

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

About this consultation

A Working Group established under the auspices of the Hague Conference on Private International Law (HCCH) has developed draft provisions for a possible convention (Draft Text) to address parallel proceedings and related actions taking place in multiple States, acknowledging the primary role of both jurisdictional rules and the doctrine of *forum non conveniens*. The Permanent Bureau of the HCCH is seeking feedback on whether the Draft Text would, in practice, assist in addressing such matters and how the provisions in the Draft Text could be improved. Responses received from this consultation will be submitted to the governing body of the HCCH, the Council of General Affairs and Policy (CGAP), where, in March 2026, CGAP will decide on the next steps for the project.

- To: This is a worldwide consultation. We especially encourage comments from experts, practitioners and judges with experience in cross-border litigation, and private international law more broadly. This consultation is being conducted in English, French and Spanish.
- Please respond by: 9:00, 26 January 2026, CET
- Enquiries: secretariat@hcch.net
- How to respond: There are two ways to respond:
- Respondents may complete the questions in the online survey.
 - Respondents may download and complete the questions in the Word document. Completed Word documents can be submitted to secretariat@hcch.net.
- Both options are available on the designated HCCH webpage, which can be accessed [here](#).
- Guidance for respondents: Respondents are encouraged to support answers with reasons, and where applicable, relevant data, experience, or practical examples. However, concise, well-considered answers are welcome. Additional observations, analyses, or commentary on the provisions of the Draft Text and the frameworks described in this Consultation Paper are also welcome.

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Executive Summary

Since 1992, the Hague Conference on Private International Law (HCCH) has progressed work on two key aspects of private international law in cross-border litigation in civil or commercial matters: the international jurisdiction of courts and the recognition and enforcement of foreign judgments. This work has resulted in two Conventions: the [Convention of 30 June 2005 on Choice of Court Agreements](#) (2005 Choice of Court Convention) which aims to ensure the effectiveness of exclusive choice of court agreements between parties to international commercial transactions, and the [Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#) (2019 Judgments Convention) which facilitates the international circulation of judgments in civil or commercial matters.

Following the adoption of the 2019 Judgments Convention, the HCCH established a Working Group comprising experts from some HCCH Members with different legal traditions and from various regions of the world. The Working Group was tasked with developing binding rules for a future instrument on concurrent proceedings (parallel proceedings and related actions or claims) and acknowledging the primary role of both jurisdictional rules and the doctrine of *forum non conveniens*, notwithstanding other possible factors, in developing such rules.

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.

The Working Group, after nine meetings, has developed draft provisions for a possible convention (Draft Text) that establish what should happen in the event that proceedings are initiated in the courts of two or more Contracting States at the same time.

The HCCH applies a structured multi-stage process for developing international instruments: after a Draft Text is prepared by a Working Group, the governing body of the HCCH, the Council on General Affairs and Policy (CGAP), decides whether to establish a Special Commission for formal negotiations involving all HCCH Members and invited Observers, where the Draft Text would be further negotiated, improved and completed with further provisions where applicable. Draft Texts are agreed by consensus in the Working Group, which is the HCCH working method, meaning that they are not necessarily approved by all members of the Working Group and reflect compromises, including between legal systems. Pending further CGAP approval, the step following the Special Commission would be to convene a Diplomatic Session to consider the text derived from the Special Commission, settle all remaining issues, and finalise the text of a convention to address parallel proceedings and related actions.

Against this background, the Permanent Bureau (PB) of the HCCH is seeking feedback on whether the Draft Text would, in practice, assist in addressing cross-border parallel proceedings and related actions and how the Draft Text might be improved. The PB invites all relevant stakeholders, in particular practitioners and judges with cross-border litigation experience, to respond to the questions contained in the Consultation Paper. The deadline for submitting responses is 26 January 2026, after which all responses will be compiled and submitted to all HCCH Members for consideration in advance of CGAP's meeting in March 2026, where CGAP will decide on next steps for the project.

Framework

The Draft Text establishes two independent frameworks to address parallel proceedings (Chapter II) and related actions (Chapter III). A court seised with parallel proceedings that satisfy the requisite jurisdiction / connection criterion under Articles 6-8 should proceed with adjudicating the dispute, and other courts that do not satisfy these criteria must suspend or dismiss the proceedings. If more than one court satisfies the jurisdiction / connection requirements set out in Article 8(2), and potentially also where proceedings in these courts commenced within a reasonable timeframe, a determination must be made as to which court is the more appropriate court in accordance with the method prescribed in Article 9, and taking into account the factors listed in Article 10.

