

Survey response	
Please indicate: [State:]	China
Please indicate: [Region:]	Asia
Please indicate: [Affiliation:]	Dalian Maritime University
Please indicate your profession:	Academia
Please indicate your profession: [Other]	
Do you have practical expertise in cross-border civil or commercial litigation:	No
Press "Next" to continue	
1.1 What are your views on the scope of the Draft Text?	I agree.
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?	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 is done with great caution, but in practice, there are indeed a large number of parallel lawsuits related to arbitration. This might limit the influence of some of the conventions.
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).	I agree with that.
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.	I believe this definition adopts a more expansive one regarding case capacity. This has significantly expanded the scope of application of the convention. However, in countries like China, which have a stricter definition of parallel lawsuits, certain adaptive regulations need to be made within the country. In practice, there may be greater differences in the definition of parallel litigation. There are no objections to the relevant actions.
3. What are your views on Article 4?	The regulation seems redundant. It would be more straightforward to simply state that whether a case is initiated or not should be determined in accordance with the domestic law of the country where the case is received.
4. What are your views on Article 5?	What are the definitions of the words "unlikely" and "reasonable"? Does this give judges excessive discretionary power?
5. What are your views on Articles 6 – 8 including how they will work in practice?	Article 6 is almost certain to be retained and may become the sole truly "hard priority rule" in the future. Article 7 is the part of the entire draft that is most likely to be weakened, dismantled or postponed for maturity. Article 7

	<p>has its validity suspended in both form and substance, does not require a written form, is prone to leading to the abuse of this clause and causing difficulties in proof. It does not stipulate the applicable law, which is likely to lead to "validity competition". Moreover, Articles 7(1) and 7(3) do not set a priority order, and the defendant may avoid the existing agreement through "mid-process consent", which further exacerbates the risk of tactical litigation. Additionally, the boundaries of "non-exclusive", "pure expansion" and "waiving objections" are ambiguous. Once written in, it is prone to having direct conflicts with domestic laws of various countries. Article 8 is highly open, but "reasonable period" and "more appropriate" are highly discretionary. In practical operation, it is very likely to be "localized" interpreted by domestic courts, and the boundary with "forum non conveniens" is not clear.</p>
<p>6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?</p>	<p>The same as you say. Article 8(2) operates less as a jurisdictional allocation rule and more as a gatekeeping mechanism for procedural coordination, trading certainty for inclusiveness in the management of parallel proceedings.</p>
<p>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?</p>	<p>Sorry, I don't have any practical experience so far.</p>
<p>6.3 Are there any additional factors that you believe should be included?</p>	<p>No, there aren't.</p>
<p>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?</p>	<p>Article 9 is the most normatively sensitive part of the Draft Text. Once Articles 6–8 fail to resolve parallel proceedings, Article 9 effectively determines who decides who decides.</p>
<p>7.2 What are your views on how the two approaches may work in practice?</p>	<p>In practice, Approach 1 is more likely to deliver timely and coordinated outcomes, though it is vulnerable to delay and over-centralisation unless supported by strict procedural safeguards. Approach 2 preserves judicial autonomy but risks inconsistent and protracted proceedings, potentially undermining the objective of effectively managing parallel litigation.</p>

<p>7.3 Do you have a preference for either approach? If so, please explain why.</p>	<p>Approach 1 gives the court first seised the primary role creates a clear procedural focal point and reduces the risk of fragmented, competing determinations. Centralisation helps curb strategic parallel litigation and inconsistent “forum shopping responses” by multiple courts acting independently. It aligns with the logic already embedded in Articles 6–8, where priority and suspension obligations play a central role. But if the first seised court is slow, formally seised, or weakly connected, it may delay effective adjudication. The unresolved brackets on when applications must be made create uncertainty and may generate satellite litigation. Approach 2 respects judicial equality, resonates with forum non conveniens reasoning and avoids rigid priority effects. But it reduced legal certainty, weaken deterrence of tactical litigatio. While both approaches reflect legitimate policy concerns, a carefully constrained version of Approach 1 offers a more effective and predictable mechanism for resolving parallel proceedings, provided that meaningful safeguards are retained to prevent de facto hierarchy and denial of justice.</p>
<p>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)?</p>	<p>Article 10 strikes a reasonable balance between flexibility and guidance. Its effectiveness in practice will largely depend on how courts operationalise these factors and on the extent to which cooperation mechanisms support coherent and predictable outcomes.</p>
<p>8.2 Do you have any views on how Article 10 might work in practice?</p>	<p>In practice, Article 10 is likely to function as a flexible but demanding balancing exercise, requiring courts seised of parallel proceedings to engage in a structured assessment of multiple, often competing, considerations. Its effectiveness will depend less on the formal listing of factors and more on how courts operationalise them in concrete cases. One practical advantage of Article 10 is that it offers courts a common analytical framework when Articles 6–8 fail to resolve jurisdictional conflicts. By directing courts to consider efficiency, convenience, completeness of dispute resolution, and the likelihood of recognition and enforcement, Article 10 encourages outcome-oriented decision-making rather than a purely formalistic approach. In this sense, it may reduce duplicative litigation and</p>

