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Aygun Mammadzada

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Beyond the model law: the case for a Commonwealth-wide adoption of the Hague Judgments Convention

Aygun Mammadzada*

The 2019 Hague Judgments Convention (Judgments Convention) marks a pivotal development in private international law, offering a uniform framework for cross-border enforcement that enhances predictability and reduces legal fragmentation. By promoting legal certainty, it supports international trade and commercial relations and aligns with the broader push for greater judicial cooperation in the interconnected world. This article argues that it is in the clear interests of Commonwealth states to ratify the Convention. The Convention offers an avenue to strengthen the "Commonwealth advantage" by leveraging shared legal traditions and institutional ties to facilitate cooperation which the Commonwealth Model Law is unlikely to do on its own. Set against the backdrop of Brexit and the UK's search for new legal alignments, the article further proposes that the UK's ratification of the Convention can serve as a source of proactive inspiration for other Commonwealth states. As the key influencer and first Commonwealth state to ratify the Convention (apart from Malta and Cyprus, which acceded through their EU membership), the UK is uniquely positioned to promote wider adoption and reinforce both legal integration and commercial certainty. Such cooperative efforts can further consolidate the Commonwealth's role in shaping the evolution of global private international law.

Keywords: Commonwealth Model Law on recognition and enforcement of judgments; HCCH Judgments Convention 2019; common law on recognition and enforcement of judgments

A. Introduction

Consider the following two scenarios in cross-border commercial disputes:

In the first scenario, a Singapore-based technology company enters into a supply contract with a UK electronics manufacturer, incorporating an exclusive jurisdiction clause designating the Singaporean courts. When a dispute arises, the Singaporean company litigates locally and obtains a favourable judgment. Where there is a choice of forum, things can be quite straightforward. Since both Singapore and the UK are parties to the 2005 Hague Choice of Court

*Lecturer in Law, Hillary Rodham Clinton School of Law, Swansea University. Email: aygun.mammadzada@swansea.ac.uk

Agreements Convention (Choice of Court Convention), the judgment is readily enforceable in the UK – showcasing how a clear forum choice under the Convention streamlines cross-border enforcement.

By contrast, in a second scenario, a Zambian agritech company contracts with an Australian supplier for solar-powered irrigation equipment, but the contract lacks a jurisdiction clause. When the equipment proves defective, the Zambian company obtains a domestic judgment. Enforcement in Australia may proceed through several avenues depending on the circumstances; for instance, if the defendant appeared and participated on the merits, the Foreign Judgments Act 1991[1] could facilitate recognition. Yet, while both Zambia and Australia may possess statutory mechanisms to recognise and enforce each other's judgments, these frameworks tend to be fragmented and outdated. In addition to statutory mechanisms, enforcement in Australia could also be pursued under common law principles.[2] The Zambian company may be forced to commence a new action in Australia, multiplying costs, delaying resolution, and exposing the parties to legal uncertainty. In such cases, opportunistic behaviour such as forum shopping may also arise, compounding the difficulties in cross-border enforcement. Each route carries its own procedural requirements and potential limitations, and outcomes can vary according to the interplay of domestic rules, the defendant's participation and the scope of an applicable treaty if any. Indeed, in the absence of a harmonised, binding multilateral framework across Commonwealth states, the process can be quite burdensome underscoring the value of a treaty-based system such as the Hague Judgments Convention (Judgments Convention) in providing clearer, more predictable, and rules-based avenues for recognition and enforcement.

More significantly, despite longstanding efforts within the Commonwealth to develop a unified model law on the recognition and enforcement of civil and commercial judgments, the Commonwealth Model Law (CML)[3] is a soft-law instrument that has not been enacted by any state to date. Its non-binding character, combined with its limited uptake and the absence of any practical mechanisms for implementation, has prevented it from gaining meaningful traction.

These examples underscore a critical issue: the pressing need for a modern, comprehensive, and binding multilateral instrument to govern the recognition and enforcement of judgments among Commonwealth jurisdictions. As observed by Beaumont and Goddard:

> A truly modern, sophisticated and reasonably comprehensive regime for recognition and enforcement of judgments in civil or commercial matters is now available to all States in the world by becoming Parties to the Hague Judgments Convention 2019

[1]Foreign Judgments Act 1991, ss 11-12.
[2]*Ibid*, s 12(3).
[3]Commonwealth Model Law on the Recognition and Enforcement of Foreign Judgments 2017.

(Judgments) and the Hague Choice of Court Agreements Convention 2005 (Choice of Court).[4]

The Choice of Court Convention provides solutions in cases involving exclusive choice of court agreements. In the absence of such agreements the Judgments Convention becomes indispensable. While both instruments are important components of the private international law architecture, this article focuses specifically on the Judgments Convention.

The Judgments Convention offers a potentially global framework that can reduce legal fragmentation, promote predictability, and foster the mutual trust that is vital for sustaining international trade and investment. In an increasingly interconnected global economy, the enforceability of final judgments is not merely a legal technicality; it is an essential component of commercial confidence. Businesses, consumers and other individuals engaging in cross-border activities must be able to rely on judgments being recognised and enforced without undue delay or expense. Indeed:

> there is nothing more frustrating to the ends of transnational commerce than for a business actor to obtain a judgment in one jurisdiction and then find that it is in fact worth nothing more than the paper on which it is printed in another.[5]

This also implicates broader questions of access to justice: without a reliable enforcement mechanism, even meritorious claims risk becoming futile, especially for smaller enterprises and under-resourced litigants. As has rightly been observed, "access to justice is a dead letter if the judgment obtained by a successful party cannot be enforced in practice."[6] The Judgments Convention addresses these imperatives by providing a rules-based system that facilitates the free movement of judgments, thereby reducing procedural burdens and reinforcing legal certainty. Its entry into force, most recently for the UK, marks a turning point in the evolution of private international law, and its uptake has begun to reshape expectations around cross-border enforcement.

This article contends that Commonwealth states should become Parties to the Judgments Convention. In doing so, they would not only enhance their domestic legal frameworks but also revive the Commonwealth's unrealised ambition of legal harmonisation in civil justice cooperation. The Judgments Convention

[4]D Goddard and P Beaumont, "Recognition and Enforcement of Judgments in Civil or Commercial Matters", in P Beaumont and J Holliday (eds), *A Guide to Global Private International Law*, (Hart Publishing, 2022), 407.
[5]Chief Justice Sundaresh Menon, "Doing Business Across Asia: Legal Convergence In An Asian Century", *Keynote Address*, 21 January 2016, para 11, https://www.judiciary.gov.sg/docs/default-source/news-docs/doing-business-across-asia—legal-convergence-in-an-asian-century-final-version-after-delivery–260116.pdf accessed on 2 August 2025.
[6]Goddard and Beaumont, *supra* n 4, 408.

presents a credible, internationally recognised, and practically viable solution that has begun to demonstrate its effectiveness through the growing ratification and early implementation by contracting states. It allows states to integrate into the expanding global enforcement framework while capitalising on the "Commonwealth advantage" – a foundation of shared legal traditions, linguistic unity, and long-standing institutional ties that connect jurisdictions across the Commonwealth.

The case for a Commonwealth-wide embrace of the Judgments Convention becomes even more compelling in light of recent geopolitical and economic shifts, particularly following the UK's departure from the EU. Brexit has fundamentally altered the UK's position within established legal regimes governing cross-border civil and commercial enforcement, notably dissolving its participation in the Brussels regime and creating heightened legal uncertainty. This disruption coincides with the UK's strategic pivot toward strengthening economic partnerships within the Commonwealth – an increasingly vital arena for trade, investment, and diplomatic engagement. Likewise, this departure has brought an opportunity for the UK "to make a major contribution to the development of global private international law".[7]

Against this backdrop, the UK recently becoming a Party to the Judgments Convention[8] signals more than mere legal reform. It embodies a deliberate alignment of the UK's private international law architecture with a broader post-Brexit economic vision and offers an opportunity to contribute to a rules-based order in cross-border enforcement. But there is yet more to it than that. As a leading jurisdiction with long-standing influence in the development of common law, the UK is uniquely positioned as a catalyst and convenor, leveraging its historical and institutional connections across the Commonwealth to foster wider adoption of the Convention and collective commitment. The task is not a straightforward one: Commonwealth states exhibit a patchwork of regulatory approaches, ranging from common-law regimes that rely heavily on judicial precedent, to codified statutory regimes governing recognition and enforcement, and at times also apply frameworks shaped by regional agreements or bilateral treaties. By working closely with the Commonwealth Secretariat and Commonwealth Members, the UK can help bridge such legal diversities and regulatory approaches, promoting harmonisation that aligns with shared values and economic interests.

This article proceeds in five parts. Part B examines the Commonwealth's fragmented approach to the recognition and enforcement of foreign judgments,

[7]P Beaumont, "Some reflections on the way ahead for UK private international law after Brexit" (2021) 17 *Journal of Private International Law*, 1, 15.

[8]On 27 June 2024, the UK deposited its instrument of ratification of Judgments and it entered into force for the UK on 1 July 2025 in accordance with Article 28(1), https://www.hcch.net/en/news-archive/details/?varevent=1085 accessed on 10 October 2025.

highlighting the challenges this creates for legal certainty and commercial cooperation. Part C critically appraises the CML acknowledging its progressive intent and liberal features while emphasising its limited uptake, lack of implementation, and resulting functional ineffectiveness as a standalone soft-law instrument. Part D explores how the Judgments Convention can unlock the Commonwealth's potential to reinvigorate the "Commonwealth advantage" by offering a modern, harmonised framework for judgment enforcement and makes the case for its widespread adoption to capitalise on shared legal heritage and institutional ties. Finally, Part E addresses the UK's potential leadership role in bridging legal divides and facilitating wider Commonwealth adoption of the Hague Judgments Convention.

B. The Commonwealth's fragmented approach to judgment recognition

It is essential to recognise the Commonwealth's distinctive role in the evolving landscape of private international law. Yet, to some extent the story is one of missed opportunity. The Commonwealth once had the potential to act as a coherent legal space, exemplified by instruments such as the United Kingdom's Administration of Justice Act 1920 (AJA)[9] and equivalent colonial or dominion statutes enacted in other jurisdictions, which once facilitated a unified approach to the recognition and enforcement of judgments. Despite a shared common law heritage, Commonwealth jurisdictions have since developed disparate statutory regimes and divergent common law doctrines, many of which are outdated, poorly coordinated, or insufficiently modernised creating significant legal uncertainties and procedural complexities. This section critically examines these systemic challenges, demonstrating how the absence of a unified approach undermines the predictability and efficiency essential for facilitating international trade and judicial cooperation across Commonwealth states.

1. *The Commonwealth: a unique legal and institutional network*

The Commonwealth is rooted in a shared history and a commitment to common values. Its origins lie in the gradual evolution of the British Empire into a voluntary and pluralistic association of equals. The organisation now operates as a values-driven platform for dialogue, development, and democratic governance. Landmark declarations such as the 1971 Singapore Declaration of Commonwealth Principles and the 2013 Commonwealth Charter have helped to define its modern ethos.[10]

[9]Administration of Justice Act 1920.

[10]For more information on the history, membership and functions of the Commonwealth, House of Commons, "The Commonwealth", *Research Briefing*, 7 March 2023, https://commonslibrary.parliament.uk/research-briefings/cbp-9478/ accessed on 31 July 2025.

Today, the Commonwealth comprises 56 sovereign member states, representing approximately 2.4 billion people across all continents. It encompasses a wide range of political and economic contexts from G7 and OECD countries to some of the fastest-growing developing economies. The modern Commonwealth has evolved into an independent and values-driven network whose informal, consensus-based governance coordinated through the Secretariat, promotes good governance, the rule of law, and intergovernmental cooperation while preserving considerable autonomy for its members.

Although the political links of empire have long since receded, the legal and institutional relationships forged during the colonial period continue to shape the Commonwealth's cohesion and relevance. One of its most significant strengths lies in what has come to be known as the "Commonwealth advantage": a distinctive blend of historical experience, common legal traditions, linguistic unity, and institutional familiarity.[11] Far from being merely symbolic, this advantage offers a tangible strategic foundation to promote legal certainty, facilitate cross-border trade, and encourage more reliable and efficient dispute resolution across jurisdictions. Indeed, this legacy has enabled countries as diverse as Canada, India, Australia, and South Africa to maintain a degree of legal cooperation and coherence despite their distinct post-independence trajectories. Such a legal fabric has proven to be a catalyst for cross-border cooperation, and matters related to private international law should equally reflect this spirit.

