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Cross-Border Jurisdiction In Cyberspace The Role Of The Hague Conference In Resolving Online Disputes

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Abstract
The growth of internet-based transactions, cross-border online platforms, and internet-based communications has increased the ambiguity in jurisdiction between courts, litigants, and states. When the site of dispute is virtual, traditional connecting factors of territorial presence, domicile, service, forum non convenience, of the private international law are emphasised. The main problem under consideration in this paper is the role of the Hague Conference on Private International Law (HCCH) in offering treaty framework to reduce the problem of fragmentation and uncertainty in transnational online disputes. This paper will center on three major Hague instruments the 1965 Service Convention, the 2005 Choice of Court Convention, and the 2019 Judgments Convention. Internet-related litigation examines their textual structure, scope of interpretation and application. Subsequently, identify loopholes occurring due to electronic service, consumer and mass-platform disputes, non-exclusive jurisdiction and non-adoption of the Judgments Convention. Following this discussion, a suggested set of solutions to reinforce the Hague architecture in cyberspace is suggested; interpretive adaptation, soft-law guidance, coordinated declarations, and capacity building. The paper aims to reconcile legal certainty, the sovereignty and access to justice within the emerging sphere of the digital cross-border disputes.

Keywords: cyberspace jurisdiction; Hague Conference; cross-border litigation; electronic service; online disputes

Introduction

In the era of the Internet, practically all commercial, communicative, or expressive actions can cross several jurisdictions in several seconds. The operator of one web source can enter into contracts with consumers in dozens of states; allegedly defamatory messages can be uploaded in one country and downloaded in other states; sales operations between consumers can be made across continents on e-commerce platforms. These facts put pressure on classical regimes of the private international law, which associate jurisdiction with physical or territorial relationships including the place of business, residence or acts within a territory.

There are three interconnected issues looming in this environment. First is the uncertainty of jurisdiction: to which court can the case be heard? Secondly, there is service and notice: in

which ways can a foreign defendant be served reliably, and in which ways can the court be confident of fair notice? Third is recognition and enforcement: in case a judgement is passed, is it legally binding in the country of the defendant? Differences in the policies used by the states promote shopping of forums, repetitive lawsuits, and uncertainty barriers to the consistent legal order.

HCCH is the major international conference that works in the development of multilateral treaties in the field of the private international law. Despite the fact that most of its current tools predate the digital era, they provide frameworks upon which to curb the cross-border issues of cyberspace. The questions that are followed in this article are as follows: To what extent online dispute problems can be solved using the Hague instruments (particularly, the Service, Choice of Court, and Judgments Conventions)? Where do gaps remain? And what are the practical actions that interpretive, institutional, and treaty-level can help to make more useful to internet disputes?

The line of argument goes on as follows. The second part is a review of the doctrinal and policy literature on internet jurisdiction. Thereafter, each parts of the pertinent Hague instruments are considered individually in regards to its structure, interpretation difficulties, and applicability to online litigation. That prompt a discussion on how they are now being adapted by courts and practitioners (in particular with regard to electronic service, online targeting and enforcement). Lastly, the remaining gaps, suggesting some viable reforms and an ending with a roadmap of reinforcing the Hague framework in the digital era.

Literature Review

The academic debate concerning internet jurisdiction has passed through a number of stages. During the early years of cyberspace, numerous commentators shared a view of law contingent to the virtual world through only weak links to the physical locality some even uttering the term cyber-exceptionalism. Still others cautioned of the dangers of unrestricted jurisdiction and urged moderate changes of conventional rules.

By the mid-1990s traditional literature like Perritt treatises charted how concepts like interactivity of websites, intentional targeting, and downloading might affect a court claiming to have jurisdiction. Researchers suggested fairness, foreseeability, and proportionality as mechanisms to adjust long-arm principles to the digital interactions.

In the 2000s, the debate matured. Some other authors, including Jack Goldsmith, stressed that territorial sovereignty is essential, but that national courts are required to exercise restraint, and that principles of the law governing private international law may be applied flexibly without abandoning their underlying principles. Scholars of comparative law recorded national differences as some courts embraced aggressive theories of the existence of effects-jurisdiction, other courts emphasized the need to foster a closer local connection.

