Submission to the UK Ministry of Justice

Consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)

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Introduction

1. I am writing to provide a submission (in my personal academic capacity) to the UK Ministry of Justice Consultation on the potential accession of the United Kingdom to the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ('Hague 2019').

2. I am Professor of Public and Private International Law in the Faculty of Laws, University College London. I have a BA and an LLB from the University of Sydney, and an LLM and PhD from the University of Cambridge. I have taught private international law in the United Kingdom since 2005, initially at the University of Cambridge (2005-2011) and then at UCL (since 2011). My publications include more than 50 articles and book chapters, and I have also published books on *Party Autonomy in Private International Law* (CUP, 2018) and *The Confluence of Public and Private International Law* (CUP, 2009), and co-authored *Cheshire North and Fawcett's Private International Law* (OUP, 15th edition, 2017). I am a specialist editor of *Dicey, Morris and Collins on the Conflict of Laws* (Sweet & Maxwell, 16th edition, 2022), the leading practitioner text in the field, with particular responsibility for the rules on the recognition and enforcement of foreign judgments.

3. This submission offers an analysis of the advantages and disadvantages of accession to Hague 2019 for the United Kingdom, with a particular focus on the law of England and Wales (others will be better placed to consider the impact on Scotland and Northern Ireland). While there are many particular provisions of Hague 2019 which could be evaluated, and special considerations may arise for certain types of disputes, this submission focuses on the impact of the proposed accession for civil and commercial dispute resolution in general. It is not structured as a direct answer to each Consultation Question, although includes a response to Consultation Questions 1, 2, 3, 4, 5, 6, 9 and 10.

4. The following sections consider two potential advantages and two potential disadvantages of Hague 2019. Although this submission identifies a number of potential risks and concerns it also identifies significant potential benefits, and on balance I am supportive of the proposed accession of the United Kingdom to Hague 2019. That accession should, however, be accompanied by consideration of appropriate mechanisms to ensure that the Convention does not come into effect for the United Kingdom in its relations with states whose justice systems raise systemic fairness concerns.

Advantage 1 – Reduced informational costs

5. The rules on recognition and enforcement of judgments in the United Kingdom are complex. Judgments may presently be recognised and enforced in England under one of five regimes, depending on the origin and nature of the judgment – the common law, the Administration of Justice Act 1920, the Foreign Judgments (Reciprocal Enforcement) Act 1933, the Hague Convention on Choice of Court Agreements 2005 ('Hague 2005'), and (in respect of certain judgments where proceedings were commenced prior to 1 January 2021, in part pursuant to the UK-EU Withdrawal Agreement) the Brussels/Lugano Regime. The rules governing the recognition and enforcement of judgments from UK courts in foreign states are even more varied, as they sometimes fall under multilateral or bilateral treaty arrangements, but are frequently covered by the diverse national laws of foreign states.

6. The most significant general impact of Hague 2019 would evidently be to harmonise the rules on recognition and enforcement of judgments as between Convention States, on a reciprocal basis. This harmonisation in itself offers a significant potential benefit to commercial parties in reducing the costs of dispute resolution, as it potentially reduces the informational cost of determining whether a judgment obtained from one court is enforceable elsewhere.

7. Well-advised parties will invariably take into account the prospect of a judgment from a particular court being enforced against assets of the defendant, wherever located, when considering where or whether to commence proceedings. Without enforcement, a judgment may not be worth pursuing. Once a party or a legal advisor has acquired knowledge of the Hague 2019 rules, that knowledge may be reapplied in relation to each Convention State. This benefit would increase if and when the number of state parties to the Convention grows over time, and would apply not only to parties considering commencing proceedings in the UK, but also parties considering commencing proceedings in other Convention States. This is likely to facilitate the more efficient resolution of disputes, as parties will (at least sometimes) be able to make lower cost decisions regarding where their disputes may be effectively resolved before deciding where (or whether) to litigate, taking into account the prospects for a judgment to be enforced against assets of the defendant located in a different territory.

