

## SUMMARY REPORT

### Seminar on the settlement of international disputes

Rio de Janeiro, Brazil, 5 November 2010

#### Overview

On 5 November 2010, a seminar on the settlement of international disputes was held at the Pontifícia Universidade Católica do Rio de Janeiro ("PUC Rio"). The Seminar was one of two events organised by the Hague Conference in Brazil, the other being a joint seminar with the Brazilian Ministry of Justice on choice of court in international litigation, held in Brasilia on 8 November 2010. Details of this event are available under "News & Events" on the Hague Conference website (< [www.hcch.net](http://www.hcch.net) >).

The focus of the PUC Rio seminar was on three multilateral instruments dealing with the settlement of international disputes:

- the *United Nations Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards* ("New York Convention");
- the *Hague Convention of 30 June 2005 on Choice of Court Agreements* ("Choice of Court Convention"); and
- the *MERCOSUR Buenos Aires Protocol of 5 August 1994 on International Jurisdiction in Contractual Matters* ("Buenos Aires Protocol").

The seminar was attended by approximately 70 participants, including government officials, legal practitioners, arbitrators, academics and students, as well as representatives from the Permanent Bureau. Proceedings were co-chaired by Ms Daniela Vargas (Vice-Dean of the Center of Social Sciences at PUC Rio) and Ms Carmen Tiburcio (Adjunct Professor of Private International Law at Rio de Janeiro State University) and were conducted in Portuguese and English, with simultaneous interpretation available.

#### Purpose

The purpose of the seminar was:

- to raise awareness of and assess the operation of the New York Convention and Buenos Aires Protocol – which are both in force in Brazil and the other Contracting States of MERCOSUR (Argentina, Paraguay and Uruguay);
- to compare these two instruments to the Choice of Court Convention, which is not in force in Brazil but under examination in some States in the region; and
- to assess the potential benefits to business that could be brought if Brazil joined the Choice of Court Convention.

#### Summary of proceedings

The seminar consisted of four presentations:

- Ms Nadia de Araujo, *Current perspectives in Brazil*
- Mr Lauro Gama, Jr., *Brazil as a venue for international disputes*
- Ms Marta Pertegás, *What do New York and The Hague have in common?*
- Mr Ignacio Goicoechea, *The Hague Convention of 30 June 2005 on Choice of Court Agreements*

as well as ample time for discussion.

A summary of the seminar proceedings can be found online in the blog entries available at: < <http://controversiasinternacionais.blogspot.com> > (in Portuguese).

The seminar began with **Ms Nadia de Araujo**, Professor at PUC Rio, giving a presentation on the current climate in Brazil with respect to choice of court agreements. She noted that choice of forum clauses in international contracts are not clearly regulated in Brazil and that the jurisprudence is faltering in the face of such clauses. There is, however, a draft new Code of Civil Procedure which, if adopted as it stands, would prevent a judge from adjudicating an action when there was an express clause choosing another jurisdiction in line with the Choice of Court Convention. She finished by stressing the importance of the adoption of the Choice of Court Convention by Brazil.

Then, **Mr Ignacio Goicoechea**, Liaison Legal Officer for Latin America of the Hague Conference, gave a presentation which explained the background, scope, operation and current status of the Choice of Court Convention. He emphasised the three main obligations established by the Convention: (1) the chosen court should not dismiss the case; (2) a court not chosen cannot judge the issue; and (3) the judgment of the court chosen must be recognised and enforced.

**Ms Marta Pertegás**, Secretary at the Permanent Bureau of the Hague Conference, next gave a presentation which compared the New York Convention with the Hague Choice of Court Convention. She stressed that both Conventions serve the same purpose in that the parties' choice is respected and any judgment or award will be recognised in the jurisdiction of enforcement. An important common goal of both instruments is to ensure legal certainty in international trade relations.

The final presentation, given by **Mr Lauro Gama**, focused on whether Brazil would be an appealing venue in which to resolve international disputes. He noted that a comprehensive legal framework, including the major Conventions discussed during the Seminar, is key to Brazil's consolidation as an attractive dispute settlement venue in the South American continent.

## **Outcome**

The seminar gave participants the opportunity to share experiences of international dispute settlement, and to critically examine the operation of three important multilateral instruments. In particular, participants were informed of:

- the parallels between the Choice of Court Convention and the New York Convention, and the goal of the former to achieve for international litigation the certainty and security that the latter has successfully achieved for international arbitration; and
- the benefits of the Choice of Court Convention, as an international counterpart to the Buenos Aires Protocol, in improving judicial coordination in civil and commercial cases and providing greater predictability about the venue for litigation and the enforceability of foreign judgments.



Seminar presenters, from left: Mr Ignacio Goicoechea; Ms Carmen Tiburcio; Ms Nadia de Araujo; Ms Marta Pertegás; Ms Daniela Vargas; and Mr Lauro Gama