More contemporary research has required treaty solutions. Both empirical and comparative research studies indicate a piecemeal terrain of national jurisprudence and challenges of cross-border application of digital judgments. A number of researchers propose that there should be multilateral harmonisation (via the HCCH or other organisations) in order to minimise fragmentation. Others suggest internet dispute treaties or soft law specialising in domain rules.

To augment the doctrinal and comparative literature, practitioner literature and HCCH materials have started to examine concrete tools particularly concerning electronic service and remote evidence. The changing dialogues and Special Commission sessions of the HCCH are indicative of an acknowledgment that its tools should be adjusted to the realities of 21 st century technology. Therefore, the literature not only highlights the issue but also indicates the HCCH as a promising, albeit incomplete, pathway of harmonisation.

Methodology

The present article will follow a doctrinal-normative approach with the support of treaty and institutional analysis. The study is done in three phases.

1. **Treaty Analysis:** To determine what the treaty text, preparatory works (where extant), explanatory reports, and HCCH interpretive statements provide pertaining to online disputes, examination of text of the convention, preparatory works (where such exist), explanatory reports and HCCH interpretive statements, to each Hague Convention considered in the context of civil procedure and judgments.
2. **Case and Practice Survey:** examination of judicial decisions, national practice notes, and HCCH committee/working group materials that interpret or apply Hague instruments in internet contexts (for example, on electronic service, targeting, recognition of online judgments, and remote evidence). Recent webinars and reports (e.g., the ABLI/HCCH webinars) help illuminate emerging trends.[1]
3. **Gap Analysis & Normative Proposals:** In terms of the doctrinal and empirical foundation, evaluating the areas where Hague architecture is wanting or in conflict with internet reality. It is based on that perspective proposed suggestions interpretive strategies, institutional improvements, and remedies that can be found in treaties as an adjunct.

Although it is not an empirical-data paper, selective case excerpts and institutional reports are analysed to base proposals on the practical reality. The normative object of the paper is to map a pragmatic course of more successful jurisprudence and the functioning of treaties in the cyberspace.

The Hague Instruments: Structure, Interpretation, and Application to Cyberspace

In this section, three central HCCH instruments Service, Choice of Court, and Judgments Conventions are analyzed and their relevance to online disputes.

The 1965 Service Convention

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the 1965 Service Convention) provides a formal mechanism of effecting service across boundaries (i) by having a Central Authority in each of the contracting States to receive and execute requests (ii) optional alternative mechanisms through diplomatic or consular means (iii) and Article 10 that allows alternative mechanisms that the parties agree on or that the State of destination allows.

The most relevant interpretive issue in the digital era is whether electronic means service particularly email or other digital transmission can be counted as valid under the Convention. Email had not been even conceived in the original drafting; nevertheless, the presence of the flexibility channels in Article 10 provides an interpretive space. In 2019, the Permanent Bureau of the HCCH published a "Practical Handbook" and updates on electronic service, and in 2019 hosted the event "HCCH a|Bridged: Innovation in Cross-border Litigation and Civil Procedure" which discussed the subject of service in information technology.3

According to the approach carefully adopted by the Handbook (and later the Special Commission discussion), these techniques may be permitted to the extent (i) there is judicial order or acquiescence, (ii) the means of delivery are secured by proper safeguards (e.g. return receipt, acknowledgment), and (iii) the destination State has not forbidden them in its declarations or permitted them in its declarations. However, most courts are still hesitant or split.4

In the internet dispute, email service becomes essential: numerous internet actors do not have a physical address, may operate in more than one country and, in fact, can be more accessible through electronic means than through physical means. The Service Convention therefore furniture of the procedure place of cross-border litigation but its meaningful use in cyber space requires the standardisation of electronic practises and judicial goodwill to modify it.

The 2005 Choice of Court Convention

The Convention on Choice of Court Agreements, 2005 regulates the recognition and enforcement of agreements on exclusive jurisdiction in civil and commercial cases.5 Its

essence is to increase the independence of parties (the possibility to select an exclusive court) and to provide that decisions made by the selected court are recognised in other contracting States, with limited reasons of refusal. It gives predictability in a contractual situation where necessary.

