (1) SA 504 (T), which held that an order awarding punitive damages for breach of contract under California law was punitive and contrary to public policy. *Jones* did, however, still enforce the compensatory component of the order.

So, Motorola would have two arguments in a South African courtroom. It could be argued that an order for 'punitive' damages under the Defend Trade Secrets Act, like treble damages under RICO, is not punitive but compensatory (*Danielson*). Or, as a fallback, it could at least enforce the compensatory component of the U.S. judgment even if the punitive component were unenforceable (*Jones*).

Book review: Research Handbook on International Child Abduction: The 1980 Hague Convention (Edward Elgar Publishing, 2023) –

Part I



Written by Mayela Celis, Maastricht University

International child abduction is a topic that has given rise to an ever-increasing number of publications (our latest blog post attests to this trend). It easily sparks emotions among experts, sometimes triggering divergent views. However, from a global perspective, there is consensus on the basic principle: States should combat international child abductions and a child should be returned to the State of habitual residence, unless an exception is made out. In 2023, Elgar published the book entitled "*Research Handbook on International Child Abduction: the 1980 Hague Convention*", eds. Marilyn Freeman and Nicola Taylor (Edward Elgar Publishing Limited, 2023). Although published a couple of years ago, it remains poignantly relevant.

This book brings together an adult who was abducted as a child, practitioners, judges, academics, NGO officials and central authority personnel. Many of the authors are at the forefront of this field and their contributions have left a long-lasting legacy in this area of law. While some topics are considered from an academic perspective, others have a more practical focus, striking the right balance between academia and practice.

This book review will be divided into two parts. The present and first post will deal with Part II to Part VI of the book. The second post will consider Parts VII & VIII and will include some personal views. The table of contents is available here.

This book is divided into 8 Parts:

- PART I – Introduction and key themes
- PART II – The impacts of international child abduction
- PART III – The 1980 Hague Convention – History and longitudinal trends
- PART IV – The 1980 Hague Convention – Implementation and operationalisation
- PART V- International child abduction in selected geographical regions
- PART VI – Non-Hague Convention countries
- PART VII – Key perspectives on international child abduction and Hague Convention proceedings
- PART VIII – Reflection and future directions

At the outset, it should be noted that this book has been dedicated to the memory of Anne-Marie Hutchinson for her invaluable contribution to this field.

Part II – The impacts of international child abduction

This Part begins with the long-term reflections of a former milk carton kid (Chapter 2 – FINKELSTEIN WATERS). A personal story of a woman who remembered seeing herself on a milk carton, when she was abducted as a child by her father and on the run, as part of a nationwide advertisement to find missing children. She recounts her life after her abduction from Norway to the United States, the previous abduction of her brothers from the United States to Israel and then to Norway, and the actions she has taken against child abduction, which includes speaking widely to the media and working with Lady Catherine Meyer, a left behind parent and founder of PACT.

It then moves on to discuss the psychological issues in child abduction and high conflict cases (Chapter 3 – CALVERT). The Chapter is rightly entitled in part "Ghosts in our Genes", given that children in high conflict cases are haunted by these ghosts (or traumas) way into adulthood. It addresses the impact of developmental issues, parenthood and the voice of the child, noting that children want to be involved and valued, acknowledged and respected.

Part III – The 1980 Hague Convention – History and Longitudinal Trends

Part III begins by providing a historical context of the Hague 1980 Child Abduction Convention (subsequently, Child Abduction Convention or Convention), including some notable US developments preceding the treaty and a description of the Hague drafting process (Chapter 4 – ELROD). It also incorporates useful insights into the post-ratification history of the Convention and of the role of the HCCH as a leader in creating international family law.

This Part then continues with the value and challenges of statistical studies on the Child Abduction Convention (Chapter 5 – LOWE, STEPHANS). This article is written by the persons commissioned to draft these statistical studies so it is all the more valuable. After explaining the origin of the global studies, among other topics, it describes the modern statistical studies' findings, such as the number of Hague applications and the outcomes. Beyond the descriptive nature of this article, it also provides useful insider information about funding issues, methodology, difficulties experienced, and challenges ahead. As stated in this article, this contribution was unable to take on board the latest study conducted on the basis of data of the year 2021, which provides valuable information regarding child abduction and the coronavirus pandemic, and which was prepared by the authors of this contribution (for more information, see Prel. Doc. No 3 of January 2023 of the 2023 Special Commission).

A note to the reader: although it was an idea left open by the authors, it should be noted that in 2021 the HCCH Council on General Affairs and Policy (CGAP Conclusion & Decision No 19) mandated the discontinuance of INCASTAT, an electronic statistical database.

PART IV – The 1980 Hague Convention – Implementation and operationalisation

Part IV begins with the role of the Permanent Bureau in the operation of the Child

Abduction Convention (Chapter 6 – GOH ESCOLAR). This article starts with the role of the Permanent Bureau, the secretariat of the HCCH, and lists some of its tasks, which include: preparing, organising sessions and meetings, supporting the proper operation of the Child Abduction Convention, providing post-convention assistance (such as country profiles, holding seminars and INCADAT), facilitating communications and maintaining networks (including the International Hague Network of Judges and the Malta Process), organising and participating in international meetings, and maintaining of HCCH Regional Offices (in Latin America – ROLAC – and the Caribbean and Asia Pacific – ROAP -) and their key role.

A note to the reader: As of July 2025, there is a new HCCH Regional Office in Rabat, Morocco. For more information, click here.

It then moves on to the extremely relevant chapter on helping battered mothers and their children using Article 13(1)(b) (Chapter 7 – EDLESON, SHETTY, FATA) – . The authors begin by contextualizing the problem and setting forth decades of social research on domestic violence and their effects on battered women and children. This article then continues by analysing court decisions where the grave risk exception has been applied. It also discusses the Hague Domestic Violence project. Finally, it provides concrete recommendations to the Permanent Bureau of the Hague Conference and suggests possible actions for Central Authorities and practitioners. In particular, some recommendations to the Permanent Bureau include: encouraging the recognition that the exceptions to the return of children are an integral part of the Convention, focusing on the protection of children rather than adopting a technical approach to this treaty, and facilitating the drafting of a new revised edition of the Guide to Good Practice on Article 13(1)(b) with more comprehensive information on domestic violence. It should be noted that one of the authors has spearheaded research in this area with the ground-breaking book *Battered Women, Their Children, and International Law: The Unintended Consequences of the Hague Child Abduction Convention* (Northeastern University Press, 2012).

Subsequently, this Part deals with child participation and the child objection exception (Chapter 8, SCHUZ). This Chapter is divided into child participation and the child objection exception. With regard to the child participation, the direct and indirect hearings and separate representation are considered, with the author underscoring the need to convey the views of the child and not only the

perceptions of the child's interest, as well as the benefits of separate representation. Concerning the child objection exception, this chapter analyses the exception in a very structural manner by dividing in age and maturity, child's objection including strength and validity and finally, the tricky question of discretion, which the author divides into welfare and convention considerations. Importantly, the author calls for internalising children's rights when considering this exception and the adoption of a more child-centric approach.

Finally, this Part discusses a 20-year evolution in judicial activism (Chapter 9 – THORPE). The author was the first to table the proposal in 1998, on behalf of the UK, to create the International Hague Network of Judges. This chapter recounts the developments of direct judicial communications and of this network from their origin to up to 2021. With the support of key articles published in the HCCH Judges Newsletter, as he argues certain loss of memory – even to reminiscence his life during the Second World War -, the author takes us on the long journey of these initiatives, providing inside information and interesting details of the conferences held in the southern part of the Netherlands in the late nineties, in Brussels in 2009, and ending with some perspectives and conclusions during the corona pandemic. Importantly, he notes that "this is a history of harmony since, apart from the earliest days, there has been no real dissent and there is not a single case in which miscarriage of justice has resulted from an abuse of the general principles governing direct judicial communications."

Part V – International child abduction in selected geographical regions

This Part focuses on the developments in two European regional courts and specific regions or States.

This Part begins with an analysis of the case law of the **European Court of Human Rights** (ECtHR) (Chapter 10 – KRUGER / LEMBRECHTS). This contribution is divided into the court's role in international child abduction and the exceptions to return. The former deals primarily with Article 8 of the ECHR (and to a lesser extent art. 6) in areas such as the voice of the child and the duty to act expeditiously, while the latter provides a summary on the ECtHR case law on the exceptions under the Child Abduction Convention (arts. 12(2), 13(1)(a) and (b), 13(2) and 20). At the outset, this article includes a useful list of cases initiated by left-behind parents and by abducting parents (footnotes 7 and 8), from which conclusions may be drawn as to existing trends (see in particular that the cases

heard before the Grand Chamber were initiated by abducting mothers). Importantly, references are made throughout this contribution to *X v. Latvia* and its impact on the best interests of the child and the exceptions under the Child Abduction Convention. It also includes relevant recent cases and a couple of interesting cases belonging to – what I refer to as – the "twilight zone", that is the uncertain period between the Grand Chamber judgments of *Neulinger* and *X v Latvia*. Among their conclusions, they note that while the case law of the ECtHR is only binding on the members of the Council of Europe, its guidance can be useful to other States.

This Part then goes on to analyse the role of the **Court of Justice of the European Union** and international child abduction (Chapter 11 – HONORATI). It focuses on the relevant provisions of Brussels II ter, putting an emphasis on key concepts such as habitual residence and studying the court's case law on this concept which amounted to 9 decisions as of July 2022 (see footnote 19 – citing benchmark cases such as A and *Mercredi v. Chaffe*, among others). Importantly, a section is devoted to the retention of jurisdiction, in which emphasis is laid on the differences between Brussels II ter and the 1996 Hague Convention. It then moves on to study return proceedings, including the child's safe return and the overriding mechanism. Finally, the author submits that the guidance provided by the CJEU may be of interest to courts located in third States and may be of some value when dealing with similar topics.

Subsequently, Part V delves into the study of specific geographic regions or States: Australasia and the Pacific, United States, Asia, Africa and the Caribbean region.

With respect to **Australasia and the Pacific** (Chapter 12 – HENAGHAN / POLAND / KONG), it makes a recount of the developments of child abduction in Contracting and non-Contracting Parties to the Child Abduction Convention. First, it analyses key concepts such as rights of custody and habitual residence, as well as the most litigated issues under the Child Abduction Convention (in particular, the exceptions) in Australia, New Zealand and Fiji. It underlines the differences and similarities among these jurisdictions. Subsequently, it describes the (national or convention-inspired) procedures adopted by Pacific countries that are not Contracting Parties to the Convention when dealing with international child abduction, including Tonga's steadfast intention not to join this treaty and Samoa's review of family law.

With regard to the **United States** (Chapter 13 – CULLEN, POWERS), it describes the robust interpretation of the Convention in this State, noting that the US Supreme Court has rendered judgments in five key cases so far. The article focuses on two of those cases (*Monasky* and *Golan*), and touches briefly upon *Abbott*. Interestingly, this article pinpoints recent federal court judgments that may have an important impact on the operation of the Convention. It also raises the need to deal with the mature child exception in the United States. This Chapter should be read in conjunction with Chapter 7 (Fleeing for safety…).

With respect to **Asia**, Chapter 14 – NISHITANI focuses primarily on developments in Japan, with some brief references to other Asian countries (such as India and Pakistan). It starts by outlining the reason why it has been a challenge for Asian States to join the Convention. It then analyses the way key Convention concepts have been interpreted in Japan, including two Japanese Supreme Court judgments (2017 and 2020) regarding the change in circumstances when executing return orders and objections of the child. References to other useful Japanese INCADAT cases are included throughout this article. The author also discusses the reform to the Implementation Act and the Civil Executive Act of Japan in 2019 and helpfully suggests improving it by introducing *ex officio* enforcement mechanism (as opposed to relying on a party's initiative). Finally, this article refers to the Malta Process, after sharing an interesting reflection on Islamic countries, the author makes a call for States to join the 1996 and 2007 Hague Conventions and Protocol, arguing that these treaties will support a safe return of the child.

With regard to **Africa**, Chapter 15 (SLOTH-NIELSEN) discusses primarily developments in South Africa, a country with vast jurisprudence on this topic. It begins with an analysis of the benchmark case *Sonderup and Tondelli* and the interplay of the Convention with the best interests of the child, as well as other South African cases. It also briefly mentions two outgoing cases from Morocco, decided in France and the United States, and legislation from Mauritius. Acknowledging that jurisprudence in this region is scant (apart from South Africa), the author suggests further judicial training in the region.

