



Introduction to the 2005 Choice of Court Convention

First Gulf Judicial Seminar on Cross-Frontier
Legal Co-operation in Civil and Commercial Matters

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Context

- The Hague Conference has a long history of promoting the principle of **party autonomy** in the area of international trade
- Party autonomy includes the ability of parties to choose the court to resolve disputes in international cases, and for that choice to be recognised and enforced
- Relevance of choice of court agreements is recognised in a number of regional instruments, in particular:
 - Arab League – 1983 Riyadh Arab Agreement for Judicial Cooperation => Article 28(e)
 - Gulf Cooperation Council – 1995 GCC Convention on the Execution of Judgments, Delegations and Judicial Notifications => Article 4.E

Context

- In GCC States, the ability of parties to choose the court to resolve their disputes is not yet uniformly accepted in national legal systems, in particular where the chosen court is in a non-Gulf State:
 - “As a matter of public policy, the agreement to give jurisdiction to a foreign court will not be upheld by the UAE Courts”

Clyde & Co, Litigation and Dispute Resolution in the UAE
 - “Where the parties’ dispute arises from a contract, and the contract contains a choice of law and/or jurisdiction clause, e.g. English law, the Qatari Courts will generally recognise the principle of freedom of contract and apply the law and jurisdiction chosen by the parties”

Clyde & Co, Disputes in Focus - Qatar

Context

- Conversely, the ability of the parties to choose the seat of **arbitration** is widely recognised:
 - All GCC States are party to the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*
 - Specific legislation in place by which the courts are required to concede jurisdiction where the parties have agreed to refer the dispute to arbitration (e.g. Art. 203(5) of the Civil Procedure Code of UAE; Art. 192 of the Arbitration Code of Qatar)

The 2005 Hague Convention

Basic objective

- Provide legal certainty and predictability with respect to choice of court agreements
- Become the litigation equivalent of the 1958 New York Convention

Scope

- Applies in **international cases**:
 - For the purposes of *jurisdiction*, a case is international unless the parties are resident in the same Contracting State and their relationship and all other elements relevant to the dispute are connected only with that State;
 - For the purposes of *recognition/enforcement*, a case is international where the judgment was given in another Contracting State

Scope

- Applies to **exclusive choice of court agreements** concluded in **civil or commercial matters**:
 - Consumer and employment contracts are expressly excluded
→ *Article 2(1)*
 - Other “**excluded matters**” include: family law and succession; insolvency; carriage of goods and persons; anti-trust (competition) matters; and validity of intellectual property rights other than copyright and related rights
→ *Article 2(2)*

The Convention's key obligations

1. The chosen court **must** hear the dispute

→ Article 5

2. Any non-chosen court **must** suspend/dismiss proceedings

→ Article 6

3. A judgment given by the chosen court **must** be recognised and enforced

→ Article 8

1. Chosen court must hear the dispute

- Chosen court cannot refuse to hear the dispute because:
 - it considers that a court of another State is more appropriate (*forum non conveniens*);
 - a court of another State was seised first (*lis pendens*)
- Chosen court may refuse to hear dispute where the choice of court agreement is null and void under the law of that State (including conflict rules)
➔ Article 5
- No effect on internal rules on subject matter jurisdiction or venue

2. Non-chosen court must suspend/dismiss

- Court not chosen may only hear the dispute if:
 - the choice of court agreement is null and void under law of State of chosen court (includes conflict rules);
 - a party lacked capacity to conclude agreement under law of State of court seised (includes conflict rules);
 - giving effect to agreement would lead to manifest injustice or would be manifestly contrary to the public policy of the State of the court seised;
 - for exceptional reasons beyond control of parties, the agreement cannot reasonably be performed; or
 - chosen court has decided not to hear the case

➔ *Article 6*

3. Court addressed must recognise/enforce

- The court addressed may refuse to recognise/enforce a judgment by the chosen court if:
 - the choice of court agreement was null and void under law of State of chosen court (unless otherwise determined by the chosen court);
 - a party lacked capacity to conclude agreement under the law of requested State;
 - the defendant was not properly notified; or
 - the judgment was obtained by fraud in connection with a matter of procedure

3. Court addressed must recognise/enforce

- The court addressed may refuse to recognise/enforce a judgment by the chosen court if:
 - recognition/enforcement would be manifestly incompatible with public policy of requested State;
 - the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
 - the judgment is inconsistent with an earlier judgment given in another State between the same parties and involving same cause of action (provided that the earlier judgment is recognisable in requested State)