In online trade a fair portion of B2B or platform-vendor contracts feature terms of service or click wrap agreements which include a jurisdiction clause. These types of clauses can be very valuable when they refer to an exclusive court in a Hague Contracting State: parallel litigation is discouraged, and recognition in other Convention States becomes facilitated.

However, limitations abound. To begin with, the Convention addresses only those issues that the parties have agreed on, and the exclusive forum agreements which are non-exclusive and permissive jurisdiction causes are omitted. Second, the Convention does not cover some issues (in accordance with national reservations) and cannot be applied to consumer contracts in case a State has issued a consumer-protection statement. Third, the reason why there are many online transactions is because they feature mass contracts, consumers or platform terms that are not actual negotiation. In such instances, the Convention has a narrow coverage.

Therefore, the Choice of Court Convention is a potent predictability instrument in the case of online commerce in its scope. Beyond that it has a partial effect.

The 2019 Judgments Convention

The newest and most ambitious HCCH instrument on cross-border judgments is the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, 2 July 2019 (Judgments Convention) which gives a framework to the recognition and enforcement of judgments on uniform terms, with limited reasons to reject them, and tries to align with the 2005 Choice of Court Convention.

The main aspects are: (i) broad default rule of recognition (except where one of the grounds of refusal applies); (ii) transitional (a judgement must be on a claim where the Convention was in force at the time the proceedings are instituted), (iii) declarations that Contracting States may make restricting recognition in some categories (e.g. a judgement on an intellectual property claim, a privacy claim, an insolvency claim) and class-based exclusions.

In the case of online disputes, the Judgments Convention has a significant positive impact on the enforceability: a positive judgement in one of the contracting States can be cross-enforced under a single multilateral regime (instead of bilateral treaties or domestic reciprocity). The accession is however incomplete (some states are yet to join), there are diverse reservations and there are prospects of declarations restraining the scope of the Convention to limit its effects in practise.

The Convention also contains a provision that judgments of courts to be selected on the basis of a valid Hague Choice of Court Agreement shall receive an easier treatment within the Judgments framework strengthening the synergy between the two treaties.

Judicial and Institutional Practice: Internet Cases, Service, and Enforcement

In order to determine the effectiveness of the Hague instruments in cyberspace, it is necessary to review how the instruments have been applied by the courts in the internet-related cases and how institutional discourses are influencing their implementation.

Electronic Service in Cross-Border Internet Litigation

Courts that face cross-border digital claims are often challenged as to whether to allow service to be done by email or other digital tools as per the 1965 Convention. Certain courts do not accept email as inherently reliable; some require it to be authorised or accepted by the court previously or have the defendant affirm it.

As an illustration, courts in the U.S. using the Convention have mandated strict adherence to physical means unless extraordinary reasons justified the use of e-service. Conversely, other civil law systems have been more open to email or even social media service whereby traditional diasporas have failed.

The 2025 ABLI/HCCH webinar on Cross-Border Commercial Dispute Resolution Electronic Service of Documents and Remote Taking of Evidence is an example of the implication of the current interactions between practitioners and state actors in modernising service protocols.9

Special Commission meetings of the HCCH Permanent Bureau and other national delegations are still going on to define more clearly the guidelines and to bring about homogeneity in the practises of electronic services. Nevertheless, national divergence still exists, and as a result of this, litigators who are involved in digital disputes are subjected to a patchwork of national attitudes.

Jurisdictional Targeting, Effects, and Online Claims

Online tort cases (defamation, breach of data privacy, or consumer injury) can contain difficult questions of targeting or effects jurisdiction i.e. whether the court may purport jurisdiction because the defendant has acted online in a manner that is targeted at that jurisdiction or has effects there.

Courts of different jurisdictions have used different tests: some focus on the issue of whether the site is localised (language, currency, tailored content to the users of the forum), others focus on whether the defendant should have known or did know that harm would be felt in the forum, or whether the defendant specifically targeted the forum (ads, promotion). These tests are fact-intensive and unpredictable since there is no universal standard.

Under the Hague convention, no standard rule on targeting online has been prescribed so far. Therefore, the courts have to apply the domestic rules and the prevailing doctrine of private international law. The lack of a treaty standard is a vacuum that makes the predictability assured by the Hague instruments less predictable.