Regarding the **Caribbean region**, Chapter 16 (GORDON HARRISON) provides a summary of the status quo in this region regarding international child abduction. It includes a useful table with a list of 32 countries/territories in the Caribbean region and their status (independent State or a territory/country of a State – *i.e.* UK, France, the Netherlands, USA -). Information is included regarding specific

States parties to the Convention (incl. any acceptances of accessions, which may be challenging to determine in the case of territories. Each State must extend the Convention to that particular dependent territory and this extension must have entered into force), and any designations to the Hague Network Judges. This chapter highlights that even in non-Contracting States, the spirit of the Convention has been persuasive (see p. 240, regarding Jamaica before acceding to the Convention) and that judges have been designated for the Hague Network in non-contracting countries (Suriname, Aruba and Sint Maarten). It ends with a useful list of challenges, recommendations and conclusions, which include judicial training and the development of internal guidelines.

A note to the reader: Just for the sake of clarification, it should be noted that St. Kitts and Nevis accepted the accession of Peru and not otherwise, and that Trinidad and Tobago has accepted 5 instead of 6 accessions.

Part VI – Non Hague Convention Countries

This Part deals with non-Hague Convention countries and more specifically, with India. Throughout the book reference is made to the fact that India is not a party to the Child Abduction Convention and what that means for children and families, given the mobility of the Indian population.

In this regard, the reader should bear in mind that this Part should be read in conjunction with **Chapter 12** (Australasia and the Pacific), which includes research on Island nations not yet a party to the treaty, such as Samoa and Tonga, **Chapter 14** (Asia), which refers to the hesitancy of India to join and information regarding Islamic States, and **Chapter 16** (the Caribbean region), which refers to non-Contracting Parties, such as Suriname, and the lack of acceptances of accessions – the Convention applies bilaterally for acceding States and thus in the case of a lack of an acceptance to an accession, the Convention does not apply -.

With regard to **non-Hague Convention countries**, Chapter 17 (MORLEY) provides, from a practitioner's perspective, an overview of the existing practices in some non-Contracting States (including in those the author has litigated, such as a case between Japan and Bangladesh). He begins his contribution by noting the existence of bilateral agreements and MOUs on family law matters, the latter of which have proven to be deficient or highly ineffective. The author also

emphasises the Malta process and lists highly useful strategies to recover children from non-Hague countries. This Chapter also deals with India (see pp. 244, 252-253, 256).

With respect to **India**, Chapter 18 (MALHOTRA, MALHOTRA) briefly analyses the Indian legislation under which a return may be requested and concludes that a writ of Habeas Corpus is the only means available. It then moves on to consider the Indian case law, in particular the numerous – and very contrasting throughout the years – judgments of the Indian Supreme Court, which is undoubtedly the more interesting part of the article. It starts with the historical position adopted by the Indian Supreme Court and the dramatic shift in position in 2017, with the abandonment of principles such as "first strike" (first seized) and the primacy of comity of Courts, as well as the concept of *forum conveniens* in these matters. It also analyses Supreme Court decisions rendered in 2019, as well as features the widely publicised case of *Jasmeet Kaur v. Navtej Singh*. Importantly, it briefly explains the Indian failed attempt to gear up to become a party to the Child Abduction Convention and the sterile bill resulting from those efforts. It concludes by praising the emergence of mirror order jurisprudence in child custody matters, which has been adopted in an Indian-USA case.

Part II of this post will be published later on in 2026… stay tuned and Happy New Year!

XLK v XLJ: Comity Beyond the Child Abduction Convention

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From the perspective of state participation, the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the "Child Abduction

Convention") stands as one of the most successful instruments of the Hague Conference on Private International Law (HCCH), boasting 103 Contracting Parties to date. This widespread adherence is largely driven by the pervasive—and increasingly difficult-to-ignore—problem of international child abduction, which affects even non-Contracting States. China, a populous country deeply engaged in globalization, exemplifies this reality. A recent custody ruling in Singapore concerned a child who had been brought to the country by his father in breach of an order issued by a Chinese court—an incident underscoring how cross-border family disputes transcend the formal boundaries of the Convention.

I. The Brief of XLK v. XLJ

XLK (the Father) and XLJ (the Mother) are both Chinese nationals, with their habitual residence in China. In 2023, a Chinese court rendered a divorce judgment, which provided that the child "shall be raised and educated" by the Mother. After the Father's appeal was dismissed, he removed the child from China to Singapore and enrolled him in school there. As a consequence of these acts, the Father was subjected to detention for non-compliance with the prior judgments, prohibited from leaving China, and had his travel documents declared invalid. These measures, however, did not alter the fact that the child remained in Singapore and was not in the Mother's care, which led the Mother to turn to Singapore in seeking the child's return.

In 2025, a District Judge of the Singapore Family Court, following consolidation of proceedings, heard the Mother's application seeking an order for sole custody and care and control of the Child together with the Father's application for joint custody and liberal access, and rendered a decision ([2025] SGFC 42). In light of the finding that "the facts show clearly that this is a case of outright child abduction" ([2025] SGHCF 50, para. 6), the District Judge identified two core concepts running throughout the case, namely the interests of the child and the comity of nations.

On the one hand, the District Judge emphasized that "[i]s it in interest of the child for him to be returned to the Applicant Mother" constituted "the crux of the matter." Accordingly, "[h]e explained in some detail his analysis of the welfare of the child with reference to" Singapore case law, ultimately concluding that "it was in the best interests of the Child for the Mother to be given care and control,

and to enable the Mother to exercise this right, she should also be given sole custody for the purpose of having the Child returned to her in China" ([2025] SGHC(A) 22, para. 10). On the other hand, the District Judge took the view that, once the Child was returned to China, no Singapore court order would be necessary, as China constituted the proper forum for addressing the Father's application for access, particularly given that the Chinese courts had already rendered a judgment, and that "it would be 'against the comity of nations' for another jurisdiction to make further orders on the same matter" ([2025] SGHC(A) 22, para. 10). The District Judge therefore allowed the Mother's application and dismissed the Father's application.

The Father's subsequent appeal was dismissed by the Family Division of the High Court ([2025] SGHCF 50). The Family Division stated that it agreed entirely with the District Judge's reasoning on these two concepts, emphasizing that, whether on the basis of the interests of the child or comity, either consideration alone was sufficient to justify dismissing the appeal, as reflected in its statement that "[t]he doctrine of comity of nations has immense force on the facts of this case, and on that basis alone, the appeal ought to be dismissed … I am of the view that the crucial point is that it is in the best interests of the child to be with the mother" ([2025] SGHCF 50, para. 7).

This reasoning prompted the Father to raise objections and to file an application for permission to appeal. Specifically, the Father contended that the emphasis placed on comity, together with the use of the language of "child abduction," indicated that the judge had conflated the circumstances in which the Convention applies with the present case, which did not fall within its scope because China is not a Contracting Party ([2025] SGHC(A) 22, para. 18). On this basis, he alleged a *prima facie* error of law, namely that "the Judge failed to apply [the welfare-of-the-child principle] by reasoning that 'comity overrides welfare'" ([2025] SGHC(A) 22, para. 22). Accordingly, the Father requested that the appellate court address "important questions of law regarding (a) the extent to which considerations of comity may override the welfare principle; and (b) the weight to be accorded to custody decisions of foreign courts" ([2025] SGHC(A) 22, para. 38).

On November 5, the Appellate Division of the High Court rendered its decision ([2025] SGHC(A) 22), dismissing the Father's application. The Appellate Division's central rationale was that "the Father's submission fails to recognise that the Judge did not dismiss the appeal on the sole basis of comity" ([2025]

SGHC(A) 22, para. 23), such that no prima facie error of law arose. In other words, the Appellate Division took the view that, in the present case, taking comity into consideration did not entail overriding the interests of the child, as both the District Judge and the Family Division had treated the interests of the child as "the crux" or "the crucial point." On that basis, the District Judge had correctly applied Singapore law, by testing in detail, with reference to relevant case law, the factors advanced by the Father, an approach which the Family Division expressly endorsed (see [2025] SGHC(A) 22, paras. 21–30).

At the same time, however, the Appellate Division held that the Family Division's statement that "on [the doctrine of comity of nations] alone, the appeal ought to be dismissed" was incorrect. In other words, in the Appellate Division's view, although both courts' application of the law, centering on the interests of the child, was entirely correct and sufficient to justify dismissing the Father's appeal, consideration of comity was unnecessary. Accordingly, "[a]ny error … on the relevance of comity therefore has no impact on the ultimate outcome of the case" ([2025] SGHC(A) 22, para. 37). Proceeding from this position, the Appellate Division concluded that the "important questions of law" advanced by the Father, which in fact presupposed the applicability of comity in the present case, could not be regarded as being of "general importance which would justify granting permission to appeal in the present application" ([2025] SGHC(A) 22, para. 40).

II. The Comity in XLK v. XLJ

The divergence in judicial positions in *XLK v. XLJ* raises a question: was consideration of comity in this case, as the Appellate Division opined, unnecessary, or, more broadly, should comity be disregarded altogether in cases falling outside the scope of the Child Abduction Convention?

Admittedly, in convention cases, consideration of comity is principled in nature, with comity in this context having been elevated to an obligation under international law. Even though the Convention is "[f]irmly convinced that the interests of children are of paramount importance in matters relating to their custody," its practical operation nonetheless rests on comity, which, when the Convention is applied by domestic courts, may occasionally generate tension between comity and the interests of the child. This, however, does not mean that such tension arises from an inherent contradiction between the two concepts. On the contrary, no necessary conflict exists between them. The actual and original

foundation of comity lies in serving the interests of sovereign states (Ernest G. Lorenzen, *Story's Commentaries on the Conflict of Laws—One Hundred Years After*, 48 Harv. L. Rev. 15, 35 (1934)), and, for that very reason, it should not be deployed to challenge the best interests of the child as a human right (Art. 3 of the Convention on the Rights of the Child).

More specifically, according to the Preamble of the Convention, comity may be regarded as being justified by, and oriented toward, the better realization of the interests of the child; pursuant to Articles 13 and 20 of the Convention, comity is suspended in defined exceptional circumstances to secure the interests of the child. Viewed as a whole, comity constitutes an obligation introduced by this interests-of-the-child–oriented international convention by virtue of its nature as an instrument binding states, such that inter-state comity in this context unambiguously serves the realization of the individual interests of the child. This understanding is in fact facilitated by the breadth of the concept of the best interests of the child, as illustrated by Lord McDermott's explanation in the English case *J v. C*, in which consideration of the child's interests was described as "a process whereby, when all relevant facts and relationships, claims and wishes of parents, risks and choices and other circumstances are taken into account and weighed" ([1970] AC 710 (HL)).

However, this results in the realization of the interests of the child under the Convention being less direct than its realization under domestic law, as reflected in the authority cited by the Appellate Division in *XLK v. XLJ*, which observed that "the understanding of the child's welfare under the Convention is not the substantive understanding (as under the domestic law of guardianship and custody) but rather the more limited understanding, that where she has been unlawfully removed from her habitual residence, her welfare is best served by swiftly returning her to her habitual residence" ([2025] SGHC(A) 22, para. 32).

Against this background, it is not difficult to understand why, although *XLK v. XLJ* was a non-convention case, the Appellate Division nonetheless acknowledged that "it might be useful to contrast the present application with applications for the return of a child under the [Convention]" ([2025] SGHC(A) 22, para. 32). Within this Convention-referential reasoning, the child's swift and immediate return appears to be a typical outcome of considering comity under the Convention, yet its essence remains a decision reached after assessing the interests of the child. In other words, while the fact that the Chinese courts had issued subsisting

orders on custody was "connected to the notion of comity of nations," it was, in substance, merely one of the "non-comity-related factors relevant in the assessment of the Child's welfare" ([2025] SGHC(A) 22, para. 36).

Accordingly, the question posed above may be framed more concretely as whether, beyond the Convention, comity should be considered directly and explicitly, or whether courts should instead adopt a Convention-referential logic while avoiding the application of the Convention itself, thereby subsuming comity within the interests of the child and avoiding its direct consideration. In *XLK v. XLJ*, the positions taken by the District Judge and the Family Division clearly reflected the former approach, albeit in a more aggressive form, whereas the Appellate Division adopted the latter. Admittedly, the District Judge and the Family Division should not have treated comity and the interests of the child as parallel and equivalent lines of reasoning, given that, even within the scope of the Convention, the interests of the child remains the paramount consideration, and *a fortiori*, beyond the Convention, comity is not even framed as an obligation. In this sense, the Appellate Division's criticism of the two courts was justified. It nevertheless appears to have moved to the opposite extreme by effectively excluding any consideration of comity. Although the Appellate Division did not expressly state that comity should not be considered, it treated the interests of the child as the sole operative concept in the present case, through its interpretive logic that "comity-connected factors are included in welfare."

