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THE YEAR IN REVIEW
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Private International Law

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I. Introduction

Selecting the covered dates for the Year in Review article is always challenging. If just the 2020 year was selected, it would result in an article that covered less than twelve months of developments because the submittal deadline is November 1, and it takes about a month to prepare the article, so research really stops at the end of September. Since this topic has never been the subject of a Year in Review article, the author has a little more latitude than normal. Therefore, this article starts with an effective date of July 1, 2019, and continues through September 30, 2020.

This article discusses recent developments in private international law. It is important to define what constitutes "private international law." To Europeans, private international law means what Americans call conflict of laws. To Americans, private international law means international law that is not the law of nations and not public international law.

II. United Nations Convention on International Settlement Agreements Resulting from Mediation

The United Nations Convention on International Settlement Agreements Resulting from Mediation[2] (Singapore Mediation Convention) was promulgated on December 20, 2018. On August 7, 2019, the convention opened for signature in Singapore, and forty-seven States signed it (including the United States), and six additional States have signed since then.[3] There are currently six State parties to the Singapore Mediation Convention, which first entered into force on September 12, 2020—Ecuador, Fiji, Qatar, Saudi Arabia, Singapore, and Belarus. Belarus approved its signature on July 15, 2020, so the Singapore Mediation Convention will come into force on January 15, 2021, for Belarus.[4]

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2. G.A. Res. 73/198, at 1 (Dec. 20, 2018), *available at* https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf [hereinafter Singapore Mediation Convention].

3. *Status: United Nations Convention on International Settlement Agreements Resulting from Mediation*, U.N. COMM'N ON INT'L TRADE L. (last visited Nov. 2, 2020), https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status.

4. *Id.*

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Instead of requiring parties to bring a separate suit to enforce a mediated settlement agreement, the Singapore Mediation Convention provides a procedural shortcut to enforce mediated settlement agreements without requiring a lawsuit to be instituted.[5] Under Article 1, the parties must first show that they meet the prerequisites for being governed by the Singapore Mediation Convention.[6]

Next, the aggrieved party must demonstrate to the competent authority that there was a settlement agreement signed by the parties.[7] The settlement agreement must have resulted from mediation,[8] which can be demonstrated in several ways: (1) the mediator's signature on the settlement agreement;[9] (2) a document signed by the mediator indicating the mediation was carried out;[10] (3) an attestation by the institution that administered the mediation;[11] or (4) any other evidence acceptable to the competent authority.[12]

The settlement agreement may be signed electronically.[13] The court shall determine the matter expeditiously, which means that the matter must be handled by motion rather than a complaint. A competent authority may refuse to enforce the settlement agreement on grounds similar to those utilized to refuse enforcement of contracts.[14] Examples of such grounds include: one of the parties to the settlement agreement was under some kind of incapacity;[15] the settlement agreement was null and void;[16] the settlement agreement was not binding;[17] or the settlement agreement was subsequently modified.[18]

The settlement agreement must be clear and understandable,[19] and it cannot be enforced if (a) it has already been performed,[20] or (b) the mediator seriously breached the mediation standards and that was the *sine qua non* for entering the settlement agreement.[21] The forum may not enforce the settlement agreement if doing so would be contrary to the terms of the settlement agreement.[22]

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5. Singapore Mediation Convention, *supra* note 2, at pmbl.
6. *Id.* at art. 1.
7. *Id.* at art. 4(1)(a).
8. *Id.* at art. 4(1)(b).
9. *Id.* at art. 4(1)(b)(i).
10. *Id.* at art. 4(1)(b)(i).
11. Singapore Mediation Convention, *supra* note 2, at art. 4(1)(b)(iii).
12. *Id.* at art. 4(1)(b)(iv).
13. *Id.* at art. 4(2)(a).
14. *Id.* at art. 5.
15. *Id.* at art. 5(1)(a).
16. *Id.* at art. 5(1)(b)(i).
17. Singapore Mediation Convention, *supra* note 2, at art. 5(1)(b)(ii).
18. *Id.* at art. 5(1)(b)(iii).
19. *Id.* at art. 5(1)(c)(ii).
20. *Id.* at art. 5(1)(c)(i).
21. *Id.* at art. 5(1)(e).
22. *Id.* at art. 5(1)(d).