Articles 12 and 13 provide that courts seised with related actions may, by taking into account the factors listed in Article 11(2), consider whether a single court should adjudicate all or part of the related actions and, if so, which court is the more appropriate court.

The operation of these two frameworks is supported by a cooperation provision and a communication mechanism in Chapter IV. Several safeguards are provided in Chapter V in relation to the operation of the Draft Text. Chapter V also contains two other general provisions in relation to specific subject matter declarations and uniform interpretation.

The Draft Text is not a complete proposed instrument. Some parts of the Draft Text currently appear in square brackets, which either serve as placeholders for negotiable terms or alternative wording, or they reflect phrases or proposals from Working Group members that are not yet agreed by consensus. The Draft Text should therefore be understood as a work in progress. It is an evolving document shaped by contributions from experts representing diverse legal traditions. It does not imply that all members of the Working Group endorse every provision. Rather, it represents a collective effort to identify common ground and explore viable solutions across jurisdictions.

I. Overview and Architecture

A. Purpose of a future instrument

- 1 In international civil or commercial matters, there can be courts in two or more States which, under their own rules, may have jurisdiction over a dispute, and each or some of the parties may seek to have their dispute determined by the courts of different States, resulting in the initiation of two or more proceedings in the courts of two or more States. These situations may be considered to be parallel proceedings or related actions. The rules and mechanisms set out in the Draft Text are developed to address such situations.

B. A cross-border litigation framework – considerations in developing the Draft Text

- 2 If a future instrument were concluded, it would form part of the suite of HCCH Conventions in the area of transnational litigation. As a future instrument is intended to be complementary to the 2005 Choice of Court Convention and the 2019 Judgments Convention, the Working Group has carefully drafted the provisions of the Draft Text to avoid any overlap with the two Conventions. It has also considered questions of consistency in the operation of the Draft Text with those Conventions. Where relevant, the Working Group has ensured that the terminology used in the Draft Text is aligned with the two Conventions to maintain consistency and to avoid a *contrario* interpretation.

C. Structure of a future instrument

- 3 The Draft Text, which sets up two independent frameworks for parallel proceedings and related actions, currently contains five chapters:
 - Chapter I Scope and Definitions (Arts 1 - 4);
 - Chapter II Parallel Proceedings (Arts 5 - 10);
 - Chapter III Related Actions (Arts 11 - 14);
 - Chapter IV Cooperation and Communication (Arts 15 - 18);
 - Chapter V General Clauses (Arts 19 - 23).

A future instrument would also require additional provisions, including general and final clauses which would contain provisions on relationships with other international instruments, etc.

1. General overview of Chapter II (parallel proceedings)

- 4 The framework for parallel proceedings applies to those proceedings in courts of different Contracting States defined as parallel proceedings (Art. 3(1)(a), see *infra*, para. 18) and within the scope of the Draft Text (Arts 1 – 2, see *infra*, paras 11 - 16). The framework involves establishing international obligations of the courts seised. More specifically, the Draft Text prescribes the circumstances and conditions under which a court seised would be obliged to proceed with the adjudication of a dispute, or to suspend or dismiss proceedings. The application of these obligations may be supported by the communication provision and cooperation mechanism in Chapter IV and may also be limited by the safeguards set out in Chapter V.
- 5 The obligations of the courts are determined based on a number of rules relating to the identification of a more appropriate court, with the purpose of resolving parallel proceedings. This assessment begins by meeting a requisite jurisdiction / connection criterion under Articles 6 – 8. More specifically, a court that has jurisdiction / connection in the following circumstances should proceed to adjudicate the dispute, and any other courts shall suspend or dismiss proceedings:

- where the main object of the proceedings is rights *in rem* in immovable property and the matter is pending in the court of a Contracting State where the property is situated (Art. 6);
- in the absence of an Article 6 circumstance, where only one of the courts seised has been designated in a derogating non-exclusive choice of court agreement (Art. 7(1)) (a derogating choice of court agreement is one that limits the States where at least one party to the agreement may initiate proceedings. An asymmetric choice of court agreement is one example of a “derogating non-exclusive choice of court agreement” because one of the parties to such an agreement is obliged to go to the courts of only one State. Another example is an agreement that confers jurisdiction on only the courts of two States and excludes the parties from going to the courts of any other State.);
- where a defendant has expressly consented to the jurisdiction of the court (Art. 7(3)); or
- in the absence of an Article 6 or 7 circumstance, where only one court has jurisdiction / connection as set out in Article 8(2).