III. Considering Comity beyond the Convention

Before diving into this question, a preliminary point should first be clarified, that the interests of the child is not an exclusive or monopolistic consideration. Under the Convention, comity operates as an independent consideration serving the interests of the child, which is described as being "of paramount importance," and functions at jurisdiction allocation, which explains why, in certain circumstances, it may come into tension with the interests of the child. Outside the scope of the Convention, however, whether expressed as "a primary consideration" in the Convention on the Rights of the Child or as a "paramount consideration" in the Guardianship of Infants Act 1934 of Singapore as applied in the present case, such formulations merely emphasize the preeminent weight of the interests of the child in a comparative sense, rather than conferring upon it an exclusive character. Accordingly, the question is not whether comity can be considered, but whether comity should be considered.

In essence, the Convention elevates comity to a binding obligation, manifested in the relinquishment of jurisdiction; beyond the Convention, by contrast, comity only "persuades; but it does not command" (*Mast, Foos & Co. v. Stover Mfg. Co.*, 177 U.S. 485 (1900)). Accordingly, the state where the abducted child is located is entirely free, if it so chooses, to disregard comity. From a technical perspective, the nature of a child custody order itself also furnishes the state with a basis for not considering comity, in that such an order is typically not final and may be modified in light of changed circumstances or the interests of the child (Robert A. Leflar, *American Conflicts Law* 490–493 (1977)).

This, however, does not mean that, beyond the Convention, there is no reason at all to take comity into consideration. In other words, outside the scope of the Convention, and while fully respecting the preeminence of the interests of the child, there are both policy and technical reasons for taking account of the role of states.

From a policy perspective, considering comity can extend the Convention's influence even indirectly, which was apparent in Singapore prior to its accession to the Convention, as *AB v. AC* ([2004] SGDC 6) being a paradigmatic example, in which scholars have observed that the court effectively recognised a foreign custody order on the basis that it had been made by the court of the child's habitual residence, thereby reflecting the Convention's spirit, a course of action described as legally questionable but policy-wise correct (See Joel Lee, *Private International Law in the Singapore Courts*, 9 Sing. Y.B. Int'l L. 243, 244 (2005)). It is therefore unsurprising that, now that Singapore has acceded to the Convention, courts may still take the Convention into consideration even in cases where it is inapplicable ([2025] SGHC(A) 22, para. 32). In the recent case, however, the Singapore courts abandoned this policy-driven, indirect application of the Convention, which, while wholly avoiding the risk of applying the Convention to non-Convention cases, to some extent, diminished the Convention's appeal to non-Contracting States by leaving its foundational logic unarticulated.

Even for states that have not acceded to the Convention, comity remains a principle worthy of consideration. For the state of the child's habitual residence, the relevant interests lie not only in the child's being returned to its jurisdiction but also in the jurisdictional interest in adjudicating the substantive custody disputes, both of which amount to the state's expectation of fulfilling its child-protection obligations. If the state where the abducted child is located wholly

disregards comity, it thereby fails to show respect for the jurisdictional interest of the state of the child's habitual residence. That consequence means that, where origin and destination are reversed, culturally divergent interpretations of the interests of the child may dominate judicial discretion, producing a situation in which the child's return is less chance to be a uniform outcome of considering the interests of the child and where such an outcome cannot be influenced by comity to vindicate that interests. Moreover, the absence of comity can render potential bilateral or multilateral cooperation beyond the Convention awkward for lack of reciprocal foundations (see *Blondin v. Dubois*, 189 F.3d 240, 248 (2d Cir. 1999)), thereby inhibiting the emergence of regional alternatives to the Convention.

Globalization has strengthened comity's reciprocal character, such that a state's showing trust in foreign courts' custody determinations is both necessary and not fundamentally at odds with the interests of the child. On the contrary, comity can assist non-Contracting States in obtaining reciprocal comity in custody disputes, thereby giving Contracting Parties greater opportunities to realize their child-protection objectives. The Convention highlights this value of comity in custody matters, yet by hard-wiring comity into a binding obligation, a feature some states find difficult to accept. Outside the scope of the Convention, however, comity is merely persuasive, and for states hesitating to join the Convention, this softer form of comity should be more palatable and may serve as a practicable intermediate step toward accession.

As for the technical benefits of comity, they have, in fact, long been reflected in non-Convention cases, which may be observed through the referential use of the Convention in such cases. According to a Singapore scholar's synthesis, drawing on the practice of the English courts, courts generally adopt four approaches in dealing with non-Convention cases (Chan Wing Cheong, *The Law in Singapore on Child Abduction*, 2004 Sing. J. Legal Stud. 444 (2004)). Two of these take the Convention as a reference. One involves indirectly adopting the Convention's understanding of the interests of the child by presuming that returning the abducted child accords with the child's welfare, an approach reflected in *XLK v. XLJ*. The other involves directly adopting the Convention's policy, under which return is refused only where the foreign court is in principle unacceptable or where one of the Convention's specified exceptions applies. The close linkage of these two approaches to the Convention allows them to be regarded as applications of comity beyond the Convention. The remaining two approaches,

although not involving a direct reference to the Convention, share the same foundation as the Convention, namely, comity. One is the application of *forum non conveniens*, and the other is the treatment of comity as a consideration equal to the best interests of the child. As noted above, the latter should not be accepted, while *forum non conveniens* is likewise closely associated with comity.

The most immediate technical benefit brought about by comity is certainty. This certainty manifests itself, on the one hand, at jurisdiction, thereby to some extent preventing parents from forum shopping through abduction. On the other hand, it manifests itself in the application of laws, as comity can, beyond the Convention, to some degree mitigate divergences in the interpretations of the interests of the child across different legal cultures, thereby contributing to a measure of predictability. Put differently, comity can provide a unifying, inter-state relational context for an issue that would otherwise be subject to divergent interpretations across fragmented legal systems.

In addition, another technical benefit of considering comity beyond the Convention lies in providing a jurisprudential foundation for the development of related legal mechanisms. Beyond the application of *forum non conveniens* noted above, a prominent example is the mirror order. Although, on its face, a mirror order may appear to run counter to comity (see *Danaipour v. Mclarey*, 286 F.3d 1, 22–25 (1st Cir. 2002)), it nonetheless fully reflects the highest regard for the interests of the child, and its "practice… may actually be seen as enhancing comity" (Rhona Schuz, *The Doctrine of Comity in the Age of Globalization: Between International Child Abduction and Cross-Border Insolvency*, 40 Brook. J. Int'l L. 31, 82–83 (2014)).

IV. Concluding Remarks

In *XLK v. XLJ*, the Appellate Division did not dispute that the application of comity in the present case would not have undermined the correctness of the outcome. Indeed, the two guiding considerations, comity and the interests of the child, did not lead to conflicting results. Rather, they served distinct yet complementary purposes: the former addressed state interests while the latter safeguarded private interests. Even assuming that tension were to arise between them in a non-Convention context, comity would not necessarily impede the interests of the child. A court may duly consider comity while still arriving at a decision fully aligned with the child's interests—thereby simultaneously honoring international

reciprocity and fulfilling its protective duty toward the child.

In sum, comity can serve a significant function in cases falling outside the scope of the Child Abduction Convention. From a policy perspective, it can, to some extent, encourage non-Contracting States to align more closely with the Convention or allow them to benefit from the Convention's advantages without formal accession to the Convention. From a technical perspective, it can, to some degree, alleviate the inherent uncertainty in the interpretation of the interests of the child and provide a jurisprudential foundation for the development of related legal mechanisms. Accordingly, for states that have not yet formed a clear intention to accede to the Convention, comity remains a consideration worthy of serious attention, offering an intermediate approach that approximates the Convention while preserving a measure of sovereign caution.

Reciprocity and the Enforcement of Foreign Judgments in Egypt – A Critical Assessment of a Recent Supreme Court Decision

I. Introduction

Reciprocity is probably one of the most controversial requirements in the field of the recognition and enforcement of foreign judgments. While its legitimacy appears to be on the wane (see Béligh Elbalti, "Reciprocity and the Recognition and Enforcement of Foreign Judgments: A Lot of Bark but Not Much Bite," 13 JPIL 1 (2017) 184), reciprocity can still strike hard – particularly when it is applied loosely and without sufficient consideration.

The case presented here, decided by the Egyptian Supreme Court (Appeal No. 11434 of 21 June 2025), provides a good illustration. Despite the Court's well-established case law imposing certain restrictions on the use of the reciprocity requirement, this recent judgment shows that, when not applied with the necessary rigor, reciprocity can still produce significant effects that undermine the legitimate expectations of the parties.

II. Facts

The case concerned the enforcement of a Canadian divorce judgment rendered in Quebec, ordering the appellant (Y) to pay a specified sum of money with interest.

X, in whose favor the judgment was issued, sought to have the Canadian judgment enforced in Egypt. The Court of First Instance rejected the claim. X then appealed to the Court of Appeal, which overturned the first-instance judgment and ordered the enforcement of the Canadian decision.

Dissatisfied with this outcome, Y brought an appeal before the Supreme Court.

In support of his appeal, Y argued that the Court of Appeal had ordered the enforcement of the Canadian judgment without establishing the existence of any legislation in Canada permitting the enforcement of Egyptian judgments there, as required under Article 296.

III. The Ruling (Summary)

> *It is established in the case law of this Court that Article 296 of the Code of Civil Procedure makes clear that the rule is founded on the principle of reciprocity or mutual treatment. Accordingly, foreign judgments in Egypt must receive the same treatment that Egyptian judgments receive in the foreign country whose judgment is sought to be enforced. In this respect, the legislature limited the requirement to legislative reciprocity and did not require diplomatic reciprocity established by treaty or convention. The court must ascertain the existence of legislative reciprocity on its own initiative.*
>
> *In the present case, the Court of Appeal ordered the enforcement of the Canadian decision on the basis that a foreign judgment may be relied upon before Egyptian courts so long as no Egyptian judgment between the same parties on the same matter has been issued and become enforceable, without determining whether any convention exists between Egypt and Canada concerning the enforcement of judgments that provides for reciprocity, as required under Article 296 of the Code of Civil Procedure.*
>
> *This constitutes a violation of the law and requires that the judgment be quashed and the case remanded.*

IV. Comments

The Court's decision raises significant concerns.

First, the Supreme Court appears to contradict itself. After reiterating its longstanding position that "diplomatic reciprocity" – that is, reciprocity established through a treaty – is not required under Egyptian law, it nevertheless held that reciprocity with Canada was not established because the Court of Appeal did not determine whether any convention with Canada exists. This is not the first time the Court has adopted such reasoning. In a previous case decided in 2015, the Supreme Court relied on a similar approach when evaluating the enforcement of a Palestinian judgment (*Appeal No. 16894 of 4 June 2015*). Such reasoning is difficult to reconcile with the Court's own affirmation that treaty-based reciprocity is irrelevant under Article 296.

Second, the Court's ruling is inconsistent not only with the prevailing view in the literature (for an overview, see Karim El Chazli, "Recognition and Enforcement of Foreign Decisions in Egypt," 15 *YBPIL* (2013/2014) 400–401), but also with the Court's prior stance affirming reciprocity on the basis of "legislative reciprocity". Under this approach, reciprocity exists if, according to the enforcement law of the State of origin, Egyptian judgments would be enforceable there. Indeed, in earlier cases, the Court conducted a comparative analysis of the enforcement requirements under the law of the State of origin and under Egyptian law, and concluded that reciprocity was satisfied when the two sets of requirements were broadly comparable (see, e.g., *Appeal No. 1136 of 28 November 1990*, admitting reciprocity with Yemen; *Appeal No. 633 of 26 February 2011* and *Appeal No. 3940 of 15 June 2020*, both admitting reciprocity with Palestine). In addition, in some cases involving the recognition or enforcement of judgments rendered in a country with which Egypt has not concluded any international convention, the Supreme Court did not examine the issue of reciprocity as required under Article 296 of the Code of Civil Procedure, nor did it invoke it *sua sponte* as the Court has repeatedly affirmed. Instead, it directly examined the requirements for recognition or enforcement under the conditions laid down in Article 298 of the Code of Civil Procedure (see, e.g., *Appeal No. 2014 of 20 March 2003* regarding the enforcement of a New Jersey judgment ordering the payment of damages resulting from breach of contract; *Appeals No. 62 and 106 of 25 May 1993* regarding the recognition of a Californian divorce judgment. In both cases, however, recognition and enforcement were rejected, *inter alia*, on the ground of public policy).