[11] See eg, Commonwealth Secretariat, *Strengthening the Commonwealth Advantage: Trade and Investment for Development* (Commonwealth Trade Review 2018), https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/documents/Strengthening_the_Commonwealth_9781848599710.pdf?VersionId=kVB5eAiduC.D1yuusVl2f9cbRkdddihz, accessed on 23 September 2025; Commonwealth Secretariat, *Finance and Investment for Resilient Growth: A Commonwealth Plan of Action* (4 October 2004), https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2024-10/a-commonwealth-plan-of-action-on-investment.pdf?VersionId=bbY1KYtkCuD3RHu8OanJtYMsKgpwnwXh, accessed on 23 September 2025. Both reports emphasise the "Commonwealth advantage," highlighting how shared legal traditions, language, and institutional frameworks facilitate deeper trade, investment, and cooperation among member states. In this regard, the Written evidence from the Commonwealth Magistrates' and Judges' Association on "The role and future of the Commonwealth" noted that, "The strength of the Commonwealth lies in its common goals and principles and shared legal systems which is ideal for the cross fertilisation of knowledge and experience and the development of standards". See https://publications.parliament.uk/pa/cm201012/cmselect/cmfaff/writev/commonwealth/com16.htm, accessed on 11 October 2025. Commonwealth Secretariat Strategic Plan 2025–2030 has identified "Leverage the Commonwealth advantage for economic growth" as one of the opportunities in its SWOT (Strengths, weaknesses, opportunities and threats) analysis, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2025-09/commonwealth-secretariat_strategic-plan-2025-2030-full-text.pdf, accessed on 11 October 2025.

2. *Fragmentation in the recognition of foreign judgments*

Despite the shared legal heritage and institutional affinities that characterise the Commonwealth, the divergence in legislative reforms and judicial interpretation has led to a scattered legal landscape. Likewise, in the absence of a unifying supranational legal order, the current state of judgment recognition and enforcement among its member states remains deeply fragmented. This fragmentation is characterised by a mosaic of common law principles, outdated imperial statutes, diverging domestic private international law regimes and occasionally, bilateral or multilateral treaty arrangements, each with varying degrees of reciprocity and procedural complexity.[12] McClean astutely observes that despite references to a "Commonwealth system" of private international law, what exists in practice are "Commonwealth arrangements", a patchwork of parallel legislative arrangements – rooted not in binding treaties but in historically coordinated, and now largely discretionary, domestic enactments.[13] This disjointed setting significantly undermines the promise of legal certainty and coherence that the Commonwealth's shared traditions might otherwise afford. As Bhagwati's "spaghetti bowl" metaphor vividly illustrates, overlapping and inconsistent rules can paralyse the very trade they are meant to enable.[14]

To contextualise this fragmented landscape, it is helpful to briefly consider the main mechanisms through which Commonwealth states recognise and enforce foreign judgments. Ironically, behind this legal diversity lies a common foundation in the English common law tradition. In jurisdictions where statutory regimes do not apply such as Vanuatu or where the judgment originates from a state not designated under a statute, recognition and enforcement of foreign judgments are typically governed by common law principles. At common law, foreign judgments are not directly enforceable. Instead, a successful litigant must bring an action on the foreign judgment as a debt, the basis being that a recognised foreign judgment gives rise to an enforceable obligation, and it is this obligation – not the judgment itself – that forms the basis of enforcement.[15] The judgment must be final and conclusive, rendered by a court of competent jurisdiction (as recognised by the enforcing court), and not contrary to public policy, natural justice, or obtained by fraud.[16] Jurisdiction in this context is rather narrow and typically requires presence in the foreign country at the time of proceedings, voluntary submission to the foreign court, or agreement to submit (prorogation). Mere service

[12]For more on legal frameworks see A Yekini, *The Hague Judgments Convention and Commonwealth Model Law: A Pragmatic Perspective* (Hart Publishing, 2023), 77–96.
[13]D McClean, "The Commonwealth Perspective", *AHRC Research Network Project*, Workshop I, 28 February 2020, https://privateinternationallaw.stir.ac.uk/projects/ahrc-research-network/workshop-i/commonwealth/, accessed on 2 August 2020.
[14]J Bhagwati, "US Trade Policy: The Infatuation with FTAs", Discussion Paper Series No. 726, 1995, 161436448.pdf accessed on 6 August 2025.
[15]A Briggs, *The Conflict of Laws*, (Oxford University Press, 5th edn, 2024), 150–151.
[16]*Ibid*, 122.

out of jurisdiction is generally insufficient. This framework, while adaptable, is procedurally complex and can be vulnerable to inconsistent judicial interpretation.[17]

Moreover, despite the common foundation, the enforcement regime for foreign judgments across Commonwealth jurisdictions has begun to diverge in significant ways.[18] To address the limitations inherent in common law enforcement, many countries have sought to supplement common law mechanisms through statutory frameworks, most of which are well over a century old and have seen little substantive reform. These statutes often provide for a streamlined registration and enforcement process for judgments from specific foreign jurisdictions, typically based on reciprocity. The UK played a central role in promoting this statutory approach, leveraging its legislative authority and influence across its dominions and territories. The AJA and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA)[19] collectively laid the foundation for a codified system of judgment enforcement and subsequently influenced the development of similar regimes in various Commonwealth countries. These frameworks continue to operate in several jurisdictions.

However, the continued reliance on these statutes has become increasingly problematic due to their narrow scope, archaic procedural classifications, and resistance to modernisation. Their application remains largely confined to final money judgments while outdated notions such as the requirement that the originating court be "superior", have led to refusals of enforcement on purely

[17]For instance, while English courts when recognising or enforcing foreign judgments have traditionally required specific criteria such as presence or submission (*Adams v Cape Industries plc* [1990] Ch 433), Canadian courts have adopted a broader and more flexible approach through the "real and substantial connection", which demands a genuine link between the dispute and the foreign forum (*Morguard Investments Ltd v De Savoye* [1990] 3 SCR 1077; also most recently the Supreme Court of Canada provided a clarification in *Sinclair v Venezia Turismo*, 2025 SCC 27). See also A Arzandeh, "Gateways' within the Civil Procedure Rules and the future of service-out jurisdiction in England" (2019) 15 *Journal of Private International Law*, 516–40; T J Monestier, "Foreign Judgments at Common Law: Rethinking the Enforcement Rules" (2005) 28 *Dalhousie Law Journal*, 163–97.

[18]For example, Australia and New Zealand operate a distinctive and streamlined model for interstate and trans-Tasman enforcement, whereas recognition of judgments from other States remains tied to common law conditions that have changed little since the 19th century, even where statutory schemes exist. See M Douglas, M Keyes, S McKibbin and R Mortensen, "The HCCH Judgments Convention in Australian Law" (2019) 47 *Federal Law Review*, 420, 421. See also Chief Justice Sundaresh Menon, "The Somewhat Uncommon Law of Commerce", *COMBAR Lecture*, November 2013, p 3, https://app.pelorous.com/media_manager/public/260/The%20Somewhat%20Uncommon%20Law%20of%20Commerce%20website%20version.pdf accessed on 2 August 2025.

[19]Foreign Judgments (Reciprocal Enforcement) Act 1933.

formal grounds.[20] Obsolete terminology and inconsistent limitation periods further contribute to enduring uncertainty.[21] Collectively, these deficiencies reveal a fragmented regime characterised by procedural rigidity, interpretive inconsistency, and doctrinal instability, all of which are fundamentally at odds with the predictability and efficiency required for modern judgment enforcement.

This legal incoherence is especially glaring when viewed in light of modern trade relations. It is striking that even where there are substantial economic ties, legal reciprocity is not assured – further weakening the Commonwealth's potential as a unified legal space. For instance, despite Nigeria's robust international trade profile, its reciprocal arrangements remain oddly limited. Although India, Malta, and Indonesia rank among Nigeria's top Commonwealth trade partners (as of 2024)[22], none are encompassed within its enforcement statutes – highlighting a persistent misalignment between commercial realities and legal architecture. Likewise, it is commented that:

> as one of Africa's major economies, but with the deepening distrust in government and institutions, Nigeria has significant work to do on establishing certainty on the scope of legal governance to help harness its economic prospects.[23]

[20]For example, courts in Samoa, Kenya, and Zambia have adopted overly literal interpretations of outdated statutory provisions, leading to refusals of enforcement in cases such as *Su'a v Imex Company Ltd* [2004] WSSC 6 (Samoa), *Intalframe Ltd v Mediterranean Shipping Co* [1986] KECA 1 (KLR) (Kenya), and *Re Lowenthal and Air France* [1966] 2 ALR Comm 301 (Zambia), thereby illustrating the tension between colonial-era legislative language and contemporary jurisdictional realities.

[21]For example, the persistent doctrinal uncertainty surrounding Nigeria's dual statutory framework—the Reciprocal Enforcement of Foreign Judgments Ordinance 1922 and the Foreign Judgments (Reciprocal Enforcement) Act 1960—both derived from the UK's Administration of Justice Act 1920 and Foreign Judgments (Reciprocal Enforcement) Act 1933. Their overlapping provisions, reliance on unissued ministerial orders, and retention of obsolete terminology (eg, "Governor-General," "Secretary of State") have produced fragmented jurisprudence and rendered parts of the regime inoperative. The divergence in limitation periods (12 months under the 1922 Ordinance, Section 3(1) and six years under the 1960 Act, Section 4(1)) further compounds the uncertainty, while Nigerian courts' continued adherence to narrow common law bases for jurisdiction—presence, residence, or voluntary submission—undermines predictability and frustrates commercial justice. See A A Olawoyin, "Enforcement of Foreign Judgments in Nigeria: Statutory Dualism and Disharmony of Laws" (2014) 10 *Journal of Private International Law* 129, 140–41 and C Amucheazi, C M Nwankwo and F Nwodo, "A reassessment of the challenges of enforcement of foreign judgments in Nigeria: the need for legislative reform to ease business" (2024) 20 *Journal of Private International Law* 473, 487–488.

[22]Foreign Trade in Goods Statistics — Q3 2024, National Bureau of Statistics (Nigeria), Foreign Trade in Goods Statistics — Q4 2024, National Bureau of Statistics (Nigeria). See also UK Department for Business and Trade, Trade and Investment Factsheet: Nigeria, 1 August 2025, 2025-08-01 Nigeria - UK Trade and Investment Factsheet accessed 6 August 2025.

[23]Amucheazi et al, *supra* n 21, 496.

The scope of application across other Commonwealth jurisdictions is similarly inconsistent. Lists of reciprocating states often remain unrevised, echoing obsolete colonial affiliations rather than aligning with contemporary economic and geopolitical interests. In practice, some jurisdictions have no statutory mechanism for recognising foreign judgments including those issued within the Commonwealth,[24] while others extend recognition to several, or none, of their Commonwealth peers.[25] In some cases, this results in "unilateral reciprocity",[26] where one state designates another as a reciprocating partner without mutual recognition. This can generate uncertainty for businesses and litigants, forcing parties to relitigate claims in multiple jurisdictions, delaying enforcement, increasing costs, and undermining confidence in cross-border dispute resolution, thereby compromising the overall coherence and practical functionality of the Commonwealth enforcement regime. A notable illustration is Vanuatu, where judgments are not registrable under the British model statutes, due to the absence of enabling legislation and a broader hesitancy toward international legal harmonisation.[27] In stark contrast, Uganda's statutory regime expressly permits recognition of judgments from all Commonwealth countries – a rare example of inclusive legislative design.[28]

Even where statutory reforms have been introduced, they have not consistently produced the level of modernisation or legal certainty required for a coherent cross-border enforcement system. Singapore offers a recent example with the amendment of its Reciprocal Enforcement of Foreign Judgments Act (REFJA)[29], which took effect on 1 March 2023. Previously, enforcement was confined to final money judgments issued by superior courts of designated jurisdictions. The revised regime expands the scope to include non-money judgments, decisions from lower courts, interlocutory rulings, and judicial settlements. While this marks a significant and commendable step forward, the reform remains grounded in a reciprocity-based model and applies only to judgments from a limited number of designated jurisdictions.[30] This narrow scope tempers the reform's

[24]For instance, Brunei's statutory framework extends only to judgments given in Malaysia and Singapore. The statutes in Ghana and Jamaica apply only in regard to judgments rendered in the UK. The relevant statute in Namibia applies only in regard to judgments given by South African courts. Likewise, South Africa extends the application scope of the relevant statutory framework only to judgments rendered in Namibia.

[25]For instance, statutory frameworks of Cameroon, Mozambique, Nauru and Rwanda do not extend to any Commonwealth jurisdiction.

[26]Yekini, *supra* n 12.

[27]For related discussions see R Mortensen, "Comity and Jurisdictional Restraint in Vanuatu" (2002) 32 *Victoria University of Wellington Law Review* 95, 112.

