



The Secretary General

Mr Stephen Mathias
Assistant Secretary-General in charge of the
Office of Legal Affairs
Organisation of the United Nations
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NEW YORK, NY 10017
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The Hague, 20 January 2020

Dear Mr Mathias,

I write in reference to your correspondence of 19 December 2019, inviting the Hague Conference on Private International Law (HCCH) to contribute to the report of the Secretary-General on oceans and the law of the sea, pursuant to United Nations General Assembly resolution A/74/19, entitled “Oceans and the law of the sea”, and available as document A/74/L.22.

It is my pleasure to share the enclosed contribution of the Permanent Bureau (PB) of the HCCH to the report.

In our earlier contributions, submitted in 2017 and 2018, we have provided updates on various HCCH instruments, in particular the HCCH Convention of 30 June 2005 on Choice of Court Agreements, and the then ongoing project – the Judgments Project – and their relevance in the field of oceans and the law of the sea. I wish now to draw your attention to the newly-adopted HCCH [Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#) (HCCH 2019 Judgments Convention), successfully adopted on 2 July 2019.

The HCCH 2019 Judgments Convention sets up a global framework to promote the free circulation of foreign judgments in civil or commercial matters. It aims at enhancing legal certainty and predictability, and provides shorter timeframes for the recognition and enforcement of a judgment in other jurisdictions. As such, it has the potential to significantly reduce transaction and litigation costs as well as risks associated with cross-border dealings. Through such judicial co-operation, the Convention will promote effective access to justice to all and facilitate rule-based international trade and investment, and mobility as a whole. These objectives are in line with the United Nations Sustainable Development Goal 16, to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

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Regional Office for Latin America and the Caribbean (ROLAC) - Bureau régional pour l'Amérique latine et les Caraïbes (BRALC)

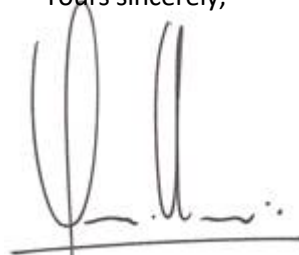
As you will note from the enclosed contribution, the Convention applies to the vast majority of maritime-related judgments (the extent of the application of the Convention to maritime-related judgments has been thoroughly discussed throughout the negotiations).

Although not directly linked to the topic of the ICP21, "Sea-level rise and its impacts", the HCCH 2019 Judgments Convention will, as demonstrated by our contribution, be beneficial for parties involved in maritime-related disputes and will promote cross-border enforceability of marine pollution related judgments.

On behalf of the PB I would like to thank you for providing the HCCH with the opportunity to offer a contribution to this important work. The PB is grateful for the ongoing co-operation between the Office of Legal Affairs and the HCCH. We very much look forward to continuing this co-operation in the future.

I take this opportunity to renew to you, Mr Assistant Secretary-General, assurances of my highest consideration.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by 'B' and a series of loops and flourishes.

Christophe Bernasconi

Contribution of the Hague Conference on Private International Law (HCCH) to the report of the Secretary-General on oceans and the law of the sea

The Permanent Bureau (the PB) of the HCCH has submitted two contributions, in June 2017 and June 2018 respectively, in response to the requests of Mr Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel. In these contributions, the PB states that certain HCCH instruments and ongoing projects are relevant to the report entitled “Oceans and the law of the sea”, as they include or have discussed maritime issues within their scope of application, such as the HCCH *Convention of 30 June 2005 on Choice of Court Agreements* (HCCH 2005 Choice of Court Convention) and the then on-going Judgments Project.

As the relevance of other HCCH instruments has been discussed in the above-mentioned contributions, this contribution will focus only on the newly-adopted HCCH *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (HCCH 2019 Judgments Convention). The adoption of this Convention brought the Judgments Project to a fruitful completion, and States are now invited to join the Convention.

HCCH 2019 Judgments Convention

The Convention addresses the question: in what circumstances will the courts of one Contracting State be required to recognise and enforce a judgment given by a court in another Contracting State in a civil or commercial matter. By laying down the conditions upon which a judgment will be eligible for recognition and enforcement and the grounds for refusal, the Convention aims at facilitating the circulation of foreign judgments in civil or commercial matters.

Insofar as maritime-related matters are concerned, the issue of the extent to which such judgments should be excluded from the scope of the Convention was one of the core discussions at the Diplomatic Session, which took place from 18 June to 2 July 2019, in The Hague and which adopted the final text of the Convention.

The Convention does not apply to judgments ruling on “transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average” (Art. 2(1)(g)). In comparison with earlier drafts of the Convention, and with the HCCH 2005 Choice of Court Convention, the scope of these exclusions is more limited, for the following two main reasons.

First, consideration was given to existing international marine pollution-related instruments addressing the recognition and enforcement of foreign judgments, such as the *International Convention on Civil Liability for Oil Pollution* and the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*. Therefore, to avoid any overlap, it was agreed that the marine pollution exclusion should be limited to three specific circumstances: transboundary marine pollution, marine pollution in areas beyond national jurisdiction and ship-source marine pollution. Other types of marine pollution, such as land-based or atmospheric pollution, are covered by the HCCH 2019 Judgments Convention.

Secondly, it was considered, from a policy standpoint, that limiting the scope of exclusion would help preventing marine pollution. By allowing certain marine pollution judgments to circulate under this new multilateral regime, the Convention may help holding polluters liable and compensate those that have been affected by marine pollution. In addition, the Convention, unlike earlier drafts and the HCCH 2005 Choice of Court Convention, governs judgments relating to emergency salvage and towage.

Clearly, the new HCCH 2019 Judgments Convention covers the vast majority of maritime-related judgments. Judgments that are eligible for circulation under the Convention will benefit from the effective and efficient framework provided by the Convention and be recognized and enforced in other Contracting States. As a result, this new Convention effectively promotes access to justice and rule-of-law at the international level.

The Hague, January 2020