

Title	Working Group on Jurisdiction: Report of 2025
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Author	PB
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Objective	To report on the progress of the Working Group on the Jurisdiction Project and to present the recommendations of the WG following its eighth meeting
Action to be Taken	For Decision <input checked="" type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	Annex: Working Group on Jurisdiction: Report of the Seventh and Eighth Meetings
Related Documents	- Prel. Doc. No 2A of December 2024 - Message from the Chair of the Working Group on the Jurisdiction Project - Prel. Doc. No 2 of February 2024 - Working Group on Jurisdiction: Report of 2024 - Prel. Doc. No 2 of February 2023 - Working Group on Jurisdiction: Report - Prel. Doc. No 7 of February 2022 - Report of the Working Group on Jurisdiction - Prel. Doc. No 3 of February 2021 - Report on the Jurisdiction Project - Prel. Doc. No 5 of February 2020 - Third Meeting of the Experts' Group on Jurisdiction

Working Group on Jurisdiction: Report of 2025

I. Introduction

- 1 The Working Group on matters related to jurisdiction in transnational civil or commercial litigation (WG), under the chairmanship of Professor Keisuke Takeshita (Japan), was established following the Council on General Affairs and Policy (CGAP) mandate in 2021.¹ Since that time, the WG has met on eight occasions. The first six meetings were held in October 2021, February 2022, September 2022, February 2023, September 2023 and February 2024. Reports on the progress of these meetings were provided to CGAP in March 2022, 2023 and 2024, respectively.²
- 2 Pursuant to the mandate given by CGAP at its meeting in March 2024,³ the WG met from 28 October to 1 November 2024 (the seventh WG meeting) and 10 to 14 February 2025 (the eighth WG meeting). These meetings were held in person, with the possibility for remote participation. The seventh WG meeting was attended by 66 members in total, of which 38 attended in person. The members represented 21 Member States from various regions, one Regional Economic Integration Organisation (REIO), and two Observers. Similarly, at the eighth WG meeting, there were 60 members, representing 22 Member States from various regions, one REIO, and two Observers.
- 3 The seventh WG meeting was held in Tokyo, Japan, with the generous support of the Government of Japan. The Permanent Bureau (PB) would like to thank the Government of Japan for their meaningful contributions, including the planning and preparation involved in hosting which resulted in a productive WG meeting.
- 4 The WG has made solid progress over the course of the seventh and eighth WG meetings. It has continued to develop the core provisions of a possible future instrument (Draft Text). In relation to parallel proceedings, the WG discussed the core framework for determining the more appropriate court when parallel proceedings are pending in the courts of two or more Contacting States. However, further work on the Article 8 jurisdiction / connection requirements is necessary to finalise this framework. The WG discussed the definition and treatment of related actions for the Draft Text, as well as the basic framework of the rules dealing with related actions. The WG developed a new chapter on cooperation and communication, covering rules on cooperation, the communication mechanism and joint hearings. These rules are used for both parallel proceedings and related actions.
- 5 In addition, the WG introduced provisions enabling courts to proceed to hear cases in circumstances where it is necessary to do so in order to avoid an abuse of process or a denial of justice. The WG also considered the scope of the Draft Text.
- 6 With all the work carried out, the Draft Text, at its current form, contains 23 articles in five chapters, more specifically, Chapter I Scope and Definitions (Arts 1-4), Chapter II Parallel Proceedings (Arts 5-10), Chapter III Related Actions (Arts 11-14), Chapter IV Cooperation and Communication (Arts 15-18) and Chapter V General Clauses (Arts 19-23).
- 7 During the seventh and eighth meetings, WG members also shared information about consultations they had held with practitioners and other experts on the Draft Text. A WG Observer, the International Bar Association, also submitted and presented a discussion paper with a view to

¹ C&D Nos 8 and 9 of CGAP 2021, available on the HCCH website at www.hcch.net under “Governance” then “Council on General Affairs and Policy” and “Archive (2000-2024)”.

² “Report of the Working Group on Jurisdiction”, Prel. Doc. No 7 of CGAP 2022, “Working Group on Jurisdiction: Report”, Prel. Doc. No 2 of CGAP 2023, and “Working Group on Jurisdiction: Report of 2024”, Prel. Doc. No 2 of CGAP 2024, available on the HCCH website at www.hcch.net (see path indicated in note 1).

³ C&D No 4 of CGAP 2024, available on the HCCH website at www.hcch.net (see path indicated in note 1).

facilitating discussions at the WG meeting. WG members reiterated the need to focus on developing a meaningful instrument that would address real world cases.

- 8 To support discussions in the last two meetings, members of the WG submitted a total of nine Working Documents, many of which were submitted jointly by several delegations, including from different legal traditions. The intersessional work, collaboration and contributions made by members of the WG has facilitated discussions and enabled key aspects of a possible future instrument to be explored.
- 9 The Report of the Chair of the WG (Annex I) summarises the key points that were discussed during the two meetings. It highlights the points discussed and indicates matters that require further work. This Report includes recommendations to CGAP for next steps.

II. Recommendations from the WG

- 10 The Report of the Chair of the WG noted the recommendations from the WG as follows:

In light of the progress made in further developing provisions for the draft Convention, the WG recommends that:

- CGAP invite the PB to convene one additional meeting of the WG, with a targeted agenda specifically focused on Article 8(2). In this meeting the WG will also review and fine-tune the entire Draft Text, without reopening or introducing discussion on policy issues;
- the Draft Text resulting from this additional meeting be the subject of an open and inclusive written consultation process. The purpose of this consultation is to gather feedback from future operators of the envisaged Convention, particularly practitioners and judges. The consultation will be structured around concise explanatory notes accompanying the Draft Text and a small number of targeted questions. The explanatory notes and questions will be prepared by the PB, with the assistance of WG members. The anticipated consultation period will be two to three months;
- the PB compile the responses received from the written consultation into a document to be submitted to all HCCH Members in advance of CGAP 2026;
- CGAP decide at its 2026 meeting, whether the Secretary General should convene a Special Commission meeting before the end of June 2026 or at a later time;
- CGAP mandate the Secretary General to allocate funds for a Special Commission meeting in the Budget for Financial Year 2025–2026.