[28]Foreign Judgments (Reciprocal Enforcement) Act 1961, Chapter 10, s 2.1.

[29]Reciprocal Enforcement of Foreign Judgments Act 1959.

[30]Pursuant to the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023, the designated reciprocating jurisdictions include the United Kingdom, Australia, New Zealand, Sri Lanka, Malaysia, India, Pakistan,

transformative potential, as it does not embrace a multilateral or universalist vision for cross-border judgment recognition. Moreover, while reflecting a welcome departure from earlier statutory limitations its unilateral approach highlights the broader lack of convergence across the Commonwealth, where such modernisation remains the exception rather than the rule.

The divergence becomes particularly pronounced when enforcement involves jurisdictions outside of these statutory schemes. In such instances, even between Commonwealth states, enforcement often reverts to the potentially more cumbersome common law route.[31] This dual system, ie, statutory versus common law, can lead to legal uncertainty and added complexity for judgment creditors seeking cross-border remedies. In this light, reforms like Singapore's represent isolated progress rather than a systemic shift.

Adding to the patchwork are a number of bilateral and multilateral treaties, though they remain peripheral within the Commonwealth. While some jurisdictions have adopted bilateral agreements, these are limited in scope and rarely updated. Exceptionally, while Australia and New Zealand have advanced interstate and trans-Tasman schemes that exemplify modern enforcement practices, the broader legal landscape for the recognition and enforcement of foreign judgments remains markedly bifurcated.[32] Multilateral instruments like the Choice of Court and Judgments Conventions offer the promise of greater coherence and uniformity, but uptake has been limited and uneven. Only a few Commonwealth states such as the UK have ratified and implemented these conventions into domestic law through dedicated legislation – thus adding yet another layer to the already fragmented statutory landscape.

The limited uptake of bilateral and multilateral treaties among Commonwealth jurisdictions reflects not merely political will or legal preference, but also systemic constraints. Smaller states, in particular, face persistent barriers to legal reform: fragmented systems shaped by colonial legacies, overlapping customary and statutory laws, limited institutional capacity, and a shortage of legal and financial resources. These challenges are usually compounded by politicised governance, insufficient public-sector legal expertise, and external pressures to conform to international standards – all of which hinder both legislative innovation and meaningful engagement with international instruments.

Despite the challenges, many Commonwealth states have shown capacity for innovation, demonstrating that strategic support and flexible reform can enable

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Papua New Guinea, Brunei Darussalam, and the Hong Kong Special Administrative Region, transferred into the REFJA following the repeal of the Reciprocal Enforcement of Commonwealth Judgments Act 1921.

[31]For example, in Australia, despite the availability of statutory mechanisms, the enforcement conditions tend to closely reflect those found under the common law which among other things, would test the jurisdiction of the foreign court indirectly at the point of enforcement in another country. See Douglas et al, *supra* n 18, 421.

[32]*Ibid.*

even smaller jurisdictions to shape meaningful legal development while preserving autonomy.[33] As such, there is an emerging recognition of the need to modernise and align enforcement frameworks, particularly in the context of increased commercial integration and intra-Commonwealth trade. Regional initiatives, judicial dialogue, and soft law instruments offer promising avenues for greater coherence, making legal harmonisation. The CML exemplifies these efforts, aiming to reduce legal uncertainty and enhance judicial cooperation. Yet, despite its potential, fragmentation persists, and the CML has yet to deliver the uniformity it envisioned – a matter explored in the following section.

C. The Commonwealth Model Law: a critical appraisal

The CML, adopted in 2017 under the auspices of the Commonwealth Secretariat, aims to modernise and harmonise the recognition and enforcement of foreign civil and commercial judgments across member states. It responds to long-standing concerns over the persistence of fragmented, colonial-era regimes still in force in various adapted forms. Framed as a uniform legal instrument aligned with international best practices, the CML seeks to enhance legal certainty and facilitate cross-border judicial cooperation. As stated in its Preamble, it is intended to "assist member countries to modernise their approach to the recognition and enforcement of foreign judgments".[34] Despite its conceptual promise and the Secretariat's commitment to "address the need to reform the arrangements within the Commonwealth for the recognition and enforcement of foreign judgments"[35], the CML has not, thus far, produced the legal convergence or practical uptake its drafters envisaged. As a non-binding soft law instrument without formal adoption, it risks remaining merely aspirational, with limited normative influence. To date, no Commonwealth member state has formally enacted the CML into domestic legislation, limiting its practical impact.

This section offers a contextual and evaluative analysis of the CML, rather than a granular, thematical examination of the operation of its provisions – an exercise already undertaken with commendable rigour in existing scholarship.[36] It assesses the instrument's structural features, normative aims, and practical limitations within the broader Commonwealth landscape.

1. *Structural features and innovations*

The CML is structurally brief, comprising only 18 clauses, which contributes to its accessibility but may also limit its capacity to provide comprehensive guidance

[33]See generally C Morris, "Law Reform in Small Jurisdictions: A Review" (2025) 46 *Statute Law Review*, 1–7.
[34]CML, Introduction.
[35]*Ibid*.
[36]Yekini, *supra* n 12.

for the Commonwealth's diverse and often complex legal systems. To its credit, the CML introduces notable substantive and procedural reforms, including the recognition of both monetary and non-monetary judgments, interlocutory orders, and consent judgments, thus broadening the enforceable spectrum beyond what most domestic statutes allow. The CML progressively removes any requirement for reciprocity, requiring foreign courts to meet broadly accepted jurisdictional standards rather than relying on outdated lists tied to political affiliations, as seen in the earlier statutory frameworks. Accordingly, a foreign judgment should be recognised[37] provided that the court of origin had jurisdiction[38] and the matter is not excluded from the scope of application of the CML.[39] Similar to the Judgments Convention,[40] the CML sets out indirect jurisdictional bases defining the connection between the judgment and state of origin. Like the Convention, the CML also accepts the traditional *situs* approach and jurisdiction of the court where real property is situated.[41] The CML preserves the traditional common law bases of jurisdiction such as presence (residence), submission and prorogation while introducing additional grounds related to contractual and non-contractual (tort) obligations as well as trusts that reflect contemporary developments. In this sense, there is an alignment with the Judgments Convention. Notably, the CML goes further by recognising additional grounds of jurisdiction beyond those provided under the Convention particularly those with regard to non-contractual obligations (the place of the wrongful act).[42] Additionally, the CML introduces an atypical jurisdictional ground concerning disputes over goods or services marketed through normal trade channels at the ordinary residence of the person acquiring the goods or using the services – essentially addressing product or service liability. However, this provision has been viewed as somewhat problematic and often aligned with bases relating to non-contractual obligations.[43] Given that the narrowness of indirect jurisdiction remains a central weakness of common law,[44] these expanded bases in the CML can usefully complement the Hague framework, as the Judgments Convention permits states to adopt more liberal recognition grounds (discussed below).[45]

[37]CML, cl 6(1).
[38]*Ibid*, cl 5(1).
[39]*Ibid*, cl 4(1).
[40]Judgments Convention, Art 5. See below, Section D.
[41]CML, cl 5(1)(i).
[42]*Ibid*, cl 5(1)(k). Notably the CML, unlike Art 5(1)(j) of the Judgments Convention, does not have the restriction to non-contractual obligations "arising from death, physical injury, damage to or loss of tangible property" and the wrongful act does not have to be the one "directly causing" the relevant harm.
[43]*Supra* n 12, 128–130.
[44]See above, Section B.2.
[45]See below, Section D.

Further, like the Judgments Convention,[46] the CML prevents any review of a foreign judgment on the merits.[47] Once a foreign judgment is recognised and enforceable in the state of origin, it can be registered by a judgment creditor for enforcement.[48] Also, in line with Judgments,[49] the CML defines several narrow grounds for refusal of the recognition and enforcement of foreign judgments which are traditionally admitted in private international law.[50]

The CML defines a "foreign judgment" as a final decision by a court with competent jurisdiction, encompassing both civil and commercial outcomes.[51] Notably, the CML eliminates the outdated distinction between "superior" and "inferior" courts, thereby facilitating the recognition of decisions from a broader range of judicial bodies.

The CML identifies a "court" as "a court of civil jurisdiction" or "a court of criminal jurisdiction in respect only of a civil claim over which it is competent".[52] In this light, the Explanatory Text noted that bodies such as religious courts should be excluded for the purposes of this definition of the CML, which may narrow the CML's practical relevance in jurisdictions such as Nigeria, Pakistan, Malaysia, Botswana, and Lesotho, where such courts retain jurisdiction over significant areas of civil law. Yet, recognising such judgments across borders may raise legitimate public policy concerns, particularly where legal foundations diverge sharply. The CML thus may favour coherence and predictability over a broader embrace of pluralism, a trade-off that may enhance legal certainty but constrain practical relevance in pluralistic systems. Nevertheless, in the absence of any domestic implementation or judicial interpretation of the CML to date, it remains uncertain whether the restrictive approach envisaged in the Explanatory Text would indeed materialise in practice.

2. *Challenges of implementation*

The very flexibility that defines the CML which is discussed above, may also be considered to undermine its adoption: the absence of institutional mechanisms or political impetus has rendered the CML more a conceptual blueprint than an actionable legislative model. Further, while intended to guide states in modernising enforcement regimes, its ambiguous structure and presentation have arguably constrained its practical utility.

The CML takes the form of a legislative bill titled *the Model Recognition and Enforcement of Foreign Judgments Bill* and complete with a short title

[46]Judgments Convention, Art 4(2).
[47]CML, cl 6(2).
[48]Clause 7 of the CML applies to the enforcement of foreign money judgments while clause 15 applies to the enforcement of foreign non-money judgments.
[49]Judgments Convention, Art 7.
[50]CML, cls. 12–13.
[51]CML, cl 2(1).
[52]*Ibid.*

(*"Foreign Judgments Act 20XX"*).[53] While it is true that model laws are typically designed as adaptable soft law instruments intended to guide domestic legislators, and the CML likewise adopts this approach, it nonetheless does not offer much practical guidance for states on how to tailor its provisions to their domestic contexts. The accompanying Explanatory Text does provide article-by-article commentary, but this falls short of the type of enactment guidance that typically accompanies model laws developed under the auspices of bodies, eg, UNCITRAL which have gained widespread adoption precisely because of their structural openness and practical adaptability.[54] Therefore, even though the Commonwealth Secretariat formulated the CML as a facilitative harmonisation tool, this lack of adaptability may sit uneasily with the diverse legal systems and constitutional arrangements across the Commonwealth. Relevantly, the Justice Reform Analysis in CARICOM stated that "developing model laws will do little good if legislative drafting capacity is weak at the national level".[55] Unsurprisingly, as of 2025, no Commonwealth state has adopted or piloted the Model Law in its proposed form. However, a more promising shift may be discerned in the Commonwealth Secretariat's most recent initiative – the Commonwealth Model Law on Digital Trade (September 2025)[56] – which, notably, is accompanied by a detailed enactment guide and was influenced by the UNCITRAL Model Law on Electronic Transferable Records (MLETR).[57] This suggests a growing awareness within the Commonwealth of the need for implementation-oriented drafting and practical guidance to ensure the effectiveness of future model laws.

A defining feature of the CML lies in its nature as a soft law instrument without binding authority to compel implementation – a characteristic consistent with other model law initiatives, yet one that nevertheless restricts its immediate practical effect. The Commonwealth Secretariat has no enforcement power, and the decentralised character of legislative reform in member states precludes any coordinated mechanism for implementation. This challenge is compounded by

[53]According to Clause 1 of the CML, "This Act may be cited as the Foreign Judgments Act 20XX".

[54]For instance, UNCITRAL's Model Law on Electronic Commerce (1996) and its Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) are accompanied by detailed implementation guides and interpretative materials that explicitly acknowledge and facilitate adaptation to local legal systems.

[55]Analysis of CARICOM Justice Sector Reform and Programming Options 2012, p 41, https://jurist.ccj.org/wp-content/uploads/2019/08/Justice-Reform-in-CARICOM-Analysis-and-Programming-Options_compressed.pdf, accessed on 12 October 2025.

[56]The Commonwealth Model Law on Digital Trade and Guide to Enactment 2025, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2025-09/d20215-v7-edti-cca-model-law-digi-trade-guide-enctmnt-r-babrooram.pdf, accessed on 12 October 2025.

[57]UNCITRAL Model Law on Electronic Transferable Records 2018.

entrenched domestic legal inertia. In jurisdictions such as Nigeria, Ghana, or Malaysia, enforcement of foreign judgments remains governed by outdated statutes or fragmented dual regimes, with reform efforts largely piecemeal.