Recognition and Enforcement of Online Judgments

The guarantee of the Judgments Convention is recognition: once a court makes a judgment, it can be more readily executed in other contracting States (unless a valid refusal ground is presented). Judges in the digital commerce area (platform disputes, domain name or internet IP cases) may start to find that online verdicts gain the regime of unified recognition.

Many states are however not yet party states, and even those that are parties may have made declarations which exclude a certain subject matter or denied the possibility of the enforcement of judgments awarded in a particular digital or mass consumer situation. In this way the theoretical advantage of streamlined enforcement can be restricted in practise until more states come on board and restrict reservations.

Contracting States must give effect to exclusive choice-of-court agreements and related judgments unless there are specified exceptions, which means that judgments based on exclusive choice-of-court agreements which are my special favorites, depending on the Judgments Convention.

So far, very little jurisprudence exists in online-specific enforcement (e.g. judgement requiring websites to take down or pay damages). Ensuring that digital judgments are enforced cross-border will over time rely wholly on national implementing law, and the desire of courts to apply the Judgments Convention in the spirit of bilateral cooperation.

Gaps, Challenges, and Tensions

While the Hague architecture offers potent tools for cross-border litigation, several persistent gaps and tensions remain especially when applied to cyberspace. Below, are identified and analysis of key challenges:

Lack of a Universal Online Targeting Standard

In the absence of treaty protection or multilateral guidance on the issue of when an online actor is considered to be targeting a jurisdiction, courts will be required to call upon the domestic doctrine. This makes the jurisdictional claims less predictable and therefore, the stability that Hague instruments are meant to promote is compromised.

One litigation may prevail in a court of law in one jurisdiction with one targeting test and lose in another, and the two courts will deliver different verdicts. Besides, the lack of a common standard will promote strategic forum shopping by plaintiffs or plaintiff attorneys.

Consumer and Platform Contracts

There are numerous online conflicts, involving consumers or users of the platform, who are not entering into any contractual agreement (clickwraps or browsewraps, made on the take-it-or-leave-it basis). Consumer-protection regulations by states often have the effect of making jurisdiction clauses less enforceable and limiting the use of choice of court agreements. The Hague Choice of Court Convention also permits the states to give a declaration that excludes consumer contracts, thereby rendering it weak in most Internet cases.

On the same note, platform terms can be used to engage a large number of users in different jurisdictions. It is still a difficult matter as to whether the Convention applies or it is right to enforce judgement on platforms. The international tools are yet to provide the means of dealing with the mass-platform disputes or cyberspace class actions.

Non-Exclusive Jurisdiction

Not every conflict is based on exclusive forum clauses. Most litigants use general causation, tort, or statutory jurisdiction. The Hague tools, in particular the Choice of Court Convention, require exclusivity, and the non-exclusive jurisdiction is not settled by a treaty. Absence of additional multilateral rules means that domestic law is the back-up, which lowers harmonisation.

Incomplete and Uneven Accession

An essential element of treaties is the widespread involvement. The Judgments Convention, which is currently in force (1 September 2023) in relevant initial jurisdictions, has not been universally adopted yet.10 There are still many states which are not a party, or they made a restrictive declaration which excludes online-relevant categories (e.g. intellectual property, privacy) hcch.net. The practical scope of the regime in the context of Internet-based disputes is fragmented so far as more states do not sign the declarations and align them.

Implementation and National Law Gaps

States, but not direct third parties, are bound by treaties. To operate successfully, the country requires domestic implementing legislature, judicial training, and unified procedural regulations. Local law does not in most jurisdictions yet admit of wide application of electronic service, remote acquisition of evidence, or simplified methods of recognition. The multilateral pledge of the Hague instruments can be a mere figment without the national commitment.

Enforcement Practicalities

Practical enforcement (garnishment, providing injunctive relief against websites) may have local barriers even where acknowledged, as national statutory instruments may be unavailable, or sovereign immunity may be a barrier or technical jurisdictional restriction of relating property or activity to the state. In online judgments (e.g., to have a webpage delisted worldwide), extraterritorial enforcement will be a challenge even with friendly recognition.