6 In parallel proceedings where more than one court has the requisite jurisdiction / connection under Article 8(2), and potentially also where proceedings in these courts commenced within a reasonable timeframe, a determination will need to be made as to which court is the more appropriate court (though the exact concept is unsettled in the text, as shown by the square brackets in Articles 9 and 10). The determination needs to be conducted by the courts involved, according to the method prescribed in Article 9 and taking into account the factors listed in Article 10. Notably, Article 9 currently contains two approaches for conducting this determination, which reflect different policy considerations among members of the Working Group.

7 Chapter II of the Draft Text does not prescribe rules or obligations in parallel proceedings where none of the courts seised has a requisite jurisdiction / connection.

2. General overview of Chapter III (related actions)

8 The framework for related actions applies to those defined as related actions (Art. 3(1)(b), see *infra*, para. 19) and within the scope of the Draft Text (Arts 1 – 2, see *infra*, paras 11 - 16). Like Chapter II, the related actions framework in Chapter III aims to enhance procedural efficiency and avoid irreconcilable judgments, but it takes a different approach. While Chapter III contains international obligations on the courts seised to undertake certain determinations relating to which court should proceed, and requires courts to proceed or suspend or dismiss if their determinations align, it does not otherwise impose international obligations on courts to suspend or dismiss proceedings if that is not their decision. In this key respect, Chapter III provides a flexible and discretionary framework for courts to deal with related actions.

9 Within this framework, if both or all courts seised determine, by taking into account the factors listed in Article 11(2), whether a single court should adjudicate all or part of the related actions and is the more appropriate court to do so (Arts 12 and 13), then that court must proceed with all or part of the related actions accordingly. Alternatively, separate proceedings by the courts seised must continue if the courts’ determinations do not align, or may continue if certain conditions are met (Art. 14).

10 The application of these rules may be affected by the safeguards set out in Chapter V. As specified under Chapter IV, certain provisions related to cooperation and communication apply when courts are applying the above rules of the Draft Text.

D. Scope of the Draft Text

1. Subject matter

- 11 The Draft Text only concerns civil or commercial matters (Art. 1). However, like the 2019 Judgments Convention, the Draft Text excludes certain subject matters which are listed in Article 2(1). The rationale for these exclusions is similar to the approach taken for the 2019 Judgments Convention - namely that some subjects are already governed by other international treaties, and it would be preferable that these instruments operate without interference from the Draft Text. These matters include family law, insolvency, the carriage of passengers and goods, transboundary marine pollution, etc. Additionally, some subjects are excluded from the 2019 Judgments Convention, either because they are particularly sensitive for many States, or because their exclusion avoids any uncertainty based on diverging interpretations under national law. Based on these considerations, the Draft Text follows the 2019 Judgments Convention and excludes these matters in Article 2(1). However, if a Special Commission were convened, HCCH Members would need to consider the scope of the subject matter exclusions and agree a final position. Additionally, further consideration would need to be given as to whether the Draft Text should deal with interim measures of protection (*i.e.* interim or provisional relief, including protective measures), and how the Draft Text should deal with matters involving claims by or on behalf of victims of terrorism. These matters and cases, in which the law of one or more of the Contracting States involved provides for exclusive jurisdiction in their own courts, could be dealt with by the Article 22 declaration mechanism.
- 12 Similar to the 2019 Judgments Convention, the Draft Text states that if an issue which is excluded from the scope of the provisions arises as a preliminary question or as a defence (as opposed to being the final issue for resolution in the case - *i.e.* the “object of proceedings”), this does not in itself put the proceedings outside of the scope of the provisions (Art. 2(2)).
- 13 Article 2(3) provides that the provisions do not apply to arbitration or arbitration related proceedings. This exclusion aims to prevent interference with the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, by ensuring that the Draft Text would not apply where there is an arbitration agreement (or, for example, where there is a dispute about the validity of an arbitration agreement), in the same way that exclusive choice of court agreements and their validity are excluded (as they are already covered by the 2005 Choice of Court Convention).
- 14 The Draft Text also excludes proceedings related to contracts concluded by natural persons acting primarily for personal, family or household purposes (consumers) (Art. 2(4)) and proceedings related to individual contracts of employment (Art. 2(5)). These exclusions reflect the view that rules in the Draft Text may not be appropriate for consumer and employment matters, as consumers and individual employees are typically weaker parties in litigation.
- 15 Like the 2019 Judgments Convention, the Draft Text applies to disputes involving States and other governmental bodies. Article 2(6) provides that the mere fact that a State, including a government, a governmental agency or any person acting for a State, is a party to the proceedings does not exclude the proceedings from the scope of the provisions. Article 2(7) provides that nothing in the provisions shall affect privileges and immunities of States or international organisations, in respect of themselves and of their property.