Despite institutional endorsement and academic interest, the CML has not been substantively engaged with at the national level. Even where legal modernisation of reforms has taken place, eg, the Singaporean Act 2023 as discussed above[58], none have considered at least several liberal features of the CML. Discussions have occurred largely in exploratory or policy-based forums. For example, the Commonwealth Law Ministers' Meeting in 2017 encouraged consideration of the CML to replace outdated reciprocal enforcement statutes. Yet, while several delegations recognised the issue, no formal commitments followed. Subsequent meetings in 2018 and 2021 echoed this pattern: acknowledgement without action. Even the Commonwealth Connectivity Agenda (CCA), launched in 2018 to facilitate trade and regulatory cooperation including through a cluster on regulatory connectivity does not identify recognition and enforcement of judgments, or the CML more broadly, as part of its action plan.[59] The Secretariat's 2019 report on Caribbean law reform referenced the CML in relation to cross-border civil procedure, but no Caribbean jurisdiction – including Jamaica, Barbados, or Trinidad and Tobago – has legislatively adopted it. It is somewhat ironic that even the Barbados Law Reform Commission, cited as "an example of the classic or standard model of a law reform agency in the Commonwealth",[60] has not engaged meaningfully with the CML. The Commission's 2019–2022 report noted civil justice reform as a priority, but it did not refer to the CML. Indeed, the CML was not among the model legislation sent by the Commonwealth Secretariat to the Commission for consideration during the reform processes.[61] Neither was it among the model bills viewed by the Commission to be included in its future Work Programme.[62]

[58]See above, Section B.2.

[59]Declaration on the Commonwealth Connectivity Agenda for Trade and Investment, 2018, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2022-01/3%20Declaration%20on%20the%20Commonwealth%20Connectivity%20Agenda%20for%20Trade%20and%20Investment.pdf?VersionId=qNb_W3ObYin.4Z.nDT3MmLBq.H4eWhHc, accessed on 7 August 2025.

[60]Report of Barbados Law Reform Commission 2019–2022, para 6.1 www.barbadosparliament.com/uploads/sittings/attachments/Report%20of%20the%20Law%20Reform%20Commission%202019-2022%20(with%20signatures)%20(portrait).pdf accessed on 7 August 2025. Also see Commonwealth Secretariat, "Changing the Law: A Practical Guide to Law Reform", 2017, para 2.7.1, www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/view/872/872/7288 accessed 7 August 2025.

[61]Different model legislation such as Model Criminal Disclosure Act, Model Prosecution Disclosure Act, Model Law on Electronic Evidence, Model Law on Computer and Computer Related Crime, Model Evidentiary Provisions, Model Freedom of Information Bill, and Model Legislature Whisteblowing Provisions were sent to the Commission by the Secretariat in 2019. See Report, *supra* n 60, para 2.7.

[62]*Ibid*.

Interestingly, even the most recent *Commonwealth Model Law on Digital Trade* which explicitly encourages states undertaking law reform to consider a range of related Model Laws, including those on Electronic Evidence, Computer and Computer-Related crime, Data Protection, and Virtual Assets, makes no mention of the CML or the recognition and enforcement of judgments.[63] This omission is striking, given that effective cross-border enforcement remains an inherent and indispensable component of international and digital trade. It suggests a continuing, perhaps even institutional, reticence within the Commonwealth Secretariat itself to prioritise the CML, despite its foundational relevance to commercial certainty and digitalisation across the Commonwealth. Such examples altogether illustrate a disconnect between institutional capacity and substantive prioritisation. They also raise broader questions about the influence of law reform commissions in driving harmonisation in private international law across the Commonwealth.

Absent a multilateral implementation strategy or regional impetus, the CML remains dormant. In contrast, Commonwealth jurisdictions have engaged more readily with authoritative treaty-based instruments, such as the Hague Conventions, especially in areas like international child abduction.[64]

The lack of legislative uptake has also precluded the development of any case law interpreting or applying the CML. Unlike other model laws, such as the UNCITRAL Model Law on International Commercial Arbitration which has generated a robust body of judicial interpretation, the CML has not become a source of persuasive authority. This jurisprudential vacuum limits both its practical relevance and normative evolution.

Viewed holistically, although the CML's brevity may enhance its accessibility and it may be considered as a progressive step especially when compared to the archaic colonial-era frameworks, its liberal features are unlikely to translate into practical impact. Besides several limitations and the absence of any realistic prospect of domestic enactment by Commonwealth states as discussed above, the CML risks remaining a largely theoretical exercise, particularly as the Judgments Convention continues to gain momentum through increasing global accessions and institutional endorsement. However, it could still be used to supplement, under national law, some of the indirect grounds of jurisdiction in the Judgments Convention when Commonwealth States implement the latter.

D. Revitalising the Commonwealth advantage: unlocking the Commonwealth's potential through the Hague Judgments Convention

As noted above, the "Commonwealth advantage" stems from enduring legal, institutional, and procedural affinities among the Commonwealth member

[63]Commonwealth Model Law on Digital Trade 2025, Guide to Enactment, p 32.
[64]Over 20 Commonwealth States are party to the Hague Child Abduction Convention, see HCCH | #28 - Status table.

states, many of which share a common law heritage. These shared foundations foster normative convergence and mutual understanding while also establishing a functional infrastructure for legal cooperation, particularly in the recognition and enforcement of foreign judgments. They engender a deeper level of trust and facilitate more effective collaboration. It is important to recognise, however, that a shared culture does not imply or require homogeneity. The Commonwealth's pursuit of a parallel legal regime alongside the Hague Judgments Project illustrates the diversity of legal and political preferences that persist despite common roots.[65] But far from undermining the "Commonwealth advantage", this diversity underscores the need for clear, binding frameworks to build mutual trust relying on assumed uniformity. Essentially, in the absence of a binding multilateral mechanism, this potential remains largely underutilised. The Judgments Convention responds directly to this challenge. It allows transforming the historical and cultural affinities of the Commonwealth into a practical, rule-based foundation for reliable cross-border judicial cooperation across heterogeneous systems. In doing so, the Convention enables states to preserve legal pluralism while reinforcing shared commitments and committing to minimum standards for recognition and enforcement.

As discussed above, the Commonwealth legal landscape remains fragmented, with evident problems even in large Commonwealth countries like Nigeria and South Africa.[66] Such divergences diminish legal certainty and expose judgment creditors to procedural unfairness and duplicative litigation across Commonwealth borders.[67] The absence of a coherent enforcement regime also erodes commercial confidence and discourages investment, as investors are less willing to commit capital in jurisdictions where the enforceability of judgments remains uncertain or contingent.

The Preamble to the CML states that the Model Law "fulfils a long-standing mandate from law ministers to address the need to reform the arrangements within the Commonwealth for the recognition and enforcement of foreign judgments," and notes its derivation from prior Hague Conference projects and conventions. It further endorses the desirability for member states "to become party to the Hague Convention on Choice of Court Agreements and to participate in the Judgments Projects of The Hague Conference". These acknowledgements show that the CML should be viewed as a supplement to the Choice of Court and Judgments Conventions (the latter being the end product of the Hague Judgments Project).

[65]P N Okoli, "The fragmentation of (mutual) trust in Commonwealth Africa – a foreign judgments perspective" (2020) 16 *Journal of Private International Law* 519, 539.
[66]P N Okoli, *Promoting Foreign Judgments: Lessons in Legal Convergence from South Africa and Nigeria* (Kluwer Law International BV, 2019), xv–xvi and 114. See also The Enforcement of Foreign Judgments in South Africa — Tabacks Corporate & Commercial Law Firm accessed on 7 August 2025.
[67]R F Oppong, "The Dawn of the Free and Fair Movement of Foreign Judgments in Africa?" (2020) 16 *Journal of Private International Law*, 575, 577.

McClean, the principal drafter of the CML, has candidly acknowledged, attempts to revitalise intra-Commonwealth mechanisms have seen little uptake due to chronic legislative capacity gaps and limited political will.[68] He has urged the Commonwealth to channel its efforts through persuading its members to become Parties to the two Hague Conventions.[69]

Indeed, the Judgments Convention offers a means to translate the Commonwealth's latent normative capital into a practical enforcement regime. It provides an enforceable and transparent mechanism for recognition and enforcement of foreign judgments grounded in treaty commitments. It directly addresses the uncertainty and inefficiency that arise when courts rely on vague hopes for reciprocal treatment[70] – even where reciprocity is not formally required for the recognition and enforcement of judgments[71] – and instead provides a coherent basis for recognition rooted in legal certainty. By fostering legal certainty and mutual trust, it offers a robust foundation for jurisdictions seeking to strengthen their position in international commerce, litigation, and investment. In doing so, it realises many of the same goals pursued by the CML such as predictability, uniformity, and mutual trust, but with the added advantages of global reach and binding force.

The Judgments Convention was adopted in 2019 by the Hague Conference on Private International Law (HCCH) after reconsidering "the feasibility of a global instrument on matters relating to jurisdiction and the recognition and enforcement of judgments in civil and commercial matters".[72] It represents a significant development in the global effort to facilitate the cross-border recognition and enforcement of civil and commercial judgments. Its global reach makes it especially attractive to jurisdictions with plural legal traditions, such as those in the Commonwealth.

[68]McClean, *supra* n 13. See also Commonwealth Secretariat, "Improving the Recognition of Foreign Judgments: A Model Law on the Recognition and Enforcement of Foreign Judgments" (2017) 43 *Commonwealth Law Bulletin*, 545.
[69]McClean, *supra* n 13.
[70]A Briggs, "The Principle of Comity in Private International Law" (2012) 354 *Hague Collected Courses*, 88–9.
[71]C S A Okoli, "The recognition and enforcement of foreign judgments in civil and commercial matters in Asia" (2022) 18 *Journal of Private International Law*, 522, 537.
[72]Working Document, No 2 of April 2012 for the attention of the Council on General Affairs and Policy of the Conference. See also: F Garcimartín and G Saumier, *Explanatory Report on the Judgments Convention*, 2020, paras 3–6; Working Document No 76 REV of June 2016, "2016 Preliminary Draft Convention" (Special Commission on the Recognition and Enforcement of Foreign Judgments; Working Document No 170 REV of February 2017), "February 2017 draft Convention" (Special Commission on the Recognition and Enforcement of Foreign Judgments; Working Document No 236 REV of November 2017), "November 2017 draft Convention" (Special Commission on the Recognition and Enforcement of Foreign Judgments).

Rather than engaging in a detailed clause-by-clause analysis which is already available in the official Explanatory Report[73] and academic commentary,[74] this section evaluates the Convention's functional viability for Commonwealth states.

The Judgment Convention's architecture is both principled and pragmatic. As a binding multilateral treaty, it establishes obligations of Contracting States. At its core, the Convention requires that a judgment issued by a court in one Contracting State be recognised and enforced in another.[75] Its recognition regime relies on indirect jurisdictional bases[76] including the exclusive ground for *in rem* claims over immovable property.[77] Article 5 establishes a range of indirect jurisdictional grounds related to residence, express consent, and submission, as well as additional bases concerning contractual and non-contractual obligations, claims arising out of the activities of natural persons engaged in business and of branches, agency and establishments of non-natural person businesses, and to the internal affairs of trusts that extend beyond those traditionally recognised under common law. Further grounds cover judgments against the person making the claim in the court where the judgment was given, certain counterclaims and non-exclusive choice of court agreements (the last establishes a complementary relationship with the sister Choice of Court Convention).[78] Collectively, the Judgments Convention broadens the bases for recognition and enforcement beyond traditional common law principles while maintaining a structured connection to the state of origin. Yet, there are features of the jurisdictional rules of the CML especially with regard to contractual and non-contractual obligations which could be used to build upon and refine the corresponding bases under the Judgments Convention.[79]

The Convention does not harmonise the direct jurisdictional rules of Contracting States; these remain governed by national law. In other words, the Convention sidelines the specific jurisdictional rule applied by the court of origin and focuses instead on the existence of an objective connection as a matter of fact. This is similar to the approach followed by the CML as discussed above.[80] As Nielsen states, even if the court of origin applied a national rule that is often regarded as exorbitant such as claimant nationality or defendant service within the forum, recognition and enforcement under the Convention is possible, provided