Finally, in light of the diverging views on the development of direct jurisdiction rules, following the completion of the work on the future Convention, the consideration of direct jurisdiction rules could be further developed in a separate and subsequent project, subject to CGAP's decision.

III. Proposals for CGAP

- 11 Based on the foregoing, the PB proposes the following Conclusions and Decisions:

CGAP took note of the Report of the Chair of the WG on matters related to jurisdiction in transnational civil or commercial litigation, and the progress made by the WG to further develop provisions for a future Convention.

CGAP thanked the Government of Japan for hosting the seventh WG meeting in Tokyo, Japan.

CGAP invited the PB to convene one additional WG meeting in the second half of 2025, with a targeted agenda specifically focused on Article 8(2) of the Draft Text. In this meeting the WG will also review and fine-tune the entire Draft Text, without reopening or introducing discussion on policy issues. This meeting will be held in person, with the possibility for online participation.

CGAP invited the PB to convene an open and inclusive written consultation process on the Draft Text following this additional WG meeting, with a view to gathering feedback from future operators of the envisaged Convention, particularly practitioners and judges. CGAP invited the PB to prepare explanatory notes and questions, with the assistance of WG members, to support the consultation process.

CGAP invited the PB to compile the responses received from the written consultation into a document to be submitted to all HCCH Members in advance of CGAP 2026;

CGAP agreed to decide at its 2026 meeting, whether the Secretary General should convene a Special Commission meeting before the end of June 2026 or at a later time;

CGAP mandated the Secretary General to allocate funds for a Special Commission meeting in the Budget for Financial Year 2025–2026.

CGAP noted that in relation to the development of direct jurisdiction rules, following the completion of the work on the future Convention, the consideration of direct jurisdiction rules could be further developed in a separate and subsequent project, subject to CGAP's decision.

ANNEX

Title	Working Group on Jurisdiction: Report of the Seventh and Eighth Meetings
Document	N/A
Author	Chair of the Working Group
Agenda Item	N/A
Mandate(s)	N/A
Objective	To record the key points that were discussed during the seventh and eighth Working Group meetings and to propose next steps for the Jurisdiction Project
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	Revised Draft Text
Related Documents	N/A

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Working Group on Jurisdiction: Report of the Seventh and Eighth Meetings

I. Introduction

- 1 The Working Group on matters related to jurisdiction in transnational civil or commercial litigation (WG), under the chairmanship of Professor Keisuke Takeshita (Japan), has worked both in plenary meetings and intersessionally to develop draft provisions for a new instrument in accordance with the mandate of the WG. Since the first meeting of the WG, a total of 55 Working Documents (Work. Docs) have been submitted by delegates from different legal cultures.¹ These Work. Docs have included proposals on a range of complex and challenging issues relevant to the development of the draft text of a future instrument (Draft Text).
- 2 Members of the WG have made solid progress on the Draft Text over the course of the seventh and eighth meetings² and have worked constructively on some of the core mechanisms and features of a future instrument.
- 3 This Report highlights the points on which consensus was reached during these meetings and identifies issues that require further consideration. This Report also outlines the next steps recommended by the WG to complete the development of the Draft Text and proposes possible next steps for the Jurisdiction Project.
- 4 During the course of the seventh and eighth meetings the Chair re-ordered a number of Articles and paragraphs in the Draft Text. The Revised and most recent version of this text is referred to in this Report as the Revised Draft Text.
- 5 The Revised Draft Text developed by the WG is set out at the Annex.

II. Structure of the Revised Draft Text

- 6 The Revised Draft Text currently contains 23 articles in 5 chapters, specifically: Chapter I Scope and Definitions (Arts 1-4), Chapter II Parallel Proceedings (Arts 5-10), Chapter III Related Actions (Arts 11-15), Chapter IV Cooperation and Communication (Arts 15-18), and Chapter V General Clauses (Arts 19-23).

A. Chapter I - Scope and Definitions (Arts 1-4)

1. Scope (Arts 1 and 2)

- 7 While no Work. Docs were submitted in relation to Article 1, the Chair asked the WG to consider whether it was desirable to remove Article 1(2) from the Draft Text to simplify the application of a future Convention. Following some discussion, the group decided not to remove the provision at this stage and leave the issue for future discussion. During the discussion, it was pointed out that a minor textual change could be made to indicate that a defendant may be a habitual resident in “any” rather than “another” Contracting State. It was suggested that further consideration regarding the link between this provision and other instruments dealing with parallel proceedings would be necessary. It was also suggested that Article 1(2) could be subject to a declaration.

¹ Available on the Secure Portal of the HCCH website www.hcch.net under “Working / Experts Groups” then “Working Group on Jurisdiction”.

² The seventh meeting of the WG was held from 28 October to 1 November 2024 in Tokyo, Japan and the eighth meeting from 10 to 14 February 2025 was held at the Permanent Bureau (PB) of the HCCH in The Hague.

- 8 The PB introduced a research paper on Article 2(1) exclusions in the Draft Text. The WG concluded its discussion on the subject matter exclusions and left further consideration for a future Special Commission as further policy consideration would be required to determine which subject matter should be excluded from the scope of the Draft Text.
- 9 The WG also discussed a Work. Doc. seeking to exclude tenancies of immovable property and the registration of immovable property from scope. However, the WG decided not to make any changes to the Draft Text, noting that these two matters were to be further discussed in the context of Article 6 ([exclusive][priority] jurisdiction / connection) or Article 8(2)(e) (jurisdiction / connection).
- 10 The WG discussed whether a future instrument should deal with consumer and individual employment contracts. Given the relative lack of bargaining power of consumers and employees, and the need to provide adequate protections, the WG decided to exclude these contracts from the scope of the Draft Text by removing the brackets around Article 2(4) and (5).
- 11 The WG considered a proposal submitted by an observer of the WG. This proposal suggested to include within the scope of the Draft Text proceedings in which jurisdiction of courts is contested based on an arbitration agreement, maintaining the general exclusion for arbitration and related proceedings. According to the provisions in this proposal, a court whose jurisdiction is contested is obliged to suspend proceedings, giving priority to the court of a Contracting State in which the seat of arbitration is located or the arbitral tribunal for the determination of the existence, validity or effects of an arbitration agreement. The importance of this issue in practice was acknowledged in the WG, including the linked question of whether the Draft Text would apply if courts of two Contracting States were seised in potential breach of an arbitral clause. However, some members questioned whether this proposal is within the mandate of the HCCH, and whether this might overlap with the work of UNCITRAL in the area of arbitration. The need for careful consideration of the relationship with the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration was highlighted. It was also highlighted that provisions excluding arbitration from scope and a treaty relationship provision might not fully clarify the operation of the Draft Text in cases of conflicts between arbitration seats and courts seised in one or more Contracting States. The WG decided not to adopt this Work. Doc., while leaving open the possibility of further consideration on this issue.

