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An Australian Perspective on International Commercial Litigation:

The Challenges and Opportunities

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Acknowledgments

At the outset, I would like to thank the Hague Conference on Private International Law and the Wuhan University for extending the invitation to me to speak at this conference. For me personally, to return to China for the first time in 30 years is stimulating; as an independent traveller here for 6 weeks in 1984 on my way to study at Oxford University my eyes were opened to a great civilisation just about to undergo a remarkable change.

Introduction

I am particularly pleased with the opportunity to attend and participate in this conference, dealing as it does with such important questions. How close are we to the commencement of the 2005 Hague Convention on Choice of Court Agreements (**2005 Convention**)? What is the appetite for more wholesale reform and the broader Judgments Project? What obstacles are there and how can they be overcome? What will the future of international litigation – and, in particular, international commercial litigation – look like?

That we have representatives here from Cambodia, China, India, Indonesia, Laos, Myanmar, New Zealand, Phillipines, Korea, Singapore, Sri Lanka, Thailand, Vietnam, Hong Kong as well as Australia shows the importance of these questions to the whole region.

This invitation to speak has provided me with a timely opportunity to draw together a number of threads that I have picked up, both, formerly, in my practice for 25 years at the private bar in Australia and presently in the office that I hold as the Solicitor-General or Second Law Officer of the Commonwealth of Australia, in relation to the topic of international litigation. At the private bar, I was brief as counsel in many matters involving parallel proceedings, choice of law, international restraining orders and the like, and as Solicitor-General I have appeared in 2013 as counsel for Australia before the International Court of Justice against our friends form Japan, and also in other ongoing international arbitration matters both investor-state and inter-state.

Some of these related “threads” include: the interface between domestic law and treaties and international law more generally; the interrelationship between international arbitration and our various court systems; the significance of our various common law and civil law heritages in international dispute resolution settings; and, most generally, the benefit of opportunities – like the present conference – to discuss these issues with people from different legal traditions where fresh perspectives and ideas can be exchanged and practical solutions worked up for the decision-makers in our various countries to consider and adopt.

Today, we have already heard illuminating and helpful presentations on the development of the 2005 Convention and its features, its impact to date in domestic legislation and other regional instruments, legal and practical issues that arise in relation to the Convention and the virtues of implementing it. This afternoon, we have also been reminded of the broader, ongoing project in relation to the development of a future binding instrument for the recognition and enforcement of judgments. We will also hear more about this tomorrow.

What I will seek to add to this discussion this evening is, first, to outline my own observations on the context and merits of the 2005 Convention, which – as is well known to this audience – aims to achieve reform in the discrete area of choice of court agreements entered into by private commercial parties. In particular, I will note the key benefits that the 2005 Convention might bring for trade and investment within the Asia Pacific region.

I will conclude with some remarks on the broader project of reform that is the object of the ongoing Judgments Project which you have heard about today.

International litigation

At the outset, however, it is helpful to identify three matters of context. The first is that there are several different "species" of "international litigation". Judge Greenwood of the International Court of Justice has helpfully identified four key categories[1]:

i. Litigation between states (for example, proceedings before the ICJ or the World Trade Organisation);
ii. Litigation between a State and an individual or corporation (for example, in a case before a human rights court, or an investor-state arbitration);
iii. Proceedings in international criminal courts and tribunals; and
iv. Litigation before national courts concerning international law issues.

To this list must be added the litigation of international commercial disputes before domestic courts – the category of interest for our present discussion. The term "international commercial litigation" has been described as a term of "convenience", grouping as it does commercial disputes that have various forms of international "connections".[2] The "international" nature of the litigation in this category of case arises due to the different States to which the parties to the

1 C Greenwood, "Some challenges of International Litigation" (2012) (1) Cambridge Journal of International and Comparative Law 7, pp. 9-10.

2 J Mo, *International Commercial Law* (5th ed, 2013) pp. 711-712, citing also S J H Cromie, *International Commercial Litigation*, Butterworths, London, 1990, p. v.

dispute belong. Such litigation can take place in a court of the State of one or other of the disputing parties, or in a "neutral" third State.

It is helpful to situate our discussion of international commercial litigation in the context of what is caught under the broader umbrella of "international litigation", if for no other reason than to acknowledge that it is part of an even larger discussion.