	<p>mitigate the risk of inconsistent judgments. However, the application of Article 10 will likely present challenges. The factors are non-hierarchical and formulated in open terms, which may lead courts in different Contracting States to assign varying weight to the same considerations. For example, some courts may prioritise procedural economy and the stage of proceedings, while others may emphasise applicable law or enforcement prospects. This divergence may initially undermine predictability and could incentivise strategic litigation, particularly where parties seek to frame factual or procedural circumstances in a way that favours a preferred forum. The cooperative elements associated with Article 10, including information exchange and, where applicable, joint hearings, have the potential to mitigate these risks. If used effectively, these mechanisms may enhance mutual understanding between courts, reduce informational asymmetries, and support more coherent determinations. Nonetheless, practical constraints such as differences in procedural culture, language, judicial workload, and concerns about sovereignty or confidentiality may limit their frequent or robust use, at least in the early stages of implementation. Over time, the development of consistent judicial practice, supported by explanatory materials and possibly soft-law guidance, will be crucial. As interpretative patterns emerge, Article 10 may gradually achieve a balance between flexibility and legal certainty, functioning as a pragmatic tool for managing parallel proceedings in cross-border litigation.</p>
<p>8.3 Are there additional considerations that, in your view, should be taken into account?</p>	<p>1. Party Autonomy and Exclusive Forum Clauses The most significant omission is the weight given to exclusive jurisdiction agreements. While Article 10 focuses on judicial discretion, the "proper administration of justice" must prioritize the parties' prior consent. Unless the clause is void, a court chosen by the parties should be presumed the most appropriate to prevent tactical "forum shopping" that undermines commercial certainty. 2. Digitalization and Technological Accessibility The factor regarding the "ease of accessing evidence" needs to be re-evaluated in the context of virtual proceedings. In a post-</p>

	<p>pandemic legal landscape, physical distance (habitual residence) is often mitigated by electronic filing, remote testimony, and digital discovery. A court that offers advanced technological support may be "more appropriate" than one that requires physical presence, regardless of geographic proximity. 3. Professional Expertise and Specialized Courts For complex disputes (e.g., intellectual property or complex financial instruments), the specialized expertise of a court is crucial for judicial efficiency. A court with a dedicated commercial division or a history of handling similar technical subject matter may provide a more "complete resolution" than a general court that happens to be seised first. 4. Relatedness to Third-Party Proceedings The test should consider whether there are related actions (not just parallel ones) involving third parties in one of the jurisdictions. Consolidating related disputes in one forum prevents fragmented litigation and inconsistent findings of fact, which serves the objective of judicial economy better than treating the parallel proceeding in isolation. 5. Financial Disparity and Legal Aid While "burdens of litigation" is mentioned, the text should explicitly address significant power imbalances. If one forum offers legal aid or fee-shifting rules that allow a weaker party to meaningfully participate, whereas the other does not, the "proper administration of justice" should lean toward the forum that prevents a denial of justice.</p>
<p>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.</p>	<p>. Advantages: Flexibility and Communication Mitigating the "Race to the Courthouse": By emphasizing the "more appropriate court" (Art. 10) rather than just the first court seised, the framework discourages parties from rushing to file in a less suitable jurisdiction just to lock in the forum. Inter-Court Dialogue: The inclusion of Article 16 (Communication Mechanism) and Article 17 (Joint Hearings) is a modern breakthrough. In practice, this transforms parallel proceedings from a "battle of sovereignties" into a collaborative judicial effort, which is essential for complex cross-border disputes. Substantive Safeguards: Articles 19-21 act as vital safety valves, ensuring that the push for efficiency does not result in a denial of justice or a violation of a</p>