In light of these restrictions, there is a caveat. If you are using *ad hoc* mediation and the mediator is elderly, ensure that the mediator signs the settlement agreement, as, without an administrative mediation institution to attest that a mediation took place, it would be hard to elicit the corroborating testimony of a now-deceased mediator.[23] The Singapore Mediation Convention may become a useful tool for countries where the court system is only marginally effective because of delays or inefficiencies.

Although the United States has not begun the process of seeking inter-agency clearance to transmit the Singapore Mediation Convention to the Senate for advice and consent, that process is expected to begin soon.

III. United Nations Convention on the Assignment of Receivables in International Trade (concluded New York, 2001)[24]

On December 12, 2001, the United Nations Commission on International Trade Law ("UNCITRAL") promulgated the Convention on the Assignment of Receivables in International Trade ("Receivables Convention").[25] The Receivables Convention was designed to lower the cost of credit by validating the assignment of future receivables (either one at a time or in bulk) and clarifying the effect of an assignment on an account debtor and other possible third parties with a claim to the account receivable.[26]

On December 30, 2003, the United States signed the Receivables Convention. As so often happens in international law—especially private international law—the ratification process moved slowly, and the Senate did not give its advice and consent to the Receivables Convention until January 2, 2019.[27]

On October 15, 2019, the United States deposited its instrument of ratification, becoming the second State party (after Liberia) to the Receivables Convention.[28] Luxembourg and Madagascar have signed, but not ratified, the Receivables Convention.[29]

The Senate believes the Receivables Convention is self-executing, and the instrument of ratification reflects this belief.[30] Therefore, after the requisite five States become parties, the Receivables Convention comes into force,

23. *See* Gilbert C. Laite, III, *Deal or No Deal? Don't Leave a Mediation Without a Signed Final Settlement Agreement*, WILLIAMS MULLEN (Jan. 16, 2011), https://www.williamsmullen.com/news/deal-or-no-deal-don%E2%80%99t-leave-mediation-without-signed-final-settlement-agreement.

24. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ctc-assignment-convention-e.pdf.

25. G.A. Res. 56/81 (Jan. 31, 2002) [hereinafter Receivables Convention], 41 ILM 776 (2002).

26. *Id.*

27. *See* S. REP. NO. 114-7 (Feb. 10, 2016).

28. Receivables Convention, *supra* note 25.

29. *Id.*

30. S.R. 114-7, supra note 27, at 6.

and there is no need for United States legislation implementing the convention into U.S. law.

According to Article 45 of the Receivables Convention, the convention does not enter into force until the first of the month following a six-month period after which the fifth instrument of ratification has been deposited. Therefore, the Receivables Convention is not yet in force; however, private parties can certainly incorporate it by reference into any contract between them.[31] Although the Receivables Convention will affect the relations between the contracting parties, it will not affect relations with third parties.[32] Contracting States may agree to have the Receivables Convention come into force early, but none have done so.[33] This is not likely to happen unless it is in connection with another treaty, such as a free trade area where the State parties agree that affected private parties should have recourse to the Receivables Convention.

The United States made the following understandings when its instrument of ratification was deposited with the United Nations Secretary-General:

> [Section 2, Understanding 1] It is the understanding of the United States that paragraph (2)(e) of Article 4 excludes from the scope of the Convention the assignment of (i) receivables that are securities, regardless of whether such securities are held with an intermediary, and (ii) receivables that are not securities, but are financial assets or instruments, if such financial assets or instruments are held with an intermediary. . .[34]

> [Section 2, Understanding 2] It is the understanding of the United States that the phrase "that place where the central administration of the assignor or the assignee is exercised," as used in Articles 5(h) and 36 of the Convention, has a meaning equivalent to the phrase, "that place where the chief executive office of the assignor or assignee is located."[35]

> [Section 2, Understanding 3] It is the understanding of the United States that the reference, in the definition of "financial contract" in Article 5(k), to "any other transaction similar to any transaction referred to above entered into in financial markets" is intended to include transactions that are or become the subject of recurrent dealings in financial markets and under which payment rights are determined by reference to (a) underlying asset classes or (b) quantitative measures of economic or financial risk or value associated with an occurrence or

31. *Id.*

32. G.A. Res 56/81, art. 22 (Jan. 31, 2002).

33. *See* Houston Putnam Lowry, Early Implementation of the 1988 UNCITRAL Bills and Notes Convention, LEGAL HARMONIZATION IN THE AMERICAS 159 (General Secretariat of the Organization of American States, 2002).