2. Definitions (Art. 3)

- 12 During the seventh WG meeting, the WG revised a definition of “related actions” in the Draft Text based on a Work. Doc. Certain aspects of this definition require further consideration and these are indicated in the text by the brackets. For example, brackets were added around the phrase “or substantially the same” in Article 3(1)(b)(i). Some members observed that the phrase “connected to each other” might cause problems because of its ambiguity.

B. Chapter II – Parallel Proceedings (Arts 5-10)

1. Jurisdiction/Connection (Art. 8)

- 13 During the eighth WG meeting, the WG discussed a new proposal seeking to delete Article 8 of the Draft Text, with some expressing serious concerns about the purpose, scope, implications and application of Article 8. Additionally, it was noted that Article 8(2) provisions of the Draft Text operate differently from the jurisdictional filters contained in Article 5 of the 2019 Judgments Convention. However, other members of the WG did not support this proposal noting that Article 8 is a core mechanism necessary to realize the appropriate operation of a future Convention and its deletion would affect the balance between the jurisdictional rules and the doctrine of *forum non conveniens* in the Draft Text. The point was also made that Article 8 offered predictability and was a compromise for accepting the Article 9 approach.

- 14 Article 8 in the Draft Text was not altered. However, the WG decided to add a note on the need for substantial further discussion and work on Article 8 to address the concerns raised about it.
- 15 During the eighth WG meeting, the WG also had a general discussion on the jurisdiction / connection factors listed in Article 8(2) and exchanged views on whether and how the jurisdiction / connection should be revised. The WG observed that these factors require careful consideration.
- 16 For example, the WG considered whether to extend the connection for tort cases to the place of harm or the place where economic loss is sustained. The WG also exchanged views as to whether additional connections need to be introduced in the Draft Text. In this regard, some members noted the potential risk of expanding the Article 8(2) connections. WG members were encouraged to submit proposals to facilitate future discussions in this regard well in advance of the next meeting.

2. Determination of the more appropriate court (Art. 9)

- 17 Article 9 is another core mechanism of the Draft Text and is used to determine the more appropriate court when more than one court has jurisdiction / connection under Article 8(2). This topic was discussed at the seventh WG meeting based on proposals submitted. The WG noted the existence of the main different policy considerations underlying the proposals. Amongst other things, one approach gives the better forum determination to the court(s) other than the court first seised. Another approach gives determinations to each / all courts consecutively and contains a number of options as to the determination carried out by the court(s) other than the court first seised.
- 18 The WG agreed that any approach to be taken should be party-driven.
- 19 The WG considered and decided to accept the revised non-paper prepared by the Chair, which aims to illustrate the different policy considerations in the two approaches. These two approaches are now reflected in the Revised Draft Text.

C. Chapter III – Related Actions (Arts 11-14)

- 20 At its seventh meeting, the WG developed and incorporated a set of rules for related actions which were inserted into the Draft Text. These rules will serve as a starting point for future discussions. The rules include determining the [better][more appropriate] forum (Art. 11), adjudication of related actions in their entirety by a single court (Art. 12), adjudication of related actions in part by a single court (Art. 13), and the continuation of separate proceedings (Art. 14).
- 21 In relation to the Draft Text, the WG noted two points for further consideration. First, regarding the use of the term “adjudication”, given that this term is used in the work of UNCITRAL. Second, the meaning and intended use of “a single court should adjudicate the entirety or any part of the related actions”.

D. Chapter IV – Cooperation and Communication (Arts 15–18)

1. Cooperation (Art. 15)

- 22 During the eighth WG meeting a separate provision on judicial cooperation was added to the Revised Draft Text with brackets. This provision is designed to indicate that cooperation forms an important component of a future Convention, and that courts are therefore encouraged or should endeavour to cooperate with each other. As part of that cooperation, courts are encouraged to exchange information through the communication mechanism established under Article 16.

2. Communication mechanism (Art. 16)

- 23 Based on a number of proposals submitted, the WG thoroughly discussed the operation of the communication mechanism at both the seventh and eighth WG meetings. It was agreed that the

communication mechanism would be used for both parallel proceedings and related actions, and that while the mechanism is not mandatory, courts should endeavour to communicate with each other.

- 24 There are different methods of communication available in the Revised Draft Text: (a) direct communication between courts, (b) indirect communication via competent or central authorities, (c) communication combining methods of (a) and (b), and (d) indirect communication through the parties. Noting that the method of communication should be flexible, the WG considered that the communication provisions should enable Contracting States to positively declare by way of notification to the depositary of a future Convention, the methods of communication which are allowed. It was also agreed that in the absence of a notification, communication should occur indirectly through parties to the proceedings and this would be the default method of communication. Members also queried whether there is a need to distinguish between incoming and outgoing communication. In this context it was suggested that further discussion could be helpful as to the implications, if any, of a declaration of the State in circumstances where it would allow communication through a competent or central authority.
- 25 The WG shared examples of indirect communication methods to better understand what they entailed. However, it was noted that there are still questions about how certain aspects of the communication mechanism might operate. For example, concerning communication through the parties, some members considered it as the ordinary collection of information from parties about proceedings in other courts, whereas other members thought of it as the transmission of information between courts through the parties.
- 26 The WG also discussed the need to have practical rules relating to writing and translation requirements in relation to initial communications between courts. Some members considered that introducing these rules in a future Convention would provide guidance to the courts that would facilitate communication with other courts. However, other members considered that such detailed rules could be produced in separate documents, such as Guidelines or a Toolkit which could be prepared by the PB.
- 27 Some members noted that these practical rules, notably the translation requirement for communication, should not apply to the communication through the parties since this communication would be governed by national civil procedural laws. Some members observed that the translation requirement may not necessarily be imposed on parties, in circumstances of indirect judicial communication, given that this may often happen as the ordinary collection of information from parties governed by national civil procedural laws. These rules for communication were added to the Revised Draft Text in brackets for future consideration.