Normative Proposals: Making the Hague Framework More Fit for Cyberspace

The above gaps need to be addressed through a combination of interpretive, institutional and treaty-adjunct approaches. The following are some suggestions on multi-pronged approach.

Interpretive Adaptation & Delegated Guidance

1. **Authoritative Interpretive Guidance on Electronic Service**

The HCCH ought to provide and embrace explicit interpretative directives (or suggestions) on what kind of electronic services can be permitted under the Service Convention (e.g. email, secure platform messaging). These guidelines must also establish minimum protection (receipt acknowledgment, fallback procedures, authentication) and reasonable standards

applicable to courts. That shall minimise the divergence at the national level and will offer the litigators a predictable framework.

2. **Soft-Law "Targeting Guidance"**

Since negotiating an international agreement on the rules of online jurisdiction at the very same time might prove challenging, the HCCH ought to establish non-binding principles on how the current jurisdiction rules (tort causation, effects test, targeting) ought to be applied in everyday internet situations (e.g. advertising, geo-targeted sales, content moderation). Courts might use them as persuasive authority and consistency would be enhanced without repealing prior treaties.

3. **Interpretive Synergy Between Treaties**

The HCCH should promote the interpretive harmonisation of the Service, Choice of Court, and Judgments Conventions to ensure that electronic approaches and principles of jurisdiction are more complementary rather than independent of each other.

Treaty-Level Enhancements and Declarations

1. **Model Declarations for Electronic Service and Evidence**

Encourage Contracting States to make uniform or model declarations accepting specified electronic service and remote evidence protocols. This would reduce heterogeneity and soften resistance to non-traditional service routes.

2. **Consumer-Protection Declarations with Safeguards**

To expand the reach of choice-of-court protections in consumer contexts, the HCCH could propose a standard "opt-out safe harbor" consumer declaration: states allow choice-of-court agreements and enforcement where consumers are given fair notice and an effective remedy, or permit easy opt-out mechanisms. This would strike a balance between consumer protection and global enforceability.

3. **Encouraging Broader Accession to the Judgments Convention**

HCCH should provide technical assistance, capacity building, model implementing legislation, and best-practice guides to states reluctant to accede. Emphasizing how the Convention supports cross-border digital trade may incentivize participation.

4. **Gradual Future Protocol on Jurisdiction in Cyberspace**

In time, the HCCH might consider a supplemental protocol specifically addressing online jurisdiction issues (e-commerce, platform disputes, cross-border torts) to augment, not supplant, existing instruments. Such a protocol could codify targeting tests or minimum standards for online jurisdiction.

Institutional and Capacity Building

1. **Judicial & Practitioner Training**

With the help of national courts, bar associations, and legal academies, HCCH should organise training and workshops on the application of Hague instruments to internet disputes. Recognition of judgments in digital environments, familiarity, and confidence will decrease the unwillingness to embrace e-service.

2. **Monitoring & Reporting Mechanism**

The HCCH may also establish a surveillance system through which states and non-governmental entities will report about their experience when applying the Conventions to the digital cases. Gathering best practises and challenges will aid in improving directions and subsequent treaty efforts.

3. **Pilot Projects & Experimental Cases**

HCCH can also assist in cross-border cases with pilot cases of e-service or online cases to create precedents through the Hague instruments. These cases would be used to test interpretive assumptions and create reference points to courts.

4. **Digital Tools & Platforms for Convention Implementation**

Prepared or facilitated systems of the transmission of digital requests between the Central Authorities, recognition systems, and secure cross-border exchange of documents in accordance with the Conventions. Going more digital with the procedural infrastructure will minimise friction and resistance.

Illustrative Case Studies

To illustrate how the Hague framework might operate in practice, the following (hypothetical but plausible) scenarios demonstrate strengths and pitfalls.

Case Study A: B2B Software License Dispute

The State A (Company X) and the State B (Company Y) license cloud software, and the clickwrap agreement has an exclusive jurisdiction clause in the courts of State A (a Hague Choice of Court State). Y fails to pay. X secures the judgement in one court in State A and wants to be recognised in State B through the Judgments Convention.