34. S. REP. NO. 115-7, at 7 (2018).

35. *Id.* at 8.

contingency. Examples are transactions under which payment rights are determined by reference to weather statistics, freight rates, emissions allowances, or economic statistics:[36]

[Section 2, Understanding 4] It is the understanding of the United States that because the Convention applies only to "receivables," which are defined in Article 2(a) as contractual rights to payment of a monetary sum, the Convention does not apply to other rights of a party to a license of intellectual property or an assignment or other transfer of an interest in intellectual property or other types of interests that are not a contractual right to payment of a monetary sum. . .[37]

[Section 2, Understanding 5] The United States understands that, with respect to Article 24 of the Convention, the Article requires a Contracting State to provide a certain minimum level of rights to an assignee with respect to proceeds but that it does not prohibit Contracting States from providing additional rights in such proceeds to such an assignee.[38]

The United States also made the following declarations:

[Section 3, Declaration 1] Pursuant to Article 23(3), the United States declares that, in an insolvency proceeding of the assignor, the insolvency laws of the United States or its territorial units may under some circumstances (a) result in priority over the rights of an assignee being given to a lender extending credit to the insolvency estate, or to an insolvency administrator that expends funds of the insolvency estate for the preservation of the assigned receivables (see, for example, Title 11 of the United States Code, Sections 364(d) and 506(c)); or (b) subject the assignment of receivables to avoidance rules, such as those dealing with preferences, undervalued transactions and transactions intended to defeat, delay or hinder creditors of the assignor. . .[39]

[Section 3, Declaration 2] Pursuant to Article 36 of the Convention, the United States declares that, with respect to an assignment of receivables governed by enactments of Article 9 of the Uniform Commercial Code, as adopted in one of its territorial units, if an assignor's location pursuant to Article 5(h) of the Convention is the United States and, under the location rules contained in Section 9-307 of the Uniform Commercial Code, as adopted in that territorial unit, the assignor is located in a territorial unit of the United States, that territorial unit is the location of the assignor for purposes of this Convention. . .[40]

36. *Id.*
37. *Id.* at 9.
38. *Id.*
39. *Id.* at 10.
40. S.R. 115-7, *supra* note 34, at 6.

> [Section 3, Declaration 3] Pursuant to Article 37 of the Convention, the United States declares that any reference in the Convention to the law of the United States means the law in force in the territorial unit thereof determined in accordance with Article 36 and the Article 5(h) definition of location. However, to the extent under the conflict-of-laws rules in force in that territorial unit a particular matter would be governed by the law in force in a different territorial unit of the United States, the reference to "law of the United States" with respect to that matter is to the law in force in the different territorial unit. The conflict-of-laws rules referred to in the preceding sentence refer primarily to the conflict-of-laws rules in Section 9-301 of the Uniform Commercial Code as enacted in each State of the United States. . .[41]
>
> [Section 3, Declaration 4] Pursuant to Article 39 of the Convention, the United States declares that it will not be bound by Chapter V of the Convention. . .[42]
>
> [Section 3, Declaration 5] Pursuant to Article 40, the United States declares that the Convention does not affect contractual anti-assignment provisions where the debtor is a governmental entity or an entity constituted for a public purpose in the United States. . .[43]
>
> [Section 4, Self-Execution Declaration] The Senate's advice and consent under section 1 is subject to the following declaration: This Convention is self-executing.[44]

The Receivables Convention covers many topics, including asset-based lending, which would otherwise be covered domestically by Article 9 of the Uniform Commercial Code, and factoring, which involves the sale of receivables, either with or without recourse.[45] While the sale of receivables with recourse resembles a lending transaction, a sale of receivables without recourse does not resemble a traditional lending transaction.[46] Some of the topics would seem settled under domestic United States law, but they are not well settled under the laws of every country.

First, although the sale of existing receivables has long been permitted in the United States and the sale of receivables was supposedly permitted under The Code of Hammurabi,[47] not all countries have followed this venerable precedent.