➔ *Article 9*

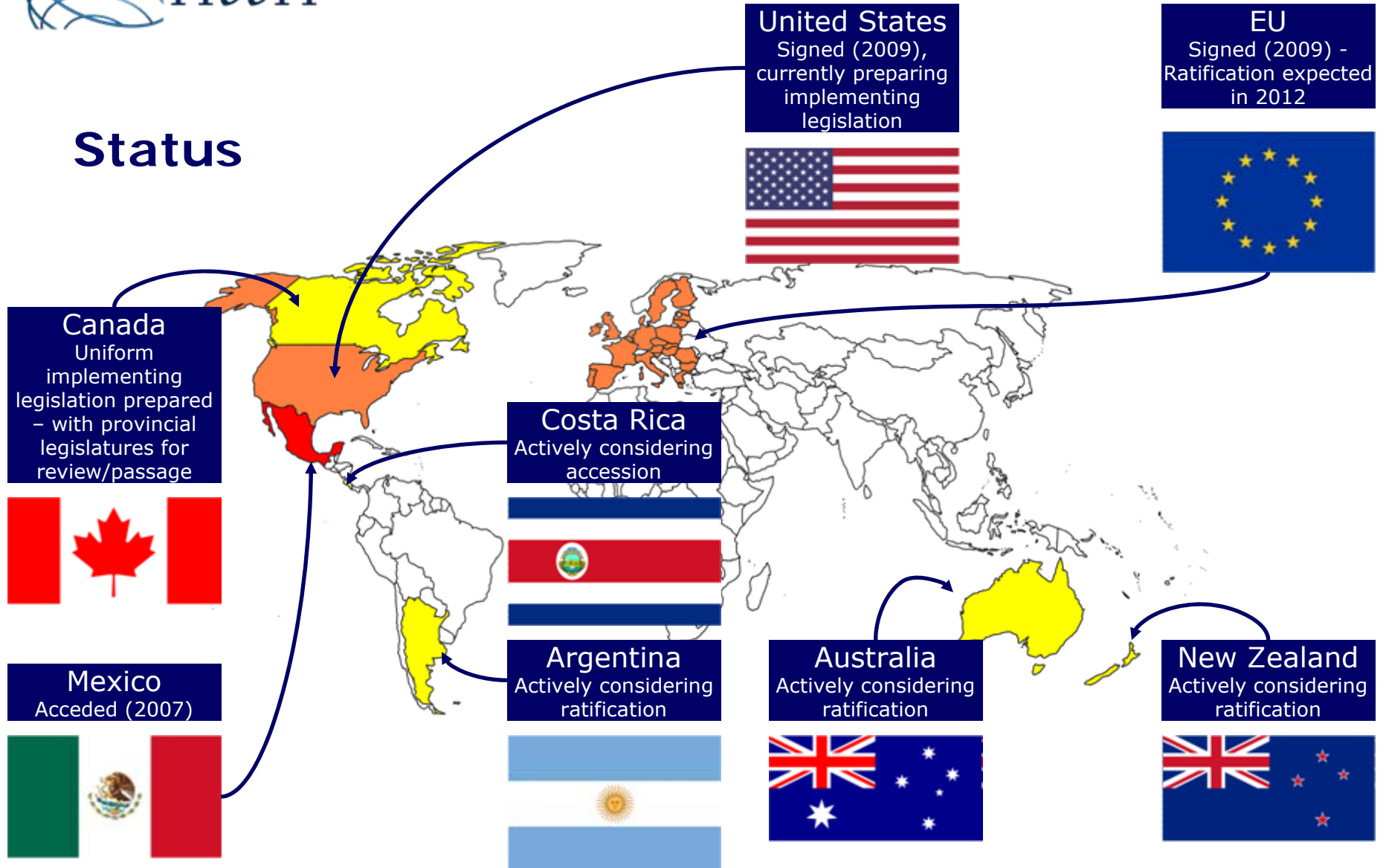


Status

- The Convention is not yet in force
- Entry into force after two ratifications/accessions

➔ *Article 31*

Status



Promotional activities

- Permanent Bureau is actively promoting the Convention at a regional level:
 - November 2010 – Joint seminar in Brasilia (Brazil) with MERCOSUR Contracting and Associated States; organized by the HCCH and the Brazilian Ministry of Justice (as President pro tempore of MERCOSUR)
 - Convention high on the agenda at the 3rd Asia Pacific Regional Conference (Hong Kong, 2008) and at the upcoming 4th Regional Conference (Manila, 2011)



Implementation support

- Implementation initiative
 - Launched by Permanent Bureau in 2010 with the support of interested States
 - 7 States + EU are currently participating – all other interested States are welcome
 - Discussion of implementation issues (*e.g.*, interaction with existing internal laws and regional instruments)

- Development of practical implementation tools (*e.g.*, seminars, checklists, and information documents)

Questions

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