Survey response	
Please indicate: [Name:]	Stephen Pitel
Please indicate: [State:]	Canada
Please indicate: [Region:]	Ontario
Please indicate: [Affiliation:]	Western University
Please indicate your profession:	Academia
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
1.1 What are your views on the scope of the Draft Text?	The proposal applies to parallel proceedings only, which means that national law would have to have two schemes: that one and a second one for staying proceedings despite no other proceeding yet having been commenced elsewhere. It would be better to have a single scheme that applies to any stay of proceedings, whether proceedings are on foot abroad or not.
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?	
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)?	The proposal excludes consumer and employment matters entirely from stays of proceedings. That is too broad. It would be preferable for the law about staying proceedings to consider the context of the action but still allow for a stay in an appropriate case, even one involving a consumer or employee.
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 oppose the potential additional requirement. Why should it matter that the defendant is based in a Contracting State? The proceedings are no less parallel if the defendant is based elsewhere.
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.	
3. What are your views on Article 4?	
4. What are your views on Article 5?	
5. What are your views on Articles 6 – 8 including how they will work in practice?	The proposal is too rigid as concerns immovable property. It mandates not staying in some cases and mandates staying in others. For both, discretionary flexibility is better. For example, a court could have jurisdiction under the in personam exception in a case about land

	abroad. If the defendant in those proceedings subsequently started a claim in the place where that land is, it is not clear to me that the in personam must therefore be stayed to allow the ones in the place of the land to proceed. The proposal, despite being about staying proceedings, seems to smuggle in some deliberate choices about the strength of a jurisdictional connection, something more suitable to a convention about taking jurisdiction. The approach in art 8(2) gives priority to jurisdiction that has been taken on certain bases over others. This is not a component of traditional common law doctrine on staying proceedings. Indeed, the traditional common law analysis pays little attention to the competing possible ways a court has taken jurisdiction. This would be a large change to the current common law. This also runs some risk of conflating the jurisdiction analysis and the stay of proceedings analysis, each of which focuses on different considerations. The proposal gives undue importance to a defendant's having taken some steps toward defending in a forum (art 7(1)). Defending accepts jurisdiction but should not in itself be determinative at the stage of staying proceedings. The fact that a defendant may, by taking steps in a forum, have attorned should not be relevant to the stay analysis. The nature of the steps taken should be relevant, on a case by case basis.
6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?	
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?	
6.3 Are there any additional factors that you believe should be included?	
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?	The proposal places much weight on the place the litigation starts first. This is not acceptable. It invites tactical commencing of litigation.

7.2 What are your views on how the two approaches may work in practice?	
7.3 Do you have a preference for either approach? If so, please explain why.	
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)?	The proposal uses an open-ended set of considerations (art 10) but makes things more confusing by saying those listed are "in particular". Does this mean they carry some additional weight? How is that to be handled by judges doing the decisions? This seems more confusing than alternative approaches that do not purport to assign weight to factors.
8.2 Do you have any views on how Article 10 might work in practice?	
8.3 Are there additional considerations that, in your view, should be taken into account?	
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.	
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.	
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?	
11.2 Are there particular advantages and challenges you foresee in applying these methods?	
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?	
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,	As I see it, the main way this would be a positive development is if the instrument were adopted by a wide range of jurisdictions that currently do not have a well-developed law on staying proceedings. For jurisdictions that

and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.	already have such a law, this is of little value as a project. In this way it has parallels to the 2005 convention.
13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?	In my view, the proposed rules are not as good as the current approach at common law in jurisdictions such as England, Canada and Singapore. They would not improve the status quo in those jurisdictions.
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?	It would be preferable to give less weight to the first seized jurisdiction in the analysis.
14. What other comments, if any, do you have?	