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41. *Id.*
42. *Id.* at 12.
43. *Id.*
44. *Id.*
45. *See* G.A. Res. 56/81, *supra* note 32.
46. *See Accounts Receivable Factoring*, CFI (last visited May 20, 2021) https://corporatefinanceinstitute.com/resources/knowledge/accounting/accounts-receivable-factoring/.
47. *Receivables Financing, Don't Overlook the Basics*, ASHURST (Sep. 28, 2018), https://www.ashurst.com/en/news-and-insights/legal-updates/receivables-financing/.

Second, receivables may be assigned, but this is not permitted in some countries.[48] Receivables may either be individually assigned or assigned in bulk.[49] If future receivables are assigned, they must be assigned in bulk because they cannot be individually identified before they exist.[50] Because an undivided interest in receivables may also be assigned,[51] this makes it rather clear that receivables may be sold before they come into existence. Under Article 9 of the Uniform Commercial Code, a *lender* may take a collateral interest in receivables that do not yet exist.[52] Under existing US domestic law, it is unclear if a receivable can be *sold* before it comes into existence. Once the Receivable Convention comes into force, this issue will be resolved domestically (at least for international receivables).[53]

IV. Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019)

After considering the issue for many years, on July 2, 2019, the Hague Conference on Private International Law drafted and adopted the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters[54] ("Hague Judgments Convention"). Although only Ukraine and Uruguay have signed the Hague Judgments Convention, the United States is expected to sign it in the near future.[55]

The United States is not currently a party to any bilateral or multilateral convention on the enforcement of foreign judgments.[56] This has been one of the reasons arbitration has been so common under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).[57] The near-universal acceptance of the 1958 New York Convention[58] has propelled arbitration into the

48. U.N. Secretariat, Possible Future Work, Addendum by the Secretariat, ¶¶ 7–8, Int'l Law Comm'n, U.N. Doc. A/CN.9/378/Add.3 (May 28, 1993).

49. *See* G.A. Res. 56/81, *supra* note 32, at art. 8.

50. *The UN Convention on the Assignment of Receivables in International Trade*, 3, MAYER BROWN (May 21, 2020), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/05/the-un-convention-on-the-assignment-of-receivables.pdf.

51. *See* G.A. Res. 56/81, *supra* note 32, at art. 8.

52. *UCC Security Agreements*, FULLERTON & KNOWLES (last visited May 23, 2021), https://fullertonlaw.com/ucc-security-agreements#_ftnref10.

53. *See* G.A. Res. 56/81, *supra* note 32.

54. Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, July 2, 2019, H.C.C.S.

55. *Contracting Parties to the Convention*, H.C.C.H. (last visited May 20, 2021) https://www.hcch.net/en/instruments/conventions/status-table/print/?cid=137.

56. *See* Nadija Vietz, *Will Your U.S. Judgment Be Enforced Abroad?*, HARRIS BRICKEN (July 22, 2020), https://harrisbricken.com/blog/will-your-u-s-judgment-be-enforced-abroad/.

57. *See* King & Wood Mallesons, *An Overview on International Arbitration*, LEXOLOGY (July 7, 2020), https://www.lexology.com/library/detail.aspx?g=37392764-3bdf-43d6-917d-4b7a95132e5a.

58. *Id.*; *See Status: "New York Convention"*, UNITED NATIONS (last visited May 20, 2021), https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2.

preferred method of international dispute resolution. While this does not present a problem for larger companies, the costs of arbitration often present an obstacle for small and medium enterprises.[59]

The Hague Judgments Convention only covers judgments in civil or commercial matters.[60] It does not apply, *inter alia*, to family law matters,[61] wills,[62] or insolvency.[63] In addition, the Hague Judgments Convention covers only final judgments and not interim measures of protection.[64] The general rule is a final judgment issued by the court of a contracting State will be recognized and enforced in another contracting State.[65]

The Hague Judgments Convention provides for a fairly long list of acceptable bases of jurisdiction.[66] Each country is concerned about an unusual exercise of jurisdiction that it considers unacceptably peculiar (commonly called "exorbitant bases of jurisdiction").[67] The common-law lawyer will notice "presence in the forum" is not a listed acceptable basis of jurisdiction under the Hague Judgments Convention.[68] While United States jurisprudence is not offended by serving a defendant while flying over a jurisdiction when the airplane neither took off nor landed in that jurisdiction,[69] other countries might find that enforcing such a judgment would violate their public policy. Similarly, courts in the United States would be loath to enforce a judgment solely based upon the presence of the defendant's personal property located within the forum.[70]