8. For example, under Hague 2019 a UK party considering bringing proceedings in the English courts against a foreign defendant without assets in England, but with assets in another Convention State, will be able to know more easily whether an English judgment is likely to be recognised and enforced in that other state. At present, acquiring this knowledge is generally likely to require legal advice on foreign law (the national rules on the recognition and enforcement of judgments applicable in the foreign state) which may be expensive or difficult to obtain, or potentially set out less clearly or precisely than Hague 2019. If the UK and a foreign state are both Hague 2019 Convention States, and a party identifies that a judgment from a UK court satisfies the requirements of the Convention, that obviates the need to obtain advice on the particular rules of foreign national law that would otherwise apply.

9. As discussed below, however, it is important to note that the Convention supplements rather than replaces national law. If a UK party identifies that a judgment from the English courts would not satisfy the requirements of the Convention, it may still be necessary to obtain advice on the national rules on the recognition and enforcement of judgments of another Convention State, in case they provide an alternative mechanism for recognition and enforcement.

Advantage 2 – Potential enhancement to recognition and enforcement rules

10. Hague 2019 may also offer the possibility of enhancing the prospect of certain judgments being recognised and enforced, although this depends on whether and in what respects the Convention goes beyond existing national law, and so will vary for each Convention State. This affects both the foreign recognition and enforcement of judgments from UK courts as well as the recognition and enforcement of foreign judgments in UK courts.

11. An advantage to the UK as a whole from accession to the Convention would be the potential increase in the range of judgments from UK courts which are capable of recognition and enforcement in foreign Convention States (where the Convention goes beyond the law currently applicable in those states). An expansion in this range makes it more likely for a party to choose a UK court to litigate their disputes, even if the defendants do not have assets in the UK.

12. It is important to note that Hague 2019 does not apply to all 'choices' of court. Where parties agree in a contract to confer exclusive jurisdiction on a particular court, the recognition and enforcement of a judgment based on that agreement is excluded from the scope of Hague 2019 because it is covered by a separate Convention, Hague 2005. Hague 2005 will only apply if the agreement is in favour of the courts of a Convention State, but the UK has already acceded to Hague 2005, alongside a number of other states, including the Member States of the European Union. However, in some cases parties choose in a contract to confer non-exclusive jurisdiction on the English courts, or an asymmetric jurisdiction agreement may be used (exclusive for one party and non-exclusive for the other), which is generally considered not to come under Hague 2005. Hague 2019 would facilitate the recognition and enforcement of judgments based on jurisdiction agreements which are not covered by Hague 2005.

13. The fact that judgments under Hague 2005 already benefit from an international enforcement regime, even if only in a limited number of states, has the incidental effect that parties may decide to include an exclusive jurisdiction agreement in their contract, instead of a non-exclusive or asymmetrical agreement, even if this would not be their ideal preference. A further benefit of Hague 2019 would be to facilitate the enforcement of judgments based on non-exclusive or asymmetrical agreements on very similar terms to those based on exclusive jurisdiction agreements, enabling parties to choose their preferred form of jurisdiction agreement with less consideration for its impact on the enforcement of any subsequent judgment.

14. In many other cases the parties do not make an advance choice at all, including in situations where a dispute arises between two parties who do not have a prior contractual relationship. In such cases, the claimant may well have a choice of a range of jurisdictions in which to commence proceedings, and an important factor which they are very likely to take into account is the ultimate enforceability of any judgment against assets of the defendant. An increase in the enforceability of UK judgments, which is highly probable under Hague 2019 (although depends on how the Convention differs from existing foreign law), is therefore likely to increase the attractiveness of the UK courts as a venue to litigate disputes even if the defendant does not have UK assets.

15. It is important to note, however, that the Convention would also have a significant effect on the recognition and enforcement of foreign judgments in the UK. It would substantially increase the range of judgments which are capable of recognition and enforcement, as compared with the position under, for example, the common law in England. There are two particularly significant increases.

16. The first is the range of judgments which can be enforced. Under the common law and the UK statutory regimes, only judgments for the payment of a fixed sum of money are capable of enforcement. Under Hague 2019 other judgments, such as a foreign court order for specific performance of a contract or restitution of particular property, would be capable of enforcement in the English courts (which might be necessary where the performance or property is located in England). This follows from the definition of 'judgment' under Article 3(1)(b) of the Convention. The limitation which exists under the common law and UK statutory regimes does not apply under Hague 2005 or the Brussels/Lugano regimes, and it is doubtful whether it has a principled basis. It is primarily a reflection of the historical evolution of English law, under which foreign judgments were not directly enforced but rather enforced as debts arising by virtue of the judgment – meaning only judgments for payment of a fixed some of money qualified for enforcement. This limitation has been rejected by the Canadian courts (in *Pro Swing Inc v Elta Golf Inc* [2006] 2 SCR 612) and by statute in Singapore (*Reciprocal Enforcement of Foreign Judgments Act* (Cap 265, as revised in 2019)). It has not raised any particular difficulties in these contexts, and it is submitted this would be an improvement in the current legal position, as it would enable a party to obtain and enforce the most appropriate remedy.