Since the choice-of-court clause is exclusive and the case falls under the scope of the Convention, State B must give recognition to the judgement under the Hague Judgments Convention unless it has a valid reasons ground to do otherwise (e.g. a reason of public policy). This situation is an example of ideal synergy between the three conventions.

Case Study B: Consumer E-commerce Platform

Consumer C (State C) purchases online goods (through an online platform) headquartered in State D through its site and experiences loss. The terms under which the platform operates contain a jurisdiction clause in favour of State D courts. C then sues in State C and the platform countersues in State D. Will the Hague framework help?

Since consumer contracts might be out of the scope of enforceable choice-of-court agreement (in terms of declaration), the coverage of the Convention is questionable; the national courts will not likely enforce the provision. A judgment that has been acknowledged in State D can be defeated in State C, provided the consumer-protection exception stands. This case demonstrates how difficult it is to reconcile consumer protection and multilateral uniformity.

Case Study C: Online Defamation Claim

Blogger in State E writes an article about a misconduct of a person in State F. The article can be read in any part of the world. The claimant is suing in State F (the location of injury). The blogger challenges jurisdiction and maintains that they did not in any manner target State F. assume that the court of State F through judgement decrees removal and damages. The decision is then brought to be known in State G where the blogger also owns assets.

In this instance, the case is not based on a choice-of-court clause; the jurisdiction relies on the tort/targeting test. The recognition would apply under the Judgments Convention provided that State G is a party and the subject matter is not excluded (defamation is often not covered) hcch.net. The enforceability therefore lies on the carving out of defamation and the possibility of the national law in recognising such judgments. This situation demonstrates tension at the periphery of the treaty regime.

Discussion & Synthesis

Based on the above-analysis and case studies, a number of observations can be made.

To start with, the Hague instruments already offer a powerful system of cross-border litigation in digital dispute but only insofar as they coincide (contractual disputes featuring exclusive terms, routes of service that are permissible, and jurisdictions that have already signed the relevant conventions). The predictability, lowered costs, and enforceability are enhanced in those areas.

Second, the most disputed cases are not included in the so-called ideal situation: tort actions, consumer actions, mass-platform actions, or even cross-jurisdictional digital claims that are not parties to the conventions and whose declarations are restrictive. The treaty scaffolding does not provide much in those areas.

Third, theory-practice bridging does not only need treaty text but also interpretive innovation, coordination of soft-law, providing the infrastructure of e-service and digital request and national legislative and judicial embrace. They need the treaties but not only those.

Fourth, the normative balance is fragile: too broad rules on jurisdiction can lead to the violation of sovereignty and excessively large loads on digital actors, whereas too narrow can result in underenforcement and disintegration. The HCCH needs to balance the advice and guidelines that must not overstep autonomy at the state level and foster international consistency.

Lastly, speed is important in the course of digital commerce and cross-border litigation. The quicker conventions and institutions adapt to the rising number of online disputes, the less firmly the fragmentation will be established. The HCCH stands at the critical juncture to be guided by interpretive adaptation, capacity building and incremental innovation of treaties as opposed to awaiting a new grand new convention.

Conclusion

Cross-border jurisdiction in cyberspace is not an issue of future it is a reality of the present. In the absence of multilateral coherence, courts, states and parties will incur expensive uncertainty, inconsistent judgements and forum shopping incentives. The conventions Service, Choice of Court, and Judgments of the Hague Conference are the most plausible multilateral framework that can bring sanity to transnational litigation, including internet litigation.

This architecture, however, has to develop. The main actions to be taken are: (i) the issue of clear interpretive guidance (especially of e-service), (ii) the establishment of soft-law protocols of online targeting and consumer protection, (iii) the facilitation of uniform declarations and the wider adherence to the Judgments Convention, (iv) supporting national implementing legislation and judicial training, and (v) the establishment of digital infrastructure that facilitates the operations of the conventions in the age of the Internet.

With a careful process of applying the Hague framework to the cyberspace, the multilateral promise of coherence and predictability can be made reality in the application of the cyberspace in dispute resolution with scholars, practitioners, and states. The phase of flakey, hyper-uncertain internet litigation can gradually give way, step-by-step, to a more permanent world procedural order.

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