Personal Details

Name:

State: United States

Region: North America

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Please indicate your profession:

- ☐ Practitioner
- ☐ Judge
- ☐ Company/business lawyer
- ☐ Government official
- ☐ Legal professional in international organisation
- ☐ Academia
- ☒ Others, please specify: Non-profit, law reform organization.

Do you have practical expertise in cross-border civil or commercial litigation:

- ☒ Yes
- ☐ No

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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?
Click or tap here to enter text.

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?
Click or tap here to enter text.

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)?
Click or tap here to enter text.

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).
Click or taffp here to enter text.

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.
Please see response to Question 13.3 below.

Question 3 on when a court is deemed to be seised

What are your views on Article 4?
Click or tap here to enter text.

Question 4 on Article 5 obligations

What are your views on Article 5?
Click or tap here to enter text.

Question 5 on priority jurisdiction / connection

What are your views on Articles 6 – 8 including how they will work in practice?
Click or tap here to enter text.

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

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?
Click or tap here to enter text.

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?
Click or tap here to enter text.

6.3 Are there any additional factors that you believe should be included?
Click or tap here to enter text.

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?
Consolidated response provided in 7.3.

7.2 What are your views on how the two approaches may work in practice?
Consolidated response provided in 7.3.

7.3 Do you have a preference for either approach? If so, please explain why.
Article 9 presents two approaches, neither of which fully achieves the Convention's objectives. We analyze each in turn before offering a constructive alternative.

Approach 1 assigns the "more appropriate court" determination to the court first seised. Other courts must suspend and await that determination before considering resumption. This sequential structure creates efficiency concerns. The court second seised cannot assess resumption until the court first seised has ruled, compounding delay where the first court has lengthy procedural timelines. It also creates tactical incentives, as a party seeking delay can file preemptively in a slow-moving forum, knowing that courts elsewhere must await that forum's determination.

Approach 2 requires courts other than the court first seised to suspend--thus embedding a strong first-filed presumption--but permits resumption upon a determination by the suspending court. This approach avoids formal delegation of decision-making authority to the court first seised. However, it is incomplete. The Consultation Paper acknowledges that Approach 2 does not regulate "what the court first seised should then do." This gap creates uncertainty. If a court second seised resumes proceedings, does the court first seised also continue? The text provides no answer, and this gap may interact unevenly with domestic procedural traditions--courts conditioned by lis pendens rules to proceed when seised first may be advantaged over those with more reflective practices. Moreover, the strong first-filed presumption preserves the tactical incentives for parties to race to the courthouse, while mandatory suspension in the court second seised still introduces delay, rewarding preemptive filing without improving efficiency.

We respectfully suggest that neither approach is optimal. Both are unnecessarily complex and subject to party manipulation.

A simpler, fairer framework exists within the Draft Text in Articles 11, 12, and 14 governing related actions, which allow each seised court to independently perform the more appropriate forum analysis. If determinations align, one court proceeds; if they do not, separate proceedings continue. No court is bound by another's determination. This framework is more administrable and respects the independent authority of each Contracting State's courts.

We see no principled reason why parallel proceedings should be treated differently from related actions in this regard. Both courts assessing parallel proceedings are equally positioned to perform the more appropriate forum analysis; timing of filing provides no jurisdictional or informational advantage. We therefore recommend that the Working Group consider adopting the basic framework in Articles 11, 12, and 14 for parallel proceedings.

Nonetheless, if the Working Group retains the current structure, we offer observations on the bracketed language common to both approaches. Both Approach 1 (paragraph 5(b)) and Approach 2 (paragraph 2(b)) present three options for the standard a court must meet to resume proceedings. We support Option 2, which would permit resumption upon a determination that the court is "the more appropriate court" after considering the Article 10 factors. Option 3, requiring a showing that the court is "clearly" more appropriate, sets a high threshold that may discourage appropriate resumption. Option 1, limiting resumption to cases necessary "to guarantee effective access to justice," is too restrictive; that standard risks being interpreted to require a showing that the court first seised is fundamentally inadequate, a determination courts will be reluctant to make.

Additionally, we recommend that both approaches adopt the phrase "as appropriate" rather than "in exceptional circumstances" at the start of paragraph 5 (Approach 1) and paragraph 2 (Approach 2). This choice is not merely linguistic. If "in exceptional circumstances" is adopted, resumption becomes a narrow safety valve rather than a meaningful component of the framework. Courts will read that phrase as a signal that resumption should be rare, effectively reducing the court second seised to a passive role regardless of which approach or which option in paragraph 5(b) or 2(b) is selected. The phrase "as appropriate" preserves the court's authority to perform the "more appropriate court" analysis when warranted, which is essential if the parallel proceedings framework is to be viewed as fair and legitimate.

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)?
Click or tap here to enter text.

8.2 Do you have any views on how Article 10 might work in practice?
Click or tap here to enter text.

8.3 Are there additional considerations that, in your view, should be taken into account?
Click or tap here to enter text.

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 Draft Text potentially represents meaningful progress, but its effectiveness will depend on how key provisions are resolved.

The principal advantage of the framework proposed in the Draft Text is that it establishes, for the first time, internationally agreed rules for coordinating parallel proceedings and related actions. This alone would reduce uncertainty for litigants and courts navigating cross-border disputes. The factors-based analysis in Articles 10 and 11, the communication mechanism and joint hearings in Articles 16 and 17, and the safeguards in Articles 19-21 are workable.

However, as we describe in our response to Question 13.3, the principal disadvantage is structural. By creating separate chapters for "parallel proceedings" and "related actions" with different consequences, the Draft Text invites threshold litigation over classification. In practice, parties will

likely attempt to manipulate whether proceedings involve the "same parties" and "same subject matter," and courts will expend resources resolving these disputes before addressing the substantive question of which court should proceed. The satellite litigation will consume precisely the time and resources the Convention aims to save.