17. The second increase in the range of judgments capable of recognition and enforcement in England relates to the test applied to the jurisdiction of the foreign court. At present, under the common law a foreign judgment will only be capable of recognition and enforcement where the defendant submitted to the jurisdiction of the foreign court or was present in the territory of the foreign court at the time of commencement of proceedings. It is important to note that this test does not examine the basis on which the foreign court actually took jurisdiction, but only whether as a matter of fact there was submission or presence (as those terms are understood in English law). These criteria are quite narrow, and have long been the subject of criticism. In particular, they exclude the possibility of enforcing many judgments in circumstances where the English courts themselves assert jurisdiction on an equivalent basis. Hague 2019 would significantly enlarge the possible criteria under which a foreign judgment will be capable of recognition and enforcement, to include a range of other connections between the dispute or defendant and the foreign court (set out in Article 5 of the Convention).

18. For example, it is very well established that the English courts may assert jurisdiction over a claim in tort where the wrongful act was committed in England, and indeed this is a generally accepted basis of jurisdiction worldwide. However, if a foreign court asserts jurisdiction on this basis in a case where the defendant is not present in the foreign territory when proceedings are commenced and does not submit to the foreign court, then the judgment of that court is incapable of recognition and enforcement in England under the common law. Hague 2019 would allow for enforcement of certain foreign judgments on this basis (see Article 5(1)(j)).

19. This change is, it is submitted, generally advantageous as a matter of principle, as the jurisdictional grounds identified in Article 5 of the Convention are each situations in which the foreign court has a strong justification for asserting jurisdiction. These are consistent with (but still narrower than) the grounds of jurisdiction available in the English courts, although it should be noted that the English courts will not assert jurisdiction in every case in which a ground of jurisdiction exists (because the exercise of jurisdiction may be declined in particular cases, relying on the doctrines of *forum conveniens* or *forum non conveniens*).

20. It should be noted, however, that this increase in the range of judgments enforceable in the UK may in some cases encourage parties who are considering bringing claims against UK defendants (or other defendants with assets in the UK) to do so in a foreign court, rather than in a UK court. This change is also and as a consequence likely to present practical difficulties to some UK based parties, as it will require them to participate in a broader range of foreign disputes.

21. We might consider, for example, a hypothetical situation in which a UK resident travels to a foreign state, Ruritania, on holiday, and while there is involved in a car accident in which they are accused of driving negligently. They return to the UK. Proceedings are subsequently commenced against them in Ruritania. Under the common law, the Ruritanian judgment would not be enforceable in English unless the UK resident actively accepts the authority of the Ruritanian courts. In consequence, the UK resident would not need to concern themselves with these foreign proceedings unless they had assets in Ruritania (or in another state where a Ruritanian judgment might be enforced), or planned to travel again to Ruritania. As a result, they may indeed not in fact be sued at all in Ruritania. If the UK and Ruritania were both parties to Hague 2019, however, it would be necessary for the UK resident to defend themselves in the Ruritanian proceedings, otherwise those courts could give a judgment against them, and that judgment would be enforceable in the UK (pursuant to Article 5(1)(j), assuming the other criteria for enforceability were met).

22. These symmetrical outcomes – the increased foreign recognition and enforcement of UK judgments, paired with increased recognition and enforcement of foreign judgments in the UK – are inevitable results of the reciprocal nature of the obligations contained in the Convention. They have the consequence that the economic benefits of the Convention in attracting some additional cases to UK courts (and requiring foreign parties to come to the UK to defendant those proceedings) are likely to be offset by the possibility that other cases will be heard in foreign courts rather than UK courts (which may require some UK parties to defend themselves in additional foreign proceedings).