It is important to note that only compensatory judgments will be enforced.[71] This means that treble damage awards, such as anti-trust awards, and punitive damages awards will not generally be enforced, but consent judgments and litigated judgments will be enforced.[72]

While there can be no assurance that the Hague Judgments Convention will be transmitted promptly to the Senate for advice and consent, it seems likely in light of the business community's interest.

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59. King & Wood Mallesons, *supra* note 57.

60. Convention on the Recognition and Enforcement of Foreign Judgements, *supra* note 54, at art. 1.

61. *Id.* at art. 2(1)(b)–(c).

62. *Id.* at art. 2(1)(d).

63. *Id.* at at art 2(1)(e).

64. *Id.* at at art. 3(1)(b).

65. *Id.* at art. 4(1).

66. *See* Convention on the Recognition and Enforcement of Foreign Judgements, *supra* note 54, at art. 5.

67. Freidrich K. Juenger, *A Hague Judgments Convention?*, 24 BROOK. J. INT'L L. 111, 112 (1998).

68. Convention on the Recognition and Enforcement of Foreign Judgements, *supra* note 54, at art. 1.

69. *See* Grace v. MacArthur, 170 F. Supp. 442 (E.D. Ark. 1959).

70. *See id.*

71. *See* Convention on the Recognition and Enforcement of Foreign Jurisdictions, *supra* note 54, at art. 10.

72. *Id.* at art. 11.

V. Hague Convention on Choice of Court Agreement (2005)

On June 30, 2005, the Hague Conference on Private International Law promulgated the Hague Convention on Choice of Court Agreement[73] (Choice of Court Convention). On January 19, 2009, John Bellinger III (the State Department's Legal Advisor at the time) signed the Choice of Court Convention on behalf of the United States, but it has not been ratified. The Choice of Court Convention came into force on October 1, 2015.[74] On September 28, 2020, the United Kingdom deposited its instrument of accession, making it the 32nd State party to the Choice of Court Convention. And although the People's Republic of China (2017), the Republic of North Macedonia (2019), and the United States (2009) have signed the Choice of Court Convention, none of them have ratified their signatures.[75]

The primary problem is how to implement the Choice of Court Convention. As a matter of policy, the United States will not ratify a private international law convention unless it has been implemented. The longest delay in implementing a recent private international law convention is the 1973 UNIDROIT Convention on the Form of an International Will (Wills Convention).[76] In 1977, the Uniform Laws Commission (formerly known as the National Conference of Commissions on Uniform State Laws) drafted the implementing legislation.[77] At its January 24-25, 2015 meeting, the Uniform Laws Commission changed the original title "Uniform International Wills Act" to "Uniform Will Recognition Act."[78] The implementing legislation is also contained in part ten of the Uniform Probate Code. [79] Senate advice and consent to the Wills Convention have been obtained.

As stated earlier, the primary problem is how to implement the Choice of Court Convention. The recognition of foreign judgments has traditionally been a state-law matter, although some have unsuccessfully suggested that it should be a matter for federal law.[80] For example, this was done for both the

73. *See Hague Convention on Choice of Court Agreements*, HAGUE CONF. ON PRIVATE INT'L LAW (June 30, 2005), https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf.

74. *37: Convention of 30 June 2005 on Choice of Court Agreements*, HAGUE CONF. ON PRIVATE INT'L LAW, https://www.hcch.net/en/instruments/conventions/status-table/?cid=98, (last updated Mar. 3, 2021).

75. *Id.*

76. Convention providing a Uniform Law on the Form of an International Will, UNIDROIT, https://www.unidroit.org/instruments/international-will (last updated May 29, 2020).

77. *Uniform Wills Recognition Act of 1977*, NAT'L CONF. OF COMM'R OF UNIF. LAWS, July 29 – Aug. 5, 1977 (approved by the American Bar Association on February 14, 1978).

78. *See id.* (referring to the bottom of the first page).