3. Joint hearings (Art. 17)

- 28 The WG agreed to include an article on joint hearings in the Draft Text. It was explained that this declaration mechanism is intended to be a flexible mechanism for those Contracting States that are comfortable with it and where the courts feel it would be useful. Members of the WG were interested to contemplate how a joint hearing might be facilitated. Some members noted that this mechanism could provide an additional avenue of cooperation and coordination among courts. It was also noted that the ability to conduct joint hearings under a future instrument would be a non-mandatory feature. It was however pointed out that the applicable procedural law and the relationship with the Evidence Convention would require further consideration. This article has been placed in brackets for future consideration, including on how joint hearings are conducted in practice.

4. Sovereignty, Procedural Rights and Confidentiality of Information (Art. 18)

29 It was agreed by the WG that any communication and joint hearings set out in this chapter should respect the procedural rights and confidentiality of information of parties under the respective applicable national laws. Different views were expressed as to whether the notion of respecting sovereignty should be introduced in the Draft Text. The reference to sovereignty has been placed in brackets for further consideration.

E. Chapter V – General Clauses (Arts 19-23)

1. Avoiding denial of justice (Art. 19)

30 The WG discussed the topic of avoiding a denial of justice at both the seventh and eighth WG meetings. It was decided that Article 19 should remain in brackets for further discussion. Members had different views on whether to set a threshold of “manifest” in relation to denial of justice and agreed to put the term in brackets for further consideration. Some members questioned the meaning of a “denial of justice” and the need for this article. The WG also discussed whether an exception concerning Article 6 (exclusive connection) or a condition to exercise jurisdiction (permission under national law) should be included for this provision. Following some discussion on the topic, it was determined that neither of them would be included in Article 19 at this stage.

2. Prevention of abuse of process (Art. 20)

31 The potential tactical use of the rules of parallel proceedings was discussed at both the seventh and eighth meetings. At the seventh meeting, a provision was added to the Draft Text, in the context of parallel proceedings, addressing the circumstances where the first court is seised in proceedings that are designed to frustrate upcoming or potential proceedings in another court in bad faith (Art. 9(5) *bis*). Based on further discussions during the eighth meeting, the WG decided to replace this provision with a new article that would be applicable to an entire future instrument (Art. 20 of the Revised Draft Text). This new article has been placed in brackets for future consideration.

32 Members acknowledged that the intention of this article is to prevent an abuse of process, but had differing views as to the application and operation of this article. Since “abuse of process” is unknown in some jurisdictions, examples were provided to assist with the understanding of the meaning of this term. Some members noted that tactical or strategic litigation was part of civil or commercial litigation and not prohibited as such. Some members also raised the difficulty, in practice, in drawing a line as to what might constitute an “abuse of process”.

III. Consultations with practitioners and other experts

33 During the seventh and eighth WG meetings, WG members shared information about consultations they had held with practitioners and other experts on the Draft Text, including views received on different Article 9 models and input received on the practicability, feasibility, and complexity of draft rules, and the risk of tactical litigation. Some members also presented the results of surveys they had conducted on parallel proceedings and related actions including their findings that numbers of parallel proceedings that would be within the scope of the instrument appeared very low. During these discussions, members emphasised that it was important to ensure that the provisions of the Draft Text were simplified, where possible. At the same time, however, it was also pointed out that the text could be complex because of the nature of the solution to parallel proceedings which involves the application of rules as well as discretionary decision making and needs to be further developed on the basis of consensus.

- 34 Members also reiterated the need to focus on developing a draft instrument that would address real world factual scenarios rather than hypothetical ones. It was agreed by members that it would be important to test the draft provisions against actual case examples.
- 35 To support this further consideration, at the eighth WG meeting a WG Observer, the International Bar Association (IBA), submitted and presented a discussion paper. This paper contained a list of recent reported and some unreported cases in England and Wales, where parallel claim situations have occurred. This paper also provided a commentary seeking to compare the actual outcome of the case with the potential outcome if the Draft Text were to be applied. Members were grateful for the IBA's input and engagement and welcomed the IBA's offer to conduct further research. Some reflections on the research were also set out, including the limited number of proceedings that would be within scope of the instrument.

IV. Recommendations from the WG

- 36 In light of the progress made in further developing provisions for the draft Convention, the WG recommends that:
- CGAP invite the PB to convene one additional meeting of the WG, with a targeted agenda specifically focused on Article 8(2). In this meeting the WG will also review and fine tune the entire Draft Text, without reopening or introducing discussion on policy issues;
 - the Draft Text resulting from this additional meeting be the subject of an open and inclusive written consultation process. The purpose of this consultation is to gather feedback from future operators of the envisaged Convention, particularly practitioners and judges. The consultation will be structured around concise explanatory notes accompanying the Draft Text and a small number of targeted questions. The explanatory notes and questions will be prepared by the PB, with the assistance of WG members. The anticipated consultation period will be two to three months;
 - the PB compile the responses received from the written consultation into a document to be submitted to all HCCH Members in advance of CGAP 2026;
 - CGAP decide at its 2026 meeting, whether the Secretary General should convene a Special Commission meeting before the end of June 2026 or at a later time;
 - CGAP mandate the Secretary General to allocate funds for a Special Commission meeting in the Budget for Financial Year 2025–2026.

Finally, in light of the diverging views on the development of direct jurisdiction rules, following the completion of the work on a future Convention, the consideration of direct jurisdiction rules could be further developed in a separate and subsequent project, subject to CGAP's decision.

