



- Conférence de La Haye de Droit International Privé
- Verdrag van de Haag betreffende de Regeling van de Rechtsverhouding tusschen het Burgerlijk Wetboek en het Wetboek van Handelwetgeving
- Conférence dell'Haia di diritto internazionale privato
- Χαίσιμα κόνφερέντζια γα το μεθναρδιανό πριβατο πραιο
- Διέσκεψη της Χάγης για το Ιθαγενή Διόρθό Διόμο
- Гаагская конференция за міжнародного приватного права
- Χαίσιμα Κόνφερέντζια για Μεθναρδιανό Πριβατο Πραιο
- Haagi Rahvusvahelise Eräõiguse Kõnekoht
- Haagin kansainväällisen yksityisölkäiden kónferenssi
- Haagkónferens for internationalt privatrett
- Kónferens e Hagas per te dretjen ndërkömbetare private
- Comhótháil na Háige um dhá príobháidíoch idirnáisiúnta
- Kónferens ta' The Hague ówar il-Liġi Internazjonalni Privati
- Haagkónferens for internationalt privatrett
- Kónferensja Haaska Prawa Prywatnego Międzynarodowego
- Conférence de Haia de Droit International Privé
- Conférence de la Haage de Dret International Privé
- Conférence de Den Haag dal dret privé international
- Haagiska konferensia mednárodného práva súkromného
- 海牙国际私法会议
- 헤이그 국제사법회의
- へーぐ国際私法会議
- Hagga tarptáulínó privatis teisés kónferensija
- Haška kónferensija o mednárodnó privátnom právu
- Haška kónferensja za mednárodnó zasebno právo
- Haška kónferensija za mednárodnó privátno právo
- Haag-ühtevõttum um alþjóðlegan einkamálarétt
- Χαίσιμα Κόνφερέντζια γα Μεθναρδιανό Χασίκο Πραιο
- Гаагская Конференция на Международного Частного Права
- Гаагская конференция на международному частному праву
- Haager Kónferens for Internationalt Privatret
- Haage Conference voor Internationalt Privatrecht
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- مؤتمرا لاهاي القانون الدولي الخاص
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- Hagga Starptáulínó privatisbe kónferensja
- საერთაშორისო კონფერენცია პირადი სამართლის დარგის საკონფერენციო
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Introducing the 2005 Hague Convention of Choice of Court Agreements

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Hague Conference

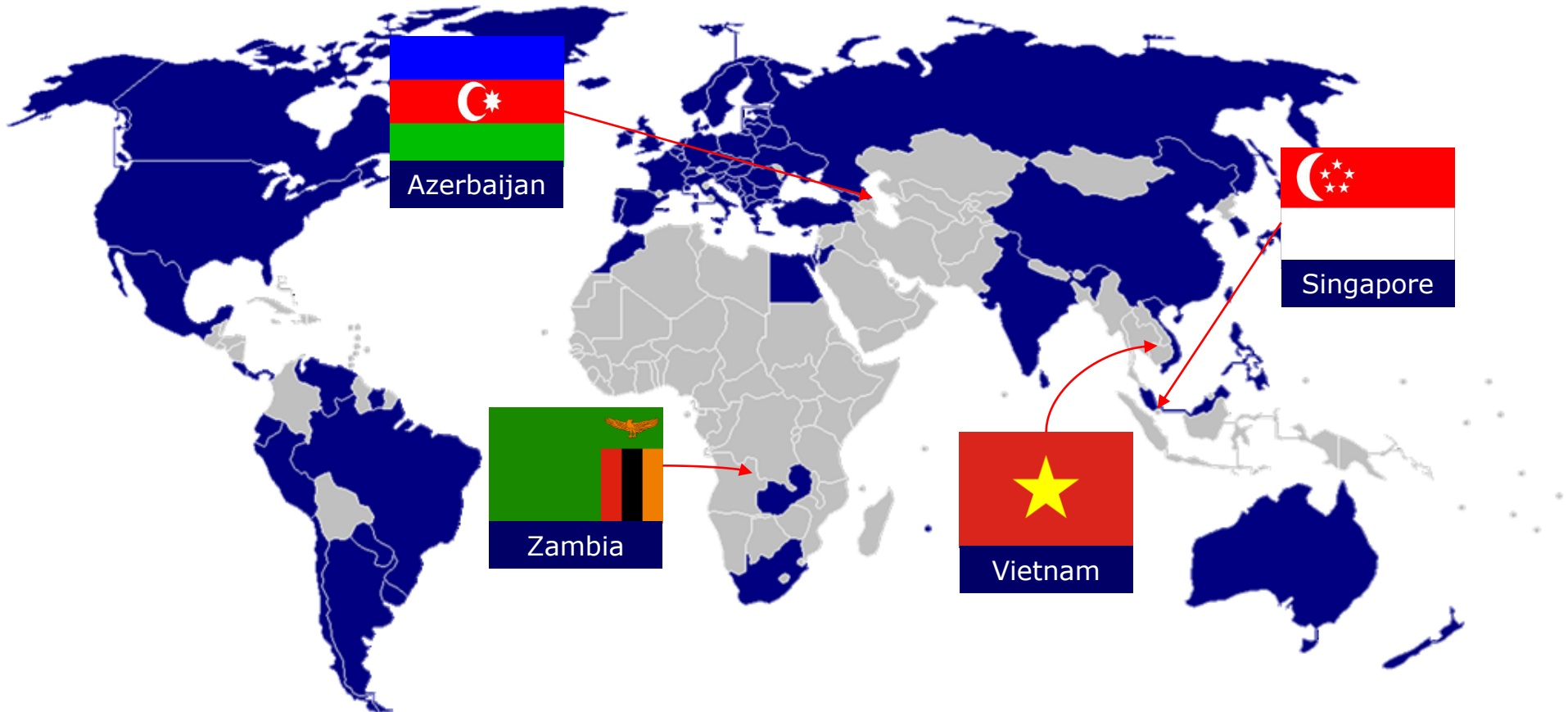
- The Hague Conference is an intergovernmental organisation working for the “progressive unification of the rules of private international law”.
- The Hague Conference pursues this purpose primarily through the development and servicing of international treaties (known collectively as the “Hague Conventions”).
- The HCCH has concluded almost 40 treaties which address one or more of the private international law questions, (*i.e.*, jurisdiction, applicable law, recognition and enforcement, and legal co-operation in a particular subject-matter area).

