

Ronald A. Brand\*

## THE 2005 HAGUE CHOICE OF COURT CONVENTION IN THE UNITED STATES

### I. INTRODUCTION

The 2005 Hague Convention on Choice of Court Agreements was the result of more than a decade of negotiations at the Hague Conference on Private International Law.<sup>1</sup> While the negotiations began with the goal of a more comprehensive convention, regulating both jurisdiction in the court of origin and recognition of the resulting judgment,<sup>2</sup> the result is an important instrument.<sup>3</sup> It provides the opportunity for predictability when a choice of court agreement is included in an international commercial contract, and places that choice on a more even plane with an arbitration agreement under the New York Convention.<sup>4</sup> By giving effect in all Contracting States to both the choice of court agreement and the resulting judgment, the Hague Convention makes the choice between arbitration and litigation more evenly balanced for purposes of choosing a forum for dispute resolution in international commercial contracts.

While the United States signed the Hague Convention in January of 2009, it has not yet ratified. With the accession of Mexico in 2007, and ratification by the European Union in 2015, however, the Conven-

---

31

---

\*Chancellor Mark A. Nordenberg University Professor and Academic Director, Center for International Legal Education, University of Pittsburgh School of Law. This article is the written version of a presentation given by the author at the South East European Law School Network (SEELS) 12<sup>th</sup> Regional PIL Conference on “Private International Law on Stage – National, European and International Perspectives,” at the University of Zenica Faculty of Law on October 23, 2015. It builds on and adapts other articles by the author.

1) Hague Convention on Choice of Court Agreements, June 30, 2005. For the negotiating history of the Convention, see the Hague Conference website at: <https://www.hcch.net/en/instruments/conventions/publications1/?dtid=35&cid=98>.

2) *See id.*

3) For a complete discussion of the Convention, see RONALD A. BRAND AND PAUL M. HERRUP, THE 2005 HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS (Cambridge University Press 2008).

4) *See*, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), done at New York, June 10, 1958, entered into force for the United States on June 7, 1959, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38.

tion went into effect for Mexico and 27 of the 28 EU Member States on October 1, 2015.<sup>5</sup> If both the EU and the United States were parties to the Convention, it is likely that many other states would follow. While it may be some time before the Hague Convention reaches the number of Contracting States that exist for the New York Convention,<sup>6</sup> the prospect does exist, and would provide a more level playing field for arbitration and litigation in international commercial relationships. For the United States, however, the internal process of ratification and implementation may be a more difficult negotiation than the external efforts that led to agreement on its terms with our negotiating partners in The Hague.

In this article, I briefly describe the history and current status of judgments recognition law in the United States and then discuss how the Hague Convention might move the law forward. I next note the difficult political situation that has prevented ratification and implementation of the Hague Convention. This is followed by mention of some of the problems the legal status quo has created in judgments recognition law. I close with an honest assessment of the likelihood that the Hague Convention will be ratified by the United States any time soon.

---

## **II. The Historical Background: Judgments Recognition Law in the United States**

### **A. Sister State Judgments**

Judgments recognition law exists on two levels in the United States. A “foreign” judgment in any court may be either a judgment from a court (state or federal) in another U.S. state, or a judgment from a court in a foreign country. So long as the judgment is from one of the states, or from a U.S. federal court, the Full Faith and Credit clause found in Article IV of the U.S. Constitution provides a gloss of federal

---

5) See status table available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=98](http://www.hcch.net/index_en.php?act=conventions.status&cid=98). Denmark is the exception to full effect within the EU. The EU ratification included the following notification:

The European Community declares, in accordance with Article 30 of the Convention on Choice of Court Agreements, that it exercises competence over all the matters governed by this Convention. Its Member States will not sign, ratify, accept or approve the Convention, but shall be bound by the Convention by virtue of its conclusion by the European Community. For the purpose of this declaration, the term “European Community” does not include Denmark by virtue of Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

6) At the time this article was written, there were 156 Contracting States: [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html).

