CHAPTER-V

ROLE AND IMPACT OF HAGUE CONVENTIONS

Hague Conference On Private International Law

Personal and family or commercial situations which are connected with more than one country are commonplace in the modern world. These may be affected by differences between the legal systems in those countries. With a view to resolving these differences, States have adopted special rules known as ‘private international law’ rules.

Hague Conventions on private international law is discussing the issues of jurisdictional issues for the last five decades. It has come out of various conventions. There are ongoing negotiations in the filed of recognition and enforcement of foreign judgments. The role and impact of Hague conventions on recognition and enforcement of foreign judgment are dealt in this chapter.

The Hague Conference on private international law is an intergovernmental organization, the purpose of which is "to work
for the progressive unification of the rules of private international law”\(^1\).

The First Session of the Hague Conference on private international law was convened in 1893 by the Netherlands Government on the initiative of T.M.C. Asser (Nobel Peace Prize 1911). Prior to the Second World War, six Sessions were held\(^2\), the Seventh Session in 1951 marked the beginning of a new era with the preparation of a Statute which made the Conference a permanent intergovernmental organisation. The Statute Of The Hague Conference On Private International Law entered into force on 15 July 1955\(^3\). Since 1956, regular Plenary Sessions are held every four years, the Nineteenth of which met in 2001-2002.


\(^2\) Art 1 (Statute, Article 1); STATUTE OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (Entered into force 15 July 1955) The Governments of the countries hereinafter specified: the German Federal Republic, Austria, Belgium, Denmark, Spain, Finland, France, Italy, Japan, Luxembourg, Norway, the Netherlands, Portugal, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland;
Membership:

Members of the Hague Conference on Private International Law are the States which have already participated in one or more Sessions of the Conference and which accepted the present Charter.

Any other States the participation of which is from a juridical point of view of importance for the work of the Conference may become Members. The admission of new Members shall be decided upon by the Governments of the participating States upon the proposal of one or more of them, by a majority of the votes cast, within a period of six months from the date on which that proposal is submitted to the Governments.

The admission shall become definitive upon the acceptance of the present Statute by the State concerned.\(^4\)

The Netherlands Standing Government Committee, instituted by the Royal Decree of February 20, 1897 with a view

\(^4\) Art.2
to promoting the codification of private international law, is in charge of the operation of the Conference.

Said Committee effectuates the operation by means of a Permanent Bureau the activities of which it directs.\(^5\)

It shall examine all proposals intended to be placed on the agenda of the Conference. It shall be free to determine the action to be taken on such proposals.

The Standing Government Committee shall, after consultation with the Members of the Conference, determine the date and the agenda of the Sessions. It shall address itself to the Government of the Netherlands for the convocation of the Members. The Ordinary Sessions of the Conference shall, in principle, be held every four years. If necessary, the Standing Government Committee may, with the approval of the Members, request the Government of the Netherlands to convene the Conference in Sessions Extraordinary.\(^6\)

\(^{5}\) ibid

\(^{6}\) Article 3
Permanent Bureau

The Permanent Bureau shall have its seat at The Hague. It shall be composed of a Secretary General and two Secretaries of different nationalities, who shall be appointed by the Government of the Netherlands upon presentation by the Standing Government Committee.

The Secretary General and the Secretaries must possess appropriate legal knowledge and practical experience. The number of Secretaries may be increased after consultation with the Members of the Conference.

Functions of Permanent Bureau:

Under the direction of the Standing Government Committee the Permanent Bureau shall be charged with:

1. the preparation and organization of the Sessions of the Hague Conference and the meeting of the Special Commissions;
2. the work of the Secretariat of the Sessions and meetings envisaged above;

3. all the tasks which are included in the activity of a secretariat.

With a view to facilitating communication between the Members of the Conference and the Permanent Bureau, the Government of each of the Members shall designate a national office. The Permanent Bureau may correspond with all the national offices so designated and with the competent international organizations.  