We therefore reiterate our recommendation that the Working Group consider extending the flexible approach of Chapter III to proceedings currently classified under Chapter II. The related actions framework demonstrates that courts can reach sensible outcomes across a wide range of case configurations without rigid distinctions between parallel proceedings and related actions. A unified framework would preserve the Convention's benefits while eliminating the structural weakness most likely to undermine its effectiveness.

If the bifurcated structure is retained, the Convention's success will depend in part on how "same parties" and "same subject matter" are interpreted. Narrow interpretations would confine the parallel proceedings chapter to genuinely duplicative litigation, channeling ambiguous cases into the more flexible related actions framework. Broad interpretations would multiply satellite litigation and risk replicating problems that have plagued certain regional instruments.

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.
Click or tap here to enter text.

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?
We strongly support Articles 16 and 17 establishing mechanisms for judicial communication and joint hearings. These provisions represent important tools for achieving the objectives of reducing litigation costs and avoiding inconsistent judgments.

The Hague Conference has previously developed principles for direct judicial communications in the family law context that provide detailed guidance on appropriate procedures, including communication safeguards and the form of communication. See HCCH, Principles for Direct Judicial Communications, available at https://assets.hcch.net/docs/62d073ca-eda0-494e-af66-2ddd368b7379.pdf. Article 16 of the Draft Text extends this institutional expertise to civil and commercial matters while allowing Contracting States flexibility in implementation through the notification mechanism in paragraph 2.

Judicial communication offers several concrete advantages for the operation of the Convention. First, courts can share information about the status and scope of proceedings before them, enabling more informed decisions about suspension or dismissal. Second, judicial communication facilitates the resolution of procedural matters, reducing the risk of conflicting or misinformed interim orders. Third, direct judicial contact can expedite the "more appropriate court" analysis by allowing courts to exchange relevant information.

Article 17's provision for joint hearings represents an innovative mechanism that could prove particularly valuable in complex commercial disputes. While joint hearings will not be appropriate in all cases, having this mechanism available allows courts and parties to achieve efficiencies that would otherwise be impossible. The safeguard in paragraph 3, requiring that "[e]ach court participating in a joint hearing shall retain power and independence over the conduct of its own proceeding, consistent with applicable national laws," appropriately preserves judicial autonomy.

We encourage the retention of both Articles 16 and 17 and the consideration of whether additional guidance in the Explanatory Report might assist courts in implementing these mechanisms effectively.

11.2 Are there particular advantages and challenges you foresee in applying these methods?
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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?
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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.
Click or tap here to enter text.

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?
Click or tap here to enter text.

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?
We see significant risks of tactical and satellite litigation arising from the current Draft Text. The threshold determination of whether proceedings qualify as "parallel proceedings" or "related actions" will become a contested issue in many cases. Parties will have strong incentives to characterize disputes favorably, and the current definitions provide opportunities for manipulation through strategic pleading choices. However, there are ways such risks could be addressed in the Draft Text.

First, the bifurcated structure should be eliminated.

The Draft Text's bifurcated structure separating "parallel proceedings" (Chapter II) from "related actions" (Chapter III) raises practical concerns. We respectfully submit that these

chapters should be collapsed into a single, flexible framework that adopts the approach currently taken in the related actions chapter.

The current structure creates an artificial threshold determination that will likely generate satellite litigation. Sophisticated litigants and their counsel will seek to characterize their disputes as falling within whichever chapter best serves their litigation interests. The "same parties" requirement creates a rigid threshold that creative attorneys can manipulate through minor variations in party configurations, while "same subject matter" is sufficiently uncertain that classification disputes are inevitable.

A unified approach using the flexible "related actions" test in Chapter III would reduce the risk of satellite and tactical litigation, while still allowing courts to give appropriate weight to the degree of overlap between proceedings. Cases with identical parties and subject matter would naturally be strong candidates for single-forum resolution, while cases with partial overlap would receive appropriately calibrated treatment. The factors enumerated in Article 11 provide sufficient guidance for courts to reach sensible outcomes across the spectrum of case configurations.

Second, if the bifurcated structure is retained, the terms "same parties" and "same subject matter" should be narrowly interpreted.

These definitions in Article 3 become critically important because they determine whether a case is adjudicated under the parallel proceedings chapter or the related actions chapter. The consequences of this classification are substantial. Narrow definitions would confine the parallel proceedings chapter to genuinely duplicative litigation, channeling ambiguous cases into the more flexible related actions framework where courts can calibrate their response to the degree of overlap.

"Same parties" should mean exactly the same parties. If the parties in one proceeding differ in any respect from the parties in another proceeding, the cases should be analyzed under the related actions framework, not the parallel proceedings framework.

"Same subject matter" presents greater difficulty. Consistency with Article 7 of the Judgments Convention requires that the standard not demand identical causes of action, and paragraph 272 of the Garcimartín-Saumier Explanatory Report offers the "central or essential issue" formulation. But that formulation provides limited guidance on where the line falls, and reasonable courts will disagree on its application to common scenarios. This uncertainty is not easily resolved through further definitional refinement. Each clarifying gloss invites its own interpretive disputes. Given this inherent ambiguity, the standard should be interpreted narrowly, with doubtful cases resolved in favor of the related actions framework.

This difficulty reinforces our concern, expressed above, that the bifurcated structure will generate satellite litigation over classification. The Working Group might address this concern in two ways: first, by providing extensive illustrations in the Explanatory Report of cases falling on each side of the line; and second, by reconsidering whether the interpretive costs of maintaining the distinction outweigh its benefits.

Question 14 - comments

What other comments, if any, do you have?

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