

HCCH

Connecter Protéger Coopérer Depuis 1893
Connecting Protecting Cooperating Since 1893

Civil Asset Tracing & Recovery: The HCCH Evidence Convention

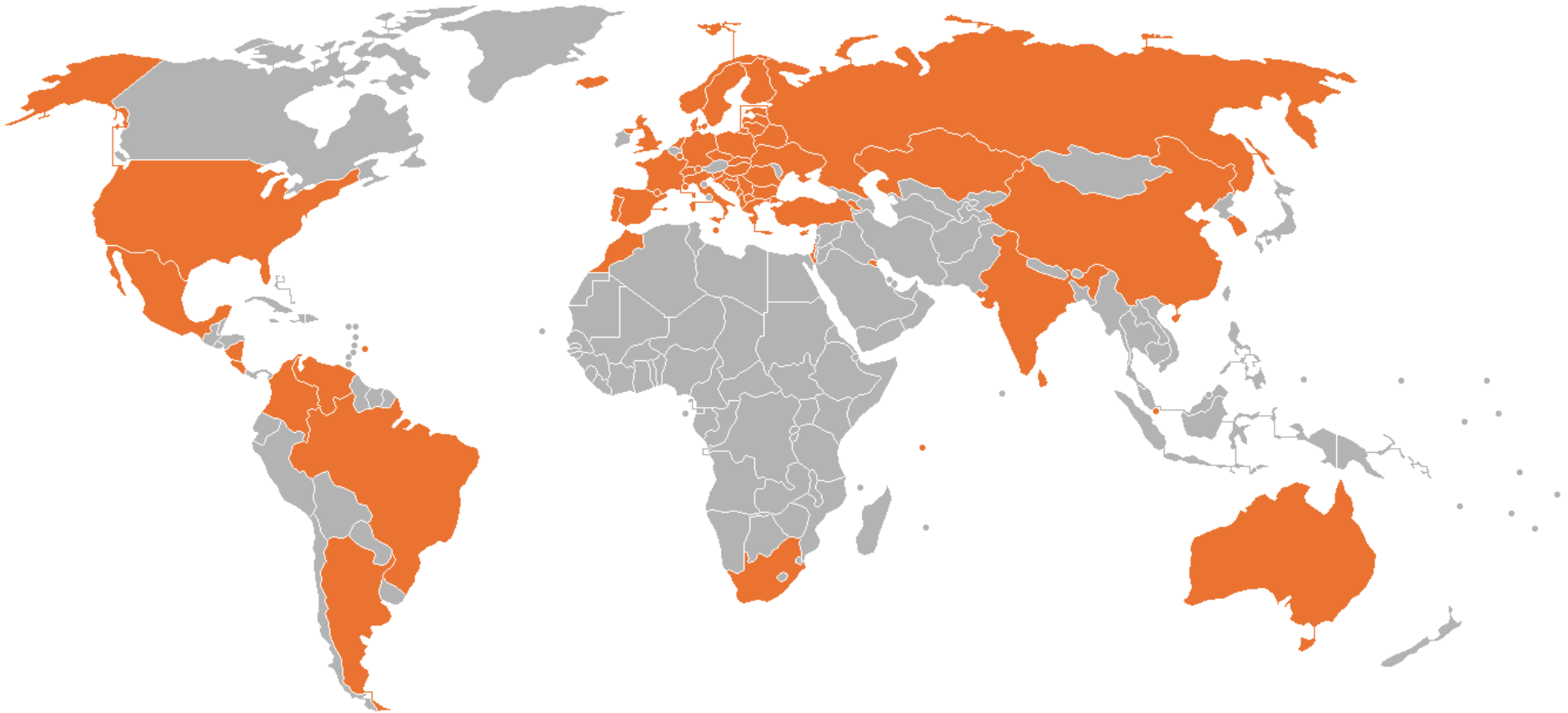
6 December 2019 | Vienna

Mr Brody Warren
Legal Officer

HCCH Evidence Convention

*HCCH Convention of 18 March 1970 on the Taking
of Evidence Abroad in Civil or Commercial Matters*