Third, the Court's stance in this case is likely to create more problems than it solves. Even setting aside the contradiction noted above, the Court gave no indication on how "legislative reciprocity" should be established when the foreign judgment originates from a federated province or a state within a federal system, each having its own autonomous legal regime (on the difficulty of establishing reciprocity emanating from federal states, notably the United States, see Béligh Elbalti, "La Réciprocité en matière de réception des décisions étrangères en droit international privé tunisien – observations critiques de la décision de la Cour d'appel de Tunis n°37565 du 31 janvier 2013" 256/257 *Infos Juridiques* (mars-2018) 20 (Part I), 258/259, *Infos Juridiques* (avril-2018) 18 (Part II)).

The situation of Canada is particularly striking. In Quebec, where a civil-law approach prevails in the field of private international law, the rules on the recognition and enforcement of foreign judgments are comprehensively codified (see Gérald Goldstein, "The Recognition and Enforcement of Foreign Decisions in Québec," 15 *YBPIL* (2013/2014) 291) and differ substantially from those applicable in the common-law provinces (see Geneviève Saumier, "Recognition and Enforcement of Foreign Judgments in Canadian Common Law Provinces," 15 *YBPIL* (2013/2014) 313). If the Court insists on applying the criterion of "legislative reciprocity," how are Egyptian courts to assess reciprocity in relation to a province such as Quebec? Would it be sufficient that Egyptian judgments are enforceable in another Canadian province where enforcement is governed by common-law principles? Does it matter that, in the common-law provinces, recognition and enforcement are not codified and are largely based on case law? And if, as would be expected, "legislative reciprocity" had to be established by reference to Quebec law, would it be relevant that under Quebec law, reciprocity is not a requirement for the recognition and enforcement of foreign judgments at all? In this respect, Egyptian courts would be well advised to consider the generous approach followed in Tunisia, whereby the Supreme Court established a presumption in favor of reciprocity, placing the burden on the party challenging enforcement to prove its non-existence (for details, see Béligh Elbalti, "La réciprocité en matière d'exequatur?: Quoi de nouveau?? Observations sous l'arrêt de la Cour de cassation n° 6608 du 13 mars 2014"published in *Arab Law Quarterly* (2025) as an online-first publication. For an overview from a comparative perspective in the MENA Arab jurisdictions, see Béligh Elbalti, "Perspective from the Arab World", *in* M. Weller et al. (eds.), *The HCCH 2019 Jugements Convention – Cornerstones, Prospects; Outlook* (Hart, 2023) 193-194).

Finally, this case, along with several others concerning the enforcement of foreign judgments, illustrates the difficulty of enforcing such judgments in Egypt in the absence of an applicable treaty (for recent examples, see *Appeal No. 25178 of 17 November 2024*, which rejected the enforcement of an Irish judgment on the ground of public policy, and *Appeal No. 3493 of 4 December 2024*, which rejected the enforcement of an Austrian judgment because the various conditions laid down in Article 298 were not satisfied). By contrast, where a bilateral convention exists, enforcement is generally somewhat easier (see, e.g., *Appeal No. 200 of 14 May 2005*, which allowed the enforcement of a French custody judgment pursuant to the bilateral convention between the two countries; but *contra*, *Appeal No. 719 of 8 October 2013*, which rejected the enforcement of a similar French judgment).

It must be admitted, however, that the conclusion of such a convention does not necessarily guarantee smoother enforcement (see, for instance, my previous comments on the enforcement of judgments rendered in Saudi Arabia and Kuwait, available on this Blog here and here).

The WTO TRIPS Agreement and Conflict-of-Laws Rules in Intellectual Property Cases

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It is neither new nor surprising that international treaties affect the design and application of conflict-of-laws rules; not only international conventions on private international law but also other international treaties shape conflicts rules, with human rights treaties being the primary example. But a recent decision concerning the interpretation of the WTO's Agreement on Trade-Related Aspects

of Intellectual Property Rights ("TRIPS Agreement") could have profound and arguably unprecedented effects on the conflict rules that are applied in intellectual property ("IP") cases, such as cross-border cases concerning copyright infringement, trademark ownership, and patent licenses.

In July 2025, an arbitration panel decided in a WTO dispute between the European Union and China that the Chinese anti-suit injunction policy that led Chinese courts to issue anti-suit injunctions in disputes involving standard-essential patents violated the TRIPS Agreement (*China—Enforcement of Intellectual Property Rights*, WTO, Award of Arbitrators, WT/DS611/ARB25, 21 July 2025). The decision, which concerned the Chinese version of anti-suit injunctions, which are referred to as "behavior preservation orders," was rendered on appeal from a panel report from April 2025. In the absence of a functioning WTO Appellate Body, the appellate decision was rendered under the alternative Multi-Party Interim Appeal Arbitration Arrangement that was concluded pursuant to Article 25 of the WTO dispute settlement understanding.

The EU complaint to the WTO in the case was certainly not the first, or the only, attack on anti-suit injunctions that national courts have issued in patent cases in order to stop parties from litigating in parallel in foreign jurisdictions. Opponents of anti-suit injunctions have been successful, for example, in the Paris Court of Appeal and in the Munich Local Division of the Unified Patent Court; these courts found that in the particular cases, U.S. court-issued anti-suit injunctions violated parties' rights under the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union (*IPCom GmbH & Co. Kg v. Lenovo (United States) Inc*, No 14/2020, Paris Court of Appeal, 3 March 2020; *Huawei v. Netgear*, UPC, Munich Local Division, Order of 11 December 2024, File No. ACT_65376-2024 UPC_CFI_791-2024). But while the effects of those decisions have been limited and focused on anti-suit injunctions, the arbitral panel decision in the WTO case could have much wider implications.

The arbitral panel in the WTO case found that TRIPS Agreement Article 1.1, according to which WTO "[m]embers shall give effect to the provisions of [the TRIPS] Agreement," creates a corollary obligation for WTO members "to do so without frustrating the functioning of the systems of protection and enforcement of IP rights implemented by other Members in their respective territories." Because the anti-suit injunctions policy at issue affected the patent holders'

ability to enforce their rights that WTO member countries provided for in compliance with the TRIPS Agreement, the panel held that the policy violated the TRIPS Agreement. The panel acknowledged that "the TRIPS Agreement does not address issues of private international law," but concluded that "the TRIPS Agreement … requires that Members not frustrate the effective protection of trade-related IP rights in the territories of other Members." It explained that "[t]he provisions of the TRIPS Agreement would be rendered inoperative if Members were allowed to frustrate the implementation by other Members of their obligations under the TRIPS Agreement."

Although the arbitral panel decision concerns anti-suit injunctions in patent cases, its reasoning raises the question whether the panel's interpretation of the TRIPS Agreement could affect the application of other conflict-of-laws rules and affect the rules in *any* cases involving IP rights covered by the Agreement. Anti-suit injunctions are not the only means through which conflicts rules can impact the ability of a foreign country to protect the IP rights that the foreign country provides. Justiciability of foreign IP rights violations allows courts to adjudicate IP rights infringements arising under foreign countries' laws, which foreign countries could perceive as depriving their own courts of the opportunity to vindicate the countries' IP law violations and preventing the countries from fulfilling their obligation to "give effect to the provisions of [the TRIPS] Agreement." Choice-of-law rules that direct courts to apply the law of the forum to remedies in cases of foreign IP rights infringements could also be viewed as diminishing or frustrating foreign countries' protection of their IP rights, and any denials of the recognition and enforcement of foreign judgments concerning foreign IP rights, which might, for instance, be because of their repugnancy with the public policy of the recognizing court's forum, clearly frustrate foreign countries' enforcement and protection of their IP rights.

A pessimistic reading of the decision could lead to the conclusion that the arbitral panel's interpretation forecloses the application of many principles and rules of conflict of laws that assist or could assist in the cross-border litigation of IP cases. In the past two decades, teams of conflicts & IP law scholars in the United States, Europe, and Asia have proposed sets of conflicts principles and rules that would overcome strictly territorial approaches to IP rights enforcement and promote greater flexibility in cross-border IP litigation, such as wider justiciability of foreign IP rights violations, greater numbers of courts with broader jurisdiction

over IP disputes, concentrations of proceedings of related causes of action concerning IP rights in different countries, and the application of a single country's law for ubiquitous (such as online) IP rights infringements. Among the several proposals, the projects by the American Law Institute, the European Max Planck Group, and the International Law Association have been the most detailed. Much of this work could now seem to be to no avail in light of the arbitral panel's interpretation of the TRIPS Agreement.

An optimistic reading of the arbitral panel decision could offer support for the current conflicts principles and rules, and at least for some of the principles and rules proposed by the projects. Conflicts rules should support collaboration among courts in their enforcement of each other's national laws, including IP laws, and thus contribute to countries meeting their obligations under the TRIPS Agreement. For example, justiciability of foreign IP rights violations can frustrate the ability of foreign courts to adjudicate violations in their jurisdictions, but in some cases, the justiciability rule can pave the way for the only available avenue for effective enforcement of the rights, such as when a rights holder can afford to litigate only once, and a concentration of proceedings, facilitated by the rules of justiciability, of parallel violations of IP rights under multiple countries' laws provides the only realistic possibility for a rights holder to enforce his rights. Certainly, any rules that aim to maximize the recognizability and enforceability of foreign judgments in IP cases should be consistent with a requirement that a foreign country's ability to "give effect to the provisions of [the TRIPS] Agreement" not be frustrated.

Not all conflicts rules, and not the rules in all circumstances, will live up to the corollary obligation that the arbitral panel identified in Article 1.1 of the TRIPS Agreement. Detailed analyses should study the compliance of different conflicts rules with the obligation, and also contemplate the role that the rules might play in achieving the overall goals of the TRIPS Agreement when a foreign country's IP laws and/or judgments do not comply with the Agreement. Rules such as the public policy exception and internationally mandatory rules might pose interesting questions in this regard.

The durability of the arbitral panel's interpretation is unclear; because it is a product of the Multi-Party Interim Appeal Arbitration Arrangement, the arbitral panel's decision is binding only on the parties and is not precedential for all WTO members, and future decisions within the WTO dispute settlement could produce

other interpretations. For now, the interpretation by the arbitral panel suggests that courts should be looking closely at the TRIPS Agreement when addressing conflict-of-laws issues in cross-border IP cases.

Kairos Shipping II LLC (appellant) v Songa Product and Chemical Tankers III AS (respondent), The interpretation of natural language on charter contracts

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The decision in Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2025] EWCA Civ 1227 represents a pivotal clarification in the interpretation of repossession clauses within standard-form bareboat charterparties, particularly under the BIMCO Barecon 2001 framework. Arising from a dispute over the early termination of a charter for a 49,708 DeadWeight Tonnage (DWT) chemical/oil tanker, the case underscores the English courts' commitment to contextual and purposive contract interpretation, balancing textual fidelity with commercial practicality. This analysis expands on the case's significance, the interpretive principles it embodies, and its ultimate resolution, drawing from judicial reasoning and industry commentary.[1]

Why This Case Matters

In the realm of maritime law, where standard-form contracts like BIMCO Barecon 2001 are ubiquitous, this ruling matters profoundly because it clarifies how courts interpret seemingly simple phrases such as "*port or place convenient to them*" in

clause 29, which governs vessel repossession following early termination. Bareboat charters, by their nature, grant charterers full operational control akin to ownership during the charter period, but termination (often due to events like insolvency under clause 28(d)) shifts the dynamic dramatically.

Upon termination, the vessel becomes uninsured and unmaintained by the charterers, who assume the role of gratuitous bailees, bearing risks and costs until repossession. The case arose when charterers terminated the agreement in May 2021 after the owners' guarantor's insolvency, offering repossession at the vessel's current port in Stockton, California. The owners' insistence on sailing to Trogir, Croatia (a 37–45-day voyage costing around US$500,000) highlighted the potential for abuse if such phrases were read broadly.[2][3][4]

This interpretation dispute illustrates broader implications for the shipping industry. Standard forms like Barecon 2001 are designed for efficiency and predictability in global trade, yet ambiguous language can lead to costly litigation. The decision reinforces that courts will not permit interpretations that impose unrecoupable burdens on charterers, especially in insolvency contexts where recovery from owners may be impossible. Commentators note that it aligns with principles from cases like China Pacific on unrecoupable costs and Capital Finance Co v Bray on minimal bailee duties, emphasizing that gratuitous bailees are not obligated to undertake extensive actions like long voyages unless explicitly required. For owners, it strengthens their repossession rights but tempers them with timeliness obligations, per BIMCO's explanatory notes.