	<p>State's fundamental public policy. 2. Disadvantages: Unpredictability and Sovereignty Lack of Legal Certainty: The "test" in Article 10 is highly discretionary. Unlike the <i>lis alibi pendens</i> rule used in the EU (Brussels I bis), which is predictable, this framework relies on judicial interpretation. This may lead to "satellite litigation" where parties spend years arguing about where to argue. The "Sovereignty" Tension: While the text mandates respect for sovereignty, the practical reality of one court "deferring" to another can be politically or professionally sensitive in many jurisdictions, potentially leading to inconsistent application of the framework. 3. Practical Implications In practice, the success of this framework will depend heavily on judicial culture. In jurisdictions familiar with the doctrine of <i>forum non conveniens</i> (like the UK or US), Article 10 will feel intuitive. However, in Civil Law jurisdictions that favor strict statutory rules, judges may struggle with the open-ended nature of the factors. Ultimately, the framework will likely work best in high-stakes commercial litigation where the parties and the courts have the resources to utilize the communication mechanisms. Its effectiveness will be determined by how many Contracting States make the necessary declarations to support joint hearings and direct communication.</p>
<p>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.</p>	<p>The Draft Text's framework for Related Actions offers a pragmatic, flexible approach to cross-border judicial coordination, prioritizing cooperation over rigid hierarchy. Its effectiveness hinges on its ability to balance judicial efficiency with respect for national sovereignty. Advantages: Precision and Cooperation The most significant strength of the framework is its granularity. Unlike the "all-or-nothing" approach of many traditional regimes, Article 13 allows for partial consolidation. This is particularly effective for complex international commercial disputes where only specific issues overlap. By allowing a single court to adjudicate shared facts while keeping distinct legal claims separate, the framework optimizes judicial resources. Furthermore, the integration of the Chapter IV communication mechanisms transforms the</p>

	<p>resolution of related actions from a competitive race into a collaborative dialogue. Article 17's provision for joint hearings is a progressive leap, offering a direct procedural pathway to resolve potential factual inconsistencies before they manifest as irreconcilable judgments.</p> <p>Disadvantages: Unpredictability and Procedural Complexity However, the framework's heavy reliance on judicial discretion introduces a degree of legal uncertainty. The factors in Article 11 are non-exhaustive, which may lead to prolonged "satellite litigation" as parties argue over which court is "more appropriate." Moreover, Article 14 acts as a double-edged sword. While it prevents a denial of justice by allowing separate proceedings to continue if courts disagree, it fails to provide a definitive "tie-breaker." In practice, if two courts both insist on their appropriateness, the risk of irreconcilable judgments—the very problem the framework seeks to solve—remains unaddressed.</p> <p>Practical Application In practice, the framework will likely be most effective in jurisdictions with a high degree of mutual judicial trust. Its success depends less on the black-letter law and more on the willingness of judges to engage in Article 16 communications. For a PhD researcher, the most critical observation is that this framework functions as a "soft-law" bridge; it provides the tools for harmony but lacks the mandatory "teeth" to enforce it, making judicial culture the ultimate arbiter of its success.</p>
<p>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?</p>	<p>The communication mechanisms in Chapter IV are the "engine room" of the entire Draft Text. While the earlier chapters provide the legal grounds for staying or consolidating proceedings, Chapter IV provides the practical tools to make those decisions informed.</p> <p>However, its effectiveness in an international context is a study in the tension between modern judicial efficiency and traditional state sovereignty.</p> <p>1. The Multi-Tiered Communication Model (Effectiveness) The framework's primary strength lies in its methodological pluralism. By offering four distinct channels (Direct, Central Authority, Combined, and Party-mediated), it acknowledges that "one size does not fit all" in global litigation.</p> <p>Direct Communication (The</p>