[73] *Ibid*, Explanatory Report.
[74] See the bibliography collected by the HCCH, https://www.hcch.net/en/instruments/conventions/publications1/?dtid=1&cid=137, accessed on 7 August 2025.
[75] Judgments Convention, Art 4(1).
[76] *Ibid,* Art 5.
[77] *Ibid*, Art 6.
[78] For the discussion of the exclusive relationship between the Hague Judgments and Choice of Court Conventions see A Mammadzada, "Multilateralism post-Brexit: do the Hague Conventions preserve the status quo of judicial cooperation?" (2024) 6 *Journal of Business Law*, 513, 520–523.
[79] See above, C.1 and Beaumont, *supra* n 7, 5–6.
[80] *Ibid.*

that an accepted connecting factor, eg, the place of the harmful act in tort cases, is satisfied.[81] The Convention's recognition and enforcement regime is "better adapted to contemporary litigation than those recognised under the British Commonwealth model" (ie the scheme originally reflected in the UK Administration of Justice Act 1920 not the CML), reflecting a more nuanced balancing of personal and subject-matter connections.[82] Thus, it is fair to say that the Convention's flexible jurisdictional matrix responds to the realities of contemporary cross-border disputes more effectively than traditional Commonwealth schemes. As Beaumont also observes, the Convention's indirect jurisdiction rules go beyond traditional common law rules, offering a more responsive framework for contemporary transnational disputes.[83]

The Convention's definitions are crafted with inclusivity in mind. It adopts a broad and inclusive definition of judgment which covers all merits-based (money and non-money) decisions regardless of nomenclature, including costs determinations and decisions issued by court officers.[84] The latter is also a feature of the CML.[85] Unlike the CML though, the approach of the Judgments Convention to "courts" might be considered broader.[86] This formulation avoids rigid classifications, allowing for the inclusion of judgments from courts with hybrid features,[87] eg, Singapore International Commercial Court, Dubai International Financial Centre Courts, etc., so long as they are on the merits and satisfy the general conditions for recognition. As discussed earlier, the CML's formulation of "court" may sound narrower, limiting it to civil courts and criminal courts exercising jurisdiction over civil claims for damages or restitution and adjudicative bodies operating under religious or customary law.[88] While the Explanatory Note of the CML noted possible exclusion of religious courts from its scope,[89] the Judgments Convention leaves open the possibility of recognising decisions from non-traditional adjudicatory bodies, a significant advantage for states with

[81]P A Nielsen, "The Hague 2019 Judgments Convention - from failure to success?" (2020) 16 *Journal of Private International Law*, 205, 214.
[82]Douglas et al, *supra* n 18, 421.
[83]*Supra* n 7, 4–5.
[84]Judgments Convention, Art 3(1)(b).
[85]CML, cl 2(1).
[86]According to Art 3(1)(b) of the Judgments Convention, "judgment" means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention."
[87]E Themeli, "Matchmaking international commercial courts and lawyers' preferences in Europe" (2019) 12 *Erasmus Law Review*, 70–81; F Tiba, "The emergence of hybrid international commercial courts and the future of cross-border commercial dispute resolution in Asia" (2016) 14 *Loyola University Chicago International Law Review*, 31–53.
[88]CML, cl 2(1).
[89]Discussed above, Section C.1.

plural legal systems.[90] Further, the Judgments Convention also sets out some narrow grounds for refusal of the recognition and enforcement similar to the CML.[91]

Yet while these features highlight the Convention's inclusivity and adaptability, they may not entirely resolve all practical or political concerns that may be associated with its implementation. Some states may worry that accession could erode their jurisdictional autonomy, since enforcement jurisdiction in international law remains almost exclusively territorial and depends on each state's sovereign authority to decide which foreign judgments to admit. Others may fear that binding treaty obligations could limit judicial discretion in balancing state sovereignty with individual rights, particularly where public policy or constitutional values are at stake.[92] Despite these anxieties, the Convention's reception among scholars, practitioners, and policymakers has been largely favourable. In this context, the Convention's scope, while broad, excludes certain areas such as family law, insolvency, and interim measures, reflecting a cautious and considered attempt to avoid conflict with highly divergent domestic approaches or existing specialised frameworks. In doing so, the Judgments Convention further achieves a pragmatic balance between harmonisation and respect for national procedural autonomy. The balance between national interests and international cooperation underscores the delicate equilibrium that any enforcement regime must navigate.[93] Indeed, the Convention's flexible architecture directly responds to this challenge. As Nielsen further notes, although this narrowing may seem regrettable, it likely reflects a necessary compromise to ensure wider global acceptance.[94]

As described by the Explanatory Report, the "bases for recognition and enforcement" in Articles 5 and 6 of the Convention define the perimeter of "eligible judgments" that can circulate under the Convention.[95] With the absence of direct jurisdictional grounds, the Convention also leaves room for recognition and enforcement under national law and provides a multilateral baseline without displacing domestic pluralism.[96] Indeed, the effectiveness of multilateral regulation under the Hague system depends on a fine balance between pragmatism and harmonisation. Given that the HCCH operates at the international level where comity often precedes trust, it has presumably aimed at a lighter

[90]"Court" is to be given an autonomous definition under the Hague Judgments Convention and limited guidance is given by the Explanatory Report, *supra* n 72, paras 101–102.
[91]Judgments Convention, Art 7. See also Section C.1.
[92]See generally A Mills, "Rethinking Jurisdiction in International Law", (2014) 84 *British Yearbook of International Law*, 187–239.
[93]Amucheazi et al., *supra* n 21, 482.
[94]*Supra* n 80.
[95]Explanatory Report, paras 134 and 326.
[96]Judgments Convention, Art 15.

form of harmonisation.[97] Indeed, as a design goal of the HCCH to build bridges between states without affecting national substantive law, the light-touch harmonisation has the potential to attract more ratifications instead of becoming a utopian fantasy.[98] By preserving national autonomy, Hague Judgments is not an exception from the broader goal. By contrast, the CML's statutory structure channels recognition and enforcement exclusively through its statutory registration procedure: once a money judgment qualifies for recognition, the creditor must register it for enforcement under the Act. No other method of enforcement is permitted[99] and the traditional common law action is displaced. While this delivers a simpler and more streamlined process than the common law, it also narrows flexibility by excluding alternative routes outside the statutory scheme. The Judgments Convention, in turn, preserves greater openness by permitting recognition not only under its own framework but also, through Article 15, under national law rules (including the common law).

In this context, it is important to stress that if Commonwealth states become Party to the Judgments Convention this does not render the CML obsolete. Indeed, the Convention would not eliminate the CML or prevent Contracting States from enacting its provisions. As the following section studies, the Convention, by design, adopts a liberal and flexible framework that accommodates existing national or regional instruments.[100] It operates as a system of minimum harmonisation, except for judgments on rights *in rem* over immovable property, which under Article 6 may only be enforced if issued by courts where the property is situated.[101] States could, if they so wished, still draw upon the CML as a supplementary tool or implement it while becoming Parties to the Judgments Convention, particularly for strengthening intra-Commonwealth judicial cooperation. As argued by Beaumont some years before the UK ratified the Convention, in enacting primary legislation to implement the Judgments Convention, the UK could have also incorporated selected provisions of the CML, notably simplifying certain indirect jurisdiction rules in Article 5 of the Convention.[102] Indeed, in an ideal scenario, a functioning CML might have offered a valuable vehicle for enhancing the recognition and enforcement of judgments across Commonwealth jurisdictions. Yet, as discussed above, the normative aspirations of the CML have not translated into practical uptake, limiting its effectiveness as a stand-alone mechanism. By contrast, the Judgments Convention, while broadly aligned in structure and principles with the CML, carries the binding force, institutional architecture, and global resonance that the Commonwealth framework lacks. Ultimately, it is the Judgments Convention that offers the most credible

[97] *Supra* n 78, 533.
[98] *Ibid*, 518.
[99] CML, cls 7-8.
[100] See Section D.
[101] *Supra* n 7, 5–6.
[102] *Ibid.*

and sustainable route to legal certainty, with the CML serving, at best, as a supportive instrument for intra-Commonwealth dialogue and a potential complement to the Convention's framework in specific contexts. Should it ever be implemented more widely, the CML might be situated within a broader multilateral strategy in which becoming a Party to the Judgments Convention provides the central foundation for a coherent and predictable transnational enforcement regime.

On a related note, another significant advantage of the Judgments Convention lies in its flexible reservation/declaration regime, which enables Contracting States to preserve core national interests while still participating in a cooperative multilateral structure.[103] Indeed, the Convention is a modest framework.[104] Article 17 permits states to refuse recognition where all relevant connections are domestic to the requested state. Article 18 allows narrowly defined subject matter exclusions, eg, judgments involving highly sensitive areas like anti-trust law or environmental regulation. Article 19 accommodates judgments involving the state itself or its agencies. Such a flexibility makes the Convention politically and administratively feasible even for states like Sri Lanka, Ghana, or Malaysia, where constitutional or public policy concerns may otherwise hinder ratification of binding international instruments. Article 25 allows declarations that limit its application to specific territorial units thereby accommodating federal or non-unified legal systems. These provisions ensure adaptability without undermining the Convention's coherence. In contrast, although drafted as a model law and is open to modification, the CML lacks a clear pathway or guidance for states on how to adapt it to their own institutional contexts. Such a design, though not binding, may prove difficult for Commonwealth jurisdictions to tailor to their institutional diversity and perhaps may explain its lack of uptake to date.

Against this background, the Judgments Convention should be understood not merely as a tool of harmonisation but as a normative framework addressing the issues that doctrines like "qualified obligation"[105] attempt to resolve. Okoli argues that South African and Nigerian courts should presumptively enforce foreign judgments, allowing only a narrow public policy exception and a careful balance of private and state interests. This approach rooted in the principle of cosmopolitan fairness denounces the unpredictability stemming from reliance on comity and reciprocity. The theory is especially relevant given Nigeria's inconsistent jurisprudence, as illustrated by the conflicting Supreme Court decisions in *Macaulay v R.Z.B of Austria*[106] and *Grosvenor Casinos Ltd v Ghassan*

[103]Notably Arts 17, 18, 19 and 25.
[104]*Supra* n 12, 238–239.
[105]This theory must be distinguished from the obligation theory, which merely treats a foreign judgment as giving rise to a debt enforceable through a new action, without generating any presumption in favour of its enforcement. See Okoli, *supra* n 66, xv–xvi and 114. See also *supra* n 65.
[106][2003] NGSC 18.

Halaoui[107], which highlight the legal uncertainty and broad judicial discretion the Judgments Convention seeks to resolve.

Critics of Okoli's innovative approach reject the idea of judicially crafting a regime for the free circulation of judgments in the absence of a treaty framework, warning that it could "negatively upset the existing balance".[108] In fact, implementing the new theory could be difficult in practice. Yet, the principles behind the doctrine ultimately reinforce rather than contradict the case for Commonwealth States becoming Parties to the Judgments Convention. Notably, many of the core features of this proposed doctrine find practical expression in the architecture of the Convention itself, which rests on the idea of qualified mutual trust among Contracting States and balances limited discretion with predictable judicial cooperation and institutional trust.[109] The Judgments Convention serves as a practical legal mechanism to operationalise that trust, enabling civil and commercial judgments to circulate across borders with the same fluidity as goods, services, and investment flow among Commonwealth nations. Indeed, Okoli himself acknowledges too, judicial initiative alone cannot craft a coherent regime for judgment enforcement; thus, in the subsequent work[110] he advances a vision of a more progressive mutual trust conception and legal integration within the Commonwealth, particularly across African legal systems. The Judgments Convention realises this vision through express treaty obligations, clear jurisdictional gateways, narrowly tailored exceptions, and structural flexibility. It addresses concerns over sovereignty, namely possible caution about being compelled to enforce judgments with no genuine or sufficient connection to their legal order, potential restrictions on domestic regulatory space, in particular, in politically sensitive matters, or yielding too much control to foreign judicial bodies. By providing clear jurisdictional grounds, permitting narrowly defined opt-outs, and allowing territorial declarations, the Convention preserves a measure of domestic control while still ensuring legal certainty and enforceability.

Since entering into force on 1 September 2023, the Convention has been ratified by the EU, UK, Ukraine, Uruguay, Montenegro, Albania and Andorra. Other signatories – including the US, Russia, Costa Rica, Israel, Kosovo and North Macedonia – indicate the Convention's possible growing appeal. Indeed, as awareness of the Convention's benefits continues to grow, the number of Contracting States is likely to increase. Yet, its full potential will remain unrealised unless Commonwealth states take proactive steps to become Parties. To capitalise on the Convention's benefits in a timely and effective manner, ratification should be pursued with deliberate urgency. At present, among Commonwealth countries, apart from the UK, only Cyprus and Malta are States Party to the Convention, and

[107][2009] 10 NWLR (149) 309.
[108]Oppong, *supra* n 67, 577.
[109]See also Amucheazi et al, *supra* n 21, 490.
[110]*Supra* n 65.

this occurred through their EU membership rather than as part of any coordinated Commonwealth initiative. This limited engagement so far reflects a missed opportunity for global leadership and strategic alignment.