23. The overall benefit of enhancing the rules on recognition and enforcement of judgments is therefore not necessarily in any increase in the number of cases to be heard in UK courts (although this is a possible outcome), but rather that parties will be able to make a decision about where to commence proceedings which is driven less by concerns about the enforceability of any subsequent judgment they obtain. This increases the likelihood that parties will be able to select the forum which will in fact be able to resolve disputes most efficiently, for example, because the relevant evidence and witnesses are located there, or because of the efficiency of its institutions and procedures, notwithstanding the absence of assets in that territory. The gain from accession to Hague 2019 is thus at least primarily a potential increase in the efficiency of dispute resolution both for UK-based and foreign commercial parties carrying out cross-border activity. While the economic benefit of this efficiency gain is difficult to quantify, it is likely to be significant.

Disadvantage 1 – Added complexity and uncertainty

24. As noted above, the rules on the recognition and enforcement of judgments in the United Kingdom are complex. Accession to Hague 2019 would add a further source of rules which would at least initially increase the complexity of this area of law, both in relation to the question of the recognition and enforcement of foreign judgments in the UK, and in relation to the question of the recognition and enforcement of judgments from UK courts in foreign states.

25. This concern particularly arises because, as set out in Article 15 of Hague 2019, the Convention does not seek to replace national law, but rather only to supplement it – adding an additional mechanism for recognition and enforcement. (The only apparent exception – the effect of the provision is not entirely clear – is under Article 6, which excludes enforcement of certain foreign judgments concerning title to immovable property located outside the territory of the judgment state, but this would be very unlikely to change the position under current UK law.) While in certain ways the Convention will enhance the rules on recognition and enforcement, and thus if the Convention is satisfied it may not be necessary to consider the position under another regime, there are some judgments which may not be capable of recognition and enforcement under the Convention but which are nevertheless capable of recognition and enforcement under the common law or under another regime. The Convention would thus not remove entirely the need to understand each of the existing regimes in order to consider fully the possibility of a foreign judgment being recognised and enforced in England. Similarly, when considering whether a judgment from a UK court will be recognised and enforced in a foreign state, where the Convention provides for a judgment to be recognised and enforced it may be relied on without consulting national law, but where the Convention does not it may still be necessary to consider the position under the applicable foreign national law as an alternative.

26. As a new source of rules, the Convention would also inevitably introduce some initial uncertainty into the law, because it establishes rules that are yet to be subject to significant interpretation and clarification by the courts. This is perhaps an unavoidable part of any law reform process, and many cases will fall squarely and uncontentiously within the rules, but in other cases difficult questions will undoubtedly arise. The major effect of this uncertainty in the short term is to make it more difficult for parties to know whether judgments will be capable of recognition and enforcement, which means it may be difficult to determine whether it is necessary to participate in foreign proceedings. This may result in significant practical difficulties for some parties.

27. For example, an English party who is subject to proceedings in another Convention State, but who does not have assets outside England, might be uncertain (where the meaning or application of a subsection of Article 5 of Hague 2019 is unclear) whether the proceedings have been commenced in circumstances that would satisfy the Convention. If that party does not participate in the foreign proceedings, there would be a risk that a judgment against it is later found to be enforceable in England, at which time there is very limited possibility for that party to contest the judgment (it may only rely on the defences set out in Article 7 of Hague 2019). On the other hand, if the party does participate in the foreign proceedings and a judgment given against it is ultimately unenforceable in England, its participation may have been an unnecessary expense. In fact, participation in foreign proceedings may in some circumstances risk constituting submission to the foreign court which could itself render a judgment given by that court enforceable. Although the Convention itself does not appear to consider an appearance to argue on the merits to constitute submission if it follows from an unsuccessful attempt to contest the jurisdiction of the foreign court (following Article 5(1)(f)), an appearance to argue on the merits in this context is generally thought to constitute submission under the common law, which means that the judgment might become enforceable under common law rules.

28. Despite these potential concerns, however, this submission remains supportive of accession to the Convention. Uncertainties in the interpretation of Hague 2019 are likely to be resolved over time, and in the long term the benefits of the Convention would, it is submitted, justify the additional complexity introduced into the law. As discussed above, in many cases Hague 2019 will provide a complete answer to the question of whether a judgment from another

Convention State will be recognised or enforced in the UK (or conversely, whether a judgment from a UK court will be recognised or enforced in another Convention State), and where this is the case the practical effect of the Convention will be to simplify the law for those parties. This is likely to be of particular benefit to UK parties considering litigating against foreign defendants in UK courts, who may rely on the Convention (where it applies) rather than having to acquire knowledge of applicable foreign national law. Again, as noted above, the benefits of Hague 2019 are likely to grow over time as more states become parties to the Convention, and thus it becomes more widely applicable.

