Personal Details

Name:

State: China.

Region: Hubei

Affiliation:

E-mail:

Please indicate your profession:

- ☐ Practitioner
- ☐ Judge
- ☐ Company/business lawyer
- ☐ Government official
- ☒ Legal professional in international organisation
- ☒ Academia
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Do you have practical expertise in cross-border civil or commercial litigation:

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Questions

Consultation on the draft text of a possible convention on parallel proceedings and related actions

Question 1 on the scope of the Draft Text

1.1 What are your views on the scope of the Draft Text?

The scope of the Draft Text, as outlined in Article 1 of the draft convention (HCCH, 2025), focuses on civil or commercial parallel proceedings and related actions across different Contracting States, while excluding revenue, customs, and administrative matters. This is a pragmatic approach, aligning with core cross-border dispute resolution needs. However, the defintion and scope of "civil or commercial matters" and "administrative matters" may vary across legal systems, resulting inconsistency in the interpretation and application of the treaty.

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, the subject matter scope effectively covers the matters where rules on parallel proceedings and related actions are most needed. .

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)?

Article 2.3 excludes arbitration from the scope of application of the Convention. This exclusion should be reconsidered. Transnational litigation and international arbitration are distinct yet closely related means of resolving international civil and commercial disputes. In practice, situations frequently arise in which, due to the uncertain validity of an arbitration agreement between the parties, arbitral proceedings and court litigation concerning the same dispute proceed in parallel. Moreover, as provided in Rule 28.4 of the SIAC Arbitration Rules—"The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the Merits"—it is possible that, notwithstanding the existence of court proceedings, the arbitral proceedings may continue until an award is rendered. Such jurisdictional conflicts between arbitration and litigation are issues that the future Convention clearly cannot ignore.

The Convention's treatment of arbitration differs from that of the 2005 Choice of Court Agreements Convention and the 2019 Judgments Convention. This is because the 1958 New York Convention already provides a global regime for the recognition and enforcement of arbitral awards, whereas, at the global level, no international convention exists that conflicts with or comprehensively governs transnational civil and commercial jurisdiction.

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).

No comments on this section.

Question 2 on definitions

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.

Parallel proceedings are narrowly defined as "proceedings in courts of different Contracting States between the same parties on the same subject matter" (Article 3(1)(a)). This objective, bright-line test (same parties + same subject matter) will enable courts to quickly identify parallel proceedings, reducing uncertainty and litigation over whether the framework applies. In practice, parties will be able to invoke this definition early in litigation to seek suspension or dismissal of duplicate proceedings, promoting efficiency. However, the narrowness may exclude some disputes where parties are "substantially the same" (e.g., affiliated companies) but not identical; while this preserves clarity, a limited exception for substantially similar parties (with clear criteria) could address gaps in complex commercial disputes.

The draft Convention defines three concepts used in the Convention text, namely parallel proceedings, related actions, and habitual residence. In the English text, the terms "proceedings" and "actions" are used respectively for parallel proceedings and related actions. We understand these two terms to have exactly the same meaning, because in the definition of related actions the term "proceedings" is in fact used to define "actions". Therefore, in the Explanatory Report to the future Convention, it would be appropriate to clarify expressly that these two terms are used synonymously.

In light of the scope of application of the Convention discussed above, arbitral proceedings should be included within the notion of related actions. An example may illustrate the relationship between arbitral proceedings and related actions.

Company S, incorporated in State C, entered into a loan agreement with Company G, which is also incorporated in State C. The contract contained an arbitration clause providing for arbitration in Hong Kong SAR. The shareholder of Company S was Company A, incorporated in State D. Company A later sold all its shares in Company S to Company B, incorporated in Hong Kong SAR, and the parties concluded a Share Purchase Agreement (SPA). The SPA provided that, prior to completion of the transfer of shares in the target company S, Company A was required to fully repay the principal and interest of the loan owed by Company S to Company G. As Company S failed to repay the debt owed to Company G before completion, Company B withheld a portion of the share purchase price equivalent to the outstanding amount. Consequently, Company A brought an action against Company B before the courts of State C, where Company S is located, seeking payment of the remaining share purchase price together with interest.