2. Geographical scope

- 16 The Draft Text covers parallel proceedings and related actions in the courts of different Contracting States (Art. 1(1)). In addition, the Draft Text sets out a potential additional requirement for the applicability of the provisions to parallel proceedings [and related actions], *i.e.* that the defendants

in the proceedings in a court of a Contracting State must be habitually resident in another Contracting State (Art. 1(2); see also Art. 3(2) and paras 20 – 21 *infra*, regarding the meaning of habitual residence). The operation of these provisions would also link to provisions on the relationship of a future instrument with other instruments, which would be for a Special Commission, if one were convened, to consider.

Question 1 on the scope of the Draft Text

- 1.1 What are your views on the scope of the Draft 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?
- 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)?
- 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).

E. Definitions and court seised

- 17 The Draft Text provides definitions for parallel proceedings (Art. 3(1)(a)) and related actions (Art. 3(1)(b)). Parallel proceedings are defined narrowly, and related actions are defined in a broader way.
- 18 Parallel proceedings are defined as any proceedings in courts of different Contracting States between the same parties on the same subject matter. The same parties and the same subject matter are objective criteria.
- 19 Related actions are defined as any proceedings in courts of different Contracting States that are not “parallel proceedings” and which involve several cumulative conditions:
 - (i) parties at least some of which are the same[, or substantially the same,] or connected to each other;
 - (ii) [facts that arise, in whole or in material part, from the same transaction, occurrence, or series of transactions or occurrences;] and
 - (iii) one or more common questions of law or [material] fact that create a risk of [irreconcilable] [inconsistent] findings or judgments [resulting from separate proceedings].These conditions together form a test of “relatedness” to ensure the existence of solid and substantial connections among the actions.
- 20 Article 3(2) defines the “habitual residence” of entities or persons, other than natural persons, as the State:
 - a. where it has its statutory seat;
 - b. under the law of which it was incorporated or formed;
 - c. where it has its central administration; or
 - d. where it has its principal place of business.
- 21 This definition originates from Article 4(2) of the 2005 Choice of Court Convention and Article 3(2) of the 2019 Judgments Convention. This provision will typically apply to corporations, but it also

covers other legal persons and associations or unincorporated entities, *i.e.* associations of natural or legal persons that lack legal personality but are capable, under the law that governs them, of being a party to proceedings.

- 22 The Working Group has discussed whether “parallel proceedings” should include cases where an injunction is sought against a defendant to do or not do something within the State of the court seised, and where such proceedings are related to other proceedings in another Contracting State. However, further consideration is required in terms of clarifying in the Draft Text that, where a proceeding is pending in a court of a Contracting State, the fact that a related court order to compel or restrain the performance of any act is sought in a court of another Contracting State, if the act is confined to the territory of that other State, does not give rise to parallel proceedings, and may not give rise to related actions within the scope of the Draft 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.

- 23 The Draft Text defines when a court is seised [for Chapter II Parallel Proceedings] (Art. 4). This provision provides that a court shall be deemed to be seised at the time when the first step in the initiation of proceedings is taken under the national law of the Contracting State in question. Since the procedures for initiating proceedings vary between States, Article 4 reflects these differences by providing two mutually exclusive approaches. Sub-paragraph (a) applies to Contracting States where proceedings are initiated either by lodging a document instituting the proceedings or an equivalent document with the court; while sub-paragraph (b) applies to Contracting States where the service of the claim by the plaintiff upon the defendant represents the formal commencement of proceedings, thus, when the document is received by the authority responsible for service or is served on the defendant.
- 24 The inclusion of Article 4 does not mean the adoption of certain types of rules [for example, on first in time] for the suspension of proceedings. In addition, if a Special Commission were convened, further consideration might need to be given to whether Article 4 is needed, and if so, whether it could apply to a future instrument as a whole. Further consideration is required to determine whether these rules are workable for different national systems.