uniformity to the system. That clause provides that, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State . . . .” In *Underwriters National Assurance Co. v. N.C. Guaranty Assn.*,<sup>7</sup> the U.S. Supreme Court described the importance of the free movement of judgments within the U.S. federal system:

The concept of full faith and credit is central to our system of jurisprudence. . . . [I]n order to fulfill this constitutional mandate, “the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced.”<sup>8</sup>

While the language of the Full Faith and Credit clause states that each “State” shall accord full faith and credit to the acts of each other “State,” the clause has been applied to encompass recognition within the entire state-federal system.<sup>9</sup> Thus, a judgment rendered in any state or federal court in the United States is entitled to full recognition in any other state or federal court in the United States.

## **B. Foreign Country Judgments: From Federal Common Law to State Statute**

Judgments from foreign courts do not receive the benefit of the Full Faith and Credit clause. Nor does the United States have a multilateral or bilateral treaty in effect which deals with judgment recognition generally. There is, however, a single source from which all U.S. law on judgments recognition has evolved: Justice Gray’s 1895 opinion in *Hilton v. Guyot*.<sup>10</sup> That opinion set a framework for judgments recognition based on comity. While the holding itself was based on a lack of reciprocity with France,<sup>11</sup> from which the judgment in question originated, Justice Gray provided the comity foundation for the subsequent common law and statutory development of the law throughout the United States:

[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defen-

---

7) 455 U.S. 691 (1982).

8) *Id.* at , 703-04.

9) *See* 28 U.S.C. § 1738.

10) 159 U.S. 113 (1895).

11) 159 U.S. at 210-28.

dant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh.<sup>12</sup>

The federal common law rule of *Hilton* has become both federal and state law, now found in both statute and common law.<sup>13</sup> It is found in both the compendium of state common law reflected in the ALI, *Restatement (Third) of Foreign Relations Law*,<sup>14</sup> and in the two state Uniform Acts created by the Uniform Law Commission.<sup>15</sup> The result is one of the most liberal regimes for judgments recognition in any country.

### **§ 481. Recognition and Enforcement of Foreign Judgments**

(1) Except as provided in § 482, a final judgment of a court of a foreign state granting or denying recovery of a sum of money, establishing or confirming the status of a person, or determining interests in property, is conclusive between the parties, and is entitled to recognition in courts in the United States.

(2) A judgment entitled to recognition under Subsection (1) may be enforced by any party or its successor or assigns against any other party, its successors or assigns, in accordance with the procedure for enforcement of judgments applicable where enforcement is sought.<sup>16</sup>

### **§ 482. Grounds for Non recognition of Foreign Judgments**

(1) A court in the United States may not recognize a judgment of the court of a foreign state if:

---

12) 159 U.S. at 202-03.

13) While this process began earlier, it is largely a result of the 1938 U.S. Supreme Court decision in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), which requires that federal courts, in cases based on diversity jurisdiction (which includes most cases for foreign judgment recognition) must apply the statutory and common law of the state in which the federal court is located. Because there is no general federal statute on judgments recognition there is no preemption of state law under the Supremacy Clause of the U.S. Constitution. U.S. Const. Art. VI.

14) RESTATEMENT (THIRD) FOREIGN RELATIONS LAW §§ 481-482 (1987).

15) National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), Uniform Foreign-Country Money Judgments Recognition Act (2005) and Uniform Foreign Money-Judgments Recognition Act (1962).

16) RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 481 (1987).

- (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law; or
  - (b) the court that rendered the judgment did not have jurisdiction over the defendant in accordance with the law of the rendering state and with rules set forth in § 421.
- (2) A court in the United States need not recognize a judgment of a court of a foreign state if:
- (a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;
  - (b) the defendant did not receive notice of the proceedings in sufficient time to enable him to defend;
  - (c) the judgment was obtained by fraud;
  - (d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought;
  - (e) the judgment conflicts with another final judgment that is entitled to recognition; or
  - (f) the proceeding in the foreign court was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.<sup>17</sup>

The other two-thirds of the states have enacted either the 1962 Uniform Foreign-Money Judgments Recognition Act or the 2005 Uniform Foreign-Country Money Judgments Recognition Act,<sup>18</sup> but the resulting rules are very similar. The most recent of the two Acts provides the basic rules as follows:

Section 3. Applicability

(a) Except as otherwise provided in subsection (b), this [act] applies to a foreign country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive, and enforceable. . . .