Members of the Hague Conference

74 Members (73 States + the EU)

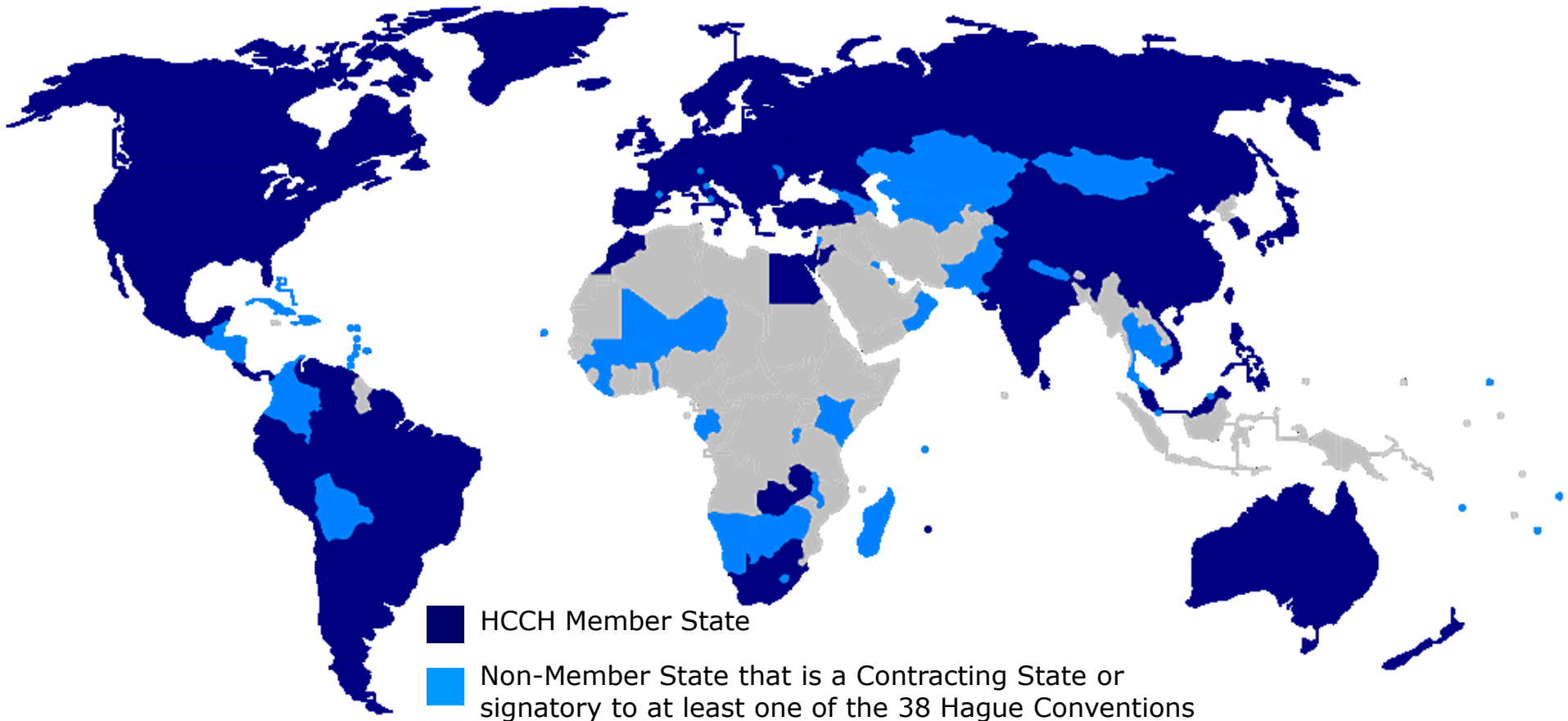
2 new Members already in 2013

2 new Members expected soon (Azerbaijan and Singapore)



Connected States

141 States "connected" to HCCH



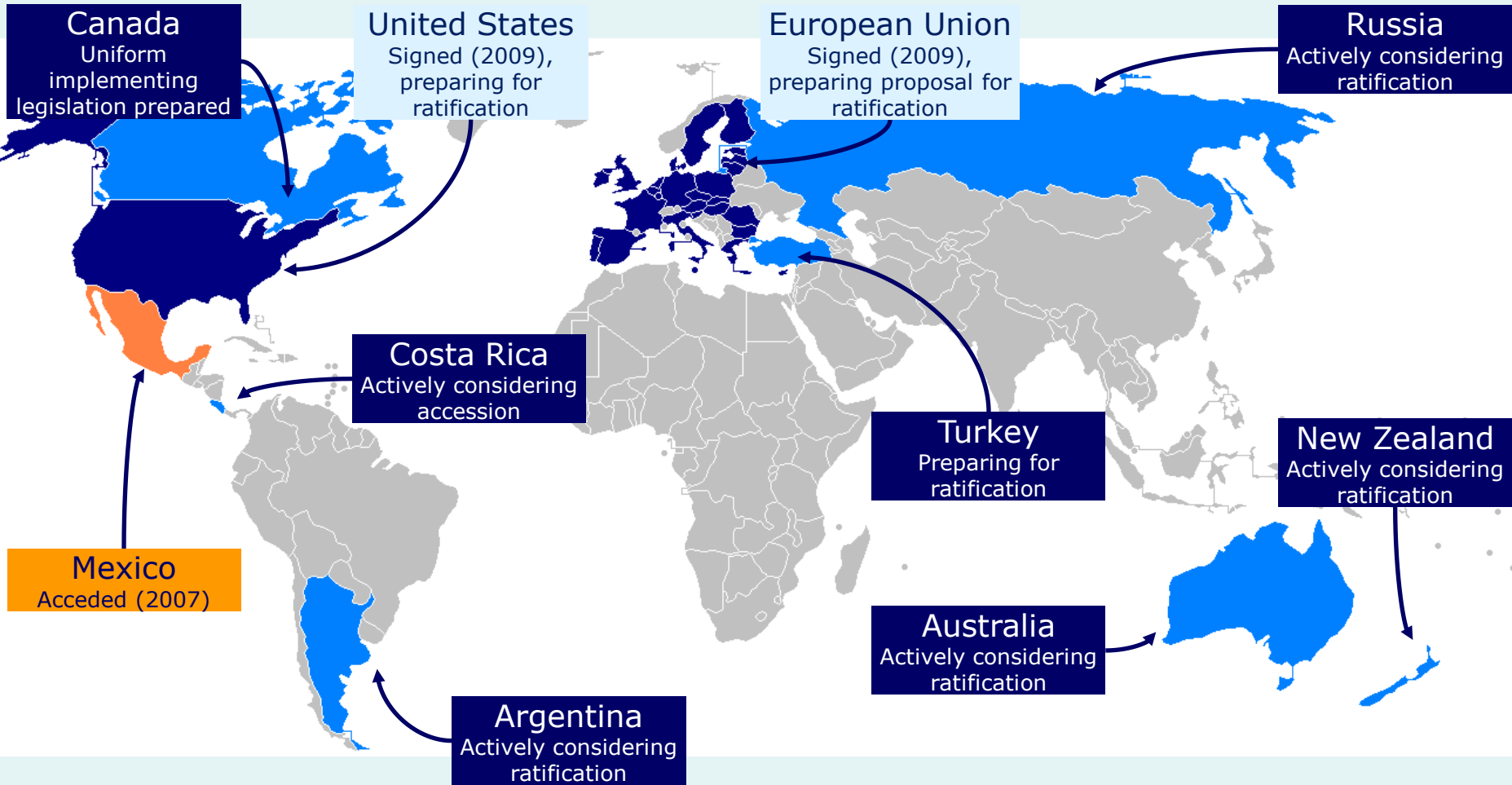
Objectives of the Choice of Court Convention