The common law and civil law divide

The second matter of context: The common law/civil law divide provides the background against which the value of establishing international rules on jurisdiction and the recognition and enforcement of judgments becomes clear. The common law doctrine of *forum non conveniens*, while aimed at litigation being conducted in the most appropriate forum, may increase litigation over just that question. The civil law doctrine of *lis pendens*, where the court first seised of the matter has priority, can produce on equally unattractive result of litigants rushing to commence proceedings in order to secure the forum of their choice.[3]

Australian commentators, picking up on the challenge arising from the diversity of legal systems, have relevantly observed:

> The means by which litigious disputes are resolved, and indeed the substantive laws from which actionable rights spring, are deeply enmeshed with cultural traditions and understandings very often valued well above the demands of international commerce; thus it is only understandable that national courts and legislatures have shown a proclivity for retaining means to protect their citizens and residents from foreign judgments rendered contrary to such

[3] Brand and Jablonski, *Forum Non Conveniens: History, Global Practice, and Future Under the Hague Convention on Choice of Court Agreements* (2007) at p. 209.

> traditions … [I]t is the sheer diversity of procedural and substantive systems and the reluctance of states and regions to forfeit their specific legal heritages in favour of uniformity that presents the most fundamental obstacle to the creation of a wide-ranging convention on the enforcement of foreign judgments.[4]

In addition to overcoming such differences, the value of pursuing the reforms of the 2005 Convention and the Judgments Project is further highlighted by considering what has been achieved in terms of increased certainty for international commercial arbitration under the New York Convention. Such certainty might also be realised for litigants in commercial disputes under a convention dealing with choice of court agreements.

Commerce in the Asia Pacific

The third matter of context is the particular nature of trade and commerce in the Asia Pacific region, and the nature of the commercial enterprise itself.

The Asia Pacific region continues to grow and further cement the important position it holds on the international stage. In 2013, the World Bank reported that the "East Asia and Pacific region contributed around 40 percent of global growth in 2012"[5] and that "the region grew at 7.5 percent in 2012 - higher than any other region in the world".[6] The World Bank stated that "[t]he challenge

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4 C R Einstein and A Phipps, "Trends in International Commercial Litigation Part II – The Future of Foreign Judgment Enforcement Law" (2005) available at: http://www.lawlink.nsw.gov.au/lawlink/Supreme_Court/ll_sc.nsf/vwPrint1/SCO_einsteinjulyaugust2005

5 "Strong Domestic Demand Drives Increasing Growth in East Asia Pacific", World Bank News, 15 April 2013, available at < http://www.worldbank.org/en/news/press-release/2013/04/15/strong-domestic-demand-drives-increasing-growth-in-east-asia-pacific >.

6 *Ibid*.

for policy makers now is to build on these strengths and address short and long term challenges with smart policies".[7] So, what are these "smart policies"?

The growth within the region opens up great commercial opportunities. These opportunities also involve risk, especially for those who seek to tap into the markets from across borders. Cross-border trade, commerce and investment involve two principal species of risk: transaction risk and litigation risk.[8]

Litigation risk represents a bundle of certain subsets of risk, which, according to Fentiman, comprises: venue and enforcement risks.[9] He defines venue risk as:

> … the risk to each party that any dispute will not be resolved in their preferred forum. It is the risk that a claimant is prevented for suing in its preferred court, or that a defendant is forced to defend proceedings where it does not wish to do so.[10]

And – relevantly – enforcement risk as:

> … *the risk that a* judgment *obtained in one court will be unenforceable elsewhere.*[11]

Understanding these risks – and dealing with them accordingly – is fundamental in international commercial litigation: businesses seek ways to reduce or altogether eliminate these risks through strategic decisions.

But making these choices and reducing or eliminating these risks is at times impossible or, at least, expensive because, for example:

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7 *Ibid*.
8 R Fentiman, *International Commercial Litigation*, Oxford University Press (2010), at para 1.02.
9 *Ibid*.
10 Fentiman, at para 1.11.
11 *Ibid*.

a. the preferred forum needs to be identified, including by analysing its procedure and the accessibility of the forum’s domestic law; and

b. local agents may need to be retained, adding to the legal bill of clients.

Other cost-generating factors spring easily to mind.

In that sense, litigation risk has a clear economic dimension because it can it drive up transactions costs:

a. For example, risk mitigation costs are usually passed on in full, increasing the price the consumer has to pay, and
b. sometimes further loadings, akin to risk insurance premiums, are added, increasing prices even further.

