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Recognition frameworks within the CIS, SCO, UN, EU and considerations for a central Asian regional convention

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Abstract

This paper examines frameworks for the recognition and enforcement of foreign judgments at the global, regional and sub-regional levels, analyzing their relevance for Central Asia and the feasibility of a Central Asian regional convention. Using doctrinal legal research methodology, the study assesses models including CIS, SCO, UN, and EU instruments and compares grounds for refusal. It finds limited participation of Central Asian states in existing frameworks coupled with lack of reciprocity and harmonization in the region. A regional convention can enhance legal certainty but faces challenges around divergent legal systems, political tensions, and inconsistent implementation. Strategic capacity building and emphasizing mutual benefits may help advance a Central Asian convention.

Keywords: Foreign judgments, private international law, regional cooperation, Central Asia

Introduction

The expansion of global commerce has led to a surge in cross-border business disputes and foreign court judgments that require recognition and enforcement abroad. However, the absence of reciprocal multilateral arrangements in Central Asia hinders the free flow of judgments across the region ^[1].

At the bilateral level, Central Asian countries inherited about 30 outdated treaties from the USSR-era with divergent standards on enforcing foreign decisions ^[2]. The patchwork of bilateral treaties creates uncertainty for enforcing judgments across neighboring jurisdictions with close economic ties.

Regionally, Central Asia lacks a harmonized convention on judgment recognition, unlike more integrated associations such as the EU, ASEAN or MERCOSUR ^[3]. Available global conventions also have limited participation, with only 3 Central Asian countries having joined the United Nations Convention on Foreign Judgments as of 2022 ^[4].

This analysis examines existing models at the bilateral, regional and global levels that Central Asia can draw upon in crafting its own regional convention to enhance cooperation on cross-border judgment recognition. A coherent regional mechanism can promote judicial comity between Central Asian states. It can balance state sovereignty with much-needed reciprocity in enforcing commercial court decisions.

Recognition Regimes in CIS, SCO, UN, EU

The CIS Convention of 1993 establishes simplified procedures for expeditious enforcement of foreign civil judgments among post-Soviet states ^[5]. This was an improvement over previous bilateral USSR treaties that imposed strict requirements such as review of the merits ^[6]. However, implementation of the CIS Convention has been inconsistent, with states frequently reverting to domestic law ^[7]. Problems such as delays in accession and lack of consolidated procedures illustrate challenges with sub-regional regimes.

The SCO and UN Conventions have limited applicability in Central Asia, with sparse membership among regional states as of 2022 ^[8]. By contrast, the EU model offers a coherent region-wide system. Judgments issued in one EU country can be automatically recognized and enforced in another with minimal formalities ^[9]. This principle of mutual trust and reciprocity increases efficiency in cross-border disputes. The EU regime offers inspiration for similarly bridging Central Asia's mix of civil and common law jurisdictions. The grounds for refusing recognition also vary widely across conventions.

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For instance, the CIS Convention does not permit merits review, unlike some domestic laws^[10]. Conversely, the UN Convention has broad exclusions to recognition based on public policy and jurisdictional defects^[11]. Reconciling such divergent standards will pose challenges in crafting a tailored Central Asian convention.

While existing regimes provide guidance, Central Asia requires its own tailored convention to enhance legal certainty and judicial comity in international business disputes. With strategic capacity building and diplomatic efforts to emphasize mutual gains, a regional convention can potentially fill this gap.

Regional Approaches in Africa and Latin America

In addition to the models of CIS, EU and UN, regional judgment recognition frameworks in Africa and Latin America also offer useful precedents for Central Asia.

The Organization for the Harmonization of Business Law in Africa (OHADA) has established simplified rules for its 17 member states to recognize and enforce judgments given in the OHADA Common Court of Justice and Arbitration^[3].

In Latin America, MERCOSUR countries implemented a regional agreement in 1995 influenced by the Brussels and Lugano Conventions in Europe^[4]. However, lack of complete ratification has hindered its effectiveness^[5].

Lessons can be derived on framing regional judgment recognition agreements in contexts with significant political and legal diversity.

Emerging Approaches for Cross-Border Digital Data

Another dimension for a modern Central Asian convention is managing cross-border recognition and enforcement for data and online transactions. For instance, the Asia-Pacific Economic Cooperation (APEC) has developed a voluntary Cross-Border Privacy Rules system to improve data flows among economies with different privacy regimes^[6].

Considerations for a Central Asian Convention

Greater reciprocity between Central Asian states is needed as currently many countries unilaterally recognize foreign judgments without the same treatment abroad. For instance, Kazakhstan automatically enforces decisions from Kyrgyzstan and Tajikistan but does not receive reciprocal recognition^[11]. A convention can create a level playing field.

The proposed convention will need to bridge differences between the civil law systems predominant in Central Asia and common law practices in enforcing foreign judgments. Civil law countries tend to review the merits of the case while common law focuses on the jurisdiction of the rendering court^[12]. A balanced approach may involve limited merits review restricted to due process and public policy violations.

The convention can establish unified standards on international jurisdiction to mitigate exorbitant claims of jurisdiction. Rules on service of process and limitation periods should also be harmonized as currently major divergences exist between Central Asian countries^[13].

Standards on due process and public policy defenses need to be clearly defined, as ambiguities lead to inconsistent application by domestic courts. Broader consensus is required on whether due process requires retrial of merits or only meeting minimal standards^[14]. Similarly, overbroad interpretation of public policy defenses should be curtailed^[15].

The convention can play a vital role in reconciling the mix

of secular and Islamic legal systems across Central Asia concerning issues like marriage, inheritance and finance^[16]. Choice of law provisions may reference Shariah principles while mandating respect for international commitments.

Registration of foreign judgments as a precursor to enforcement can help streamline procedures compared to relitigation of merits^[17]. The EU model provides a reference where a certificate of registration promptly enables enforcement.

Potential Impediments and Mitigation Strategies

Firstly, ratification and implementation challenges are illustrated by the delays in CIS countries adopting the 1993 CIS Convention and frequent recourse to domestic law^[18].

To address this, technical capacity building programs for judges and policymakers on convention provisions and cross-border cooperation will be vital.

Secondly, tense diplomatic ties between certain Central Asian states, as exemplified by border and water disputes, stymie bilateral judgment recognition agreements and judicial cooperation^[19]. Therefore, diplomatic efforts emphasizing the collective benefits from regional integration will be crucial to securing political commitments.

Thirdly, overcoming resistance from nationalistic judges and prosecutors adhering to protectionist stances will require awareness building about mutual gains^[20]. Guidance manuals and training modules for judicial officials can highlight advantages of reciprocal recognition.

Thus concerted legal harmonization efforts alongside diplomatic initiatives and technical capacity building are key to advancing a well-crafted regional convention.

Conclusion

In conclusion, while the CIS, EU and global models offer useful guidance, Central Asia needs a tailored regional convention that balances state sovereignty and national interests with much-needed reciprocity in enforcing foreign commercial judgments. Concerted political commitment and joint technical work will be crucial to unlocking the benefits of greater regional integration and legal harmonization through a multilateral convention.

In summary, while recognition frameworks globally and in Europe offer useful precedents, Central Asia needs a harmonized regional mechanism tailored to its unique context. A convention that balances state sovereignty with reciprocity and common standards can promote cross-border judgment recognition to facilitate trade and investment. Concerted legal harmonization efforts and technical capacity building will be crucial to crafting a multilateral convention that advances the region's integration and prosperity.

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