Practically, the case could influence future drafting by encouraging more precise language around repossession locations and obligations, potentially prompting BIMCO to amend forms for greater clarity. In an industry reliant on international arbitration and English law, this precedent promotes fairness, reduces standoffs like the one leading to the vessel's arrest in Gibraltar, and minimizes economic disruptions in termination scenarios. It also serves as a cautionary tale on the risks of over-relying on "convenience" clauses without considering commercial imperatives, potentially affecting negotiations in bareboat, time, and voyage charters alike.

Principle of Contract Interpretation Illustrated

At its core, this case illustrates the orthodox principles of English contract interpretation as articulated in Arnold v Britton [2015] UKSC 36 and Wood v Capita Insurance Services Ltd [2017] UKSC 24, which advocate an iterative process starting with the natural and ordinary meaning of words but integrating the full documentary, factual, and commercial context. The Court of Appeal, led by Lord Justice Phillips, emphasized that ambiguous or opaque provisions (like clause 29's reference to "*a port or place convenient to them*") must be construed holistically to avoid textual absurdities, such as rendering "current or next port of call" superfluous. This approach rejects isolated literalism, instead checking interpretations against the contract's purpose and commercial consequences.[5]

In applying these principles, the courts treated clauses 28 and 29 as a self-contained regime for termination and repossession, applicable neutrally to defaults by either party. The obligation to board "as soon as reasonably practicable" was seen as integral, curtailing the owners' repossession right to ensure prompt relief for charterers from their bailee burdens. Commercial common sense played a key role: an unfettered owner choice could prolong charterer exposure to risks and costs, especially unrecoverable in insolvency, which was deemed contrary to reasonable party intentions. The High Court and Court of Appeal avoided rewriting the contract but departed from the tribunal's broader reading, which ignored these contextual imperatives.[6]

This method echoes Arnold's warning against departing from natural meaning without justification and Wood's call to balance text with context. It demonstrates how courts resolve ambiguity by favoring constructions that promote business efficacy, such as swift repossession, over those creating "highly prejudicial" outcomes. For standard forms, it highlights that even industry-drafted clauses are subject to rigorous scrutiny, encouraging drafters to anticipate contextual applications.[7]

Bottom-Line Outcome

The Court of Appeal unanimously dismissed the owners' appeal on 7 October 2025[8], endorsing the High Court's reversal of the arbitral tribunal's award and holding that owners must repossess at the vessel's current port unless impracticable or impossible. Specifically, clause 29 requires owners to arrange boarding "as soon as reasonably practicable," making the current port (Stockton) the default, with "convenient to them" as a contingency only if needed for prompt action[9], e.g., diverting a vessel at sea to a nearby port. The owners' demand for Trogir breached this, as Stockton was accessible, safer, and cheaper, per uncontested facts. No broad implied duty was placed on charterers to sail distant voyages, limiting their bailee role to minimal care. The award was remitted for reconsideration, with charterers entitled to expenses from the standoff, affirming the need for efficiency in maritime terminations.[10]

This outcome not only resolved the US$2.19 million claim but sets a benchmark for interpreting repossession clauses, prioritizing practicality over unilateral convenience.

Factual and Procedural Background

The dispute arose under a bareboat charter dated 11 February 2013 (BIMCO Barecon 2001)[11] between Brodotrogir DOO ("BDOO"), as original owner, and Songa Shipping Pte Ltd (charterer) for a chemical/oil tanker (49,708 DWT) to be built. By novation on 17 December 2013, Kairos Shipping II LLC (a Marshall Islands SPV of BDOO) became owner and Songa Product and Chemical Tankers III AS (affiliated with Songa Group) became charterer, with BDOO guaranteeing Kairos's obligations. The vessel was delivered on 23 December 2016[12][13].

Under clause 28(d) of the charter (insolvency of a party), the charterers were entitled to terminate with immediate effect.[14] On 16 October 2020 a Restructuring Plan in respect of BDOO was confirmed in Croatia. In May 2021 the charterers purported to terminate the charter under cl.28(d), notifying the owners they would repossess the vessel, then in Stockton, California, **"***as soon as…practicable***"** (the vessel's current port of call). The owners refused to take

repossession in Stockton, insisting instead that the vessel be sailed to Trogir, Croatia (their yard and home port). After a standoff, the charterers began the voyage under protest on 16 August 2021. The vessel was arrested in Gibraltar after 37 days at sea (20 September 2021), and the owners ultimately took physical possession on 7 January 2022[15], providing security as required by the Gibraltar court.

The charterers then commenced LMAA (London Maritime Arbitrators Association) arbitration on 13 January 2022, claiming USD 2,190,277.81 in expenses for crewing and operating the vessel from 14 May 2021 (Stockton) until the repossession, on the basis that the owners breached clause 29 by not taking possession "*as soon as reasonably practicable*" at Stockton.

The owners denied the termination and counterclaimed lost hire but admitted for present purposes that if terminated by cl.28(d) then charterers were entitled to expenses incurred in sailing to Gibraltar (and therefore downplayed costs of anchoring in Mexico). A 26 March 2024 Partial Final Award[16] held that the charterparty was validly terminated on 14 May 2021[17] and that clause 29 entitled the owners to insist on repossession in Trogir as a "*place…convenient to them*".

The charterers challenged that award in the Commercial Court as a point of law under s.69 Arbitration Act 1996[18]. On 13 December 2024 HHJ Pelling KC (Commercial Court, QBD)[19] allowed the charterers' appeal, holding that clause 29 required the owners to repossess "*as soon as reasonably practicable*" – meaning at Stockton (the vessel's current port) unless impracticable. The owners (Kairos) obtained permission to appeal to the Court of Appeal. On 7 October 2025[20] the Court of Appeal (Phillips LJ, Nugee and King LJJ)[21] dismissed the appeal, endorsing the High Court's interpretation.

Clause 29 and the Interpretative Dispute

Clause 29 of the Barecon 2001[22] charter governs the process of repossession after early termination. In the events of clauses 28(a)–(d)[23] (default or insolvency) it provides (emphasis added):

"…the Owners shall have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers… Pending physical repossession…the Charterers shall hold the vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised representative to board the vessel as soon as reasonably practicable following the termination… The Vessel shall be deemed to be repossessed… upon [boarding] by the Owners' representative… All …wages, disembarkation and repatriation of the charterers' Master, officers and crew shall be the sole responsibility of the Charterers.".

The dispute centred on the words "*a port or place convenient to them*." The charterers argued that clause 29 requires owners to repossess at the first opportunity (the vessel's current port, or if at sea its next scheduled port) unless those are unsuitable, in which event the vessel can be diverted only to a convenient port to facilitate immediate repossession. The owners contended that the clause expressly allows them to elect *any* port that is "convenient to them" (i.e. objectively convenient), so long as the choice is not irrational, even if this means a long voyage. Under the owners' interpretation, they could require the charterers (as unpaid bailees) to take the vessel to any distant port convenient to the owners (subject only to reasonableness) and then repossess. In this case, they asserted that Trogir (their yard in Croatia) was "convenient", whereas the charterers said the trip to Trogir (37–45 days, ~$500,000) made Stockton the only practicable repossession point, therefore by the interpretation of the clause 29[24] by the charterer, Croatia is not a reasonable point to repossess the vessel.

The Arbitral Award

The LMAA tribunal sided with the owners on construction. The Tribunal held that clause 29 gave owners a right (but not a duty) to repossess at the vessel's current port, the next port, *or* at a place convenient to them. It treated "convenient" in its natural and ordinary sense, meaning any location that objectively suited the

owners' purpose of repossession. An owner's choice would be set aside only if irrational or arbitrary. The tribunal read clause 29 as granting owners a menu of locations, and "*convenient to them*" was a distinct option chosen by owners for their purposes.[25]

Critically, the tribunal held that the owners' obligation to board "as soon as reasonably practicable" did **not** override the choice of location. It rejected the notion that the immediate repossession duty confined owners to the current port. Convenience of a place was to be judged "objectively against the parties' express intention that the vessel be repossessed as soon as reasonably practicable". The tribunal emphasised that timing (the period to arrange boarding) is relevant to whether a place is "convenient" for prompt repossession, but it did not make practicability a separate obligation overriding location choice.

In short, the owners had the option of choosing Trogir and still had to board "as soon as practicable" once there; it was not that they had to repossess at Stockton just because it was closer.[26]

Applying this to the facts, the Tribunal found that while the transatlantic voyage to Trogir would cost ~$500,000 and take about 45 days, owners (using a ship-management company) could probably have taken longer even to crew and board at Stockton. In the absence of evidence on how quickly a crew or representative could be flown to Stockton and given that the owners had a yard and personnel in Trogir (where their principal was insolvent), the tribunal found Trogir was nonetheless "objectively convenient". It concluded it would *not* have been reasonably practicable to repossess at Stockton on 14 May 2021, and so clause 29 entitled owners to insist on Trogir. The owners' choice was therefore upheld in the award.[27]

Commercial Court (HHJ Pelling KC) Judgment [2024] EWHC 3452 (Comm)

The High Court reversed the tribunal. HHJ Pelling analysed clause 29 against the commercial background of a bareboat charter.[28] He noted that on termination under cl.28 the vessel becomes uninsured and without crew support from

charterers, placing charterers in the position of *gratuitous bailees* to owners. It is therefore critical that the owners take physical repossession promptly to relieve charterers of this risk and cost. Repossession at the vessel's current port achieves that imperative[29]; requiring a longer unpaid voyage would prolong the charterers' burden, possibly unrecoverable if the owner is insolvent (citing *China Pacific*) [30] [31].

Pelling J held that the natural reading of clause 29 must be considered in context. He observed that if owners had an unfettered right to choose *any* convenient port, the words "current or next port" would be superfluous[32]. Those phrases must be read as referring to the vessel's actual location (in port at termination, or its next port if at sea).

The judge rejected the owners' argument that the first sentence of cl.29 purely allocates *location* and the third sentence addresses *timing* (board as soon as practicable).[33] Instead, he read the clause holistically: the first sentence gives a right to repossess and the third imposes the corresponding obligation to board promptly. He explained: "the right to repossess… in the first sentence should be read in the light of… the obligation… to place a representative on board as soon as reasonably practicable". [34]

Crucially, Pelling J found that if the owners' representative could have boarded the vessel at Stockton, then the owners could not nonetheless demand an additional prolonged voyage.[35] He wrote:

"If the owners' representative was able to board the vessel at her *"current port of call"*, then it would not follow that the owner was entitled nonetheless to insist that the vessel be taken… to a place… where the voyage time… would take materially longer than if the owners' representative had boarded at its original port… Concluding that an owner was entitled to act in this manner would mean ignoring the owner's obligation to repossess… as soon as reasonably practicable.".[36]

Pelling J saw that point as decisive. He concluded that the vessel had to be repossessed at Stockton (the current port) unless it was impossible or impractical

to board there. The tribunal had in fact found it *reasonably practicable* to board at Stockton. The judge held as a matter of fact (uncontested on appeal) that boarding at Stockton would have been faster and cheaper than sailing to Trogir.[37] Because the owners insisted on Trogir for their own convenience (yard and crew there, or personal financial motives) rather than out of necessity, the owners had breached their obligation. On true construction, clause 29 "requires the [owners] to repossess the vessel by causing [their] representative to board… as soon as reasonably practicable", and that duty could be performed in Stockton without unreasonable delay.[38]

Pelling J also explicitly applied established interpretation principles.[39] He noted that the meaning of clause 29 was "neither clear nor precise" in isolation, so he gave weight to context and purpose.[40] [41] The judge stressed that clause 29 was part of a self-contained code for termination under clause 28, and must be read to protect each party fairly in all default scenarios.[42] He cautioned against imposing any broad, implied obligation on charterers (as unpaid bailees) to sail the vessel to a far port absent necessity. Noting that a gratuitous bailee's duty is generally only to make the bailed item available, he held that any duty to sail must be "strictly confined" to what is needed for repossession.[43] Imposing a broad duty on charterers to sail the vessel at their own cost to a distant port, where owners' insolvent, was unnecessary and commercially problematic.[44] [45]

In summary, the High Court found in favour of the charterers (Songa). The owners' wide interpretation was deemed to subvert the clause's purpose: "it cannot have been the parties' intention that the owner would [have] an unqualified entitlement to choose where to repossess". Instead, the obligation to board "as soon as reasonably practicable" curtailed the owners' rights to effectively the vessel's current location. The claim was thus allowed, and the arbitral award set aside.[46]