Accession to the Judgments Convention, particularly by economically influential Commonwealth countries such as India, Nigeria, South Africa, Canada, and Australia, could catalyse a domino effect, encouraging wider uptake across the Commonwealth. Indeed, for smaller Commonwealth jurisdictions with limited capacity to pursue independent legal reform, the leadership of larger states could serve both as a model and as a catalyst. In this context, the UK's recent accession to the Convention is especially significant. Its accession sends a strong signal of commitment to multilateralism and legal modernisation and creates space for Commonwealth-wide dialogue on more Commonwealth Member States becoming Parties. The accession of other larger, more influential Commonwealth states would in turn reduce the structural and resource-related reform burden on smaller states, offering them a credible framework without compromising legal distinctiveness. If catalysed by the UK's leadership, this wave of high-profile accessions could ultimately help establish a critical mass of Commonwealth accessions, transforming the Judgments Convention from a promising international instrument into a foundational pillar of cross-border civil and commercial cooperation.

The practical benefits of accession to the Convention are considerable. It enables judgments to circulate predictably across borders, in the same way that goods, services, and investments increasingly flow within this diverse yet interconnected association. Consider businesses operating between India and South Africa or between Nigeria and the UK – jurisdictions with growing bilateral commercial ties. Currently, enforcement usually relies on outdated treaties or uncertain common law principles, often resulting in duplicative proceedings and procedural delays. The Convention would replace this patchwork with a unified legal foundation, eliminating the need for case-by-case assessments of reciprocity or forum appropriateness. For smaller Commonwealth jurisdictions such as Barbados or Mauritius – both seeking to enhance their status as regional financial centres – early adoption would signal legal modernisation and bolster investor confidence. Barbados, often cited as a model Commonwealth law reform agency and already party to several Hague instruments, could reaffirm its reformist role by becoming an early adopter and thereby set a precedent for smaller island states navigating similar legal modernisation challenges.[111]

The Judgments Convention would also hold substantial value for federated or legally plural states, such as Canada, Malaysia, or India with its flexible declaration mechanisms as discussed above. Moreover, the Convention would be especially valuable in managing the intra-Commonwealth human

[111]Barbados has acceded to the 1961 Hague Apostille, 1980 Child Abduction, 1996 Child Protection, 1970 Evidence and 1965 Service Conventions.

and financial mobility seen between the UK and countries such as Jamaica, Pakistan, or Bangladesh. In such contexts, it would offer greater legal certainty in the recognition and enforcement of civil and commercial judgments, particularly in areas like tort or contract claims, thereby providing enhanced protection for individuals who currently face the burden of legal fragmentation and unequal access to justice.

Beyond enhancing intra-Commonwealth coherence and harmonising enforcement practices, the Convention would anchor its member states within an expanding global recognition framework, granting them broader access to a transnational network of judgment recognition and enforcement. Judgments rendered in one Commonwealth jurisdiction would enjoy enforceability in all other Contracting States. As ratifications increase, this global reach becomes a compelling incentive for states with commercial or geopolitical ambitions to join early and help shape the Convention's future practice and interpretation.

These practical advantages, however, do not stand alone. They intersect with deeper normative considerations that make the Commonwealth particularly well placed to embrace the Judgments Convention. It provides not only a functional solution to the inefficiencies of fragmented enforcement regimes but also a timely and robust mechanism for unlocking the Commonwealth's untapped potential and revitalising the "Commonwealth advantage". Indeed, this shared legal heritage takes on heightened significance in light of the UK's legal divergence from the EU, which has deepened the conceptual and doctrinal gap between common law and continental legal systems. As Harris has said, "in more than one sense the English speak a different language to most of the rest of Europe" and "are ill at ease with civilian concepts",[112] echoed by Mortensen, from Australia, who added "the English speakers of the Commonwealth are even more uncomfortable with them".[113] What may initially appear as a marginal observation becomes, in this context, a vital insight: it points to the enhanced potential for legal cooperation within the Commonwealth, particularly through the Judgments Convention, which preserves room for common law reasoning and procedural autonomy. Reducing legal risk in post-Brexit commercial relations demands a broader framework – one that supports mutual recognition without eroding domestic legal identities.[114]

[112]J Harris, "Understanding the English Response to the Europeanisation of Private International Law" (2008) 4 *Journal of Private International Law* 347, 347

[113]R Mortensen, "Brexit and private international law in the Commonwealth" (2021) 17 *Journal of Private International Law*, 18, 25–26. See also R Mortensen, "A Common Law Cocoon: Australia and the Rome II Regulation", in P Sarcevic, P Volken and A Bonomi (eds), *Yearbook of Private International Law*, vol 9, (Sellier Publishers & Swiss Institute of Comparative Law, 2007), 203–222.

[114]*Ibid,* Mortensen (2021), 50.

E. Bridging legal divides: the UK's facilitative role

The UK's historical role in shaping the legal architecture of many Commonwealth states principally through the export of the common law tradition, continues to carry contemporary significance. While member states have variably retained or adapted this legal legacy, the shared foundations of the common law, coupled with the continued use of English as a legal *lingua franca*, sustain a unique framework for cross-border cooperation. Positioned at the nexus of this shared heritage the UK, in partnership with other member states and institutions, is exceptionally well placed to facilitate a coordinated push toward more Commonwealth Member States becoming Party to the Judgments Convention. Rather than suggesting any hierarchical or unilateral role, this approach emphasises collaboration through the existing Commonwealth mechanisms, grounded in reciprocity, shared capacity-building, and respect for legal pluralism.

1. *Common law legacy and contemporary credibility*

The UK's guiding role within the Commonwealth legal sphere is firmly rooted in a confluence of doctrinal authority, jurisprudential influence, and sustained international engagement, particularly through entities such as the HCCH and the Commonwealth Secretariat. The UK's status as a legal norm entrepreneur is undergirded by its historical role as the progenitor of common law traditions, many of which remain structurally embedded in the legal architectures of Commonwealth jurisdictions across the Caribbean, Africa, and the Asia-Pacific. English case law continues to exert persuasive weight in these systems, buttressed by a longstanding tradition of UK-led legal education, judicial training, and capacity-building initiatives that reinforce shared rule of law commitments.

As Beaumont observes, the UK, especially through the legal system of England and Wales, continues to shape the contours of Commonwealth common law, including its private international dimensions.[115] Despite several HCCH Conventions, notably in family law and judicial cooperation (eg, the Child Abduction, Service, and Evidence Conventions), having wide uptake, adjudication grounded in common law reasoning remains the principal source of private international law. This remained true even during the UK's EU membership. Yet, a jurisprudential kinship persists: As the High Court of Australia once affirmed, the common law endures as a foundational gift of English legal tradition[116] – an enduring intellectual legacy that positions the UK as a natural leader in areas such as cross-border judgment recognition.

The UK's legal innovations have also served as precedents and catalysts for reform across diverse legal systems. For example, the latest Commonwealth

[115] *Supra* n 7, 16.
[116] Judge Gaudron's statement in the case *Oceanic Sun Line Special Shipping Company Inc v Fay* [1988] 165 CLR 197, 263.

Model Law on Digital Trade expressly acknowledges the influence of the UK Electronic Trade Documents Act (ETDA) 2023, noting that the global use of electronic bills of lading has more than doubled within twelve months of the Act's entry into force.[117] This explicit reference underscores the UK's continuing normative and practical impact on Commonwealth law reform. Most recently, within a month of the UK's Arbitration Act 2025 receiving Royal Assent, Singapore's Ministry of Law launched a public consultation, explicitly referencing the UK's Act and the approaches adopted therein as potential models for reforming its own arbitration framework under the Singapore International Arbitration Act 1994.[118] The UK's evolving data protection regime, particularly under the 1998 and 2018 Data Protection Acts, shaped legislative developments in several Commonwealth states. For example, in developing its Data Protection and Privacy Act, Uganda explicitly benchmarked its law against international best practices, including the UK's framework.[119] Likewise, the Parliament of Trinidad and Tobago, in debates on the Electronic Transactions Bill and Data Protection Bill, referred to UK laws and practices as persuasive authority.[120] In the realm of private international family law, the UK's early ratification of the 1980 Hague Child Abduction Convention in 1986 catalysed similar commitments in Australia (1986) and New Zealand (1991). UK case law has been cited as a "fortifying" authority for its "weight and cogency"[121] and relied upon by different Commonwealth courts.[122] Moreover, parliamentary debates and Hansard records confirm that the UK Central Authority participates in international knowledge-sharing and capacity-building events in Hague Child Abduction Convention matters.[123]

[117]Commonwealth Model Law on Digital Trade 2025, Introduction. See also, Guide to Enactment, p 65.

[118]https://www.mlaw.gov.sg/files/Arbitration/IAA_Consultation_Paper.pdf, accessed on 11 October 2025.

[119]UNCTAD, Data Protection Regulations and International Data Flows: Implications for Trade and Development (United Nations Conference on Trade and Development 2016) 38 https://unctad.org/system/files/official-document/dtlstict2016d1_en.pdf accessed on 10 October 2025.

[120]Parliament of the Republic of Trinidad and Tobago, HOR Deb (Hansard Reports) 18 February 2009, 10th Sitting, 2nd Session, 9th Republican Parliament, 852, https://www.ttparliament.org/wp-content/uploads/2022/01/hh20090218.pdf accessed on 10 October 2025.

[121]See Western Cape High Court judgment in *G.S v A.H* (11592/05) [2006] ZAWCHC 59; 2007 (3) SA 330 (C), paras 26, 44–49.

[122]See High Court Wellington decision in *P v The Secretary for Justice* [2003] NZFLR 673, para 29, 54; Court of Appeal of New Zealand in *McDonald v Sanchez* [2024] NZCA 674, para 86, 86, 91, 99, 167; Family Court of Australia in *Arthur & Secretary, Department of Family & Community Services and Anor* [2017] FamCAFC 111, para 74, 76; Supreme Court of Canada in *Thomson v Thomson* [1994] 3 SCR 551.

[123]See UK Parliament, House of Commons, Hansard for 28 March 2023 (Volume 730) mentioning the UK's participation in "knowledge-building conference on parental child

Beyond legal domains, the UK has also assumed a supportive role in cyber security: since the 2018 Commonwealth Cyber Declaration, it has invested over £5 million through the Commonwealth Cyber Programme, delivering more than 100 events across 30 countries and strengthening pan-Commonwealth networks, expertise, and resilience.[124] The UK has also played a pivotal role in promoting the Latimer House Principles, which have become cornerstones of judicial independence and separation of powers across Commonwealth legal systems.[125] These examples reflect a leadership model grounded not in imposition but in persuasive authority, technical expertise, and institutional credibility – an approach well suited for guiding Commonwealth engagement with the Judgments Convention.

Following its departure from the EU and the consequent withdrawal from the Brussels regime, the UK now faces both the challenge and opportunity of redefining its role in the international legal order. Its accession to the Judgments Convention represents a critical inflection point in this broader post-Brexit legal recalibration, positioning the UK to model practical pathways for Commonwealth Members to become Parties to the Convention while encouraging collaborative engagement and dialogue among Commonwealth jurisdictions.[126] The latter also aligns with the Commonwealth Secretariat's Strategic Plan which aims at exploring the means to strengthen pan-Commonwealth engagement.[127] The Convention's entry into force now lends immediate and practical momentum to this vision, transforming abstract potential into a concrete opportunity for legal leadership and facilitation. It provides an exemplary template for Commonwealth jurisdictions contemplating accession, affirming that the Convention is not antithetical to common law values but rather harmonises with principles such as procedural fairness, due process, judicial independence, and equitable access to justice.

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abduction" and that the UK Central Authority helps share information about Hague return orders and liaises with foreign counterpart central authorities. https://hansard.parliament.uk/commons/2023-03-22/debates/46D069C8-D175-4B93-BD7A-971BBF3F4BDE/InternationalChildAbduction, accessed on 10 October 2025. See also https://www.parallelparliament.co.uk/debate/2023-03-22/commons/westminster-hall/international-child-abduction, accessed on 10 October 2025.

[124]See https://www.gov.uk/government/collections/cyber-security-capacity-building-in-the-commonwealth-2018-to-2021, accessed on 10 October 2025.

[125]See Commonwealth Latimer Principles, A Plan of Action for Africa, page 26. https://www.cpahq.org/media/dhfajkpg/commonwealth-latimer-principles-web-version.pdf, accessed on 10 October 2025.

[126]In this regard, Beaumont emphasised, the UK becoming a Party to the Judgments Convention would advance its commitment to the "progressive unification of the rules of private international law" and reinforce its global standing as a forum for cross-border dispute resolution. See *supra* n 7, 4–5. For the discussions related to the development of private international law as a binary aftermath of Brexit see also Mammadzada, *supra* n 78, 530.