**Method of operation**

The principal method used to achieve the purpose of the Conference consists in the negotiation and drafting of multilateral treaties or Conventions in the different fields of private international law. After preparatory research has been

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10 (International judicial and administrative co-operation; conflict of laws for contracts, torts, maintenance obligations, status and protection of children, relations between spouses, wills and estates or trusts; recognition of companies; jurisdiction and enforcement of foreign judgments).
done by the secretariat, preliminary drafts of the Conventions are drawn up by the Special Commissions made up of governmental experts. The drafts are then discussed and adopted at a Plenary Session of the Hague Conference, which is a diplomatic conference.

The secretariat of the Hague Conference maintains close contact with the governments of its Member States through National Organs designated by each government. For the purpose of monitoring the operation of certain treaties involving judicial or administrative co-operation, the Permanent Bureau enters into direct contact from time to time with the Central Authorities designated by the States Parties to those treaties. In order to promote international co-operation and to ensure co-ordination of work undertaken by different bodies, the Hague Conference also maintains continuing contact with a number of international organisations, including the United Nations - particularly its Commission on International Trade Law (UNCITRAL), UNICEF, the Committee on the Rights of the Child (CRC) and the High Commissioner for Refugees (UNHCR) - the Council of Europe, the European Union, the Organisation of American States, the
Commonwealth Secretariat, the Asian-African Legal Consultative Committee, the International Institute for the Unification of Private Law (Unidroit) and others. Certain non-governmental organisations, such as International Social Service, the International Society of Family Law, the International Chamber of Commerce, the International Bar Association, the International Union of Latin Notaries, and the International Union of Sheriff Officers and Judicial Officers, among others, maintain close contact with the Permanent Bureau and regularly send observers to attend Hague Conference meetings. For the development of new Conventions, as well as for the monitoring of the practical operation of existing Conventions, the Permanent Bureau often appeals to other international organisations that have specific knowledge of the subject matter involved.

**Plenary Sessions**

Plenary Sessions meet in principle every four years in ordinary diplomatic session. In case of need, as occurred in 1966 and 1985, an Extraordinary Session may be held. The Plenary Sessions discuss and adopt the draft Conventions prepared by the Special Commissions and take decisions on the subjects to
be included in the agenda for the Conference's work. All of the
texts adopted are brought together in a Final Act which is signed
by the delegations. Under the rules of procedure of the Plenary
Sessions each Member State has one vote. Decisions are taken
by a majority of the votes cast by the delegations of Member
States which are present at the vote. Non-Member States invited
to participate on an equal footing with Member States also have
the right to vote.

Achievements, Monitoring Of Results And Work In Progress

Between 1893 and 1904 the Conference adopted seven
international Conventions, six of which have been subsequently
replaced by more modern instruments. From 1951 to 2002 the
Conference adopted 35 international Conventions. Until 1960 the
Conventions were drafted only in French; since then they have
been drawn up in French and English. Among those that have
been the most widely ratified, the following Conventions should
be mentioned:

i. Civil procedure,
ii. Service of process,

iii. Taking of evidence abroad,

iv. Legalisation, conflicts of laws relating to testamentary dispositions,

v. Maintenance obligations,

vi. Recognition of divorces,

vii. Protection of minors,

viii. International child abduction and intercountry adoption.¹²

Some of the Hague Conventions deal with the determination of the applicable law, some with the conflict of jurisdictions, some with the recognition and enforcement of foreign judgments and some with administrative and judicial co-operation between authorities. Some of the Hague Conventions combine one or more of these aspects of private international law.

From time to time, Special Commissions are held at The Hague to monitor the practical operation of Hague Conventions. In the past, such Commissions have been convoked for the Service and Evidence Conventions, the Child Abduction Convention, the

¹² see www.hcch.nl/conventions/finaldraft
Inter-country Adoption Convention and the Conventions on maintenance (support) obligations.

Two conventions are currently under preparation: one on exclusive choice of courts agreements, and the other one on international recovery of child support and other forms of family maintenance.

**Building Bridges Between Legal Systems**

The statutory mission of the Conference is to work for the ‘progressive unification’ of these rules. This involves finding internationally-agreed approaches to issues such as jurisdiction of the courts, applicable law, and the recognition and enforcement of judgments in a wide range of areas, from commercial law and banking law to international civil procedure and from child protection to matters of marriage and personal status.