79. UNIF. PROB. CODE §§ 2-10001–2-1010 (amended 2010).

80. *See, e.g.*, *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute*, A.L.I. (1999-2006) (formerly known as "International Jurisdiction and Judgments Project").

1958 New York Convention, which was implemented by the Federal Arbitration Act, chapter two,[81] and the 1975 Panama Arbitration Convention, which was implemented by the Federal Arbitration Act, chapter three.[82] Presumably, this was done pursuant to the holding in *Missouri v. Holland*.[83] The federal government may enact implementing legislation for treaties concluded under the Constitution's treaty power.

Some have suggested the Choice of Court Convention should be implemented at the state level by drafting a uniform law that every state and territory would adopt. As a political matter, such an approach would delay ratification.

Others have suggested a "cooperative federalism" approach. This would follow the model Federal eSign legislation[84] as a "gap filler" for the Uniform Electronic Transaction Act, which was promulgated by the Uniform Law Commission.[85] While this cooperative federalism approach would be faster than a State-by-State implementation of the Choice of Court Convention, it will still be slower than a pure federal implementation.

At a public meeting of the Secretary of State's Advisory Committee on Private International Law, which was chaired by Harold Koh (the then legal advisor of the State Department), there was no consensus on how to implement the Choice of Court Convention. Therefore, the matter did not proceed further.

The Choice of Court Convention allows the parties to a written commercial agreement to decide which court in a contracting State will hear their dispute.[86] The chosen court must be the exclusive court to hear the dispute.[87] If the parties have not explicitly designated the court as the exclusive court, the Choice of Court Convention presumes it is the exclusive court,[88] which is contrary to the traditional American jurisprudence's interpretation of such a contractual text.

Selecting an exclusive court gives rise to three main consequences. First, the chosen court will have the jurisdiction to hear the dispute.[89] Second, other courts of contracting States will not assume jurisdiction of the dispute.[90] The Choice of Court Convention does not apply to interim measures of protection (including prejudgment remedies), so the selection of

81. 9 U.S.C § 201.

82. *Id.* at § 301.

83. *See* Missouri v. Holland, 252 U.S. 416 (1920).

84. 15 U.S.C § 7001.

85. *See* William H. Henning, *The Uniform Law Commission and Cooperative Federalism: Implementing Private International Law Conventions Through Uniform State Laws*, 2 ELON L. REV. 39, 45 (2011).

86. Hague Choice of Court Convention, art. 5, June 30, 2005 [hereinafter Hague Convention].

87. *Id.* at art. 3.

88. *Id.* at art. 3(b).

89. *Id.* at art. 5.

90. *Id.* at art. 6.

an exclusive forum does not affect that.[91] Third, the judgment rendered by the chosen court will generally be recognized and enforced[92] unless one of the "laundry list" of grounds for refusing to recognize or enforce a judgment under article nine of the Choice of Court Convention exists. However, it is important to note that only compensatory judgments will be enforced.[93] This means treble damage awards (such as anti-trust awards) and punitive damages awards will not be enforced.

The Choice of Court Convention is mentioned because it will likely be packaged for Senate advice and consent with the Hague Judgments Convention.

VI. 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention, which was concluded on June 10, 1958, is one of the most ratified and used conventions in the private international law area. Although the 1958 New York Convention is hardly new, many countries didn't become parties until recently.[94]

Ethiopia deposited its instrument of accession on August 24, 2020, and the 1958 New York Convention became effective November 22, 2020.[95] Ethiopia will apply the 1958 New York Convention only to recognize and enforce arbitral awards made in the territory of another contracting State.[96] Ethiopia will apply the 1958 New York Convention only to differences arising out of commercial legal relationships, whether contractual or not. Ethiopia will not apply the 1958 New York Convention retroactively.[97]

The Maldives deposited its instrument of accession on September 17, 2019, and the 1958 New York Convention became effective December 16, 2019.[98]

Papua New Guinee deposited its instrument of accession on July 17, 2019, and the 1958 New York Convention became effective October 15, 2019.[99]

Palau deposited its instrument of accession on March 31, 2020, and the 1958 New York Convention became effective June 29, 2020.[100] Palau will apply the 1958 New York Convention only to recognize and enforce awards made in the territory of another contracting State.[101] Palau will also apply the 1958 New York Convention only to differences arising out of legal