	<p>Gold Standard): This is the most effective method for rapid coordination. In practice, it allows judges to clarify the procedural status of a case in minutes rather than months. However, its effectiveness is geographically lopsided; it will thrive in Common Law and "Model Law" jurisdictions but face significant cultural resistance in Civil Law countries where judges view direct contact as a breach of protocol.</p> <p>Communication through Parties (The Pragmatic Default): While listed as a "default," this is often the least reliable method. Parties in conflict are prone to "strategic gatekeeping"—selectively sharing information to favor their jurisdictional preference. Relying on this method risks the court being misled.</p> <p>2. Joint Hearings (Art. 17): High Potential, High Friction Joint hearings are the most "ambitious" element of the text. Practical Advantage: They provide a singular venue for resolving factual disputes, which is the primary cause of irreconcilable judgments. Practical Disadvantage: The logistics are a nightmare. Synchronizing schedules across time zones, ensuring simultaneous interpretation, and managing "dual" procedural rules require a level of administrative support that many courts simply do not have.</p> <p>3. The "Sovereignty" Bottleneck (Art. 18) The inclusion of "Sovereignty" in brackets (Art. 18) highlights the framework's biggest practical hurdle. If a court communicates with a foreign counterpart and, as a result, decides to stay its own proceedings, a domestic audience might view this as judicial abdication. The effectiveness of Chapter IV depends entirely on whether judges view themselves as members of a global judicial community or as guardians of a strictly national silo.</p> <p>4. Writing and Translation Barriers Article 16(4)'s requirement for written communication and formal translation is a "necessary evil." While it ensures a clear record (satisfying due process), the costs and time delays associated with certified translations can effectively kill the "real-time" benefits of coordination, especially in fast-moving commercial disputes.</p>
<p>11.2 Are there particular advantages and challenges you foresee in applying these methods?</p>	<p>1. Advantages: The "Synergy" of Global Justice Reduction of Judicial "Blind Spots": The primary advantage is the elimination of</p>

information asymmetry. When courts speak directly, they bypass the "filtered" narratives provided by self-interested litigants. This leads to a more accurate determination of which forum is truly the forum conveniens. Procedural Economy: While the initial coordination (translation, scheduling) is costly, it prevents the massive downstream costs of contradictory judgments, multiple appeals, and the impossibility of enforcement. Judicial Education and Harmonization: Frequent use of Article 16 fosters a "global judicial culture." Judges become familiar with foreign procedural standards, which gradually reduces the "fear of the unknown" that often leads to a refusal to stay proceedings. Flexibility for Specialized Disputes: For technical cases (e.g., intellectual property or maritime law), direct communication allows specialized judges to align on technical fact-finding, even if they apply different national laws. 2. Challenges: The "Friction" of Sovereignty and Law The "Due Process" Shadow: A major challenge is the transparency of communication. If two judges speak privately, how do the parties ensure their right to be heard (audi alteram partem) is respected? There is a risk that "back-channel" judicial discussions could be challenged as a violation of procedural rights. Constitutional and Regulatory Barriers: In many Civil Law jurisdictions, a judge's power is strictly limited to the "four corners of the file." Communicating with a foreign judge without a formal Letter Rogatory might be seen as an illegal exercise of authority or a violation of judicial independence. Language and "Loss in Translation": Even with the safeguards in Article 16(4), subtle legal nuances often disappear in translation. A "stay" in one country might mean something very different from a "suspension" in another, leading to accidental procedural deadlocks. Resource Asymmetry: Not all courts are created equal. A high-tech commercial court in a global financial hub will find a "Joint Hearing" via Zoom seamless, while a court in a developing Contracting State may lack the stable internet, hardware, or staff to participate, creating a "digital divide" in international justice.

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?

1. Avoiding Denial of Justice (Art. 19): The Humanitarian Shield This is arguably the most critical safeguard. In practice, it prevents the Draft Text from becoming a mechanical "trap." Practical Operation: Its primary role will be as a counter-argument to a mandatory stay. For instance, if Court A is supposed to stay proceedings in favor of Court B, but Court B's legal system has collapsed due to conflict, or the limitation period has expired, Art. 19 allows Court A to "rescue" the case. The "Manifest" Threshold: The debate over adding the word "manifest" is crucial. Without it, the bar is lower, allowing more judicial intervention. With it, the threshold becomes exceptionally high, requiring proof that the alternative forum is effectively a "black hole" for justice.

2. Prevention of Abuse of Process (Art. 20): The Shield Against Tactical Games This is the most "dynamic" safeguard because it targets litigation conduct rather than legal systems. Practical Operation: This will be the primary weapon against "torpedo actions"—where a party rushes to a slow-moving court specifically to block a legitimate claim elsewhere. The "Grey Area": In practice, the line between "clever strategy" and "abuse" is razor-thin. Judges will struggle with this. For example, is filing a negative declaration in a favorable forum "strategic" or "abusive"? Art. 20 gives judges the discretionary "teeth" to dismiss cases that simply "don't smell right," even if they technically meet all jurisdictional requirements.