---

17) *Id.* § 482.

18) *Supra* note 9.

Section 4. Standards for Recognition of Foreign Country Judgment

(a) Except as otherwise provided in subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this [act] applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the judgment or the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

These rules are generally applied in a manner favoring recognition.<sup>19</sup>

### III. The 2005 Hague Convention

In 1992, the United States proposed that the Hague Conference on Private International Law consider a multilateral convention on the recognition and enforcement of judgments.<sup>20</sup> This led to formal negotiations which changed focus in 2001 to a convention with only one basis of jurisdiction – consent to a chosen court – and rules regarding the recognition and enforcement of the resulting judgments. The Hague Convention on Choice of Court Agreements was completed in June 2005.<sup>21</sup>

The Hague Convention went into effect for the first two parties, Mexico and the European Union (and 27 of its 28 Member States), on October 1, 2015.<sup>22</sup> The Convention provides in Article 5 that a court chosen in an exclusive choice of court agreement shall have exclusive jurisdiction; in Article 6 that a court not chosen shall defer to the chosen court; and in Article 8 that the courts of all contracting states shall recognize and enforce judgments from a court chosen in an exclusive choice of court agreement. The obligation to recognize and enforce judgments is subject to an explicit list of bases for non-recognition found in Article 9.<sup>23</sup>

U.S. law on the recognition of foreign judgments was also evolving internally at the turn of the Twenty-First century. This resulted in 2005 in the completion of two texts with similar rules but conflicting goals. The Uniform Foreign-Country Money Judgments Recognition Act (2005 Recognition Act),<sup>24</sup> prepared by the National Conference of Commissioners on Uniform States Laws (ULC), was designed to up-

---

19) For a more complete analysis of U.S. judgments recognition law, see, RONALD A. BRAND, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS (Federal Judicial Center International Litigation Guide 2012) available at: [http://www.fjc.gov/public/pdf.nsf/lookup/brandenforce.pdf/\\$file/brandenforce.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/brandenforce.pdf/$file/brandenforce.pdf).

20) Letter of May 5, 1992 from Edwin D. Williamson, Legal Advisor, U.S. Department of State, to Georges Droz, Secretary General, The Hague Conference on Private International Law, *distributed with* Hague Conference document L.c. ON No. 15 (92).

21) The text of the Final Act of the Twentieth Session, and a documentary history of the Choice of Court Convention project, are available on the Hague Conference website at: [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=98](http://www.hcch.net/index_en.php?act=conventions.text&cid=98).

22) See status table available at [http://www.hcch.net/index\\_en.php?act=status&cid=98](http://www.hcch.net/index_en.php?act=status&cid=98).

23) Hague Convention on Choice of Court Agreements, *supra* note 15.

24) Uniform Foreign-Country Money Judgments Recognition Act (2005 Recognition Act), available at <http://www.uniformlaws.org/Act.aspx?title=Foreign-Country%20Money%20Judgments%20Recognition%20Act>.

date and replace that body's 1962 Recognition Act, thus, modernizing judgments recognition law as state law. The American Law Institute Proposed Federal Statute on the Recognition and Enforcement of Judgments, in contrast, was developed as a tool for centralizing judgments recognition law at the federal level.<sup>25</sup> The mostly political differences behind these two approaches were relevant to the effort to construct the method by which the Hague Convention would be ratified and implemented by the United States, with the ULC favoring implementation largely at the state level, through a Uniform Choice of Court Agreements Implementation Act,<sup>26</sup> and the ALI favoring implementation through a federal statute conforming largely to the comparable implementation of the New York Arbitration Convention.<sup>27</sup> This debate remains unresolved, leaving further internal action on the Hague Convention both stalled and uncertain.

