



The Road Ahead

The 2005 Choice of Court Convention



“Co-operation through Hague Conventions”

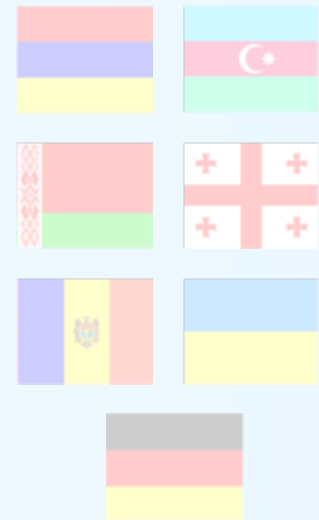
Bonn - 15 October 2010

Christophe Bernasconi

First Secretary

Hague Conference on Private International Law

1. Overview of the Convention
2. Scope
3. Operation
4. Recent Developments





- 1. Overview of the Convention**
2. Scope
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Basic objectives

- Provide *legal certainty* and *predictability* with respect to *choice of court agreements*
- Become the litigation equivalent of the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*

Three key obligations

1. The chosen court **must** hear the dispute
 - Article 5
2. Any non-chosen court **must** suspend/dismiss proceedings
 - Article 6
3. A judgment given by the chosen court **must** be recognised and enforced
 - Article 8



1. Overview of the Convention
2. **Scope**
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Article 1(1)

- “This Convention shall apply in **international cases to exclusive choice of court agreements** concluded in **civil or commercial matters**”

International cases

- For 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
- A State may refuse to exercise jurisdiction where, except for location of chosen court, there is no connection between that State and the parties or dispute (Art 19 declaration)

International cases

- For purposes of *recognition/enforcement*, a case is international where the judgment was given in another Contracting State
- A State may refuse to recognise or enforce judgment given by a court of another Contracting State if parties were resident in requested State and relationship of the parties and all other elements relevant to dispute, other than location of chosen court, were connected only with requested State (Art 20 declaration)



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Obligation of chosen court

- Chosen court cannot refuse to hear dispute because:
 - it considers that a court of another State is more appropriate (*forum non conveniens*);
 - a court of another State was seised first (*lis pendens*)
- Chosen court may refuse to hear dispute where the choice of court agreement is null and void under the law of that State (including conflict rules)
- No effect on internal rules on subject matter jurisdiction or venue

Obligation of court *not chosen*

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

Obligation to recognise/enforce

- A court 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 chosen court (unless otherwise determined by the chosen court);
 - a party lacked capacity to conclude 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, or recognition / enforcement would be manifestly incompatible with public policy of requested State
 - ...



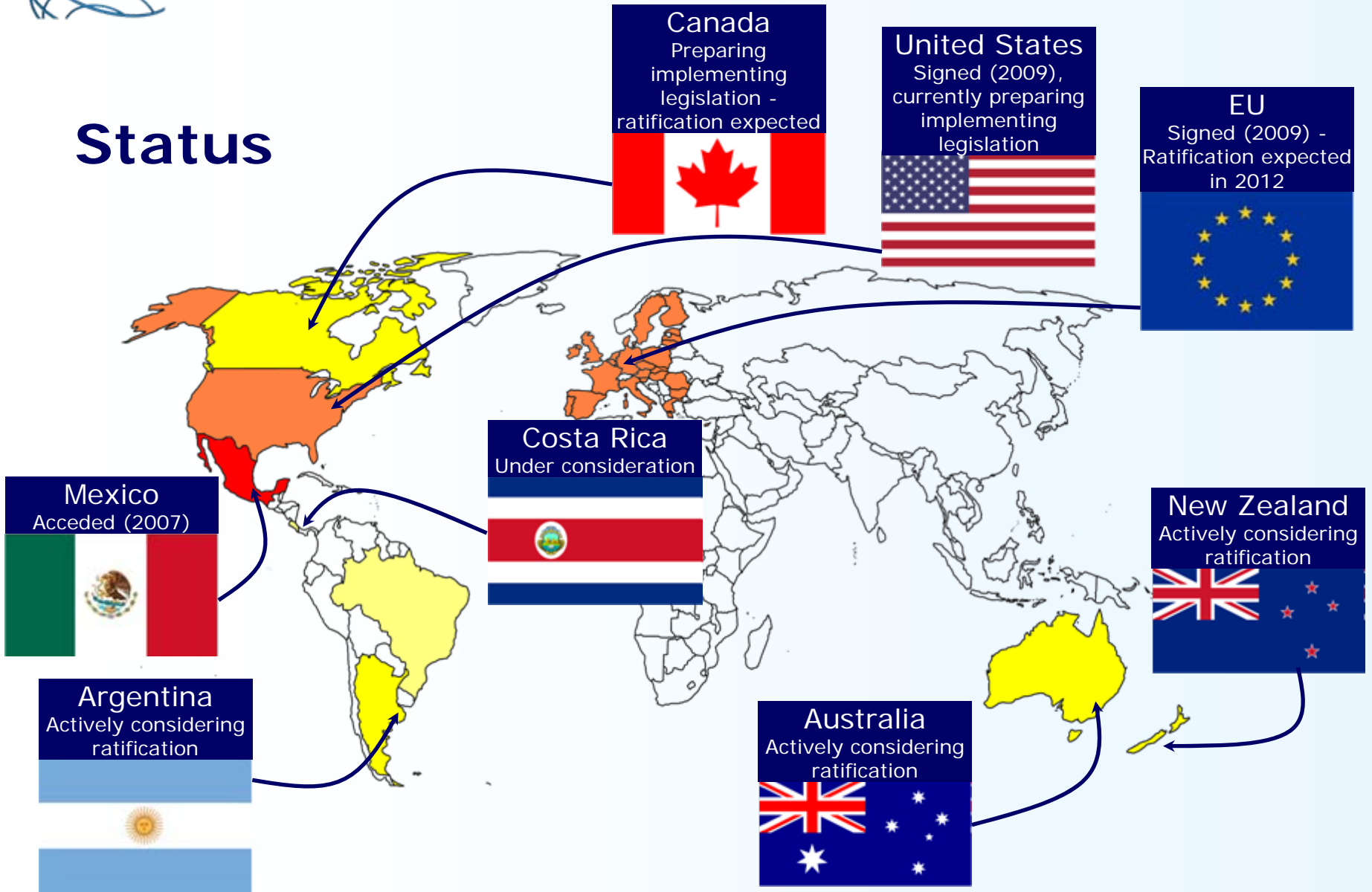
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Status

- The Convention is not yet in force
- Entry into force after two ratifications/accessions (Art 31)

4. Recent developments

Status



Supported by HCCH

- New implementation initiative
 - Launched by PB this year at the request of a group of interested States
 - 6 States + EU are currently participating – all interested States are welcome!
 - Discussion of implementation issues (*e.g.*, interaction with existing internal laws and regional instruments)
 - Development of practical implementation tools (*e.g.*, seminars, checklists, and information documents)



Thank you!

Christophe Bernasconi

cb@hcch.nl

www.hcch.net