ANNEX

Draft of the provisions on parallel proceedings and related actions for future discussion

CHAPTER I SCOPE AND DEFINITIONS

Article 1 Scope

1. The provisions in this text shall apply to parallel proceedings [and related actions] in the courts of different Contracting States in civil or commercial matters. The provisions in this text shall not extend in particular to revenue, customs or administrative matters.
2. [The provisions in this text shall apply to parallel proceedings [and related actions] if [any of] the defendant[s] in [any of] the proceedings in a court of a Contracting State [is][are] habitually resident in another Contracting State.]
3. The provisions in Chapter III shall apply only where none of the courts seised of related actions has issued a decision on the merits.

Article 2 Exclusions from scope

1. The provisions in this text shall not apply to the following matters –
 - (a) the status and legal capacity of natural persons;
 - (b) maintenance obligations;
 - (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
 - (d) wills and succession;
 - (e) insolvency, composition, resolution of financial institutions, and analogous matters [,except where the proceedings are based on general rules of civil or commercial law, even if the action is brought by or against a person acting as insolvency administrator in one party's insolvency proceedings];
 - (f) the carriage of passengers and goods;
 - (g) transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average;
 - (h) liability for nuclear damage;
 - (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
 - (j) the validity of entries in public registers;
 - (k) defamation;
 - (l) privacy;
 - (m) intellectual property;
 - (n) activities of armed forces, including the activities of their personnel in the exercise of their official duties;
 - (o) law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties;

- (p) anti-trust (competition) matters, except where the proceedings are 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 where the proceedings are pending;
- (q) sovereign debt restructuring through unilateral State measures;
- [(r) *to be determined.*]³

[Note: Exclusive choice of court agreements and interim measures for protection should be further considered.]

2. Proceedings are not excluded from the scope of the provisions where a matter to which the provisions do not apply arose merely as a preliminary question in the proceedings, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude proceedings from the provisions, if that matter was not an object of the proceedings.
3. The provisions shall not apply to arbitration and related proceedings.
4. This instrument shall not apply to proceedings related to contracts concluded by natural persons acting primarily for personal, family or household purposes (consumers).
5. This instrument shall not apply to proceedings related to individual contracts of employment.
6. Proceedings are not excluded from the scope of the provisions by the mere fact that a State, including a government, a governmental agency or any person acting for a State, is a party to the proceedings.
7. Nothing in the provisions shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3 **Definitions**

1. In this Convention –
 - (a) “parallel proceedings” means any proceedings in courts of different Contracting States between the same parties [on the same subject matter]⁴;
 - (b) “related actions” means any proceedings in courts of different Contracting States that are not “parallel proceedings” and that involve:
 - (i) parties at least some of which are the same[, or substantially the same,] or connected to each other;
 - (ii) [facts that arise, in whole or in material part, from the same transaction, occurrence, or series of transactions or occurrences;] and
 - (iii) one or more common questions of law or [material] fact that create a risk of [irreconcilable] [inconsistent] findings or judgments [resulting from separate proceedings]].

³ Before the discussion of the second WG meeting, there was a limb excluding from scope “cases in which the law of one or more of the Contracting States involved provides for exclusive jurisdiction in their own courts”. It was deleted because the problems arising from those cases would be dealt with by the declaration mechanism (Art. 22 of the Revised Draft Text). However, the WG will revisit the issues concerning exclusive jurisdiction including the possible exclusion from the scope.

⁴ The term “on the same set of operative facts” was not included in the text because it was pointed out that the inclusion of this term alone might cause problems. However, the WG will revisit the issue of the definition of parallel proceedings.

2. An entity or person other than a natural person shall be considered to be habitually resident in the State –
 - (a) where it has its statutory seat;
 - (b) under the law of which it was incorporated or formed;
 - (c) where it has its central administration; or
 - (d) where it has its principal place of business.

**[Article 4
Court seised**

For the purpose of [Chapter II], a court shall be deemed to be seised –

- (a) when the document instituting the proceedings or an equivalent document is lodged with the court; or
- (b) if such document has to be served before being lodged with the court, when it is received by the authority responsible for service or served on the defendant.]

[Note: Inclusion of this provision does not mean the adoption of certain types of rules [on first in time] for the suspension of proceedings.]

[Note: This Article could potentially apply not only to Chapter II, but also to the Convention as a whole.]

[Note: The WG will need to ensure that these rules are workable for their national systems. Further changes may be necessary to the text.]

**CHAPTER II
PARALLEL PROCEEDINGS**

**Article 5
Suspension, dismissal and resumption of parallel proceedings**

1. A court that must suspend proceedings in accordance with this Chapter [shall do so as soon as it is informed] of the proceedings in the other court by a party, [other relevant person,] or through the communication mechanism established pursuant to Article 16.
2. A court that suspended its proceedings in accordance with this Chapter shall dismiss the case if the proceedings in the court for the benefit of which proceedings were suspended resulted in a judgment capable of recognition and, where applicable, of enforcement in that Contracting State.
3. A court that suspended its proceedings in accordance with this Chapter shall, on request of a party, proceed with the case if the court for the benefit of which proceedings were suspended [is unlikely to render] [has not rendered] a judgment on the merits [within a reasonable time].

[Note: For the situation provided in paragraph 1, the possibility of dismissal instead of suspension should be further considered.]

[Note: Further consideration of the recognition and enforcement of foreign judgments and on the detailed rules is required.]

Article 6
[Exclusive][Priority] jurisdiction / connection

Where parallel proceedings which have as their [main] object rights *in rem* in immovable property [, tenancies of immovable property, or the registration of immovable property] are pending before courts of Contracting States and the property is situated in one of those Contracting States, the court of the Contracting State in which the property is situated shall proceed with adjudication on the dispute. Any other court shall [, on application by a party,] suspend [or dismiss] the proceedings.

[Note: Application of this rule to parallel proceedings which have as the [main] object tenancies of immovable property or the registration of immovable property should be discussed further.]