62 Contracting Parties



Evidence abroad *with* the Convention



Chapter I

Letters of Request



Chapter II

Diplomatic officers | Consular agents | Commissioners



Derogatory channels

Other Channels | Less restrictive conditions | Bilateral/multilateral agreements

Evidence abroad **without** a Treaty



STATE OF ORIGIN

Letter of Request

Judicial authority/judicial officer in State of origin

Ministry of Justice

Ministry of Foreign Affairs

Diplomatic bag

STATE OF DESTINATION

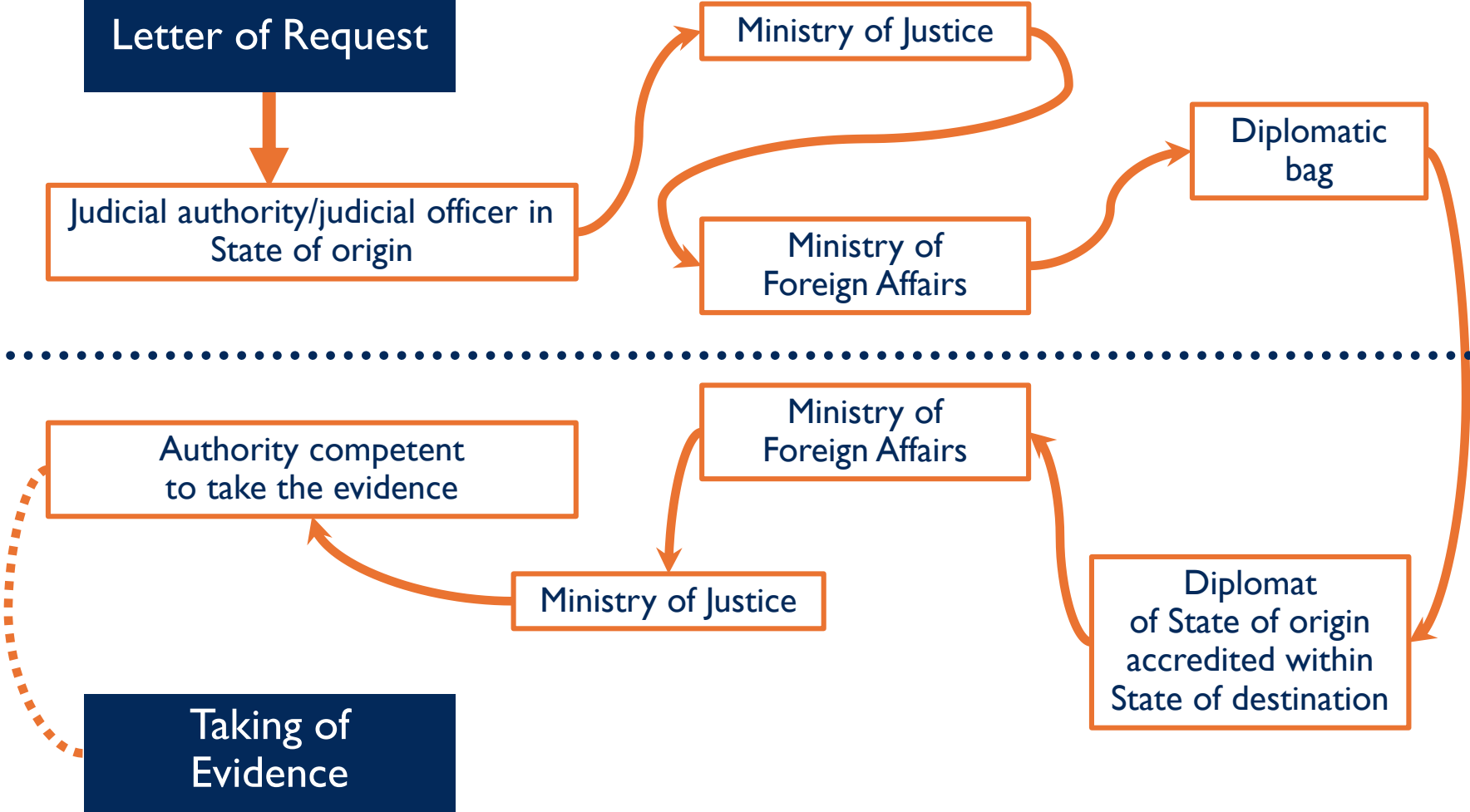
Authority competent to take the evidence

Ministry of Foreign Affairs

Ministry of Justice

Diplomat of State of origin accredited within State of destination

Taking of Evidence



Chapter I – Indirect Taking of Evidence

By Letter of Request



REQUESTING STATE

Letter of Request



Judicial Authority
“Requesting State”



REQUESTED STATE



Taking of
Evidence



Central Authority
of the “Requested State”



Competent Authority
of the “Requested State”



Asset Tracing & Recovery (Chapter I)



civil or commercial matters (*Art 1(1)*)



evidence or « other judicial act » (*Art. 1(1)*)



judicial proceedings, commenced or contemplated (*Art 1(2)*)



compulsion (*Art. 10*)



pre-trial discovery of documents (*Art. 23*)

Chapter II – Direct Taking of Evidence

By a Consul / Commissioner



STATE OF ORIGIN

Request to take evidence abroad



Court
in State of Origin



STATE OF EXECUTION



Consul / Commissioner
takes evidence in
State of Execution



Commissioner
appointed in
State of Origin



Consul accredited to
State of Execution

Asset Tracing & Recovery (Chapter II)



civil or commercial matters (*Arts 15, 17*)



proceedings commenced in a court (*Arts 15, 16, 17*)



« take all kinds of evidence » (*Art. 21(a)*)



apply for assistance to obtain by compulsion (*Art. 18*)

e-Transmission & e-Execution



Transmitting
a document
by electronic means

(as provided for by the Convention)



Executing
the request
by electronic means

(as provided for by domestic law)

Ongoing Work:

Questionnaires on *Use of IT* under the Service and Evidence Conventions

Guide to Good Practice on the *Use of Video-Link* (forthcoming 2020)

HCCH a|Bridged: Edition 2020

The image features a blue gradient background. On the left side, there are large, overlapping white and light blue curved shapes. A thin horizontal orange line runs across the middle of the page, positioned just below the main text.

Other HCCH Instruments



Art. 2(2) Exclusions from scope (*inter alia*):

family law matters

insolvency, composition and analogous matters

anti-trust (competition) matters

Art. 7 Does not govern interim measures of protection



Art. 2(1) Exclusions from scope (*inter alia*):

family law matters

insolvency, composition, resolution of financial institutions
and analogous matters

anti-trust (competition) matters,

except where the judgment is based on conduct that constitutes an *anti-competitive agreement or concerted practice among actual or potential competitors to fix prices, make rigged bids, establish output restrictions or quotas, or divide markets by allocating customers, suppliers, territories or lines of commerce,*

and where such *conduct and its effect both occurred in the State of origin;*

Art. 3(1)(b) Interim measure of protection is not a judgment



Art. 6

Central Authorities shall take **all appropriate measures:**

...

c) to help **obtain relevant information** concerning the income and, if necessary, other financial circumstances of the debtor or creditor, **including the location of assets;**

...

g) to facilitate the **obtaining of documentary or other evidence;**



Mr Brody Warren
Legal Officer | bw@hcch.net