3. Public Policy (Art. 21): The Sovereignty Clause Public policy (ordre public) is a staple of private international law, but its application here is unique because it applies at the commencement of a case, not just at the enforcement of a judgment. Practical Operation: This allows a State to protect its "essential interests." For example, if a dispute involves critical national infrastructure or state secrets, a court can refuse to defer to a foreign court based on Art. 21. The "Intolerable Result" Test: By using the term "manifestly," the framework signals that mere "difference in law" is not enough. To trigger Art. 21, the result of staying the case must be shocking to the conscience of the forum state. The effectiveness of these safeguards lies in their exceptional nature. If

	<p>they are used too often, the Draft Text loses its predictive power and leads to more parallel proceedings. In practice, they will likely operate as deterrents—knowing these rules exist may discourage parties from attempting the very abuses the articles are designed to prevent.</p>
<p>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.</p>	<p>Yes, but with significant caveats. Here is an evaluation of the framework against its own goals:</p> <p>1. Enhancing Legal Certainty and Predictability The Conflict: The Draft Text shifts from the "mechanical certainty" of the <i>lis alibi pendens</i> (first-in-time) rule toward a "discretionary appropriateness" model. The Outcome: While this allows for fairer results, it actually decreases short-term predictability. Parties cannot be 100% sure which court will eventually hear the case because the "more appropriate court" test (Art. 10) is subjective. However, it enhances long-term certainty by ensuring that the final judgment is more likely to be recognized globally, as it was rendered by the most logically connected forum.</p> <p>2. Access to Justice and Reducing Litigation Costs The Advantage: The "Safeguards" (Art. 19) directly address access to justice by preventing a party from being forced into a forum where they cannot effectively litigate (due to lack of legal aid or expired limitation periods). The Cost Challenge: In the short term, litigation costs might increase. The framework encourages "satellite litigation" where parties spend months arguing about which court is "more appropriate" or whether an "abuse of process" has occurred. The intensive communication and translation requirements in Chapter IV also add a financial layer to the proceedings.</p> <p>3. Mitigating Inconsistent Judgments The Success: This is where the framework shines brightest. By moving away from a "race to the courthouse" and moving toward judicial communication (Art. 16) and joint hearings (Art. 17), the Draft Text provides the best possible tools to ensure two courts don't reach opposite conclusions on the same facts. The Remaining Risk: As long as the "Tie-breaker" (Art. 14) allows for separate proceedings to continue if courts disagree, the risk of inconsistent judgments can never be 0%. The framework provides the pathway to consistency, but it cannot force it if two sovereign courts refuse to yield.</p> <p>4. The Role of</p>

	<p>Declarations (Art. 22) The ability for states to opt-out of specific matters is a double-edged sword. It ensures broad adoption of the instrument (more countries will sign it), but it risks fragmentation. If too many states make declarations, the "universal" predictability of the instrument is weakened.</p>
<p>13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?</p>	<p>1. From "Race to Judgment" to "Judicial Dialogue" The Status Quo: Currently, the first party to get a final judgment wins the "recognition race." This encourages aggressive, costly litigation in multiple countries simultaneously. The Improvement: The Draft Text shifts the focus to the commencement phase. By requiring courts to communicate (Chapter IV) and consider staying proceedings based on "appropriateness" (Art. 10), it stops the race before it becomes a marathon. This is a massive improvement in procedural economy.</p> <p>2. Replacing the "Rigid Stay" with "Flexible Coordination" The Status Quo: Many systems use either the strict <i>lis alibi pendens</i> (the first court always wins, even if it's a "torpedo" court) or the discretionary <i>forum non conveniens</i> (which can be unpredictable and nationalistic). The Improvement: The Draft Text creates a hybrid model. It provides a structured list of factors for the "appropriateness" test, moving away from pure judicial whim toward a harmonized international standard. It acknowledges that sometimes "Related Actions" (Art. 11) shouldn't be fully stayed, but rather partially consolidated.</p> <p>3. Institutionalizing Communication The Status Quo: Judges rarely talk to each other across borders. If they do, it's often through slow, formal diplomatic channels (Letters Rogatory) that take months. The Improvement: Chapter IV is a "game-changer." It provides a legal mandate for judges to pick up the phone or send an email (Direct Communication). For a 博二 (PhD) student, this is the most exciting "academic" improvement—it treats the global judiciary as a network rather than a collection of isolated silos.</p> <p>4. Explicit Safeguards for the "Weaker Party" The Status Quo: In many current systems, if you are forced to litigate in a foreign forum where you can't afford a lawyer or the statute of limitations has passed, you are simply out of luck. The Improvement: Article</p>