- ▶ Concluded in 2005 at the 20th Session of the Hague Conference
- ▶ Main objectives are to:
 - Provide legal certainty and predictability with respect to choice of court agreements (a tool for transactional planning); and
 - Become the litigation equivalent of the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (reinforce dispute settlement framework in Contracting States).

An example

- A recent Finnish case provides an example of the benefits of the Choice of Court Convention.
- Contract contained a choice of court agreement designating courts in the US state of California.
- Judgment was rendered by the chosen court and enforcement was sought in Finland.
- Finnish law requires an international binding agreement for the recognition and enforcement of judgments and no such agreement exists between Finland and the US. As such, the judgment creditor brought fresh proceedings.

Status



Scope of the Convention

- The Convention only applies to *international* cases
- The choice of court agreement must be exclusive but it is deemed exclusive unless the agreement expressly provides otherwise
- The choice of court agreement must relate to civil or commercial matters

International Cases

- For the purposes of *jurisdiction*, a case is international unless the parties are resident in the same Contracting State and their relationship, and all other elements relevant to the dispute, are connected only with that State;
- For the purposes of *recognition/enforcement*, a case is international where the judgment was given in another Contracting State

Exclusive choice of court agreements

- A choice of court agreement designating a single court (or the courts of a single State) is deemed exclusive unless the parties expressly provide otherwise.

➤ Article 3(b)

- However, States may agree (by declaration) to recognise and enforce judgments rendered pursuant to a *non-exclusive* choice of court agreement.

➤ Article 22

Exclusions from scope

- Consumer and employment contracts
 - ➔ Article 2(1)
- Further excluded matters include family law and succession, insolvency, carriage of goods and persons, anti-trust (competition) matters, validity of IP rights other than copyright and related rights.
 - ➔ Article 2(2)
- But the Convention *does* apply where excluded matters arise as preliminary question (e.g. by way of defense) and not as object of the proceedings.
- If a State has a strong interest in not applying the Convention to a specific matter, it may make a declaration to that effect.
 - ➔ Article 21

Form of agreement

- Agreement must be concluded or documented –
 - in writing, or
 - by other means of communication which render information accessible for subsequent reference (e-agreement)

➔ Article 3(c)

Key Obligations of the Convention

1. Chosen court **must** hear the dispute.
→ Article 5
2. All other courts **must** suspend or dismiss proceedings.
→ Article 6
3. A judgment given by the chosen court **must** be recognised and enforced by other Contracting States.
→ Article 8

First key obligation:

- **Chosen court cannot refuse to hear the dispute because:**
 - it considers that a court of another State is more appropriate (*forum non conveniens*); or
 - a court of another State was seized first (*lis pendens*)
- **Chosen court may refuse to hear a dispute where the choice of court agreement is null and void under the law of that State (including conflict of law rules)**

➤ Article 5
- **No effect on internal rules on subject matter jurisdiction or venue**

Second key obligation:

➤ Court not chosen may only hear the dispute if:

- the choice of court agreement is null and void under law of State of chosen court (includes conflict of law rules);
- a party lacked capacity to conclude the agreement under the law of State of the court seized (includes conflict rules);
- giving effect to the agreement would lead to manifest injustice or would be manifestly contrary to the public policy of the State of the court seized;
- for exceptional reasons beyond control of the parties, the agreement cannot reasonably be performed; or
- the chosen court has decided not to hear the case

➔ Article 6

Third key obligation

➤ **The court addressed may refuse to recognise/ enforce a judgment by the chosen court if:**

- the choice of court agreement was null and void under law of State of the chosen court (unless otherwise determined by the chosen court);
- a party lacked capacity to conclude the agreement under the law of requested State;
- the defendant was not properly notified; or
- the judgment was obtained by fraud in connection with a matter of procedure

Thank you

Questions?