Meanwhile, Company G (more precisely, the bankruptcy administrator of Company G), on the basis of the arbitration agreement, commenced arbitration against Company S before the HKIAC, seeking repayment of the debt owed by Company S to Company G. It should be noted that, at the time the arbitration was commenced, Company S had already come under the actual control of Company B, and Company A had transferred all of its shares to Company B.

It is evident that the arbitration between Company G and Company S before the HKIAC and the court proceedings between Company A and Company B before the courts of State C are closely connected and involve intertwined legal interests. This arbitral proceeding clearly falls within the category of "related actions (arbitration)" with which the Convention is concerned. Accordingly, we submit that the definition of related actions should take into account situations involving related arbitral proceedings.

Question 3 on when a court is deemed to be seised

What are your views on Article 4?

Article 4, which defines when a court is seised, addresses a critical procedural issue in cross-border litigation and is generally well-drafted. By recognizing two mutually exclusive approaches (lodging a document with the court or serving the claim on the defendant), the provision accommodates differences in national procedural laws, ensuring the Draft Text is accessible to Contracting States with diverse legal traditions.

In practice, this flexibility will minimize conflicts between the Draft Text and domestic rules, as courts can apply the test consistent with their own procedures. However, challenges may arise in determining which approach applies to a given Contracting State, particularly if a State's procedural rules blur the line between lodging a claim and serving the claim.

Although such situations may not arise frequently in practice, questions may arise as to how to proceed if the parties to parallel proceedings, or the two courts seised, each consider themselves to be the "court seised." In addition, should issues of time differences between jurisdictions be taken into account?

Question 4 on Article 5 obligations

What are your views on Article 5?

Article 5, which provide for suspension and dismissal, are relatively workable in practice. But several clarifications would improve its utility. First, the phrase "as soon as it is informed" (Article 5(1)) should specify the method of notification (e.g., formal application by a party or communication via Article 16) to avoid disputes over when a court is deemed "informed." Second,Article 5(3) lacks practical operability, primarily because the standard of "within a reasonable time" is difficult to determine. This provision should further specify the criteria for determining such a time period, or, alternatively, the Explanatory Report to the Convention should set out clearer guidance on how this standard is to be assessed. Third, Article 5 should explicitly state that resumption is discretionary (not mandatory) to allow courts to consider other factors (e.g., public policy, abuse of process) before proceeding.

Question 5 on priority jurisdiction / connection

What are your views on Articles 6 – 8 including how they will work in practice?

Regarding Article 7: In international civil and commercial practice, situations in which parties conclude arbitration agreements to resolve their disputes arise far more frequently than situations in which they choose court jurisdiction. Therefore, in order to ensure that the future Convention gains broad acceptance and adoption within the international business community, parallel or related proceedings arising from the parties' exercise of party autonomy in concluding arbitration agreements should also be taken into consideration.

Question 6 on Article 8(2) jurisdiction / connection requirements

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?

With a view to expanding the range of parallel or related proceedings covered by the Convention, we consider it reasonable for Article 8(2) to include, as far as possible, the various jurisdictional connecting factors of courts.

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?

Yes, these factors are appropriate for obliging courts to suspend or dismiss proceedings. Each factor establishes a meaningful link between the dispute and the court, ensuring that only courts with a legitimate interest in the case retain jurisdiction. For example, defendant's habitual residence (Article 8(2)(a)) and contractual performance in the State (Article 8(2)(e)) are well-recognized grounds that balance party autonomy and judicial efficiency. By requiring courts without these connections to suspend or dismiss, the Draft Text reduces forum shopping and ensures that disputes are adjudicated by courts with the most relevant links.