Over the years, the Conference has, in carrying out its mission, increasingly become a centre for international judicial and administrative co-operation in the area of private law,
especially in the fields of protection of the family and children, of civil procedure and commercial law.


A Convention on jurisdiction, recognition and enforcement of foreign judgments in civil and commercial matters is currently under negotiation. Negotiations have also begun on a new global instrument on the international recovery of child support and other forms of family maintenance.

**Legislative Drafting and Policy Reform**

The Hague Conference has also participated in drafting legislation, implementing various Conventions, including, e.g. the Trust Convention and the Children’s Conventions. Frequently, these efforts have been done in co-operation with other
organisations and have focused on developing countries or countries in a state of transition. For example, in 1991, a member of the Secretariat took part in a mission of experts which advised the Romanian Government of the Convention on the Rights of the Child regarding inter-country adoption. In 1992 the Hague Conference collaborated with UNICEF in the drafting of a new law on child protection and adoption of children at the request of Albania. In 1993 the Conference took part in a mission organised jointly with UNICEF and UNHCR for the protection of the rights of unaccompanied children in former Yugoslavia. In 1996, a member of the Secretariat assisted the Parliament of Paraguay in drawing up legislation for the protection of children. In 1998, another member of the Secretariat took part in a mission to Armenia, commissioned by UNICEF in co-operation with International Social Service at the request of the Government of Armenia, to advise on policy and law reform with respect to the care of children living without families.
Convention Of 1 June 1970 On The Recognition Of Divorces And Legal Separations:

The convention shall apply to the recognition, in one contracting state, of divorces and legal separations obtained in another contracting states which follow judicial or other proceedings officially recongised in that state and which are legally effective there.\textsuperscript{13}

Obligation to recognise- habitual residence and nationality:

Article 2 of Convention Of 1 June 1970 On The Recognition Of Divorces And Legal Separations provides that divorces and legal separations to which the convention applies shall be recongised in all other Contracting States, subject to the remaining terms of this convention, if at the date of the institution of the proceedings in the State of the divorce or legal separations (referred to as “the state of origin),-

(1) The respondent had his habitual residence there; or

\textsuperscript{13} Art.1 of Convention of 1 June 1970 On The Recognition Of Divorces And Legal Separations
(2) The petitioner had his residence there and one of the following further conditions was fulfilled-

a) Such habitual residence had continued for not less than one year immediately prior to the institution of proceedings

b) The spouses last habitually resided there together; or

3) both spouses were nations of that state; or

4) the petitioner was a national of that state and one of the following further conditions was fulfilled-

a) the petitioner had his habitual residence there; or

b) he had habitually resided there for a continuous period of one year falling, at least in part, within two years proceedings the institution of the proceedings; or

5) the petitioner for divorce was a national of that state and both the following conditions were fulfilled-

a) the petitioner was present in that State at the date of institution of the proceedings and
b) the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.

**Legal Separation converted into a divorce:**

Under Article 5\(^{14}\), where a legal separation complying with the terms of this Convention has been converted into a divorce in the State of origin, the recognition of the divorce shall not be refused for the reason that the conditions stated in Articles 2 or 3 were no longer fulfilled at the time of the institution of the divorce proceedings.

**Recognition of a divorce or legal separation shall not be refused**- because the internal law of that state in which such recognition is sought would not allow divorce or, as the case may be, legal separation upon the same facts, or, because it was

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\(^{14}\) See Art.5 of Convention Of 1 June 1970 On The Recognition Of Divorces And Legal Separations
applied other than applicable under the rules of private international law of that state.\textsuperscript{15}

It is submitted that, India follows the Indian law in relation for recognition of foreign divorce decrees. Despite the Indian law commission's recommendations in this context of recognition and enforcement of foreign judgments and the recommendations are still in vogue.\textsuperscript{16} India was not a party to the Convention Of 1 June 1970 On The Recognition Of Divorces And Legal Separations. Moreover, the convention was not ratified by many countries. It has no effect on India.