29. As Hague 2019 is a relatively new treaty, one question which might be asked is whether it would be better to delay accession until there has been more case law on the Convention which has clarified the meaning of its terms (an issue raised by Consultation Question 2). It is submitted, however, that this is likely to be undesirable for the UK, because it would mean that the work of clarifying the terms of Hague 2019 would be done exclusively by foreign courts, and if the UK were to accede to the Convention later the interpretation would inevitably draw on that existing case law, in accordance with the interpretative principle set out under Article 20 of the Convention. Although in principle (and under UK law – see, for example, *Fothergill v Monarch Airlines Ltd* [1981] AC 251, 281-2) judges interpreting the Convention ought to be strongly directed by its international character and by public international law rules on treaty interpretation, promoting a uniform meaning, in practice judges in some states may be influenced by traditional national rules and approaches, and by their general perspective on civil and commercial dispute resolution. It would, it is submitted, be in the interest of the UK for UK judges to be at the forefront of the interpretation and clarification of the terms of Hague 2019, even if this means a temporary period of increased legal uncertainty. It is perhaps also worth noting that the Convention would only apply in the UK twelve months after ratification (Article 28(2)), and even then only to proceedings commenced after that date (Article 16), so there would in any event be a significant delay in its practical application.

Disadvantage 2 – Systemic fairness questions

30. Hague 2019 establishes obligations to recognise and enforce foreign judgments as between Convention States. It is therefore premised on the existence of a basic level of mutual trust between legal orders. A potential concern may arise if a state which does not have a reliable or fair judicial system, for example because judges are subject to improper political (or other) influence, became a party to the Convention. This issue is raised in more particular terms by Consultation Questions 9 and 10, but it is a broader issue than that identified in those questions.

31. In the absence of other treaty arrangements, recognition and enforcement of judgments from foreign states in England is presently governed by the common law rules. These rules may similarly apply to judgments from foreign states with questionable judicial systems – there is no requirement for any mutual acceptance as between the UK and the state from which the judgment arises. However, under the common law a judgment of a foreign state will only be enforceable in limited circumstances based on the foreign presence or submission of the defendant (as noted above). This means that a UK party may sell goods or perform services or carry out other economic activity in a foreign state, while at the same time taking measures to ensure that any judgment from the courts of that foreign state would not be enforceable in England (by not submitting to the foreign court, or establishing a fixed place of business in the foreign territory).

32. The expanded range of judgments which are capable of recognition and enforcement under Hague 2019 would make it impossible for parties to avoid this risk in the same way. If, for example, a UK party entered into a contract containing an obligation which had to be performed in a foreign state, a judgment for breach of that obligation from the courts of that state would generally be capable of recognition and enforcement in the UK under Hague 2019 (Article 5(1)(g)), which is not the case under the common law. This means that a party seeking to resist recognition and enforcement of the judgment would be required to establish one of the available defences under Article 7 of the Convention. The list of defences does not (or at least does not appear), however, to include allegations that a foreign legal system is generally or systemically unreliable or unfair. It is possible that such a situation may be covered by the defences of fraud or public policy (Article 7(1)(b) or (c)), but it is at least unclear that this would be the case. Article 7(1)(c) refers expressly to 'situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness', which perhaps suggests that more general systemic unfairness is not covered by the exception. This means that a party who is subject to a foreign judgment will be required to provide evidence as to how the procedures which were applied against it were somehow unjust. This evidentiary burden may be very difficult or even impossible to satisfy in individual cases, even in states which have systemically unreliable judicial systems.

33. The Convention does include another mechanism which could potentially deal with at least some aspects of this concern – Article 29. This Article permits a state to make a declaration, either at the time of its own accession to the Convention, or within 12 months of another state depositing its instrument of accession to the Convention, preventing the Convention from applying between the state and a particular foreign state in their bilateral relations. The effect is that a state may exclude another state party from the effect of the Convention on a bilateral and reciprocal basis. (There is therefore no need to consider making a reservation to the Convention to achieve this, as proposed under Consultation Question 10.) If the UK became a party to Hague 2019, and subsequently another state with a systemically unjust legal system were to deposit an instrument of accession to the Convention, this mechanism could (and it is submitted should) be used by the UK to prevent the Convention coming into effect as between the two states, which would avoid the difficulties examined above.