However, the appropriateness depends on uniform application—if courts interpret factors broadly (e.g., expanding "contractual performance" to include minor connections), the obligation to suspend may be undermined. Additionally, some factors (e.g., "implied consent through merits arguments") may be difficult to prove, leading to litigation over whether the connection exists. Despite these challenges, the factors are appropriate because they are objective, predictable, and aligned with international best practices, making them suitable for imposing suspension/dismissal obligations.

6.3 Are there any additional factors that you believe should be included?

No

Question 7 on the determination of the more appropriate court

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?

In practice, both alternatives provided in Article 9 adopt the approach of allowing the court first seised to determine the direction of parallel proceedings, that is, to decide which court should hear the case. However, the first alternative is more reasonable. Under this approach, the court first seised may, in light of the specific circumstances of the case, determine which court is the more appropriate court. By contrast, the second alternative directly confers priority on the court first seised to hear the parallel proceedings, which is more likely to encourage forum racing by the parties in practice. Accordingly, we are inclined to consider the first alternative to be preferable.

7.2 What are your views on how the two approaches may work in practice?

see above

7.3 Do you have a preference for either approach? If so, please explain why.

I prefer Approach 1, with modifications to address its weaknesses. Approach 1's focus on the first seised court promotes efficiency and finality, which are critical for resolving parallel proceedings. By requiring the first seised court to make a determination on the more appropriate forum, it ensures that disputes are not left in limbo, and parties have clarity on which court will adjudicate their case.

However, to address the risk of suboptimal forum choices, the exceptions for other courts to resume proceedings should be clarified. For example, defining "exceptional circumstances"

as cases where the first seised court is clearly not the more appropriate forum (based on Article 10 factors) and requiring other courts to make a "clearly more appropriate" finding (Option 3 in Article 9(5)) would balance flexibility with certainty. Additionally, requiring the first seised court to make a determination within a fixed timeframe (e.g., 60 days from the application) would prevent delays.

Question 8 on factors to be considered to determine the more appropriate court

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)?

2 The factors listed in Article 10 are comprehensive and well-aligned with the goal of identifying the most appropriate forum for resolving parallel proceedings. Each factor addresses a key aspect of procedural efficiency, party convenience, and the likelihood of consistent judgments. For example, "burdens of litigation on the parties" (Article 10(a)) and "ease of accessing evidence" (Article 10(b)) prioritize practical considerations that reduce costs and delays, while "likelihood of recognition and enforcement" (Article 10(f)) ensures that the resulting judgment will be effective globally.

The inclusion of "the law applicable to the claims" (Article 10(c)) is particularly important, as courts familiar with the governing law are more likely to render accurate judgments. However, the bracketed terms (e.g., "relative" ease of accessing evidence, "significant delay" in proceedings) should be retained and clarified to avoid ambiguity. For example, defining "significant delay" as a delay that would prejudice a party's rights or undermine the efficiency of the proceedings would provide courts with clear guidance.

8.2 Do you have any views on how Article 10 might work in practice?

The parallel litigation regulation approach centered on the more appropriate court responds to the need of various countries to protect their national jurisdiction, yet it essentially inherits the judicial tradition of the U.S. interest-balancing analysis method, with its institutional design presenting dual characteristics: on the one hand, procedural flexibility is achieved by vesting judges with discretionary power, and on the other hand, systemic risks arise from the vagueness of standards.The core flaw of this mechanism lies in its over-reliance on subjective judgment: it neither establishes a binding checklist of jurisdictional factors nor prescribes rules for the weight allocation of each factor.This may lead to conflicting jurisdictional determinations rendered by different courts in respect of the same case, and even trigger a jurisdictional vacuum. When courts mutually shirk their responsibilities and refuse to accept jurisdiction, the parties will be left with no forum for litigation.