Further consideration is necessary as to whether registration includes recordation and whether this term can be added to the text as well. Further discussion is needed to address whether the rule on tenancies should include an exception for cases where the tenant is habitually resident in a different State.

The WG will need to consider further how the above provision aligns with Article 5(3) of the 2019 Judgments Convention.]

Article 7
Party autonomy

1. Subject to Article 6, if the parties to the proceedings in both / all courts have agreed prior to the dispute that one or more courts shall have jurisdiction over the dispute, and only one of the courts seised is designated under such agreement as having jurisdiction, then that court shall proceed with adjudication of the dispute unless such agreement states that it does not deprive any other court or courts of jurisdiction. Any other court shall suspend the proceedings.
2. Paragraph 1 does not apply to an exclusive choice of court agreement. For the purposes of this sub-paragraph, an “exclusive choice of court agreement” means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one State or one or more specific courts of one State to the exclusion of the jurisdiction of any other courts. A choice of court agreement which designates the courts of one State or one or more specific courts of one State shall be deemed to be exclusive unless the parties have expressly provided otherwise.
3. Subject to Article 6, if the defendant expressly [and positively] consented to the jurisdiction of the court of a Contracting State [by written or oral format and addressed either to the court or to the claimant] in the course of the proceedings, then that court shall proceed with adjudication of the dispute. Any other court shall stay or dismiss adjudication of the dispute.

[Note: Possible need to address non-exclusive jurisdiction agreements with purely prorogatory effect and / or waivers of objections to jurisdiction either in this Article or in the rules on the more appropriate / better forum analysis.]

[Note: Relationship between paragraph 1 and paragraph 3 should be discussed further.]

[Note: For paragraph 1 of this Article, the formal validity of the agreement needs to be considered further. Cf. Article 3(c) of the 2005 Choice of Court Convention.]

[Note: Certain limitations of the timeframe within which the defendant should consent might need to be considered further.]

Article 8 *Jurisdiction / Connection*

1. Subject to Articles 6 and 7, where parallel proceedings are pending before the courts of Contracting States, a court of a Contracting State shall suspend or dismiss the proceedings [at the request of a party to the proceedings] if –
 - (a) it does not have jurisdiction / connection pursuant to paragraph 2 of this Article and one or more of the other courts has or have such jurisdiction / connection; or
 - [(b) proceedings in that court were not started within a reasonable timeframe after proceedings were commenced in the court first seised having jurisdiction / connection pursuant to paragraph 2 of this Article.]

[Note: The meaning of “a reasonable timeframe” in sub-paragraph (b) should be further considered. Also, it should be noted that such timeframe issues may be dealt with by the provisions concerning the determination of the [clearly] [more appropriate] [most appropriate] [better] forum analysis. The WG needs to discuss these issues further. Further rules need to be considered in the determination of the more appropriate / better forum analysis.]

This Article is added without prejudice to the possibility that the WG will specify further circumstances in which courts would be required to suspend or dismiss the proceedings.]

2. A court of a Contracting State has jurisdiction / connection if [at least] one of the following requirements is met –
 - (a) the defendant was habitually resident in that State at the time that person became party to the proceedings;

[Note: Possible need to define the term “defendant”, as a defendant may be a claimant in another State – adopt language of Article 5(1)(a) of the 2019 Judgments Convention, specifying the time at which the defendant was joined to the proceedings. Also, need to clarify the situation of multiple defendants.]

- (b) the defendant is a natural person who had their principal place of business in that State at the time that person became party to the proceedings as regards a [dispute] [claim] arising out of the activities of that business;
- (c) the defendant maintained a branch, agency, or other establishment without separate legal personality in that State at the time that person became party to the proceedings in that State, and the claim arose out of the activities of that branch, agency, or establishment;

[Note: Or should the timing be tied to the activities of that branch, agency or other establishment?]

- (d) [the proceedings have as their object] [the claim concerns] [the action concerns] a contractual obligation and the performance of that obligation took place, or should have taken place, in that State, in accordance with –
 - (i) the agreement of the parties, or
 - (ii) the law applicable to the contract, in the absence of an agreed place of performance, unless the activities of the defendant in relation to the transaction clearly did not constitute a purposeful and substantial connection to that State;

[Note: Which phrase, [the proceedings have as their object], [the claim concerns], or [the action concerns] should be adopted needs further consideration also for sub-paragraphs (d)-(h).]

- (e) the claim [is brought on] [concerns] a lease of immovable property (tenancy) [or the registration of immovable property] and the property is situated in that State;
- (f) the claim concerns a contractual obligation secured by a right *in rem* in immovable property located in the State, if the contractual claim is brought together with a claim against the same defendant relating to that right *in rem*;
- (g) a claim concerns a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property and the act or omission directly causing such harm occurred in that State, irrespective of where that harm occurred;
- (h) the claim concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and –
 - (i) at the time the proceedings are instituted, the State was designated in the trust instrument as a State in the courts of which disputes about such matters are to be determined; or
 - (ii) at the time the proceedings are instituted, the State is expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

This sub-paragraph only applies to proceedings regarding internal aspects of a trust between persons who are or were within the trust relationship;

- (i) a counterclaim arises out of the same transaction or occurrence as the original claim, if the court of the State has [priority] [jurisdiction] [connection] for the original claim under this Article and the original claim is pending in that court;
- (j) the defendant argued on the merits without contesting jurisdiction within the timeframe provided in the law of the State of the court, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;

[Note: Should this connecting factor in (j) be prioritised? It should be considered to whom “it is evident”.]

[(k) to be determined.]

[Note: Interaction of this paragraph with Articles 6, 7, or 9 needs further consideration.]

[Note: Substantial further discussion and work on Article 8 is required to address concerns raised by several WG members as to its purpose, scope, implications, and application, including the potential for tactical litigation.]

Article 9

Determination of the more appropriate court

1. Subject to Articles 6 and 7, where parallel proceedings are pending in the courts of two or more Contracting States that have jurisdiction/connection under Article 8, [the court first seised shall determine, on an application by a party [made no later than the first defence on the merits] [made within a reasonable timeframe], whether any other seised court in a Contracting State with jurisdiction/connection under Article 8 is a more appropriate court to resolve the dispute. When making this determination the court first seised shall take into account the factors in Article 10.
- 2.] Any court other than the court first seised [shall][must] [, on an application by a party,] suspend its proceedings in favour of the court first seised [pending the determination of the application under paragraph 1].