#### **IV. Problems of Non-Uniformity**

While it may be possible to have uniformity when law is determined at the state – rather than the federal – level, that is not the current situation in the United States regarding judgments recognition law. Three issues, in particular, demonstrate the problem of non-uniformity in this area of the law.

The first is the existence of differences in state law, even among those states which have adopted either of the two Uniform Acts. This is demonstrated in the case of *Standard Chartered Bank v. Ahmad Hamad Al Gosaibi and Brothers Co.*,<sup>28</sup> where a \$25 million Bahraini judgment in favor of a U.K. bank was granted recognition by the Supreme Court for New York County, applying the New York version of the 1962 Recognition Act. When the New York judgment was taken to Pennsylvania and the District of Columbia, recognition of the New York recognition judgment was granted in Pennsylvania under the Full Faith and Credit Clause of the U.S. Constitution,<sup>29</sup> but was denied in the District of Co-

---

25) AMERICAN LAW INSTITUTE, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE (2006) (“ALI Proposed Federal Statute”).

26) Uniform Choice of Court Agreements Implementation Act, available at: <http://www.uniformlaws.org/Act.aspx?title=Choice%20of%20Court%20Agreements%20Convention%20Implementation%20Act>.

27) See, Federal Arbitration Act, Chapter II, 9 U.S.C. §§ 201 *et seq.*

28) 38 Misc. 3d 831, 836, 957 N.Y.S.2d 602, 605 (2012), *appeal denied*, 110 A.D.3d 578 (App. Div., 1st Dep’t 2013).

29) *Standard Chartered Bank v. Ahmad Hamad Al Gosaibi and Brothers Co.*, 2014 Pa. Super. 179, 99 A.3d 936 (Pa. Super. 2014).



lumbia.<sup>30</sup> The D.C. court specifically held that differences between New York and D.C. law on the recognition of foreign judgments prevented the use of the Full Faith and Credit clause as a back-door means of recognition of a foreign judgment that would not have been granted recognition directly.<sup>31</sup> The D. C. court noted the problems these differences created, and the resulting incentive for forum-shopping in the judgment recognition process, closing with a suggestion that a federal approach would be welcomed:

We acknowledge that, if the type of judgment rendered in New York is not entitled to full faith and credit, litigants will need to obtain recognition of foreign country judgments in each U.S. jurisdiction where they seek to enforce them. We likewise acknowledge that international comity may well be served by a policy that favors uniform enforcement of foreign country judgments across all of the nation’s jurisdictions. However, we view this policy consideration as a matter to be addressed, if at all, by federal statute or international treaty.<sup>32</sup>

Similar issues were raised in the case of *Alberta Securities Commission v. Ryckman*,<sup>33</sup> when a Delaware court granted recognition and enforcement to a judgment from Arizona,<sup>34</sup> which had recognized an Ontario judgment which the Delaware court specifically determined would not have been recognized directly in Delaware.<sup>35</sup>

The second problem of non-uniformity comes in state law on the requirements of personal jurisdiction necessary for bringing an action to recognize and enforce a foreign judgment. Personal jurisdiction in

---

30) Ahmad Hamad Al Gosaibi and Brothers Co. v. Standard Chartered Bank, 98 A.3d 998, 2014 WL 4356135 (D.C. Ct. App. 2014).

31) 98 A.3d at 1002.

32) 98 A.3d at 2008 (emphasis added).

33) 2015 WL 2265473 \*1 (Del. Super. Ct. 2015) (not reported in A.3d).

34) *Alberta Securities Com’n v. Ryckman*, 200 Ariz. 540, 30 P.3d 121, 353 Ariz. Adv. Rep. 16 (Ariz. Ct. App. 2001).