34. There are, however, two concerns that might be raised with this mechanism. The first is that it appears only to permit the exclusion of a bilateral relationship at (or shortly after) the time of accession of one of the states concerned. If a foreign state which was a party to the Convention subsequently experienced a deterioration in the independent functioning of its judicial system, so that judgments from that state became systemically unreliable, the Article 29 mechanism would not apply. Notifications under Article 29 may be later withdrawn, but under Article 29 may not be made outside the time period envisaged. It is possible that the UK could, in those circumstances, partially denounce the Convention in relation to that other state, pursuant to Article 31, but this is not entirely clear from the Convention itself (which assumes that any denunciation is a withdrawal from the Convention altogether). Any denunciation would also take 12 months to take effect.

35. An alternative approach which may provide greater legal certainty would be for the UK to make a reservation at the time of its accession, reserving for itself the possibility to suspend on a unilateral basis the bilateral operation of the Convention in relation to a particular foreign state where that foreign state's judicial system raises systemic concerns. (For further discussion of this issue and possible mechanism, in relation to the United States, see Diana A. A. Reisman, 'Breaking Bad: Fail-Safes to the Hague Judgments Convention' (2021) 109 Georgetown Law Journal 879.) Although the efficacy of such a mechanism is not entirely certain, as the reservation might be objected to by other states, it is recommended that this

approach be adopted with a clear explanation of its purpose and clearly defined criteria for its operation. Such a mechanism would need to be carefully drafted, but it could potentially provide invaluable additional flexibility in the future operation of the Convention.

36. The second concern is that, whether under Article 29 or a mechanism created by reservation, the act of formally rejecting the application of the Convention as between the UK and a foreign state could raise diplomatic difficulties. This in turn raises the risk that the Convention is allowed to apply even where there are systemic risks of unfair judgments from a particular foreign state, meaning that UK parties are potentially subject to unjust foreign judgments which are recognised and enforced in the UK (unless specific procedural unfairness can be proven). It would be undesirable for commercial parties to suffer the consequences if diplomatic concerns prevented the disapplication or suspension of the Convention on a bilateral basis. If the UK is to accede to Hague 2019, it is submitted that procedures should be developed under which a UK governmental authority evaluates the possible use of Article 29 each time a foreign state accedes to the Convention, and at the time of the UK's own accession. Such procedures should also address the circumstances in which a declaration under Article 29 would be lifted. In addition, a review mechanism should be developed under which any concerns of systemic fairness which arise in relation to other Convention States feeds into consideration of whether the operation of the Convention on a bilateral basis in respect of a particular state should be suspended (or whether such a suspension should be lifted), using the reservation mechanism identified above. It would be preferable if these processes were insulated at least to some extent from political or diplomatic considerations.

Conclusions

37. The rules governing the recognition and enforcement of foreign judgments in the UK, and of UK judgments in foreign courts, are complex and varied. Hague 2019 offers the prospect of international standardisation of these rules, which could be a significant benefit to the smooth functioning of cross-border commercial activity and in particular the efficient resolution of cross-border disputes. It would at least to some extent reduce the cost of determining whether a judgment would be enforceable, enabling more efficient decisions about where to litigate. It would in many cases enhance the existing rules on recognition and enforcement, enabling decisions about where to litigate to be based on the most efficient forum to resolve the dispute. While Hague 2019 would add complexity through the addition of a further regime with new rules, ultimately if widely adopted it could have the effect of reducing the need to refer to the range of different national rules governing recognition and enforcement of foreign judgments. The functioning of the Convention does, however, depend on a basic level of mutual trust between different legal systems, and the operation of Hague 2019 would need to be carefully monitored and managed, using various mechanisms as appropriate to ensure that it does not apply in relation to particular foreign states in inappropriate circumstances.

38. On balance, it is submitted that the benefits of Hague 2019 would outweigh the costs and risks, and the proposed UK accession is therefore supported.

Professor Alex Mills

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