- [3. If, following a determination made under paragraph 1, the court first seized determines that another seized court is a more appropriate court, the court first seized shall suspend its proceedings in favour of that court and may only resume proceedings in accordance with Article 5(3).
4. If, following a determination made under paragraph 1, the court first seized decides to continue proceedings, a court that has suspended proceedings under paragraph 2 may only resume proceedings in accordance with paragraph 5 or Article 5(3)].
5. [In exceptional circumstances] [As appropriate], a court other than the court first seized may, on an application by a party, resume proceedings if:
 - (a) the application is made [no later than the first defence on the merits] [within a reasonable timeframe] [within a period of [30 days] from the determination in the court first seized]; and
 - (b) the court other than the court first seized determines that [Option 1: it must hear the case to guarantee effective access to justice] [Option 2: it is the more appropriate court to resolve the dispute, after taking into account the factors in Article 10] [Option 3: it is the clearly more appropriate court to resolve the dispute, after taking into account the factors in Article 10].
6. A court making a determination under this Article shall do so expeditiously. Courts are encouraged to exchange information through the communication mechanism established pursuant to Article 16 and may do so at any stage of the determination.

[Note: this Article has interlinked brackets to reflect different views in the WG concerning the role of the court first seized. The following sets out the text excluding the words that are undoubtedly included in the interlinked brackets (with the yellow highlighted changes of (i) the numbering of the paragraphs and (ii) a capital letter to small letter), clarifying the alternative basic framework reflecting a different view:

1. Subject to Articles 6 and 7, where parallel proceedings are pending in the courts of two or more Contracting States that have jurisdiction/connection under Article 8, any court other than the court first seized [shall][must] suspend its proceedings in favour of the court first seized.
2. [In exceptional circumstances] [As appropriate], a court other than the court first seized may, on an application by a party, resume proceedings if:
 - (a) the application is made [no later than the first defence on the merits] [within a reasonable timeframe]; and
 - (b) the court other than the court first seized determines that [Option 1: it must hear the case to guarantee effective access to justice] [Option 2: it is the more appropriate court to resolve the dispute, after taking into account the factors in Article 10] [Option 3: it is the clearly more appropriate court to resolve the dispute, after taking into account the factors in Article 10].
3. A court making a determination under this Article shall do so expeditiously. Courts are encouraged to exchange information through the communication mechanism established pursuant to Article 16 and may do so at any stage of the determination.

Whether or not the remaining brackets are the interlinked brackets and what should be changed to reflect the above-mentioned different views remain open for consideration.]

[Note: Issues concerning the provisions for non-priority [connection] [jurisdiction] should be considered further.]

Article 10

Determination of the [clearly] [more appropriate] [most appropriate] [better] forum

In making a determination under Article [xx], the court shall [have regard to the proper administration of justice, taking] [take] into account the following factors in particular:

- (a) [The burdens of litigation on the parties][the convenience of the parties], including in view of their habitual residence;
- (b) The [relative] ease of accessing evidence or preserving evidence;
- (c) [the law applicable to the claims];
- (d) the stage of the proceedings before each court seised [and any applicable limitation or prescription periods] [and the possibility of significant delay in one or more forums];
- (e) [the likelihood that one court may provide a complete or significantly more complete resolution of the dispute as a whole;] and
- (f) the likelihood of recognition and, where applicable, enforcement of any resulting judgment given in the Contracting State of any other seised court.

The courts may exchange information through the communication mechanism established pursuant to Article 16.

CHAPTER III RELATED ACTIONS

Article 11

Determining the [better] [more appropriate] forum

1. Where related actions are pending in the courts of two or more Contracting States, any such court shall, upon application of a party, determine within a reasonable time:
 - (a) Whether a single court should adjudicate the entirety or any part of the related actions; and if so,
 - (b) Which court is the [better] [more appropriate] forum for resolution of the entirety or any part of the related actions.

[Note: In this model, parties may make applications to multiple courts and each court would reach its own independent determination of the application before it. However, further consideration should be given to the form of applications in the respective courts and the possibility of introducing an order for the determinations.]

[Note: Further consideration should be given to whether the phrase “a single court should adjudicate” adequately reflects the intended purpose and whether (a) and (b) can/should be separated.]

2. In making its determination of which court is the [better] [more appropriate] forum, a court shall consider the proper administration of justice, taking into account the following factors:
 - (a) [the burdens of litigation on the parties] [the convenience of the parties], including in view of their habitual residence;
 - (b) the [relative] ease of accessing evidence or preserving evidence;
 - (c) [any choice of court agreements between the parties];

- (d) [the law applicable to the claims];
- (e) the stage of the proceedings before each court seised [and any applicable limitation or prescription periods] [and the possibility of significant delay in one or more forums];
- (f) [the likelihood that one court may provide a complete or significantly more complete resolution of all, or the relevant part of, the matters at issue;] and
- (g) the likelihood of recognition and, where applicable, enforcement of any resulting judgment given in the Contracting State of any other seised court.]

[Note: The related actions framework proposed herein does not require that a court of a Contracting State has a connection/jurisdictional ground such as those set forth in draft Article 8(2). The related actions framework is intended to be flexible and discretionary. We understand that this may raise concerns for some delegations where one court’s jurisdiction is based on a so-called “exorbitant” ground. These concerns can be addressed in the [better] [more appropriate] forum factors—taking into account all relevant sensitivities in drafting. This list remains non-exhaustive and subject to further discussions of the Working Group.]

Article 12

Adjudication of related actions in their entirety by a single court

1. For the purposes of an application of Article 11, if two or more courts seised of related actions determine that:
 - (a) a single court should adjudicate the entirety of the related actions; and
 - (b) the same court seised is the [better] [more appropriate] forum for the adjudication of the related actions in their entirety,

that court shall [proceed with adjudication of] [adjudicate] the entirety of the related actions case, and the other court(s) making the determinations shall suspend or dismiss their case(s).