35) 2015 WL 2265473 at \*2 (footnotes omitted):

It is undisputed that Delaware could not directly domesticate the Canadian Judgment for two reasons. First, the Canadian Judgment violates the UFCMJRA’s statute of limitations. Delaware’s UFCMJRA imposes a 15-year statute of limitations on foreign-country judgment recognition. The Canadian Judgment was issued in 1996 and the instant action was filed in Delaware in 2013—a 17-year gap. Second, the Canadian Judgment constitutes a fine or penalty. The UFCMJRA “does not apply to a foreign-country judgment . . . to the extent that the judgment is: . . . [a] fine or other penalty.” The Canadian Judgment is a fine or penalty because the ASC ordered a pecuniary judgment on Ryckman to punish him for his Securities Act violations.

U.S. courts ultimately is determined as a matter of U.S. Constitutional law under the Due Process Clauses of the Fifth and Fourteenth Amendments.<sup>36</sup> Nonetheless, the failure of the U.S. Supreme Court to have decided the question of what is necessary in a judgments recognition action under this test, and has left the matter to be addressed in differing ways in differing courts.<sup>37</sup> In cases seeking the recognition of foreign judgments, the courts of New York have held that the judgment debtor need not be subject to personal jurisdiction in New York before the judgment creditor may obtain recognition and enforcement of the foreign country money judgment, as neither the Due Process Clause of the United States Constitution nor New York law requires that the New York court have a jurisdictional basis for proceeding against a judgment debtor.<sup>38</sup>

This approach has been followed in subsequent New York<sup>39</sup> and Texas decisions,<sup>40</sup> and by the Federal District Court for the Northern District of Iowa,<sup>41</sup> but has been rejected by the Fourth Circuit Federal Court of Appeals,<sup>42</sup> the Michigan Court of Appeals,<sup>43</sup> and the American Law Institute's 2005 Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute ALI Proposed Federal Statute.<sup>44</sup>

---

36) *See, e.g.*, *Daimler AG v. Bauman*, 571 U.S. 310 (2014); *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. \_\_\_, 131 S. Ct. 2846 (2011); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. \_\_\_, 131 S. Ct. 2780 (2011).

37) The closest the Supreme Court has come to the question is a footnote in the celebrated case of *Shaffer v. Heitner*, 433 U.S. 186 (1977), where the Court addressed whether a court may proceed when the defendant is without sufficient contacts with the forum state to support personal jurisdiction, but property of the defendant is located in the forum state. In its footnote 36, the Court stated:

Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter. 433 U.S. at 210 n.36.

38) *Lenchyshyn v. Pelko Electric, Inc.*, 281 A.D.2d 42, 43, 723 N.Y.S.2d 285, 286 (2001).

39) *Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Co.*, 986 N.Y.S.2d 454 (1st Dep't 2014).

40) *Beluga Chartering B.V. v. Timber S.A.*, 294 S.W.3d 300 (Tex. App. 2009); *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476 (Tex. App. 2008).

41) *Pure Fishing, Inc. v. Silver Star Co., Ltd.*, 202 F. Supp. 2d 905 (N.D. Iowa 2002).

42) *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminim Factory,"* 283 F.3d 208 (4th Cir. 2002), *cert. denied*, 537 U.S. 822 (2002).

43) *Electrolines, Inc. v. Prudential Assurance Company, Ltd.*, 260 Mich. App. 144, 677 N.W.2d 874 (Mich. App. 2003).

44) ALI, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED

The third problem of non-uniformity comes in application of the doctrine of *forum non conveniens*, a discretionary doctrine which allows courts in the United States to refuse to exercise jurisdiction, even when it exists, when there is a more appropriate forum for hearing the case abroad.<sup>45</sup> The Second Circuit U.S. Court of Appeals has held that actions for the recognition of foreign arbitral awards may be refused on this basis in decisions that have led to confusion and may well apply equally to judgments recognition actions.<sup>46</sup> While this approach has been rejected by the District of Columbia Circuit Court of Appeals,<sup>47</sup> the differing approaches only add to the lack of uniformity in this area of the law, and present obstacles that could as easily be placed on the recognition of foreign judgments as on the recognition of arbitral awards.

