Survey response	
Please indicate: [Name:]	The Honourable David Goddard KC
Please indicate: [State:]	New Zealand
Please indicate: [Region:]	Wellington
Please indicate: [Affiliation:]	N/A
Please indicate your profession:	Other
Please indicate your profession: [Other]	Judge (part-time), Arbitrator, Mediator, Academic
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
Press "Next" to continue	
1.1 What are your views on the scope of the Draft Text?	If a soft law instrument is developed, as I suggest below, the scope could be expressed more broadly than if a convention is the goal.
1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?	Broadly, yes.
1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?	It makes sense for the subject-matter exclusions to track the Judgments Convention exclusions, as they do.
1.4 What are your views on the geographical scope of the Draft Text and how it would work in practice? (See paragraph 16 for further information).	There is not a compelling case for requiring habitual residence in another Contracting State if there are parallel proceedings in two Contracting States - the element of internationality, and the rationale for providing "tie-breaker" rules, is present without this.
2. What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.	The definition of parallel proceedings is simple and workable. The definition of related proceedings leaves open a number of fundamental issues, so it is difficult to comment on how it might operate in practice. These unresolved issues reflect significant conceptual differences that may be difficult to bridge.
3. What are your views on Article 4?	A provision along these lines would be necessary if reference is made in any text to the time when a court is seised.
4. What are your views on Article 5?	The basic structure of Art 5 is logical, but the real difficulty lies in determining when a court must suspend proceedings.
5. What are your views on Articles 6 – 8 including how they will work in practice?	Despite the careful work done by the Working Group, over a series of meetings, significant issues remain unresolved in these Articles. The multiple square brackets and notes are strongly

	reminiscent of the draft text that was prepared in the Judgments project in the period 1999-2001. It will be difficult - I suspect, extremely difficult - to reach consensus on a text that addresses these issues. And if such a text can be arrived at, the compromises required to do so will give rise to significant barriers to widespread adoption of any resulting convention by States from different legal traditions. There is also an appreciable risk that differences will be able to be bridged in a text only by adopting language that is so vague and imprecise that uniformity of practice will prove elusive even among Contracting States. I recommend that rather than attempting the extremely difficult, and quite possibly elusive, task of preparing a draft convention the Council on General Affairs and Policy consider authorising work on a "soft law" instrument which sets out relevant high-level principles and provides a menu of text options consistent with those high-level principles. I consider that such a project is much more likely to succeed, and to promote a meaningful level of consistency and accessibility of domestic legal frameworks to address the practical challenges of parallel proceedings and related procedings.
6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?	The focus should be on factual connections with each relevant Contracting State, rather than the legal concept of jurisdiction. That is the approach in Judgments, adopted for good reasons which apply here also. Substantial further work is needed on the structure and content of this Article and related provisions, as the draft text recognises. The difficulty of arriving at an agreed list of priority connections will be much reduced if the goal is a soft law text, as different textual options consistent with a set of high-level principles could be provided.
6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?	The content of this list of connections depends on its practical significance. In particular, the interplay between consent to litigate in a particular court before or in the course of proceedings, and the other listed connecting factors, requires careful consideration.

6.3 Are there any additional factors that you believe should be included?	It is premature to express a view on this, until there is more clarity about the conceptual framework for Art 8 and related provisions.
7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?	The very significant differences of approach reflected in the square-bracketed options in Art 9 reflect genuine challenges in reaching agreement on these issues, which as noted above may better be tackled in a soft law instrument.
7.2 What are your views on how the two approaches may work in practice?	It is premature to express a view on this.
7.3 Do you have a preference for either approach? If so, please explain why.	Arguments can be made for a range of approaches. It will be difficult, perhaps impossible, to arrive at a single text that commands consensus and is widely adopted.
8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?	These factors are likely to be the most relevant for the purpose of determining which of two or more connected courts is the more appropriate to hear a proceeding. But considerable work will be needed to refine this list.
8.2 Do you have any views on how Article 10 might work in practice?	It is premature to express a view on this.
8.3 Are there additional considerations that, in your view, should be taken into account?	Other factors may be relevant, but the non-exhaustive framing of Art 10 leaves room for this.
9. Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with parallel proceedings in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.	As noted above, I am not confident that there is sufficient agreement on a core framework to enable preparation of a convention along the lines contemplated, let alone one that will be widely adopted.
10. Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with related actions in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.	The difficulties I identified above in relation to finalising a text on parallel proceedings are as great, perhaps greater, in the context of related proceedings. Again, it sems to me that a principles-based soft law instrument has better prospects of achieving a measure of consistency of practice and accessibility.
11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seised, in cases involving parallel proceedings and related actions?	These seem broadly desirable and workable, but further refinement is necessary. Encouraging greater communication between courts would be very valuable in this field: this could be done through a soft law 'principles' instrument.
11.2 Are there particular advantages and challenges you foresee in applying these methods?	It is premature to express a view on this.

12. What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?	It is premature to express a view on this.
13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument? The objective of a future instrument is to enhance legal certainty, predictability and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.	As explained above, I consider that the more promising approach would be to continue work on a soft law instrument. I am not optimistic, based on the Draft Text and my experience of work on the Judgments Project prior to 2001, that it will be possible to achieve consensus on the text of a convention that will be widely adopted.
13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?	See above.
13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than those that currently exist? Are there any ways that such risks could be addressed in the Draft Text?	It is premature to express a view on this.
14. What other comments, if any, do you have?	As explained above, I suggest that CGAP give careful consideration to the prospect of reaching consensus on the text of a convention that will be widely adopted. Other approaches - such as a soft law instrument that sets out relevant high-level principles and provides a menu of text options - may be more successful in the long run.