91. *Id.* at art. 7.
92. Hague Convention, *supra* note 86, at art. 8.
93. *Id.* at art. 11.
94. *Contracting States*, N.Y. ARB. CONVENTION, (last visited May 17, 2021) [hereinafter *Contracting States*], https://www.newyorkconvention.org/countries.
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *Contracting States*, *supra* note 94.
101. *Id.*

relationships, whether contractual or not, that are considered commercial under the national law.[102]

Seychelles deposited its instrument of accession on February 3, 2020, and the 1958 New York Convention became effective May 3, 2020.[103] Seychelles will apply the 1958 New York Convention only to recognize and enforce awards made in the territory of another contracting State. Seychelles will also apply the 1958 New York Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law.[104] Seychelles will not apply the 1958 New York Convention retroactively.

Tonga deposited its instrument of accession on June 12, 2020, and the 1958 New York Convention became effective September 10, 2020. Tonga will not apply the 1958 New York Convention retroactively.

Currently, there are 165 State parties to the 1958 New York Convention.[105]

VII. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

While the Hague Service Convention was concluded more than 50 years ago—on November 15, 1965—new countries adhere to it every year.[106]

Austria signed the Hague Service Convention on June 22, 2019, and ratified its signature on July 14, 2020.[107] The Hague Service Convention entered into force on November 12, 2020. The Hague Service Convention does not apply to service on the Republic of Austria itself or its political subdivisions. The documents must be translated into German before service will be effective. Austria objected to the service of documents directly through foreign diplomatic or consular agents within its territory, as proposed in Article 8, paragraph 1 unless the document is to be served upon a national of the State where the documents originate.[108]

Brazil deposited its instrument of accession for the Hague Service Convention on September 29, 2019, and it became effective on June 1, 2019.[109] Brazil declared that it would not accept service of process by diplomatic or consular agents within Brazil unless it was being served on a national of the serving State. Brazil declared that it is opposed to the transmission methods of judicial and extrajudicial documents provided for in

102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.*
106. *14: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, HAGUE CONF. ON PRIVATE INT'L LAW (last updated July 27, 2020), https://www.hcch.net/en/instruments/conventions/status-table/?cid=17.
107. *Id.*
108. *Id.*
109. *Id.*

article ten (including service by mail). Under article five, paragraph three, and Article seven, paragraph two, Brazil declared that all documents transmitted to the Brazilian Central Authority for service must be accompanied by a translation into Portuguese (except in the case of the standard terms in the model annexed to the Convention, referred to in article seven, paragraph one).[110] Finally, Brazil declared that when Brazil is the receiving State, the required certificate must be signed by the Judge who has jurisdiction or by the Central Authority designated under article two of the Hague Service Convention.[111]

The Marshall Islands deposited its instrument of accession on July 29, 2020, and the Hague Service Convention will become effective February 1, 2021.[112] The Marshall Islands requires the served documents and the accompanying certificate to be in English. The Marshall Islands declared that it would not accept service of process by diplomatic or consular agents within its territory unless the service of process was being served on a national of the serving State, and announced that it would not accept service by mail under Article 10(a).[113]

Finally, a Marshall Island judge may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:[114]

> (i) the document was transmitted by one of the methods provided for in this Convention;
>
> (ii) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document; and
>
> (iii) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Also, the application for relief referred to in Article 16 will not be entertained if it is filed more than one year following the date of the judgment.[115]

Nicaragua deposited its instrument of accession for the Hague Service Convention on July 24, 2019, and it became effective February 1, 2020.[116] Nicaragua will apply the Hague Service Convention to family matters, and Nicaragua declared that it would not accept service of process by diplomatic

110. *Id.*

111. *Id.*

112. *Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, *supra* note 106.

113. *Id.*

114. *Id.* (notwithstanding the provisions of the first paragraph of Article 15).

115. *Id.*

116. *Id.*

or consular agents within its territory unless it was being served on a national of the serving State.[117]

VII. Conclusion

Although some developments in private international law occurred, 2019-2020 was not a momentous year. Like most years, private international law made some gradual improvements. Because this area of law constantly changes, practitioners must consult the latest references to ensure accurate information.

117. *Id.*