[127]Commonwealth Secretariat Strategic Plan 2025–2030, p 20.

While mutual trust, in its EU sense, may not be directly transferable to the Judgments Convention framework, a functionally analogous mechanism emerges – one grounded in confidence-based cooperation. This model rests not on automatic recognition or supranational authority but on calibrated willingness of states to accept foreign judgments as legitimate and worthy of enforcement, based on shared procedural standards and legal compatibility. The Convention thus fosters a principled openness that encourages convergence while safeguarding national legal autonomy.

A further practical dimension of the UK's coordinating role is that, as a common law jurisdiction familiar with both civil and common law procedural traditions, it is uniquely positioned to facilitate the integration of the Judgments Convention into Commonwealth legal systems by bridging the structural and philosophical divides that often hinder international legal harmonisation. Whereas civil law systems typically operate under codified jurisdictional hierarchies, common law jurisdictions rely on precedent and judicial discretion, particularly in the application of comity. The Judgments Convention, by providing a structured yet flexible framework for recognition and enforcement, offers a middle ground that accommodates both traditions. The UK becoming a Party to the Convention, therefore, provides tangible reassurance to Commonwealth partners that the Convention is doctrinally congruent with their legal systems and can be domesticated without compromising core legal identities.

2. *Economic imperatives: Commonwealth trade as a post-Brexit springboard*

The UK's leadership in the promotion of the Judgments Convention is equally animated by compelling economic imperatives. Just as the UK's post-Brexit legal reorientation has presented both challenges and opportunities for international engagement, so too does the evolving economic landscape demand new strategies for global cooperation and alignment. The Commonwealth, a constellation of states sharing broadly similar legal traditions, democratic norms, and historic institutional linkages, offers a ready-made springboard for a post-EU Britain seeking to diversify and expand its commercial reach.[128] Brexit has also been described as "a trading and commercial opportunity for the countries of the Commonwealth", with the potential for significantly improved access to UK markets.[129] Indeed, research by the Commonwealth Secretariat indicates that bilateral trade costs between Commonwealth partners are, on average, 19 per cent lower compared to those for other country pairs – a phenomenon often

[128]For the relevant discussions see Kamal Ahmed, "Can the Commonwealth be good for post-Brexit Britain?", BBC, 16 April 2018, https://www.bbc.co.uk/news/business-43779196, accessed 7 August 2025.
[129]Mortensen (2021), *supra* n 113.

referred to as the "Commonwealth trade cost advantage".[130] Crucially, in light of recent EU resistance to the UK accession to the Pan-Euro-Mediterranean convention, the Commonwealth assumes even greater strategic importance as a viable and responsive trading venue for post-Brexit UK and vice versa.[131]

The economic rationale for a coherent Commonwealth framework on judgment recognition and enforcement aligns closely with the *Commonwealth Strategic Vision 2030*, which envisions "a democratic, prosperous and environmentally sustainable Commonwealth underpinned by shared resilience, collaboration and connectedness".[132] Within the Strategic Directions framework, *economic resilience* is defined as "stronger intra-Commonwealth trade, investment and finance", while *democratic resilience* emphasises "governance underpinned by the rule of law".[133] The Judgments Convention, by facilitating predictable and efficient cross-border enforcement, directly serves these economic and normative ambitions. A harmonised judgments framework would not only enhance commercial certainty and reduce transaction costs but also advance the Commonwealth's own agenda of integrated, rules-based economic cooperation. Likewise, many Commonwealth States becoming Party to the Judgments Convention would not only reinforce the relatively free circulation of UK judgments already available under existing reciprocal enforcement statutes and common law rules, but also extend that certainty across intra-Commonwealth relations. As observed by Beaumont, the UK's leadership in persuading other states to become Parties to the Judgments Convention is best demonstrated through its becoming a Party, which in turn reinforces confidence among non-UK persons to continue litigating in the UK by ensuring that resulting judgments will be readily enforceable abroad.[134] Likewise, through a uniform treaty framework alongside the existing mechanisms, the Judgments Convention would also offer British businesses, investors, and insurers a predictable and efficient enforcement regime abroad. This is not a hypothetical gain, but a commercial imperative. In 2023, UK exports to the Commonwealth amounted to £90 billion, with imports totalling £74 billion – resulting in a trade surplus of £16 billion. Trade within this bloc is primarily services-based (comprising 61% of UK exports and 52% of imports) and highly concentrated in five states – Australia, Canada, India, Singapore, and South Africa – which together account for over 70% of

[130]The Commonwealth, B2B Connectivity Agenda, https://thecommonwealth.org/connectivity-agenda/b2b#wg, accessed on 7 August 2025.
[131]P Foster and A Bounds, "EU blocks Britain's attempts to join pan-European trading bloc" Irish Times, 2 July 2025,https://www.irishtimes.com/business/2025/07/02/eu-blocks-britains-attempts-to-join-pan-european-trading-bloc/, accessed on 5 July 2025.
[132]Commonwealth Secretariat Strategic Plan 2025–2030, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2025-09/commonwealth-secretariat_strategic-plan-2025-2030-full-text.pdf, accessed on 12 October 2025.
[133]*Ibid*, p 7.
[134]*Supra* n 7, 4.

total UK – Commonwealth trade.[135] Against this backdrop, legal certainty in cross-border recognition and enforcement is indispensable to sustaining and expanding these commercial flows and advancing the Commonwealth's broader vision of leveraging "Commonwealth advantage" for economic growth.[136]

The UK has also invested in mechanisms designed to support the commercial development of its Commonwealth partners. Through technical and financial assistance, it has helped build trade-related infrastructure, enhance regulatory frameworks, and foster private sector resilience in developing Commonwealth economies.[137] The legal certainty offered by the Judgments Convention complements these efforts by ensuring that commercial rights adjudicated in one jurisdiction are reliably recognised and enforced in another. This alignment of legal and economic infrastructure creates conditions conducive to sustainable, mutually beneficial trade.

Expanded trade and commercial relations demonstrate that the "Commonwealth advantage" is not a nostalgic construct grounded merely in shared history or cultural affinity. It is an economic reality contingent upon legal predictability and institutional trust. Although proposals such as a Commonwealth Free Trade Area or the CANZUK[138] bloc remain aspirational, the UK has made tangible progress through bilateral and multilateral agreements – including its accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership alongside Canada, Australia, Malaysia, New Zealand, and Singapore, as well as a bilateral trade deal with India and the UK-Singapore Digital Economy Agreement. Yet such frameworks can only reach their full potential if buttressed by robust legal mechanisms for the recognition and enforcement of foreign judgments.

A compelling precedent for this kind of legal-economic synergy is the Trans-Tasman Proceedings Scheme between Australia and New Zealand. Lauded as a "stellar example of internationalism in the conflict of laws"[139], the Scheme illustrates how shared legal traditions and mutual trust can support streamlined cross-border enforcement. Its success reinforces the case

[135]House of Commons, "Statistics on UK trade with the Commonwealth", *Research Briefing*, 13 December 2024, https://researchbriefings.files.parliament.uk/documents/CBP-8282/CBP-8282.pdf accessed on 5 July 2025. See also Department for Business and Trade, Official Statistics: UK trade in numbers, https://www.gov.uk/government/statistics/uk-trade-in-numbers/uk-trade-in-numbers-web-version accessed on 5 July 2025.
[136]Commonwealth Secretariat Strategic Plan 2025–2030, p 4.
[137]Commonwealth Secretariat, "Commonwealth Trade Review 2015: The Commonwealth in the Unfolding Global Trade Landscape: Prospects, Priorities, Perspectives", 2016, 22, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/inline/Commonwealth%20Trade%20Review%202015-Full%20Report.pdf, accessed on 8 August 2025.
[138]Proposed political and economic alliance between Canada, Australia, New Zealand, and the United Kingdom.
[139]R Garnett, "Internationalism in New Zealand conflict of laws" (2021) 17 *Journal of Private International Law*, 380, 390.

for adopting a treaty-based model across the Commonwealth – not only to foster consistency but to build confidence in the legal architecture underpinning trade relations. The Scheme's continued operation alongside the Judgments Convention would exemplify the latter's flexibility, as New Zealand could still enforce a broader category of Australian judgments under domestic law, without contravening Articles 5–7 – a demonstration that treaty-based models can coexist with deeper bilateral integration.[140]

The benefits of enhanced cross-border enforcement, however, are not confined to the UK's own economic security. Developing Commonwealth countries stand to gain significantly, particularly those striving to expand export sectors and attract foreign investment. For example, Nigeria's growing export economy reflects the wider potential of developing states to participate more fully in global trade provided that developed countries support this integration through legal infrastructure and preferential mechanisms.[141] The UK, already the largest destination for African goods within the Commonwealth, accounting for nearly 40% of intra-Commonwealth exports from Africa[142], is well-placed to lead this charge. In this context, the UK's leadership is not merely symbolic but substantively critical: it could provide the legal infrastructure and normative guidance necessary to empower Commonwealth partners to participate more confidently in cross-border commerce.

These perspectives reinforce the empirical reality of intensifying UK – Commonwealth trade. Under its Developing Countries Trading Scheme (DCTS), the UK extends preferential market access to over 65 developing nations, and many of them are Commonwealth Members.[143] The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership in December 2024[144] underscores its economic leadership and strategic role in facilitating Commonwealth countries' becoming Parties to international instruments such as the Judgments Convention. Legal predictability – particularly in the recognition and enforcement of judgments – is essential to ensuring that these preferential trade arrangements are meaningful and durable. For small island states and emerging economies in particular, the reliability of cross-border legal frameworks is vital to fostering investor confidence and mitigating the risks of commercial engagement.

[140]Goddard and Beaumont, *supra* n 4, 418–419.
[141]Amucheazi et al, *supra* n 21, 491. See also A Yekini, "Foreign Judgments in Nigerian Courts in the Last Decade: A Dawn of Liberalization" (2017) 2 *Nederlands Internationaal Privaatrecht*, 205–218.
[142]*Supra* n 135, 20.
[143]Developing Countries Trading Scheme (DCTS), https://www.gov.uk/government/collections/trading-with-developing-nations, accessed on 8 August 2025.
[144]House of Commons, "The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)", *Research Briefing*, https://commonslibrary.parliament.uk/research-briefings/cbp-9121/ accessed on 8 August 2025.

Private international law, in this respect, becomes more than a field of legal doctrine; it functions as an enabling device for cross-border economic governance.[145] Brexit presents a unique moment for developing the principles of private international law across the Commonwealth, including the UK.[146] The evolving contours of the UK's global trade policy post-Brexit thus carry profound legal and commercial implications for many Commonwealth states. Strengthened legal frameworks, built on shared traditions and institutional trust, can amplify this renewed engagement and give tangible expression to the "Commonwealth advantage".

In much the same way, the UK's effort to expand trade ties across the Commonwealth will only realise its full potential if accompanied by strengthened legal frameworks that guarantee the recognition and enforcement of foreign judgments. Conversely, the growth of intra-Commonwealth trade and investment may itself generate political will for more comprehensive and predictable enforcement regimes, thereby reinforcing the case for Commonwealth-wide acceptance to be bound by the Judgments Convention. Therefore, on a greater scale, private international law can be used to manage interstate relations and the intense economic relationships fostered by economic integration.

Ultimately, UK leadership in this area transcends the preservation of legal tradition; it offers pragmatic benefits for all parties. By championing the Convention's adoption, the UK can ensure the continued prominence of its courts in international dispute resolution, the wider circulation of its judgments, and enhanced legal certainty for partners ranging from small developing states to major economic powers. This model of reciprocal benefit promotes trust, reduces transaction costs, and advances access to justice – aligning with the development objectives of many Commonwealth Members. It also presents a compelling case for the UK's leadership to be understood not as hegemonic ambition but as a facilitative, multilateral engagement. By encouraging Commonwealth states to see the Convention as a practical tool for economic growth, legal integration and judicial modernisation, the UK can affirm that post-Brexit multilateralism in private international law is not an abstract theoretical aspiration but a credible and inclusive pathway – one that bolsters Commonwealth cohesion and supports the prosperity of its diverse economies in an increasingly interconnected global world.