8.3 Are there additional considerations that, in your view, should be taken into account?

No

Question 9 on the effectiveness of the framework for parallel proceedings

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.

The framework for parallel proceedings in Chapter II is generally effective and well-designed to address the challenges of cross-border litigation. Its key advantages include:

1. Clarity and Predictability: The hierarchical jurisdiction/connection rules (Articles 6–8) and structured more appropriate court analysis (Articles 9–10) provide clear guidance for courts and parties, reducing uncertainty and forum shopping.

2. Flexibility: The framework accommodates diverse legal traditions by recognizing different seisin rules (Article 4) and providing multiple jurisdiction/connection factors (Article 8(2)).

3. Safeguards: The safeguards in Chapter V (avoiding denial of justice, prevention of abuse of process, public policy) ensure that the framework does not lead to unfair or unjust outcomes.

However, the framework has several disadvantages:

1. Ambiguity in Key Terms: Bracketed terms (e.g., "[exclusive][priority] jurisdiction," "reasonable time") and vague exceptions (e.g., "exceptional circumstances" in Article 9) may lead to inconsistent application across jurisdictions.

2. Limited Mandatory Cooperation: The cooperation and communication provisions (Chapter IV) are non-mandatory, meaning courts may be reluctant to exchange information, undermining the effectiveness of the more appropriate court analysis.

3. Potential for Satellite Litigation: Disputes over the interpretation of jurisdiction/connection factors or the more appropriate court determination may lead to additional litigation, increasing costs and delays.

The solutions, principles, and factors adopted in China's most recent legislation on parallel proceedings are broadly consistent with those reflected in the draft Convention.

Articles 280 and 281 of the Civil Procedure Law of the People's Republic of China (Amended), which entered into force on 1 January 2024, address parallel proceedings and contain the following main elements:

1.Definition of parallel proceedings: Where the same dispute between the same parties is brought by one party before a foreign court and by the other party before a People's Court, or where one party brings the same dispute both before a foreign court and before a People's Court, the situation constitutes parallel proceedings.

2. Acceptance of jurisdiction: In cases of parallel proceedings, where the People's Court has jurisdiction under the Civil Procedure Law, it may accept the case.

3. Priority of exclusive choice-of-court agreements: Where the parties have concluded an exclusive choice-of-court agreement designating a foreign court, and such agreement does not violate the provisions of the Law on exclusive jurisdiction and does not involve the sovereignty, security, or public interests of the People's Republic of China, the People's Court may rule not to accept the case; if the case has already been accepted, it shall rule to dismiss the action.

4. Exclusive jurisdiction of the People's Court: The People's Court shall exercise exclusive jurisdiction over cases subject to its exclusive jurisdiction, or cases involving the sovereignty, security, or public interests of the People's Republic of China.

5. Suspension of proceedings: After the People's Court accepts a case pursuant to the preceding provisions, where a party applies in writing for suspension of the proceedings on the ground that a foreign court has been seised earlier, the People's Court may rule to suspend the proceedings.

6. Continuation of proceedings before the People's Court: In cases of parallel proceedings, the People's Court shall continue to hear the case where (a) the parties have agreed to submit to the jurisdiction of the People's Court, or the dispute falls within the exclusive jurisdiction of the People's Court, or (b) it is manifestly more convenient for the case to be heard by the People's Court.

7. Resumption of proceedings: Where the foreign court fails to take necessary measures to hear the case, or fails to conclude the case within a reasonable time, the People's Court shall, upon a party's written application, resume the proceedings.

8. Effect of recognized foreign judgments: Where a legally effective judgment or ruling rendered by a foreign court has been wholly or partially recognized by a People's Court, and a party brings an action before a People's Court again with respect to the part that has already been recognized, the People's Court shall rule not to accept the case; if the case has already been accepted, it shall rule to dismiss the action.