Therefore, litigation risk has the potential to influence businesses' commercial decisions: if risk can be eliminated or reduced to acceptable levels, businesses will be commercially active; if risk is assessed as too high, their commercial activity may cease altogether.

While this is problematic for companies and individuals around the world, Asia Pacific region particularly sensitive to increased transaction costs. This is because:

a. when compared with other regions around the world, the Asia Pacific is a region made up of many countries and their geographical dispersion makes travel including to resolve disputes more expensive;[12]

b. the Asia Pacific region is populated with common law, civil law and hybrid legal systems;[13]

c. a multitude of different languages is spoken, making it more difficult for parties to access and understand the laws and procedures of countries they engage in business with; and

d. the region is also made up of varying levels of economic growth resulting in considerable differences in the sophistication of court practices and procedures including amongst other things the use of technologies enabling overseas appearances.[14]

To countenance increased transaction costs within the region and globally, the importance of global dispute resolution mechanisms for cross-border trade and investment has become more apparent than ever.

Many countries have recognised this importance, as is evidenced within the region by the efforts Australia, Singapore and Hong Kong (as well as a number

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12 D Goddard, "Rethinking the Hague Judgments Convention: A Pacific Perspective" *Yearbook of Private International Law*, (2001), 3, p. 27.

13 S Chong S.C., "Singapore's Litigation Landscape: A Changing Constant", Opening Address *Litigation Conference 2013*, 1 February 2013, para. 17.

14 See, for example, Hon. J J Spigelman AC, "International Commercial Litigation: An Asian Perspective", (2007) 35 ABLR 318.

of other Asia Pacific States) have gone to in order to cast themselves as effective dispute resolution hubs.[15]

Reforms to domestic arbitration frameworks or, as in Australia, proposed reforms to their respective international commercial laws, are clear evidence of these efforts.

It is here where the "smart policies" referred to by the World Bank will be required. Currently, cross-border disputes within the region are being resolved predominantly through the use of arbitration.[16] However, despite the success of arbitration in the Asia Pacific region, there is still a great need and desire for complementary instruments regulating international litigation.[17]

At present, while there are a number of bilateral treaties,[18] there is no regional treaty governing international commercial litigation in force among states in the Asia Pacific region.

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15 A Monichino SC, "International arbitration in Australia -2010/2011 in review", (2011) 22 ADRJ 215.

16 C Crowe, "Asia's arbitration explosion", International Bar Association, 16 August 2010, available at < http://www.ibanet.org/Article/Detail.aspx?ArticleUid=C55383E1-519F-4CD9-8822-BE34CC748D2F >.

17 See, for example, Business Across Borders, Troubled waters – the risks of international commercial disputes, A series of articles written by the Economist Intelligence Unit, available at < http://www.managementthinking.eiu.com/sites/default/files/downloads/Troubled%20Waters.PDF >. See also, "Fulbright's 9th Annual litigation trends survey – Litigation Bounces Back; Regulation Hits High – U.S. Release", (26 February 2013), available at < http://www.nortonrosefulbright.com/news/93066/fulbrights-9th-annual-litigation-trends-survey-litigation-bounces-back-regulation-hits-high-us-release >; "ICC calls on governments to facilitate cross-border litigation", *ICC Commission on Commercial Law and Practice*, Paris, (29 November 2012) available at < http://www.iccwbo.org/News/Articles/2012/ICC-calls-on-governments-to-facilitate-cross-border-litigation/ >.

18 See, for example, *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* (Trans-Tasman Agreement) and *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region pursuant to Choice of Court Agreements between Parties Concerned made between the*

And the cross-border litigation-relevant rules that we do have, such as the rules regarding international jurisdiction and the recognition and enforcement of foreign judgments, vary considerably.[19]

The Convention's rules governing choice of court agreements

Let me come now to the 2005 Convention – while falling short of a comprehensive convention on jurisdiction and the recognition and enforcement of judgments – creates rules relating to choice of court agreements between private commercial parties. It has been correctly described as filling a "gap" and providing "increased predictability for the international commercial community"[20]: It has also been described as "an important statement about the value to transnational trade and business of certainty in contractual relation"[21].

The 2005 Convention has further been described as "a tool for transaction planning and for subsequent dispute resolution, validating party autonomy through upholding choice of court agreements and enforcing judgments resulting from exclusive choice of court agreements, not all judgments"[22]. This notion of contractual freedom is an important feature of the nature of the scheme. Further, and perhaps most significantly, the 2005 Convention can be seen as "establish[ing] a balance between litigation and arbitration in the

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Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region (Hong Kong SAR and Mainland China Agreement).