	<p>19 (Denial of Justice) provides an explicit "safety valve." It prioritizes Access to Justice over judicial efficiency. This humanizes international commercial law, ensuring that the quest for "no parallel proceedings" doesn't crush the rights of the individual litigant. The "Reality Check" (Where it might not improve) While the rules are a theoretical leap forward, their practical success depends on ratification. If only 10 countries sign, the status quo remains for the rest of the world. The Article 22 Declarations (Opt-outs) could lead to a "Swiss cheese" convention—full of holes where states have carved out their favorite industries. Final Verdict for your Thesis The Draft Text is a significant improvement because it moves the world toward a "Global Judicial Architecture." Even if it isn't perfect, it provides a common language for judges. Instead of asking "Do I have power?", judges will start asking "Who is best placed to do justice?"</p>
<p>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?</p>	<p>1. The Risks: Where "Satellite Litigation" Lurks The Draft Text, despite its best intentions, creates several specific battlegrounds for tactical maneuvering: The "Appropriateness" Battle (Art. 10 & 11): Because the factors are non-exhaustive and require judicial weighing, parties will litigate the forum before they ever litigate the merits. A defendant can delay a case for years by producing "evidence" that another court is more convenient, easier for evidence access, or further along in proceedings. The "Abuse of Process" Paradox (Art. 20): Ironically, a provision designed to stop tactical litigation can itself be used tactically. A party might file a "satellite" motion claiming the other party's filing is an abuse of process, creating a meta-dispute that consumes time and resources. The "Communication Lag" (Art. 16): A party could exploit the court-to-court communication process by requesting extensive translations or challenging the "indirect" communication through the other party, effectively stalling the proceedings. 2. Is the Risk Greater or Fewer than the Status Quo? In my view, the risks are qualitatively different, but arguably fewer in the long run. Under the Status Quo: The risk is "The Torpedo." A party rushes to a notoriously slow jurisdiction to block a faster court. This is a "blind" risk—once the race is won, the result</p>

	<p>is locked in, often leading to a total denial of justice for the plaintiff. Under the Draft Text: The risk is "The Delay." The litigation becomes more expensive and slower at the start. However, because the text encourages judicial dialogue, a judge can quickly see through a "torpedo" by simply contacting the foreign judge. Verdict: The Draft Text replaces the risk of "Total Injustice" with the risk of "Procedural Delay." For most commercial litigants, a slow but fair outcome is better than a fast, blocked one.</p> <p>3. How to Mitigate These Risks If the Special Commission wants to "tighten" the text, they could consider several strategies:</p> <p>Impose Strict Timelines: The current text uses "reasonable time." Replacing this with specific deadlines (e.g., "the court shall make a determination on appropriateness within 90 days") would significantly curb stalling tactics.</p> <p>"Costs Follow the Event" for Satellite Motions: Explicitly state that if a party brings a challenge under Article 10 or 20 and loses, they must pay the other side's legal costs for that specific motion on an indemnity basis. This creates a financial deterrent against frivolous "appropriateness" challenges.</p> <p>Presumption of Initial Forum: Introduce a "rebuttable presumption" that the first court seized is appropriate unless the challenging party meets a high evidentiary burden. This keeps the "certainty" of the status quo while allowing the "flexibility" of the Draft Text as an exception.</p> <p>Standardized Communication Templates: To prevent the "Translation Trap," the HCCH could provide pre-approved, multilingual forms for Article 16 communications, reducing the time and cost of judicial dialogue.</p> <p>A Final "Doctoral" Thought As you wrap up your analysis, you might argue that discretion is not the enemy of certainty—secrecy is. The genius of the Draft Text isn't the "appropriateness" test; it's the Communication Mechanism. If judges talk, tactical lies die.</p>
14. What other comments, if any, do you have?	Not anymore.