## V. Looking Forward

The ratification and implementation of the 2005 Hague Convention on Choice of Court Agreements, if accomplished through federal legislation, could bring need uniformity and coherence to U.S. law on judgments recognition as well as provide greater certainty that U.S. judgments would be recognized and enforced abroad. Whether that will happen is not certain, however, as the current political climate results in a strong desire on the part of the Uniform Law Commission and others to see that judgments recognition law be found at the state level and not in federal law. While there is no persuasive legal argument for this position, it is asserted with a great deal of political fervor and reflects much of the broader current political context for any legislative activity in the U.S. Congress. The ability of the ULC and others to block any attempt to achieve reasonable federal implementation of the Hague Convention upon ratification, is likely to mean that the United States will remain outside of that treaty's process for some time to come.

---

FEDERAL STATUTE § 9 (2005). The ALI Proposed Federal Statute similarly provides in section 9, that

(b) An action to recognize or enforce a judgment under this Act may be brought in the appropriate state or federal court

- (i) where the judgment debtor is subject to personal jurisdiction; or
- (ii) where assets belonging to the judgment debtor are situated.

45) *See*, RONALD A. BRAND & SCOTT R. JABLONSKI, *FORUM NON CONVENIENS: HISTORY, GLOBAL PRACTICE, AND FUTURE UNDER THE HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS* (2007).

46) *Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Republic of Peru*, 665 F.3d 384 (2011); *In re Arbitration between Monegasque de Reassurances S.A.M. (Monde Re) v. NAK Naftogaz of Ukraine*, 158 F. Supp. 2d 377 (S.D.N.Y. 2001), *aff'd*, 311 F.3d 488 (2d Cir. 2002).

47) *Continental Transfert Technique Ltd. v. Federal Govt. of Nigeria*, 697 F. Supp. 2d 46, 57 (D.D.C. 2010).

**ABSTRACT**

The 2005 Hague Convention on Choice of Court Agreements was the result of more than a decade of negotiations at the Hague Conference on Private International Law. While the negotiations began with the goal of a more comprehensive convention, regulating both jurisdiction in the court of origin and recognition of the resulting judgment, the result is an important instrument. It provides the opportunity for predictability when a choice of court agreement is included in an international commercial contract, and places that choice on a more even plane with an arbitration agreement under the New York Convention. By giving effect in all Contracting States to both the choice of court agreement and the resulting judgment, the Hague Convention makes the choice between arbitration and litigation more evenly balanced for purposes of choosing a forum for dispute resolution in international commercial contracts.

**Keywords:** Hague Convention on Choice of Court Agreements; U.S. law on the recognition of foreign judgments; New York Arbitration Convention.

## **HAŠKA KONVENCIJA O PROROGACIONIM SPORAZUMIMA IZ 2005. GODINE U SJEDINJENIM AMERIČKIM DRŽAVAMA**

### **SAŽETAK**

Haška konvencija o prorogacionim sporazumima iz 2005. godine je bila rezultat više od desetljeća pregovora u okviru Haške konferencije o međunarodnom privatnom pravu. Iako su pregovori počeli s ciljem sveobuhvatnosti konvencije, regulisanja obje nadležnosti, porijekla i priznanja presuda, rezultirala je važnim instrumentom. Ona pruža mogućnost predvidivosti sporazumnog izbora suda koja je uključena u međunarodni trgovački ugovor, i taj izbor postavlja čak na ravan sa njujorškom konvencijom. Sa učinkom u svim državama ugovornicama oba sporazumna izbora suda i presuda, Haška konvencija čini izbor između arbitraže i parnice dosta izbalansiranim u svrhu izbora foruma za rješavanje sporova u međunarodnim trgovačkim sporovima.

**Ključne riječi:** Haška konvencija o sporazumnom izboru suda, američko pravo o priznanju stranih presuda, njujorška arbitražna konvencija.