19 See, for example, Hon J.J. Spigelman AC, "Transaction costs and international litigation", (2006) 80 ALJ 438, 449, in which he summarises the different approaches to foreign judgment enforcement within the Asia Pacific region.

20 Brand and Jablonski at p. 204.

21 R Mortensen, "The Hague and the Ditch: The Trans-Tasman Judicial Area and the Choice of Court Convention" (2009) 5(2) JPIL 213, 240.

22 P Winship and L Teitz, "Developments in Private International Law: Facilitating Cross-border Transactions and Dispute Resolution" (2006) PIL 505, 507.

international arena", by doing for litigation what the New York Convention has done for arbitration[23]. This also may ultimately have positive implications for the rule of law.

As has been reaffirmed here today, the Convention contains three basic rules which operate if the parties have exclusively chosen a particular court or country's courts:

1. The court chosen by the parties will hear the dispute (Art 5);
2. Any other court in a Contracting State will decline to hear the dispute (Art 7); and
3. Other courts of Contracting States will recognize and enforce the judgment (Art 9).

Contracting States may also opt to recognise and enforce judgments based on non-exclusive choice of court agreements (Art 22). (Under such agreements, while a particular court is "chosen", other courts are not expressly excluded.)

Merits of the 2005 Convention

The merits of the 2005 Convention can conveniently be summarised by reference to the "five C's": certainty, choice, competition, costs and cross-fertilisation.

Certainty

23 G Tu, "The Hague Choice of Court Convention – A Chinese Perspective" (2007) AJCL 347, 364.

First, the 2005 Convention can be seen as driving the progressive unification of jurisdictional and recognition and enforcement rules globally and across the region.

This has considerable benefits, including because the 2005 Convention reduces the litigation risks which I described earlier businesses are exposed to when engaging in cross-border trade, commerce and investment.

The benefits include:

— reducing the risk of venue disputes and unfamiliarity with law of unforeseen venues by allowing parties to agree on a particular venue;

— reducing the risk of parallel proceedings by providing that the chosen court will have jurisdiction and that courts not chosen are obliged to suspend or dismiss proceedings brought before them; and

— ensuring that a judgment given by the chosen court will be recognised and enforced in other Contracting States.

This leads to a further, systemic benefit.

Choice

Second, the benefit is the introduction of real “choice”; the creation of an alternative, expanding the dispute resolution options available to commercial parties.

Unlike arbitral awards, which are generally recognised pursuant to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, at present judgments are much more difficult — if at all — to enforce across borders.

The Hague Choice of Court Convention of 2005 seeks to overcome this problem and fill a significant gap.

Speaking extra-curially, the then Chief Justice of NSW, the Hon CJ Spigelman made the link between the Hague Choice of Court and New York Convention, noting that:

> The Choice of Court Convention has the same core justification as the New York Convention on Arbitral Awards. Parties to a commercial contract have chosen a jurisdiction. The autonomy of the parties should be respected for the same reasons as such autonomy is respected by all of those numerous nations that have adopted the New York Convention[24].

Thus, the Hague Choice of Court Convention not only increases certainty in international litigation by giving primacy to party autonomy, but also enhances the enforceability of judgments across borders.

And in that sense, the Convention provides parties in international commercial disputes with a genuine choice between arbitration and litigation.

Competition

Third, by levelling the playing field between the two dispute resolution mechanisms, the 2005 Convention leads to increased competition between the two procedures.

24 Address to Commonwealth Law Conference 2009, p5.

The various national courts, on the one hand, and the plethora of arbitral institutions and arbitrators on the other, will all have to work harder, and smarter, in refining their procedures, and drawing on the best in each other's procedures, to remain attractive.

Arbitration will risk losing its near monopoly in the area unless it truly proves its comparative worth; courts will be able more effectively to offer their distinctive contribution to dispute resolution.

Costs

Fourthly, as certainty promotes choice, and choice provokes competition, it can be anticipated that dispute resolution costs, especially in the area of arbitration, - but also in the courts - may decrease, benefitting disputants directly, and then indirectly lowering the costs of their products in the market.