In addition, in connection with the rules on parallel proceedings, Article 282 of the Civil Procedure Law of the People's Republic of China (Amended) contains a specific provision on forum non conveniens. Where a People's Court has accepted a foreign-related civil case and the defendant raises an objection to jurisdiction, and all of the following conditions are met, the People's Court may rule to dismiss the action and inform the plaintiff to bring the action before a more appropriate foreign court:

1. The basic facts of the dispute did not occur within the territory of the People's Republic of China, and it is manifestly inconvenient for the People's Court to hear the case and for the parties to participate in the proceedings;

2. There is no agreement between the parties choosing the jurisdiction of the People's Court;

3. The case does not fall within the exclusive jurisdiction of the People's Court;

4. The case does not involve the sovereignty, security, or public interests of the People's Republic of China; and

5. It is more convenient for the foreign court to hear the case.

After a ruling dismissing the action is made, if the foreign court refuses to exercise jurisdiction over the dispute, or fails to take necessary measures to hear the case, or fails to conclude the case within a reasonable time, and a party subsequently brings the action again before a People's Court, the People's Court shall accept the case.

Question 10 on related actions

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.

The framework for related actions in Chapter III is innovative and flexible, addressing a gap in existing international instruments. However, the framework has several disadvantages: 1. Lack of Binding Coordination: Since courts make independent determinations, there is a risk of inconsistent decisions (e.g., one court decides to consolidate, while another does not), leading to continued fragmentation. 2. Ambiguity in "Relatedness" Test: The three cumulative conditions for related actions (Article 3(1)(b)) are broad, and courts may disagree on whether actions are sufficiently related to warrant consolidation. 3. No Guidance on Partial Consolidation: Article 13 (partial consolidation) is underdeveloped, with no clear criteria for determining which parts of related actions should be consolidated.

Under Chinese law, there is no concept or regime governing related actions.

Question 11 on the communication mechanism

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?

The communication methods set out in Chapter IV are practical and flexible, addressing the diverse needs of cross-border judicial cooperation. The four methods (direct court communication, indirect via central authority, combined, and via parties) accommodate different levels of judicial cooperation and institutional capacity across Contracting States. In practice, the effectiveness of these methods will depend on the willingness of Contracting States to implement them. States with well-established central authorities (e.g., under the Hague Service Convention) will find indirect communication straightforward, while others may struggle with administrative capacity. Direct court communication may be hindered by language barriers or lack of familiarity between courts, but the translation requirements address this to some extent.

11.2 Are there particular advantages and challenges you foresee in applying these methods?

The communication mechanism may be subject to certain challenges, mainly including the following aspects. First, the mechanism is non-mandatory, and its operation may be directly affected if any court is unwilling to engage in communication and cooperation. Second, communications between different courts may involve information confidentiality issues, and conflicts may also arise due to discrepancies in data protection legislation across jurisdictions.

Question 12 on safeguards

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?

Articles 19, 20, and 21 of the draft Convention provide for three safeguards, namely avoiding denial of justice, prevention of abuse of process, and public policy. We have no difficulty with the inclusion of public policy as a safeguard. However, given that avoiding denial of justice and prevention of abuse of process are highly technical concepts, we are concerned that, in practice, such provisions may instead be misused, thereby undermining the effective application of the Convention. If such safeguards are to be included, the threshold for their application should be raised and their scope of use should be strictly limited.

Question 13 on the objectives of the Draft Instrument

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.

We consider that the provisions of the draft Convention are, in general, capable of achieving the objectives of the Convention.

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?

We believe that rules on jurisdiction in cases of parallel proceedings need to be unified at the international level. In our view, the provisions of the current draft Convention represent an improvement over resolving conflicts of jurisdiction in parallel proceedings solely through domestic legislation.

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?

In transnational litigation practice, the tactical use of the Convention by lawyers is common and unavoidable, and there is no need to address or regulate such conduct in the Convention.

Question 14 - comments

What other comments, if any, do you have?

No comments on this section .