Court of Appeal [2025] EWCA Civ 1227

The owners appealed to the Court of Appeal, but the judgment of Lord Justice Phillips (with King and Nugee LJJ concurring) largely affirmed HHJ Pelling's reasoning. Phillips LJ reiterated that clause 29 must be read as a coherent scheme: owners get the right to repossess and simultaneously have a strict duty to repossess promptly, and charterers' only role thereafter is unpaid caretakers. In context, a *port convenient to the owners* is a fallback if the vessel's current or next port is not suitable for immediate repossession. [47] [48]

Phillips LJ held (para.45–50) that the clause was not drafted so as to give owners an unfettered right to nominate any port. The reference to "her current or next port" shows that the immediate repossession point is normally where the vessel actually is (or is about to be). He agreed with the judge that if the vessel is in port at termination, the phrase *"current or next port"* cannot sensibly be read as giving the owners the right to require sailing to the *next* port – on termination there is no "next" port and owners would have no say in where that was. Instead, it is consistent with repossession at the port where the vessel is (or if at sea its next port of call). [49] [50]

Reading the whole clause together, the Court held that the "convenient to them" provision was meant as a contingency: if the vessel's current/next port is impractical for repossession, then the owners may choose a different port convenient *for carrying out repossession as soon as practicable*. The Court gave the example that if the vessel were at sea on a long voyage, it might be diverted to a convenient port to facilitate immediate boarding. But if the vessel is already safely in port, the owners' right and obligation coincide in directing repossession there. [51] [52]

Critically, Phillips LJ found no basis to imply a sweeping obligation on charterers. The clause expressly imposes no duty on charterers to sail the vessel to a far port. To imply one, the Court said, would impose on charterers an onerous unpaid voyage at their own risk – an outcome for which there is no express provision or necessity. At most, charterers may have to sail only so far as strictly needed to permit repossession.

In this case the vessel was available in Stockton and could safely be boarded there. Requiring it to sail across the Atlantic was not strictly necessary to effect

repossession, so clause 29**[53]** did not entitle the owners to insist on Trogir. [54] [55]

Phillips LJ therefore concluded (paras.50–51): if the vessel is in port at termination, clause 29 means the owners "must repossess at that port unless it is impracticable or impossible". In the present case, Stockton was safe and accessible, and the tribunal had found it reasonably practicable to board there. The appeal was dismissed, affirming that owners must repossess as soon as practicable at Stockton and cannot require the charterers to undertake the long Trogir voyage. [56] [57]

Application of Contract Interpretation Principles

Both courts applied the modern canon of construction articulated in *Arnold v Britton* and *Wood v Capita Insurance Services Ltd*.[58] The Court of Appeal in particular set out (at para.25) the orthodox approach: courts start with the natural and ordinary meaning of the contractual words, consider them in documentary, factual and commercial context, and give effect to clear language.[59] [60] If the clause is unambiguous, it must be applied; if there is ambiguity or absurdity, the court may depart from literal meaning to avoid a result unreasonable to the parties. Commercial common sense may choose between reasonable constructions, but the court will not rescue a party from a bad bargain or rewrite clear terms. [61] [62]

HHJ Pelling expressly identified these principles in his judgment.[63] He found clause 29's language "opaque" and unclear, so he heavily weighted context and purpose.[64] Citing Lord Hodge in *Wood v Capita*, the judge recognized the need to check any interpretation against the contract as a whole and its commercial consequences.[65] In this vein, he considered the consequence of owners' reading – that charterers would bear great cost as unpaid bailee for potentially months with little recourse – and found it pointed against the owners' construction.[66] He applied Arnold's rule against crafting a solution to a bad bargain, refusing to allow literal emphasis on "convenient" to override the parties' likely intent of prompt repossession.

The Court of Appeal similarly observed that the clause must be read as a coherent regime.[67] It emphasized the imperative that owners repossess quickly to relieve charterers of their gratuitous bailee burden. Phillips LJ noted that to accept the owners' interpretation would ignore the obligation to act quickly and would render the references to "current or next port" superfluous – a textual absurdity to be avoided.[68] In doing so, the court was not rewriting the clause from a bad bargain but giving effect to what a reasonable contracting party would have understood: that owners' right to pick a convenient port is subordinated to the duty to repossess as soon as practicable.[69] The judges thus balanced the words of cl.29 with its commercial context, consistent with Arnold's and Wood's guidance.[70]

Commentators have noted this alignment with interpretative canons.[71] As Nail and Khodabandehloo (Burges Salmon) explain, the "ordinary natural meaning" rule requires looking beyond isolated words to the contract, including purpose and context. Here the court zoomed out to see clauses 28–29 as a self-contained code: cl.28 triggers repossession due to termination, and cl.29 governs where and how that occurs.[72] The "convenient to them" option was therefore a mechanism to achieve the owners' prompt repossession obligation, not an unrestricted location choice.[73] This method echoes established authority that ambiguous provisions may yield to context and common sense**.[74]**

Neither court fell into the trap warned by Arnold of imposing a departure from natural meaning without clear justification.[75] Instead, they found the owners' literal reading led to commercial absurdity or a "highly prejudicial" consequence for charterers, which justified a contextual construction. In particular, the courts treated the terms "current or next port" as evidence that immediate repossession location was the intended norm.[76] In short, the decisions manifest a textbook application of current contract interpretation law: respecting clear language but giving it realistic effect when plain meaning would contradict the contract's evident purpose.

Implications and Comparison with Case Law on Charterparties

The result reinforces that courts will not lightly allow a charter clause to impose onerous unrecoupable costs on charterers. It aligns with the general rule that a gratuitous bailee has only minimal duties – notably the duty to make the vessel available for repossession – unless the contract explicitly requires more.[77] [78] The judges declined to imply a broad obligation on charterers to sail the ship to a distant port at their expense.[79] Instead, charterers' obligations remain as stated: hold the vessel as unpaid caretakers, disembark crew at own cost, and permit owners to board.

On the owners' side, the decision confirms that clause 29 indeed strengthens their position (as noted in BIMCO's Explanatory Notes) by giving them an explicit repossession right, but it also emphasizes the built-in limit that repossession must occur "as soon as reasonably practicable".[80] In that sense, this case highlights that even in standard form charters drafted by industry bodies, ordinary words will be tempered by logic and context.[81]

In existing charterparty jurisprudence, this case is notable for its careful line-drawing. It does not depart from precedent so much as apply longstanding rules to the novel clause. English law has long held (e.g. *Capital Finance Co v Bray*) that without contractual obligation a bailee is not responsible for actively returning goods, and that principle underpinned the analysis.[82] Nor does it upset the general liberty of parties to bargain – here owners *did* bargain for the right to repossess and for charterers to pay crew costs – but the bargain was judged not to include an open-ended repossession location right.[83]

In broader terms, the outcome serves as a reminder of the risk of vague drafting in charterparties. If owners had truly wanted unqualified location choice, they could have omitted the words "current or next port" or phrased an express voyage obligation. Courts will enforce the bargain the parties actually made.[84] As one commentator observes, though the clause's wording appears unambiguous, focusing too narrowly on "convenient to them" without context "may lead to error".[85] The decision thus arguably encourages parties to draft repatriation and repossession clauses with precision.

Finally, the case underscores that interpretation doctrines are applied rigorously even in commercial shipping contexts. The judges made clear that receiving a "bad bargain" due to poorly chosen words is not a ground for relief.[86] This reflects *Arnold v Britton* and *Wood v Capita*'s insistence that courts will not "rewrite" a contract under the guise of construction.[87] It also highlights that standard form clauses will be read against their commercial purpose: here, to get owners back into possession swiftly after default, rather than to give owners a windfall location choice.[88]

[1] Hill Dickinson, 'Court of Appeal Considers Scope of Owners' Rights to Repossess Vessel Following Early Termination of Bareboat Charter' (Hill Dickinson, 9 October 2025) < https://www.hilldickinson.com/insights/articles/court-appeal-considers-scope-owners-rights-repossess-vessel-following-early > accessed 10 October 2025.

[2]Hill Dickinson, 'Court of Appeal Considers Scope of Owners' Rights to Repossess Vessel Following Early Termination of Bareboat Charter' (Hill Dickinson, 9 October 2025) < https://www.hilldickinson.com/insights/articles/court-appeal-considers-scope-owners-rights-repossess-vessel-following-early > accessed 10 October 2025.

[3] 'Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 – Court of Appeal (Lady Justice King, Lord Justice Phillips and Lord Justice Nugee) – 7 October 2025 –
Lloyd's Maritime Law Newsletter' (Lloyd's Maritime Law Newsletter) <
https://www.lmln.com/charterparty/songa-product-and-chemical-tankers-iii-as-v-kairos-shipping-ii-llc-2025-ewca-civ-1227–court-of-appeal-lady-justice-king-lord-justice-phillips-and-lord-justice-nugee–7-october-2025-160310.htm ; accessed 10 October 2025.

[4] 'Kairos Shipping II LLC (Appellant) v Songa Product and Chemical Tankers III as (Respondent)' (*Courts and Tribunals Judiciary*) < https://www.judiciary.uk/live-hearings/kairos-shipping-ii-llc-appellant-v-songa-product-and-chemical-tankers-iii-as-respondent/ > accessed 3 November 2025

[5] Hill Dickinson, 'Court of Appeal Considers Scope of Owners' Rights to Repossess Vessel Following Early Termination of Bareboat Charter' (Hill Dickinson, 9 October 2025) < https://www.hilldickinson.com/insights/articles/court-appeal-considers-scope-owners-rights-repossess-vessel-following-early > accessed 10 October 2025.

[6] L Nail and A Khodabandehloo, 'Contract Interpretation: The "Ordinary Natural Meaning" Is Perhaps Wider Than You Think (Songa Tankers v Kairos Shipping)' (Burges Salmon, 9 October 2025) < https://www.burges-salmon.com/articles/102lpa3/contract-interpretation-the-ordinary-natural-meaning-is-perhaps-wider-than-you/ > accessed 9 October 2025.

[7] *Ibid*.

[8] Factual chronology: 17 December 2013 (novations); 23 December 2016 (delivery); 16 October 2020 (BDOO insolvency plan); 14 May 2021 (termination, repossession available at Stockton); August–September 2021 (voyage to Trogir, Gibraltar arrest); January 2022 (owners repossess at Gibraltar); January 2022 (arbitration commenced); March 2024 (partial award); 13 December 2024 (High Court judgment); 7 October 2025 (Court of Appeal judgment).

[9] 'Kairos Shipping II LLC (Appellant) v Songa Product and Chemical Tankers III as (Respondent)' (*Courts and Tribunals Judiciary*) < https://www.judiciary.uk/live-hearings/kairos-shipping-ii-llc-appellant-v-songa-product-and-chemical-tankers-iii-as-respondent/ > accessed 3 November 2025

[10] Hill Dickinson, 'Court of Appeal Considers Scope of Owners' Rights to Repossess Vessel Following Early Termination of Bareboat Charter' (Hill Dickinson, 9 October 2025) < https://www.hilldickinson.com/insights/articles/court-appeal-considers-scope-owners-rights-repossess-vessel-following-early > accessed 10 October 2025.

[11] Baltic and International Maritime Council, BARECON 2001 (BIMCO 2001) cl 29.

[12] Factual chronology: 17 December 2013 (novations); 23 December 2016

(delivery); 16 October 2020 (BDOO insolvency plan); 14 May 2021 (termination, repossession available at Stockton); August–September 2021 (voyage to Trogir, Gibraltar arrest); January 2022 (owners repossess at Gibraltar); January 2022 (arbitration commenced); March 2024 (partial award); 13 December 2024 (High Court judgment); 7 October 2025 (Court of Appeal judgment).

[13] Factual chronology: 17 December 2013 (novations); 23 December 2016 (delivery); 16 October 2020 (BDOO insolvency plan); 14 May 2021 (termination, repossession available at Stockton); August–September 2021 (voyage to Trogir, Gibraltar arrest); January 2022 (owners repossess at Gibraltar); January 2022 (arbitration commenced); March 2024 (partial award); 13 December 2024 (High Court judgment); 7 October 2025 (Court of Appeal judgment).

[14] Clause 28(d) refers to termination on insolvency. Clause 29 (quoted) sets out repossession rights upon any Clause 28 termination.