Cross-fertilisation

Fifthly, and this may be difficult to precisely quantify or tie down, but there are likely to be benefits through cross-fertilisation. As courts play themselves back into the market for international commercial dispute resolution, they will increasingly deal with disputes that may mirror disputes dealt with by the courts of another country. This will lead to the cross-fertilisation of legal techniques in at least two areas:

a. In determining applications under the 2005 Convention itself, courts or various countries will necessarily familiarise themselves with the

workings of the legal systems of other Convention partners, including their jurisprudence on the Convention.

b. In the conduct of substantive hearings reserved to the courts of one State by the Convention, the governing law may wholly or in part be that of another Convention country.

Rule of law considerations

There is a final matter which cannot be reduced to a word commencing with 'C' or indeed to commerce alone. Beyond these immediate commercial benefits, there are also likely to be benefits in terms of rule of law considerations when international commercial disputes are adjudicated by courts. That is, the openness, transparency and independence that is ordinarily a feature of judicial proceedings will enable greater consistency between decisions both within the judicial system of a given country and between the jurisdictions of different states.

The development of commercial law needs, among other things, open, public precedents, which enable parties and their advisers to know how the law is likely to be applied in a given case. Often this might avoid the need to go to dispute resolution at all. Here, courts have a clear advantage over arbitration.

The way forward

The 2005 Convention provides a platform upon which the Asia Pacific States, and other trading nations around the world, are able to harmonise the rules and procedures applicable to the resolution of commercial disputes.

Australia's Chief Justice Robert French has recently spoken extra-judicially as follows:

> The arguments in favour of Australia's accession to the Convention are powerful. In the long term it is likely to be a benefit to participants in international trade and investment by widening their choices of dispute resolution mechanisms. It is in the public interest that in this field of dispute resolution the option of the judicial process not be unduly handicapped because of burdens placed upon the recognition of judgments. Support and enhancement of the important public function of the courts in commercial dispute resolution, both international and domestic, is an object which serves and transcends the interests of parties to litigation.

Contracting States to the Convention will offer a reinforced and foreseeable litigation framework to businesses engaging in cross-border commercial transactions.

I can only emphasise that widespread ratification is, as noted during the Conference, the first and primary key to success. The broader the ratification of the Convention, the more likely it is that the objective of increased certainty underpinning its development will be achieved.

In this way, it has been observed that the Convention's "success depends on whether the big economic players of the world such as the United States, the European Union, and China will sign and ratify it"[25]: To this list must be

25 G Tu, "The Hague Choice of Court Convention – A Chinese Perspective" (2007) AJCL 347, 365.

added, at least, India, Japan and Korea also; and I would say all 15 nations represented here today.

Of course, the Hague Choice of Court Convention has not entered into force. Mexico has acceded to the Convention and the United States of America (on 19 January 2009) and the European Union (on 1 April 2009) have each signed the Convention.

The European Union we were told today will issue its proposal to ratify the Convention shortly.

This ratification will be of great importance for the Asia Pacific region — not only because the 2005 Convention will enter into force, but also because the European Union and the United States of America are key trading partners for Asia Pacific States.

In order to achieve this widespread ratification, it will be necessary for each country to identify the practical steps it must take within its own legal system to bring the 2005 Convention into law, and be satisfied that its domestic law can accommodate the 2005 Convention. There was mention today of mandatory laws of the forum, which we all have in one way or another. Korea mentioned its anti-trust laws. In Australia we have trade practices laws. To a large extent, States may be able to satisfy themselves that mandatory laws of the forum may sit outside the operation of the Convention. See for example Article 2. Apart

from this there will be the public policy exception as a safety valve, although it will important to keep it fairly narrow.

Some countries, such as Australia, would need to do more than just ratify the 2005 Convention. They would have to bring it into domestic law with a statute. That statute will require some drafting and attention paid to definitions (such as the definition of “consumer” or “employment contract”) which will need to be squared with domestic law in some fashion.

The main second key to success will then depend on the choice of individual parties as to whether to activate the 2005 Convention for their particular transactions.

In short, as a hybrid system – involving State agreement to the Convention and individual election by commercial parties – the more States that ratify the better and the more parties that take up the benefits of the Convention the better.

The Broader Judgments Project

Having explored the benefits of the 2005 Convention, I wish to conclude by comparing what the 2005 Convention can achieve – and achieve in the immediate future – with the larger issues that only the Judgments Project can deal with – over the longer term.