**The Hague Convention on Private International Law and U.K.:**

In the Hague Conference on Private International Law, the United Kingdom has been regularly participating since 1955\textsuperscript{17}. Its work in preparing draft conventions in this filed provided much advisory work for U.K. law Commission. Starting with the draft

\textsuperscript{15} Art.6 of Convention Of 1 June 1970 On The Recognition Of Divorces And Legal Separations

\textsuperscript{16} See the Sixty-fifth Report on Recognition of Foreign Divorces, Indian Law Commission, Govt of Indian Press, 1977

\textsuperscript{17} see North, Essays in Private International law(1993),pp.236-238
Hague Convention on the Recognition of Foreign Decrees of Divorce and Legal Separation, over the ensuring years, advice was provided in the context of the negotiation of at least eight further Conventions, there are

i. International administration of estates

ii. The celebration and validity of marriages and the recognition of decisions relating to marriages

iii. The law applicable to immovable property

iv. The law applicable to agency

v. International abduction of children

vi. International sale of goods

vii. The validity and recognition of trusts and

viii. The international co-operation and protection of children in respect of inter-country adoptions\(^\text{18}\).

The significance of this work in the present context is that the United Kingdom’s ratification of three of these conventions was followed by their implementation in three significant pieces of legislation on Private International Law, namely the

\(^{18}\) cf, Peter north. Private International Law: Change or Decay?, I.C.L.Q page no.490-91, July 2001

The Adoption Act 1968 enabled the United Kingdom to ratify the 1965 Hague Convention on the Adoption of Children, by extending the Jurisdictional rules of the United Kingdom courts in adoptions connected to other countries which are parties to the conventions, providing for the law to be applied in such cases and for statutory rules for recognition of adoptions made in such countries.

On the procedural front, the Evidence (proceedings in Other Jurisdictions) Act 1975, by providing for the taking of evidence in England for the purposes of foreign proceedings, gives effect to the 1970 Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. Administrative steps, rather than the introduction of primary legislation, have been taken to give effect to two further Hague
Conventions on matters of process in relations to international litigation.\textsuperscript{19}

Since 1994, Hague Conference, working on a draft world-wide convention on jurisdiction and recognition and enforcement of judgments in civil and commercial matters. This could be almost described as the Brussels Convention writ large onto the world scene. The negotiations are continuing even now.

The prospects of success at The Hague are mixed. Furthermore, success has to be measured not just in terms of a Convention actually being concluded, but also of whether it is so laden with compromises that few States will ratify it. It is inevitable in negotiating a Convention of this significance, given the potential geographical breadth of its application, that compromises undoubtedly have to be made in the process. The secret is to try to ensure that large number of states accept that the disadvantages of the compromises are out weighted by the advantages to be gained both by the ease of recognition and

enforcement abroad of judgments in one’s own courts, and by the international agreement that certain domestic grounds of jurisdiction are unacceptable as the basis of international recognition. 20

Hague Conventions and India:

India is a non-member state in the Hague Conference on Private International Law. Hague Conventions has drafted 36 conventions and also ratified by many number of state parties. Some of the conventions which are relevant in the context are as follows:

i. The Convention on the Recognition of Divorces and Legal Separations (1970), applies to the recognition in one Contracting state of divorces and legal separations obtained in another Contracting State, which follow judicial, or other proceedings officially recognized in that state and which are legally effective there. This convention, however, does not apply to orders relating to pecuniary obligations or the custody of children.

20 North, Essays in Private International Law (1993), pp.201-223
ii. The Convention on Recognition and Enforcement of Decisions relating to Maintenance Obligations (1973), it applies to a decision rendered by a judicial or administrative authority in a Contracting State in respect of maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate.

iii. The Convention on Celebration and Recognition of the validity of Marriages (1978), inter alia, seeks to applies various rules of private law to determine conclusively the validity of marriages taken place between persons coming from different legal jurisdictions.

iv. The Convention on the Civil Aspects of International Child Abduction (1980), seeks to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to

3. Convention on the Services Abroad of judicial and Extra-judicial Documents in civil or Commercial Matters (1965)


India has taken steps only in relation to inter-country adoptions. In connection with other aspects, there is no comprehensive legislation dealing with issues such as, foreign divorce decrees, Maintenance Obligations of wife, child custody and abduction etc. At present, more number of states are participating in the Hague conference and also preparing the draft legislations in their countries whereas India lacking the active part in this regard.