[15] Factual chronology: 17 December 2013 (novations); 23 December 2016 (delivery); 16 October 2020 (BDOO insolvency plan); 14 May 2021 (termination, repossession available at Stockton); August–September 2021 (voyage to Trogir, Gibraltar arrest); January 2022 (owners repossess at Gibraltar); January 2022 (arbitration commenced); March 2024 (partial award); 13 December 2024 (High Court judgment); 7 October 2025 (Court of Appeal judgment).

[16] Arbitral tribunal reasoning in Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC (Partial Final Award, LMAA, March 2024) paras 124–129 (owners have right to choose “convenient” location; convenience assessed objectively). See also ibid paras 128–129 (ordinary meaning of “convenient” and owners’ priority; critique of charterers’ proposed construction).

[17] Factual chronology: 17 December 2013 (novations); 23 December 2016 (delivery); 16 October 2020 (BDOO insolvency plan); 14 May 2021 (termination, repossession available at Stockton); August–September 2021 (voyage to Trogir, Gibraltar arrest); January 2022 (owners repossess at Gibraltar); January 2022 (arbitration commenced); March 2024 (partial award); 13 December 2024 (High Court judgment); 7 October 2025 (Court of Appeal judgment).

[18] Arbitration Act 1996, s 69.

[19] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024]

EWHC 3452 (Comm).

[20] Factual chronology (18)

[21] Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 [45]–[52] (Phillips LJ).

[22] Baltic and International Maritime Council, BARECON 2001 (BIMCO 2001) cl 29.

[23] Clause 28(d) refers to termination on insolvency. Clause 29 (quoted) sets out repossession rights upon any Clause 28 termination.

[24] Under cl 29, owners' rights include selecting a convenient location for repossession, but their timing obligation limits that right. The charterers' obligations are limited: they become unpaid bailees caring for the vessel until repossession, owed only minimal duties by law. The court refused to imply any unstated duty on charterers to sail beyond what was necessary to allow repossession.

[25] Arbitral tribunal reasoning in Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC (Partial Final Award, LMAA, March 2024) paras 124–129 (owners have right to choose "convenient" location; convenience assessed objectively). See also ibid paras 128–129 (ordinary meaning of "convenient" and owners' priority; critique of charterers' proposed construction).

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[27] Ibid.

[28] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm).

[29] Songa (EWHC) (n 2) [28]–[31] (charterers board at "current port" unless impracticable; owners cannot force longer route at charterers' cost). See also ibid [29]–[30] (Stockton practicable; insisting on Trogir was for owners' convenience,

not clause intention).

[30] China Pacific SA v Food Corporation of India (The Winson) [1982] AC 939, 958 (Lord Simon of Glaisdale).

[31] Capital Finance Co Ltd v Bray [1964] 1 WLR 323, 329 (Lord Denning MR).

[32] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm).

[33] Songa (EWHC) (n 2) [27] (quoting Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, 912–13 (Lord Hoffmann)).

[34] Songa (EWHC) (n 2) [28]–[31] (charterers board at "current port" unless impracticable; owners cannot force longer route at charterers' cost). See also ibid [29]–[30] (Stockton practicable; insisting on Trogir was for owners' convenience, not clause intention).

[35] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm).

[36] Songa (EWHC) (n 2) [28]–[31] (charterers board at "current port" unless impracticable; owners cannot force longer route at charterers' cost). See also ibid [29]–[30] (Stockton practicable; insisting on Trogir was for owners' convenience, not clause intention). (Reference 22)

[37] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm). (Reference 23)

[38] Songa (EWHC) (n 2) [28]–[31] (charterers board at "current port" unless impracticable; owners cannot force longer route at charterers' cost). See also ibid [29]–[30] (Stockton practicable; insisting on Trogir was for owners' convenience, not clause intention). (Reference 22)

[39] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 [10]–[13] (Lord Hodge JSC).

[40] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm).

[41] Songa (EWHC) (n 2) [27] (quoting Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, 912–13 (Lord Hoffmann)).

[42] Songa (EWHC) (n 2) [22]–[30]; Songa (EWCA) (n 1) [25] (note: [850]–[909] appears to be a typographical error, as the judgment extends only to [52]; no such paragraphs exist).

[43] Capital Finance Co Ltd v Bray [1964] 1 WLR 323, 329 (Lord Denning MR).

[44] Rainy Sky SA v Kookmin Bank [2011] UKSC 50, [2011] 1 WLR 2900 [23] (Lord Clarke JSC).

[45] On contractual construction, see Nail and Khodabandehloo (n 5) (applying Arnold v Britton principles of context and purpose). The Court of Appeal reiterated that Arnold v Britton allows no relief from bad bargains and Wood v Capita emphasises drafting quality. The judge echoed Lord Hodge: owners' proposed reading "divorces" cl 29 from its commercial context. Both courts adhered to the rule that "ordinary meaning" yields to context where necessary.

[46] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm).

[47] Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 [45]–[52] (Phillips LJ).

[48] Songa (EWCA) (n 1) [45]–[51] (CA confirms Stockton as repossession point unless impracticable; "convenient" is a fallback; no broad duty to sail far).

[49] Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 [45]–[52] (Phillips LJ). (Reference 35)

[50] Songa (EWCA) (n 1) [45]–[51] (CA confirms Stockton as repossession point unless impracticable; "convenient" is a fallback; no broad duty to sail far). (Reference 36)

[51] Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 [45]–[52] (Phillips LJ). (Reference 35)

[52] Songa (EWCA) (n 1) [45]–[51] (CA confirms Stockton as repossession point unless impracticable; "convenient" is a fallback; no broad duty to sail far).

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[56] Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 [45]–[52] (Phillips LJ). (Reference 35)

[57] Songa (EWCA) (n 1) [45]–[51] (CA confirms Stockton as repossession point unless impracticable; "convenient" is a fallback; no broad duty to sail far). (Reference 36)

[58] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 [10]–[13] (Lord Hodge JSC).

[59]Songa Product and Chemical Tankers III AS v Kairos Shipping II LLC [2025] EWCA Civ 1227 [45]–[52] (Phillips LJ).

[60] Songa (EWHC) (n 2) [22]–[30]; Songa (EWCA) (n 1) [25] (note: [850]–[909] appears to be a typographical error, as the judgment extends only to [52]; no such paragraphs exist).

[61] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 [10]–[13] (Lord Hodge JSC).

[62] On contractual construction, see Nail and Khodabandehloo (n 5) (applying Arnold v Britton principles of context and purpose). The Court of Appeal

reiterated that Arnold v Britton allows no relief from bad bargains and Wood v Capita emphasises drafting quality. The judge echoed Lord Hodge: owners' proposed reading "divorces" cl 29 from its commercial context. Both courts adhered to the rule that "ordinary meaning" yields to context where necessary.

[63] Kairos Shipping II LLC v Songa Product and Chemical Tankers III AS [2024] EWHC 3452 (Comm).

[64] Songa (EWHC) (n 2) [22]–[30]; Songa (EWCA) (n 1) [25] (note: [850]–[909] appears to be a typographical error, as the judgment extends only to [52]; no such paragraphs exist).

[65] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 [10]–[13] (Lord Hodge JSC).

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[68] Songa (EWHC) (n 2) [22]–[30]; Songa (EWCA) (n 1) [25] (note: [850]–[909] appears to be a typographical error, as the judgment extends only to [52]; no such paragraphs exist).

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[70] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017]

AC 1173 [10]–[13] (Lord Hodge JSC).

[71] L Nail and A Khodabandehloo, 'Contract Interpretation: The "Ordinary Natural Meaning" Is Perhaps Wider Than You Think (Songa Tankers v Kairos Shipping)' (Burges Salmon, 9 October 2025) < https://www.burges-salmon.com/articles/102lpa3/contract-interpretation-the-ordinary-natural-meaning-is-perhaps-wider-than-you/ > accessed 9 October 2025.

[72] On contractual construction, see Nail and Khodabandehloo (n 5) (applying Arnold v Britton principles of context and purpose). The Court of Appeal reiterated that Arnold v Britton allows no relief from bad bargains and Wood v Capita emphasises drafting quality. The judge echoed Lord Hodge: owners' proposed reading "divorces" cl 29 from its commercial context. Both courts adhered to the rule that "ordinary meaning" yields to context where necessary.

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[74] Rainy Sky SA v Kookmin Bank [2011] UKSC 50, [2011] 1 WLR 2900 [23] (Lord Clarke JSC).

[75] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 [10]–[13] (Lord Hodge JSC).

[76] On contractual construction, see Nail and Khodabandehloo (n 5) (applying Arnold v Britton principles of context and purpose). The Court of Appeal reiterated that Arnold v Britton allows no relief from bad bargains and Wood v Capita emphasises drafting quality. The judge echoed Lord Hodge: owners' proposed reading "divorces" cl 29 from its commercial context. Both courts adhered to the rule that "ordinary meaning" yields to context where necessary.

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[80] Baltic and International Maritime Council, BARECON 2001 (BIMCO 2001) cl 29.

[81] Hill Dickinson, 'Court of Appeal Considers Scope of Owners' Rights to Repossess Vessel Following Early Termination of Bareboat Charter' (Hill Dickinson, 9 October 2025) < https://www.hilldickinson.com/insights/articles/court-appeal-considers-scope-owners-rights-repossess-vessel-following-early > accessed 10 October 2025.

[82] Capital Finance Co Ltd v Bray [1964] 1 WLR 323, 329 (Lord Denning MR).

[83] cf OCM Maritime Nile LLC v Courage Shipping Co [2022] EWCA Civ 1091, [2022] 2 Lloyd's Rep 93 (allowing owners repossession on default, emphasising contractual rights); The Jotunheim [2004] EWHC 671 (Comm), [2005] QB 234 (similar repossession context); Swiss law cases applying Arnold v Britton on literal meaning and bad bargains.

[84] Hill Dickinson, 'Court of Appeal Considers Scope of Owners' Rights to Repossess Vessel Following Early Termination of Bareboat Charter' (Hill Dickinson, 9 October 2025) < https://www.hilldickinson.com/insights/articles/court-appeal-considers-scope-owners-rights-repossess-vessel-following-early > accessed 10 October 2025.

[85] L Nail and A Khodabandehloo, 'Contract Interpretation: The "Ordinary Natural Meaning" Is Perhaps Wider Than You Think (Songa Tankers v Kairos Shipping)' (Burges Salmon, 9 October 2025) < https://www.burges-salmon.com/articles/102lpa3/contract-interpretation-the-ordinary-natural-meaning-is-perhaps-wider-than-you/ > accessed 9 October 2025.

[86] Arnold v Britton [2015] UKSC 36, [2015] AC 1619 [15], [18]–[20] (Lord Neuberger PSC); Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173 [10]–[13] (Lord Hodge JSC).

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Digital Governance, Regimes Theory and Private International Law. A tech diplomacy perspective

By Juliano Alves Pinto, Brazilian tech diplomat; former Deputy Consul of Brazil in San Francisco (2013–2016); State Undersecretary of Science, Technology, and Innovation (2019–2021); HCCH expert on digital economy (2023–2024); and Government Affairs Director at the Digital Cooperation Organization (DCO) (2024–2025)

Could Private International Law be an answer to digital governance? Though this idea has already been debated among PIL scholars, it must be said that it has not yet broken the bubble of the PIL niche. Diplomats usually overlook PIL as a small part of the larger International Law realm, which embraces Public International Law as the standard bearer of the multilateral framework that has been established ever since the Westphalia Peace in 1648.

However, the uniqueness of digital platforms architecture and its asymmetric relationship with individuals all around the world has made PIL emerge as a relevant normative toolbox to tackle the numerous situations in which the user needs to protect themselves from the leonine contracts and the frequent

algorithmic abuses on data extraction, data privacy and, even more often, IA misleading guidance.

A digital platform is usually comprised of a number of layers, which may reflect different jurisdictions according to the territory in which a specific component of the platform architecture is localized. That said, an individual can access a platform in a country A and the platform could be hosted in a country B. Their personal data -collected by the platform- could be stored on a cloud-based server in a country C, not to mention third-party applications used by the platform that could be placed in different jurisdictions. If a lawsuit is set, which law is applicable? Is it the place of business the usual connecting factor?

Instead of long-lasting negotiations to approve an international treaty on a specific emerging technology governance, which usually turns out to be time and resource consuming, a simplified PIL convention that offers an applicable law methodology, defining connecting factors in typical conflict of law situations, as well as the ubiquity of specific platform layers, might be more effective. The current world order on digital governance is a highly fragmented reality, with a number of multilateral initiatives being launched within or without the UN System, from the traditional International Telecommunications Union to the emerging Digital Cooperation Organization, sponsored by Saudi Arabia.

