

**Fourth Meeting of the Working  
Group on Choice of Law in  
International Contracts  
(24-26 June 2013)**



**Report**

From 24 to 26 June 2013, the **Working Group on Choice of Law in International Contracts** ("Working Group"), chaired by Mr Daniel Girsberger, met at the Permanent Bureau of the Hague Conference on Private International Law ("HCCH") for the fourth time. Guided by the mandate given by the Council on General Affairs and Policy of the Conference<sup>1</sup> ("Council") and the recommendations for the commentary outlined by the Special Commission,<sup>2</sup> the participating experts discussed about the wording of the Commentary accompanying the Draft Hague Principles ("draft Commentary") and identified relevant general issues related to the text of the draft Commentary.

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The Working Group identified general issues related to the draft Commentary (see Annex 1 attached – "Guidelines for commentaries").

The Working Group analysed the draft commentaries concerning the Preamble and all Articles, with the exception of Article 11. The latter draft commentary will be circulated as soon as possible.

The Working Group proposed amendments to refine the commentaries and decided that the respective drafters would revise the commentaries in accordance with the suggested changes.

The Working Group also proposed clarifying revisions to the text of the Draft Principles at Articles 3 and 6.

The Working Group agreed that an expert from within the Group, with assistance from the Permanent Bureau, would undertake the task of drafting a general introduction to the Draft Principles.

The Working Group drew to a successful close on the final day. As to future steps, the Working Group noted that the original drafters of the respective draft commentaries will submit revised versions as soon as possible, but in any event no later than 1 September 2013. The Permanent Bureau will edit the draft commentaries for consistency of style

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<sup>1</sup> At its 2013 meeting, the Council "welcomed the work carried out by the Working Group and further developed by the Special Commission held in November 2012 and gave its preliminary endorsement of the Draft Hague Principles on Choice of Law in International Contracts. The Council mandated the Working Group to prepare a draft Commentary, circulate it to all Members and Observers for comments, finalise the draft Commentary in light of these comments and present a complete draft of the Commentary, together with the Principles, to Council. The Council would then be invited to either give its final endorsement of the complete package of the Principles and the Commentary, or if necessary submit the package to the Special Commission". See Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference, available at < [www.hcch.net](http://www.hcch.net) >.

<sup>2</sup> See Draft Hague Principles as approved by the November 2012 Special Commission on Choice of Law in International Contracts, available at < [www.hcch.net](http://www.hcch.net) >.

and then circulate the revised proposed draft Commentary to the Working Group with further comments due within a month, for further discussion and completion by 1 November 2013.

The draft Commentary would then be distributed to all Members and observers for written consultation (tentative date for completion 15 January 2014). Subsequently, the Working Group will analyse and incorporate any comments received and finalise the Draft Hague Principles and accompanying Commentary with the assistance of the Permanent Bureau. If necessary, the Working Group or available experts will meet for that purpose in The Hague (tentatively from 27 to 28 January 2014).

If the timeframe is met, the final Draft Hague Principles and Commentary will be submitted to the Council at its April 2014 meeting.

The Working Group recommended that the Permanent Bureau collates all references / sources on an online repository which will be updated on an ongoing basis.

**Guidelines for commentaries (in no particular order)**

1. Scenarios (before the comments – for example, Art. 6); illustrations (to be preferred over “examples”, after the comments): number and content left to the author’s discretion. However, do not use illustrations to underline obvious statements.
2. Sub-headings: grouping, approximately 3 to 4 paragraphs per sub-heading, no tree structure.
3. Structure: introduction + table of contents + all articles + article and commentary.
4. No footnotes: references in the body text if necessary.
  - a. International sources are welcome
  - b. But refrain from referring to national legal systems, unless absolutely necessary
  - c. *Travaux préparatoires* only if published (on HCCH website)
  - d. As a rule: No doctrinal writings.
5. Further references, especially to national legal rules and doctrine will be available on the HCCH website. The collation and maintenance of this material will be undertaken by Permanent Bureau (to be recommended in the report).
6. Background (“history”): only if particularly useful or necessary for interpretation (*e.g.*, re Art. 3).
7. Cross-referencing
  - a. to other articles, as many as possible;
  - b. to commentaries, if useful, but not excessively.
8. Length of commentaries: depends on complexity of Article; approximately 60 pages for entire Commentary is appropriate.
9. Introduction (as sub-heading): describe purpose / function as a starting point.
10. Consistency of language and use of terms of art
  - a. Parties: A, B, C
  - b. States: X, Y, Z
  - c. Party autonomy (not principle of...) or freedom of choice.

Drafting Committee to streamline these matters in due course (in both official languages).
11. Style / “tone” of Draft Commentary: Explain rules rather than justify or even market the Principles (except for the Preamble).
12. Targeted audience: lawyers without particular expertise in private international law.
13. Use of abbreviations: list of abbreviations (to be prepared by Permanent Bureau and circulated to Working Group). Later to be finalised by Drafting Committee.