A core benefit of the Convention is to identify and carve out a category of very common international commercial dispute, usually with a contract within it. Examples such as contracts for distribution, agency, loan or sale readily come to mind. It is appropriate here for the party autonomy reflected in the exclusive jurisdiction clause to result in the dispute being conclusively determined, subject to limited exceptions, by the court chosen by the parties, and for other States to give effect to this party choice.

That would still leave a range of disputes excluded from the Convention by Article 2. Some have received discussion today, such as consumer transactions, intellectual property, anti-trust and insolvency. In these broader types of disputes, there are larger public interests involved – including the legal status of one of the parties or in rem considerations – such that party autonomy cannot provide the sole dictate for the correct and preferable forum to resolve the dispute.

The 2005 Convention also, by definition, cannot deal effectively with multi-party disputes where only some of the parties have signed the exclusive jurisdiction clause.

So for disputes which the 2005 Convention cannot solve, some broader framework for international co-operation is necessary. We have heard today of the rather stark differences between the current rules adopted by various jurisdictions in the recognition and enforcement of judgments given in other jurisdictions. Thus:

a. Traditionally the common law embodies an unilateral approach; identifying the types of foreign judgments which will be treated as giving rise to a fresh domestic obligation to perform them, usually as a debt, and irrespective of whether reciprocity is afforded by the foreign state;

b. At the other extreme, in some systems including in some Asian countries, there has traditionally been no scope for according any status to foreign judgments; the parties simply must start again;

c. Then there are cases where there may be recognition or enforcement, but only on proof to the satisfaction of the court asked to do so of reciprocity being afforded by the courts of the other country; this gives rise to real questions as to how to establish that reciprocity is afforded. We were told today that China and Japan fall into this category;

d. That leaves the possibility of a bi-lateral agreement between 2 countries which will set out the terms for mutual recognition and enforcement. This may be seen between China and Hong Kong; between Cambodia and Vietnam shortly; and most explicitly and comprehensively in the *Trans Tasman Proceedings Acts* of Australia and New Zealand, coming into force on 11 October 2013. The Australia/New Zealand scheme has been moulded to anticipate and accommodate the 2005 Convention where there is an exclusive jurisdiction clause. Beyond this it applies to a very broad range of judgments and cases, with the only real ground to resist enforcement being public policy. (I should also add that on 9 September 2013 the NSW Supreme Court, our busiest commercial court, signed a

Memorandum of Guidance with the Dubai International Finance Centre Courts on the reciprocal enforcement of many judgments.)

e. Finally, there is the option of a multi-lateral regional conventions dealing with the enforcement of judgments. First, the Brussels Convention – which is now an EU Regulation – was concluded in 1968. Later, in 1988, the Lugano Convention came into force, in substantially identical terms. As we heard today the Brussels Convention is being currently revised to take even more complete shape in 2015.

What the Judgments Project seeks to do is to take the impressive work that has been done in various bi-lateral or multi-lateral agreements and build from that a truly broad international framework to identify which court has the jurisdiction to decide a given international dispute, and to render enforcement easy in the courts of other countries. There are questions as to the sequencing of these two objectives within the Judgments project, but the important thing as I see it is that be given a resumed and forceful impetus.

While it may be difficult and slow to achieve, the Judgments Project is valuable in its own right, but also repays examination in the context of the 2005 Convention. The rather large variances which currently exist between countries in their attitudes to foreign judgments only strengthen the case for the immediate move to ratify the 2005 Convention. It can, almost immediately, provide real benefits within the scope of its operation; and it may help pave the way for the large reform which will carry even greater benefits in the future.

Conclusion

Australia firmly supports the Hague Conference on Private International Law in its ongoing efforts for the further development of an effective international litigation and civil procedure framework.

Australia is a devoted participant in the Working Group and Experts' Group in the Judgments Project and attaches great importance to the work of the Hague Conference in concluding an instrument on international litigation.

Australia is actively considering ratifying the Convention.

Two public consultations, one in 2008/09 and one in 2012/13, both resulted in strong public support for Australia's ratification of the Convention. I understand that its ratification is currently one of the items included in Australia's reform of its private international reform project, conducted under the auspices of the Standing Council on Law and Justice.

Australia is also firmly committed to promoting the merits of the 2005 Convention and keenly contributes to the development of a multilateral litigation scheme, acknowledging the benefits these projects will bring to parties engaging in cross-border trade, commerce and investment.

I thank you for your attention.