Domestic regulatory frameworks on new technologies are becoming the standard approach in an array of jurisdictions. An example is the digital tokens realm, which has already been regulated in different countries, from Switzerland (2018) to Brazil (2022) and the EU (2023). Even though it might be difficult for lawmakers to cope with technology change, even a provisional regulation is better than self-regulation alone.

From an International Relations perspective, the International Regimes Theory is often regarded as the go-to approach among diplomats and multilateralism experts, as it deals with the idea that cooperation among countries, regardless of self-interest, should be done by a minimal normative system, not necessarily formalized by treaties or an international organization framework. Stephen Krasner defined international regimes in 1982 as sets of *"principles, norms, rules, and decision making procedures around which actors converge in a given issue-area of the international relations."* [1] Normally these principles, norms, and rules are established by the actors themselves to make sure goals through

cooperation are achieved. From a digital multilateralism point of view, it is no wonder that the very definition of internet governance included in the WSIS Tunis Agenda in 2005 coincides with Krasner's classic approach:

> *34. A working definition of Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of* ***shared principles, norms, rules, decision-making procedures****, and programmes that shape the evolution and use of the Internet.[2]*

It is worth noting that the WSIS approach embraces multiple actors, beyond the typical state-centered approach, as innovation requires a triple-helix perspective, alongside the private sector and Academia. Still, governance itself cannot be achieved without a minimal rule-based system. The main difficulty of multilateralism and Public International Law is the time needed to reach the necessary consensus to build up international rules by which countries need to abide.

Technology develops in a much faster pace, which means that the already-late-coming domestic norms are often approved quicker than any multilateral framework. In this sense, treaty-based multilateralism might not be the only solution to provide the necessary protection to individuals and digital platforms all around the world.

The other side of the coin is that domestic frameworks alone fail to provide individual protection when cross-border relationships are established through digital platforms and their multiple layers localized in different jurisdictions. PIL in this sense could be the right answer to law efficacy, not only from a multilateral perspective but also from a domestic regulatory system approach.

Interestingly, flexibility and adaptation became one of the main features of International Regimes Theory, not only by embracing new actors but also through the construction of unorthodox multilateral arrangements.[3] That said, PIL institutes, such as applicable law, jurisdiction and judgment recognition, could be included as components of any regime building methodology, whereas domestic regulatory frameworks could become the main normative sources of newly PIL-based regimes of digital governance. The Hague Conference on Private International Law (HCCH) has been tackling this issue since 2022, having

successfully established two groups of experts on digital tokens and CBDC's. Though unfamiliar to most tech diplomats and multilateralism specialists, both initiatives might be fundamental to change the current fragile digital governance landscape, as the definition of the law applicable to platforms might shed some light onto a rather obscure international reality.

Hence, it is about time for tech diplomats, scholars, and policy makers to embrace PIL as a relevant digital governance mechanism. At the end of the day, we just need to make sure individuals receive the necessary protection across the globe, regardless of the jurisdiction concerning the multiple layers of a platform's architecture.

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This contribution is a summarized version of a PhD thesis originally written in Portuguese that will soon be included on: https://www3.ufmg.br/pesquisa-e-inovacao/teses-e-dissertacoes

[1] KRASNER, Stephen (1982) Structural Causes and Regime Consequences: Regimes as Intervening Variables

[2] WSIS: Tunis Agenda for the Information Society (2005)

[3] SNIDAL, ABBOTT (2009) The governance triangle: Regulatory standards institutions and the shadow of the state

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Tatlici v. Tatlici on Appeal: Defendant Wins as Public Policy Confronts the Financialization of

Cross-Border Defamation Award

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The *Tatlici* litigation continues to unfold as one of the most noteworthy examples of how national courts in Europe are responding to transnational defamation judgments obtained in the United States. The previous commentary examined Malta's First Hall Civil Court judgment refusing to enforce the U.S. default award of US$740 million.[1] The Malta Court of Appeal's judgment of 14 October 2025 builds upon that foundation by upholding non-enforcement while clarifying the legal reasoning behind it.[2] The Malta Court of Appeal's judgment came as the second major development, following an earlier first-round enforcement attempt in Turkey that had already failed on venue.[3]

The Malta Court of Appeal upheld the First Hall Civil Court's rejection of enforcement but replaced procedural formalism with a more principled proportionality analysis grounded in *ordre public*. The judges, Chief Justice Mark Chetcuti, Hon. Judge Robert G. Mangion and Hon. Judge Grazio Mercieca, held that the magnitude and moral nature of the award—being damages for defamation—"manifestly" offended Maltese public policy.[4] Such "astronomic" damages, the court reasoned, would have a chilling effect on free expression and thereby upset Malta's constitutional balance between protecting reputation and safeguarding democratic speech.[5]

The court also noted that the absence of a reasoned Florida judgment hindered the court's ability to test the applicant's belated claim that the award represented "real" rather than moral damages.[6]

It is against this backdrop that the Maltese decision must be read alongside the unfolding NEKO 2018 A, LLC receivership before the U.S. District Court for the Southern District of Florida, which is a case that exposes how litigation finance now shapes both litigation conduct and judgment enforcement across borders.[7] The Florida proceedings, captioned *Mehmet Tatlici and Craig Downs v. Ugur Tatlici*—as cited in the Malta Court of Appeal's judgment, directly link the plaintiff, Mehmet Tatlici, with his Florida attorney, Craig Downs, who appeared as co-plaintiff in the U.S. default judgment awarding US$740 million in damages.

Although litigation funding was not part of the Maltese court's formal reasoning, the *Tatlici* dispute shows how financial mechanisms behind litigation are beginning to shape the transnational life of judgments. This connection matters for private international law because recognition and enforcement today concern not only the validity of foreign judgments but also the economic structures that propel those judgments across jurisdictions.

Litigation Funding as a Governance Warning

As Cassandra Burke Robertson observes, third-party funding externalises litigation risk and encourages high-variance, high-quantum claims that might otherwise settle early.[8] Funders' capital increases the number of transnational lawsuits filed, raises settlement values, and spreads litigation across more jurisdictions.[9] This tendency is especially visible in defamation and other reputation-based torts, where damages are inherently subjective and national legal systems diverge sharply on what counts as a proportionate remedy.

Maya Steinitz's governance theory underlines a concern that once funders gain control over budgets and strategic decisions, they develop portfolio-level incentives to pursue outsized awards that maximise aggregate returns—even when enforcement remains uncertain.[10] This creates a structural tension that private international law cannot ignore because enforcement courts are ultimately asked to enforce judgments whose underlying dynamics are driven as much by capital as by legal merit.

The NEKO receivership makes these abstract concerns tangible. In October 2025, NEKO 2018 A, LLC, a litigation funder with an investor's interest, secured a collateral receivership over its funded law firm, the Downs Law Group, the same firm involved in *Tatlici*.[11] The receivership order placed all accounts, rights to payment, proceeds, substitutes, and records under the control of a court-appointed receiver and suspended pre-trial deadlines to "*preserve resources … without the burden of potential protracted litigation*."[12] This effectively turned litigation receivables into tradable assets by allowing the funder to monetise pending claims and future enforcement proceeds.

Scholars such as John Gotanda and Ronald Brand warn that this financialisation of litigation detaches judgments from substantive justice and proportionality, compelling enforcement courts—like Malta's—to reimpose those limits through *ordre public* review.[13] Seen from a private international law perspective, this convergence between capital markets and cross-border enforcement exposes a governance gap: Article 2(1)(k) of the Hague Judgments Convention 2019 explicitly excludes defamation from its scope, while the Convention remains entirely silent on litigation funding. This dual absence, of both defamation and funded claims, leaves national courts to fill that regulatory void case by case, relying on domestic *ordre public* standards to assess the enforceability of judgments shaped by third-party capital.

Funding Under Scrutiny for Potential Fraud on Court

The relationship between litigation funding and the manner in which a judgment is obtained deserves careful attention. While the Maltese appellate court did not address the issue of fraud, ongoing criminal proceedings in Turkey—where judicial and prosecutorial authorities are examining how the Florida judgment was obtained—illustrate how difficult it can be to distinguish legitimate litigation conduct from actions that are not merely procedural but go to the integrity of the adjudicative process.

In highly financed, cross-border cases, the line between assertive advocacy and excessive pressure can become blurred. When litigation outcomes are closely tied to the financial expectations of external funders, there is a risk that commercial considerations may influence legal strategy or procedural choices. As Steinitz's governance analysis suggests, such dynamics can create "agency costs," where professional judgment becomes constrained by the funder's return-driven objectives.[14] These constraints indicate that there must be increased protection and openness in recognition and enforcement actions to guarantee that financing efficiency does not compromise procedural integrity in the judicial process. In extreme cases, these forces can blur the line between zealous advocacy and alleged fraudulent conduct, which has been a tension made visible in the *Tatlici* litigation.

Conclusion

The *Tatlici* litigation illustrates how the *ordre public* exception has evolved into a

constitutional safeguard within the global enforcement of judgments. The Malta Court of Appeal's 2025 decision affirming the refusal to enforce a US $740 million Florida defamation award and treating "astronomic" moral damages as incompatible with freedom of expression, the court used *ordre public* as an active tool of constitutional governance. This aligns with the argument advanced by Symeon C. Symeonides, who conceptualises the public policy exception as a constitutional checkpoint ensuring that foreign judgments do not erode the forum's fundamental rights.[15]

At the same time, *Tatlici* exposes enduring tensions between litigation finance, procedural integrity, and the enforceability of transnational awards. The claimant's connection to the US federal receivership shows how financial structures can shape litigation strategy and the formation of judgments, while the ongoing Turkish criminal inquiry into the alleged fraudulent procurement of the Florida judgment illustrates the risks that arise when capital-backed claims intersect with procedural fragility.

The case exemplifies a wider paradox in which a claimant secures an extraordinary foreign award yet lacks attachable assets in the rendering state and faces recognition refusals abroad, so the judgment's practical value collapses despite its formal validity. The defendant in the US$740 million action now occupies a jurisdictional and enforcement limbo, subject to a judgment that can neither be executed in *foro domestico* nor circulate transnationally through recognition or exequatur.

Tatlici confirms that public policy, founded on proportionality and constitutional values, still marks the outer boundary of the transnational movement of judgments in a system increasingly exposed to the financialisation of litigation.

[1] Fikri Soral, 'Tatlici?v?Tatlici: Malta Rejects?$740?Million U.S. Defamation Judgment as Turkish Case Looms' (Conflict?of?Laws, 28?April?2025) https://conflictoflaws.net/2025/tatlici-v-tatlici-malta-rejects-740-million-u-s-defamation-judgment-as-turkish-case-looms/

accessed 4?November?2025.

[2] *Tatlici v Tatlici* (Court of Appeal, Malta, 14 October 2025) App ?iv 719/20/1. ("**Appellate Judgement**")

[3] Istanbul Regional Court of Appeal, 4th Civil Chamber, Decision No 2025/3701, File No 2025/2327, 13 October 2025,

[4] Appellate Judgement (n 2) para. 53

[5] ibid. para 47-52

[6] ibid. para. 50.

[7] *NEKO 2018 A, LLC v Downs Law Group, P.A.* (US District Court for the Southern District of Florida, No 1:25-cv-24580, filed 6 October 2025) https://dockets.justia.com/docket/florida/flsdce/1:2025cv24580/698527

[8] Cassandra Burke Robertson, 'The Impact of Third-Party Financing on Transnational Litigation' (2011) 44 *Case W Res J Intl L* 159.

[9] ibid at 164

[10] Maya Steinitz, 'Whose Claim Is This Anyway? Third Party Litigation Funding' (2011) 95 *Minnesota Law Review* 1268, 1318–25 (discussing funders' portfolio-level incentives and the resulting agency-cost problems in litigation governance).

[11] *NEKO 2018 A v Downs Law Group* (n 7).

[12] ibid

[13] See Ronald A Brand, 'Recognition and Enforcement of Foreign Judgments' (2013) 74 *University of Pittsburgh Law Review* 491, 520–28; John Y Gotanda, 'Punitive Damages: A Comparative Analysis' (2004) 42 *Columbia Journal of Transnational Law* 391. Both scholars argue that disproportionate awards, exacerbated by the financialisation of litigation, require recognition courts to restore proportionality through the *ordre public* exception.

[14] Steinitz (n 10) 1304, 1315.

[15] Symeon C Symeonides, 'The Public Policy Exception in Choice of Law: The American Version' (2025) *Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)* (forthcoming, also to appear in *Emory Journal of International Law*).