2. Nothing in this provision precludes two or more of the courts seised from adjudicating the entirety of the related actions pending before them, if one or more other courts seised do not make the determinations in paragraph (1) within a reasonable time or make inconsistent determinations.

[Note: Further consideration should be given to the use of the word “Adjudication” and possible alternative descriptions.]

Article 13***Adjudication of related actions in part by a single court***

1. For the purposes of an application of Article 11, if two or more courts seized of related actions determine that:
 - (a) a single court should adjudicate part of the related actions; and
 - (b) the same court seized of a related actions case is the [better] [more appropriate] forum for that part of the related actions,

that court shall [proceed with adjudication of] [adjudicate] that part of the related actions, and the other court(s) making the determinations shall suspend or dismiss that part of the related actions.

- [2. Nothing in this provision precludes the courts from determining that different parts of the case may be most appropriately assigned to different courts.]
3. Nothing in this provision precludes two or more of the courts seized from adjudicating any part of the related actions pending before them, if one or more other courts seized of related actions do not make the determinations in paragraph (1) within a reasonable time or make inconsistent determinations.

[Note: The possibility to allow partial consolidation, as well as the most appropriate way to draft such a rule, should be further discussed taking into account practical considerations and whether such rules could further the goals of this chapter, namely improved procedural efficiency and the avoidance of irreconcilable judgments.]

Article 14***Continuation of separate proceedings***

1. If any court seized decides not to adjudicate the entirety of the related actions under Article 12 or any part of the related actions under Article 13, or makes a determination that is inconsistent with the determination of any other court under Article 12 or Article 13, then such a court shall proceed with the related actions case before it.
2. If one or more courts seized do not make the determinations under Article 12 or Article 13 within a reasonable time, any other court seized may, upon application of a party or on its own motion, [proceed to adjudicate] [adjudicate] the proceedings before it.
3. Any court seized that has suspended the entirety or any part of its proceedings under Article 12 or Article 13 may resume proceedings if the court in favour of which it has suspended its proceedings has not assumed jurisdiction in relation to the entirety or the relevant part of proceedings within a reasonable time.

[Note: Further consideration should be given to a possible third scenario in which one of the courts initially seized has suspended proceedings pending a determination in another court seized of only part of the proceedings before it, after which the court that has suspended will need to resume its own proceedings, taking into account the finding/s of the other court.]

[Note: The related actions framework proposed herein does not specifically address a related action case requiring a determination of rights in rem in immovable property. Further consideration will be given as to how to best address this topic within the framework.]

CHAPTER IV COOPERATION AND COMMUNICATION

Article 15 Cooperation

For the purposes of the application of this Convention, where appropriate, seized courts [undertake] [are encouraged] [shall endeavour] to cooperate with each other. As part of that cooperation, courts are encouraged to exchange information through the communication mechanism established pursuant to Article 16 and may do so at any stage when making a determination under this Convention.

Article 16 Communication mechanism

1. For the purposes of the application of this Convention, each court may communicate with other courts, either directly or indirectly.
2. Contracting States may, at the time of the deposit of their instruments of ratification, acceptance, approval or accession or at any time thereafter, notify the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention, that they will allow one or more of the following methods of communication:
 - (a) direct judicial communication between courts, and if so, whether their laws allow for communication outside the presence of the parties or their representatives (*ex parte* communication); or
 - (b) indirect judicial communication through a competent authority [central authority]; or
 - [(c) a combination of (a) and (b) with each Contracting State using its preferred method.]
3. The absence of such notification means that the Contracting State in question allows only for indirect communication through the parties to the proceedings.
- [4. Any communication, where appropriate, shall occur in the following manner:
 - (a) The initial communication under this article from each court seized of parallel proceedings or related actions shall be in writing and be provided either in an official language of the Contracting State of the receiving court, or in an official language of the Contracting State of the sending court together with a translation into an official language of the Contracting State of the receiving court.
 - (b) Further communications between such courts may be carried out using any translation method or common language agreed upon by the relevant courts and, where applicable, the competent authorities [central authorities].]

[Note: The possibility for a Contracting State to withdraw from the method(s) provided in paragraph 2 by a notification should be considered further.]

**[Article 17
Joint hearings**

1. Contracting States may, at the time of the deposit of their instruments of ratification, acceptance, approval or accession or at any time thereafter, notify the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention, that they will allow courts seised of parallel proceedings or related actions to conduct joint hearings.
2. If the Contracting States of two or more courts seised of parallel proceedings or related actions cases allow joint hearings under paragraph 1, then such courts may conduct a joint hearing.
3. Courts participating in a joint hearing under this article shall agree on the scope, process, format, and other aspects related to the joint hearing, which may be based on a proposal by the parties. Each court participating in a joint hearing shall retain power and independence over the conduct of its own proceeding, consistent with applicable national laws.]

[Note: The possibility for a Contracting State to withdraw from joint hearings by a notification should be considered further.]

**Article 18
[Sovereignty,] procedural rights, and confidentiality of information**

Any communication and joint hearings set out in this Chapter shall respect [each other's sovereignty,] the procedural rights of the parties to the proceedings, and the confidentiality of information under the respective applicable national laws.

**CHAPTER V
GENERAL CLAUSES**

**Article 19
Avoiding denial of justice**

[Nothing in the present Convention shall prevent a court from exercising its jurisdiction if that court determines it is reasonable and foreseeable that its exercise is necessary in order to avoid a [manifest] denial of justice.]

**[Article 20
Prevention of abuse of process**

Nothing in this Convention shall prevent a court from suspending, dismissing, continuing or resuming proceedings to prevent an abuse of process.]

**[Article 21
Public policy**

Notwithstanding provisions from Article # to Article #, the court shall not be obligated to suspend or dismiss the case if the proceedings may involve sovereignty or security interests of the forum State or the suspension or dismissal would be manifestly incompatible with the public policy or fundamental principles of the forum State.]

Article 22

Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.
2. *[Reciprocity to be considered]*

Article 23

Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.