3. *Beyond rhetoric: tools for transformation*

The road to legal harmonisation is rarely linear, and even less often apolitical. Yet by investing in the institutional architecture that underpins cross-border legal

[145]R F Oppong, *Legal Aspects of Economic Integration in Africa*, (Cambridge University Press, 2011), 272.
[146]Mortensen (2021), *supra* n 113, 20.

cooperation, the Commonwealth can move from rhetorical declarations of shared values to operational tools for transformation. The Judgments Convention offers such a tool. But its promise will only be fully realised through deliberate, coordinated, and inclusive engagement. The UK, with its diplomatic reach and legal expertise, is well positioned to assist jurisdictions in laying the legal and infrastructural groundwork to become Party to and implement the Judgments Convention. As a founding member of the modern HCCH Statute, the UK's leadership would align with its longstanding policy objective to "work for the progressive unification of the rules of private international law".[147]

While this section advances a strategic and normative case for UK-led leadership and facilitation and identifies several key tools and institutional avenues for supporting wider participation in the Judgments Convention, it does not seek to provide a detailed account of the procedural mechanics of domestic implementation, which lie beyond its intended scope.

In practical terms, effective leadership requires more than mere advocacy or political will. It demands long-term investment in capacity building, institutional cooperation, and tailored support. This leadership must operate on both formal and informal planes. While government-led initiatives and structured partnerships are crucial, they should be complemented by the promotion of best practices, professional exchanges, and the cultivation of trusted relationships. Indeed, the Commonwealth Secretariat's *Strategic Plan* also provides an institutional framework through which the Judgments Convention could be advanced even though it does not explicitly mention recognition and enforcement of foreign judgments. Among the opportunities, it highlights are the need to "leverage the Commonwealth advantage for economic growth" as mentioned above, and to "expand pragmatic co-operation across member states".[148] To achieve its 2030 ambitions, the Plan identifies "strengthening partnerships" as one of the key "strategic accelerators" and introduces a new focus on collaborations with international and Commonwealth-accredited organisations to address member states' needs.[149] The Plan conceptualises such collaborations as "performance enablers"[150] and, in its SWOT (strengths, weaknesses, opportunities and threats) analysis, explicitly lists "fragmented partnerships" as a systemic weakness.[151]

Institutions such as the Foreign, Commonwealth and Development Office, Commonwealth Secretariat and British Council can act as key vehicles for this engagement. Crucially, following the 1975 Law Ministers' Meeting, the Commonwealth Secretariat obtained observer status at the HCCH, facilitating participation in Special Commissions and the development of brochures and model

[147]HCCH Statute 1955, Art 1. For related discussions see also *supra* n 7.
[148]Commonwealth Secretariat Strategic Plan 2025–2030, p 4, Table 1.
[149]*Ibid,* p 7, Figure 1.
[150]*Ibid*, p 2.
[151]*Ibid*, p 4, Table 1.

legislation tailored to Commonwealth jurisdictions.[152] Although the Strategic Plan makes no express reference to judgment recognition and enforcement, the establishment of an effective Commonwealth-wide policy in partnership with the HCCH would concretely advance the 2030 ambition and reflect the Plan's guiding principles of being "problem-driven, adaptive and transformational" as well as "risk-aware and responsive".[153] Reviving this model of engagement and partnership could support the practical implementation of the Judgments Convention and wider HCCH instruments across the Commonwealth. The UK's co-leadership of the Regulatory Connectivity Cluster under the Commonwealth Connectivity Agenda also provides an existing platform to promote legal coherence.[154] To that end, the UK could serve as both interlocutor and facilitator supporting pilot projects, legal secondments, and regional judicial workshops through partnerships with the HCCH (including its new Regional Office for Africa opened in July 2025[155]), Commonwealth Secretariat, possibly Commonwealth Magistrates' and Judges' Association, and regional judicial colleges. These efforts must not only build familiarity with the Convention's structure and safeguards but also foster confidence among legal communities that their distinct procedural traditions and sovereignty concerns are taken seriously.

Indeed, one critical yet perhaps underappreciated barrier to the uptake of Hague instruments in the Commonwealth lies in the composition of HCCH membership itself. As observed during the preparation of the Commonwealth Model Law, "forty Commonwealth member countries are not members to the Hague Conference and thus have not participated in the negotiations to the draft text of the Convention".[156] While some of these states have since become signatories to one or more HCCH instruments, the structural underrepresentation remains. A review of the current HCCH membership confirms this disparity: out of the 56 Commonwealth states, only 15 are full members of the Hague Conference[157], and an additional 24 are listed as "Connected Parties" – that is, states that have signed, ratified, or acceded to at least one Hague Convention but are not full members.[158] This means that more than 30% of Commonwealth jurisdictions remain entirely outside the Hague framework. This not only hampers their

[152]Memorandum by the Commonwealth Secretariat, "The Recognition and Enforcement of Judgments and Orders and the Service of Process within the Commonwealth: A Progress Report" (1980) LMM(80)17, 233, 239, https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/1016/1012/8804?inline=1, accessed on 8 August 2025.
[153]Commonwealth Secretariat Strategic Plan 2025–2030, p. 6, Table 3.
[154]See https://thecommonwealth.org/connectivity-agenda, accessed on 10 October 2025.
[155]See https://www.hcch.net/en/news-archive/details/?varevent=1092, accessed on 8 August 2025.
[156]Commonwealth Secretariat, *supra* n 67, 550.
[157]See https://www.hcch.net/en/states/hcch-members, accessed on 8 August 2025.
[158]See https://www.hcch.net/en/states/other-connected-parties, accessed on 8 August 2025.

engagement with instruments like the Judgments Convention but also limits their voice in shaping future normative developments.

Addressing this gap is not simply a matter of numerical representation – it is a prerequisite for legal harmonisation with global consequences. HCCH membership enables participation in working groups, access to draft texts, and involvement in the soft diplomacy that often shapes the final contours of international instruments. In this regard, as the only Commonwealth state among the founding members of the HCCH Statute, the UK is well positioned to support and lead efforts for broader Commonwealth membership of HCCH, thereby laying the groundwork for subsequent participation in the Special Commissions which will review the operation of the Judgments Convention.[159] This leadership need not be top-down or neocolonial in tone. On the contrary, a genuinely cooperative model that values reciprocity, respect for legal pluralism, and contextual sensitivity can foster mutual benefits. "A world with an identical legal framework that applies in every space would neither be realistic nor even desirable", since law reflects divergent social, economic, and political realities. Yet the goal of convergence remains valid – namely, to "iron out unnecessary or undesirable differences which pose obstacles to free and seamless trade".[160] This nuanced vision should underpin the UK's approach: one that embraces diversity while offering technical and institutional support toward shared, practical goals. For many small jurisdictions, particularly in the Caribbean and Pacific regions, aligning with the Judgments Convention can reduce the transaction costs of enforcing judgments abroad, enhance their attractiveness as commercial jurisdictions, and align their legal systems with globally accepted standards.

By deepening alliances within the HCCH, especially with like-minded Commonwealth partners such as Australia, Canada, New Zealand, and South Africa, the UK can catalyse broader participation, encouraging engagement from influential jurisdictions like India and Nigeria.[161] Such efforts would reinforce the HCCH's Strategic Plan 2023–2028,[162] which prioritises inclusivity, broader geographic representation especially for underrepresented regions, and meaningful multilevel engagement.

[159]The founding members of the HCCH Statute, according to its Preamble, are the Federal Republic of Germany, 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. See HCCH Statute 1955, Preamble.

[160]T L Friedman, *The World is Flat: The Globalized World in the Twenty-first Century* (2006, Penguin) [quoted in Chief Justice Sundaresh Menon, *supra* n 5, para 15].

[161]Beaumont, *supra* n 7, 17.

[162]HCCH Strategic Plan 2023–2028, https://assets.hcch.net/docs/935a0fb4-e8e1-469f-bad8-03aafc7de292.pdf accessed on 8 August 2025.

The UK's leadership could further extend to supporting pilot implementation initiatives in willing states such as Ghana, Barbados, or Malaysia[163], providing guidance on aligning domestic laws and procedural frameworks with the Convention as well as fostering regional dialogue among participating states, in close coordination with the HCCH and Commonwealth Secretariat. This collaborative ethos reflects the success of other Commonwealth initiatives, such as the Latimer House Principles, Commonwealth Cybercrime Initiative, "Changing Laws, Changing Lives" programme funded by the UK FCDO to reform outdated laws and provide technical, legal and communications assistance to Commonwealth governments.[164]

High-level diplomatic engagement at forums such as Commonwealth Law Ministers, Commonwealth Heads of Government Meetings or the Commonwealth Lawyers Association conferences would offer a visible platform to champion the Convention as a modern instrument aligned with shared Commonwealth commitments to the rule of law, access to justice, and economic development.

Targeted professional development could further embed the Convention into legal practice. Judicial exchange programmes and continuing professional development initiatives could include Judgments Convention-focused modules for judges, registrars, and legal practitioners. Drawing on its own experience with implementing legislation and procedural reform, the UK could develop model national laws or drafting guidelines providing a pragmatic legal roadmap for smaller jurisdictions with limited legislative capacity. In this way, the UK leadership would move beyond symbolism: it would offer concrete tools, technical support, and inclusive processes that operationalise the principle of universality at the heart of the HCCH's global mission.

Overall, the UK stands at a pivotal juncture. Its accession to the Judgments Convention should be leveraged not merely for domestic strategic gain, but as a springboard to revitalise cross-border legal cooperation across the Commonwealth and contribute to greater global legal cohesion. By modelling the Convention's compatibility with common law systems, championing its substantive value, and fostering collective accession, the UK can help bridge enduring legal divides and reaffirm its leadership in both the Commonwealth and the wider international legal order. This approach simultaneously advances the UK's post-Brexit legal diplomacy and empowers Commonwealth jurisdictions to engage more confidently in the global economy, underpinned by predictable, efficient, and just recognition and enforcement of judgments. Ultimately, if

[163]Ghana (as a stable African common law hub and recent HCCH member), Barbados (as a small island state with close legal ties to the UK), and Malaysia (as a major Commonwealth economy and HCCH member in the Asia-Pacific) illustrate how pilot frameworks could be tailored to diverse regional and legal contexts.

[164]See https://www.humandignitytrust.org/news/changing-laws-changing-lives-hdt-secures-renewed-uk-funding-for-acclaimed-work-helping-governments-eradicate-archaic-laws/, accessed on 10 October 2025.

global legal fragmentation is a challenge of the twenty-first century, then bridging legal divides through mutual recognition and trust is the Commonwealth's opportunity and a uniquely British responsibility.

To this end, a UK-led effort to disseminate best practices, facilitate legal dialogue, and build interpretative consensus around the Judgments Convention would carry both normative and operational weight. By aligning doctrinal leadership with practical institutional support, the UK can help ensure that the Convention's promise is fully realised across the Commonwealth legal family.

F. Conclusion

This study offers a critical reassessment of judgment recognition and enforcement across the Commonwealth, exposing the doctrinal fragility and practical stagnation of the current legal frameworks. It addresses a persistent normative and practical gap: the absence of a binding, multilateral instrument among Commonwealth states capable of ensuring the predictable and efficient cross-border recognition and enforcement of civil and commercial judgments. Despite shared common law roots, the enforcement landscape remains fragmented and outdated, undercutting legal certainty and commercial confidence. In doing so, the article underscores the enduring need for a coherent multilateral framework – one that transcends piecemeal domestic reforms and provides a principled foundation for cross-border judicial cooperation within the Commonwealth.

The discussion advances a threefold contribution. First, it delivers a nuanced appraisal of the CML, recognising its progressive ambition and liberal features, yet arguing that its limited uptake, lack of domestic implementation, and insufficient practical guidance for enactment have ultimately rendered it functionally ineffective as a soft law instrument unless it is viewed alongside a binding multilateral instrument. Second, it makes a principled case for all Commonwealth Members to become Parties to the Judgments Convention, highlighting its legal precision, jurisdictional flexibility, and potential to restore mutual trust through binding treaty law. In that context those Members may improve, under national law as permitted by Article 15 of the Convention, the indirect jurisdiction rules taking inspiration from the CML. Third, it situates the UK's post-Brexit position as a strategic opportunity within a wider Commonwealth context, proposing that the UK, drawing on its jurisprudential expertise, diplomatic networks, historical role and unique status as a founding member of the HCCH as well as the first Commonwealth state to ratify the Judgments Convention in its own right, can serve as a source of proactive inspiration for Commonwealth-wide engagement. In this context, the article reconceives the "Commonwealth advantage" not as a nostalgic artefact but as a forward-facing legal opportunity that can be facilitated by Commonwealth Members becoming Parties to the Judgments Convention.

Ultimately, the article stresses that the enforceability of judgments is no longer a peripheral technicality but a cornerstone of cross-border trust and

global economic order. It urges the Commonwealth Secretariat to shift to binding treaty law, and to recognise the Judgments Convention not only as a doctrinally sound instrument but as a politically viable and institutionally supported platform for meaningful harmonisation.

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