Question 3 on when a court is deemed to be seised

What are your views on Article 4?

II. Operation of the Draft Text

- 25 Parallel proceedings (Chapter II) and related actions (Chapter III) are dealt with separately, with different sets of rules. The operation of both sets of rules is supported by the same provision on cooperation and the communication mechanism (Chapter IV). Several safeguards listed in Chapter V may be raised in relation to the operation of the Draft Text.

A. Parallel Proceedings (Chapter II)

- 26 Establishing international obligations of the courts seised, namely, to proceed with the adjudication of a dispute, or to suspend or dismiss proceedings, is a core mechanism under the framework for parallel proceedings (Chapter II).

- 27 Among these obligations, the Draft Text sets out an overall structure and conditions as to how the suspension, dismissal and resumption of parallel proceedings should be carried out, once such a court's obligations have been determined according to the Draft Text. First, it requires a court that must suspend proceedings to [do so as soon as it is informed] of the proceedings in the other court by a party, [other relevant person,] or through the communication mechanism established pursuant to Article 16 (Art. 5(1)).
- 28 Secondly, it requires a court that suspended its proceedings to dismiss the case if the proceedings in the court, for the benefit of which proceedings were suspended, resulted in a judgment capable of recognition and, where applicable, of enforcement in that Contracting State (Art. 5(2)). On the other hand, a court that suspended its proceedings shall, on request of a party, proceed with the case if the court for the benefit of which proceedings were suspended [is unlikely to render] [has not rendered] a judgment on the merits [within a reasonable time] (Art. 5(3)).

Question 4 on Article 5 obligations

What are your views on Article 5?

- 29 The jurisdiction / connection provisions (specified in Arts 6 - 8) apply to determine the court that should proceed to adjudicate the dispute for the purposes of resolving parallel proceedings. If only one court has jurisdiction / connection, that court will adjudicate the dispute and any other courts shall suspend or dismiss their proceedings. If more than one court has jurisdiction / connection, these courts will need to further determine the more appropriate court (under Arts 9 - 10).
- 30 The Draft Text establishes three categories of jurisdiction / connection, consisting of: [exclusive][priority] jurisdiction / connection (Art. 6), party autonomy (Art. 7) and other jurisdiction / connection requirements (Art. 8(2)). The application of these categories is hierarchical. Namely, where [exclusive][priority] jurisdiction / connection (Art. 6) is established, that court will proceed to adjudicate the dispute; in the absence of an Article 6 circumstance, the court designated in a derogating non-exclusive choice of court agreement or the court to which the parties consented will proceed to adjudicate the dispute (Art. 7); in the absence of an Article 6 or 7 circumstance, the requirements listed in Article 8(2) will need to be considered. The "bases for recognition and enforcement" in Articles 5 and 6 of the 2019 Judgments Convention served as a starting point when developing the jurisdiction / connection provisions in the Draft Text.
- 31 The Draft Text currently uses the alternative wording of "jurisdiction" or "connection" to demonstrate the role that Articles 6 - 8 intend to play in the Draft Text. These provisions require a "link" to be established between the proceedings and a State in the context of parallel proceedings but are not meant to directly regulate international jurisdiction.

1. [Exclusive][Priority] jurisdiction / connection (Art. 6)

- 32 According to Article 6, where parallel proceedings which have as their [main] object rights *in rem* in immovable property are pending before courts of Contracting States, the court of the Contracting State in which the immovable property is situated will have priority and shall proceed with the adjudication of the dispute. Any other court will be required to suspend [or dismiss] the proceedings unless a safeguard in Chapter V is invoked.
- 33 If a Special Commission were convened, further consideration would be needed as to whether Article 6 should also apply in situations where proceedings in the court of a Contracting State where the property is situated have not yet commenced. Consideration would also be needed as to whether Article 6 should be expanded to cover parallel proceedings which deal with a residential lease of immovable property (tenancy) or the registration of immovable property, which are included in Article 5(3) of the 2019 Judgments Convention.

2. Party autonomy (Art. 7)

- 34 Where Article 6 does not apply, party autonomy (more specifically, choice of court agreements which are not exclusive within the meaning of the 2005 Choice of Court Convention) is a connection which must be examined in resolving parallel proceedings according to the Draft Text. As provided in Article 7(1), where a choice of court agreement which is not exclusive within the meaning of the 2005 Choice of Court Convention, concluded prior to the dispute, designates one or more courts, and only one of the courts seised is designated under such an agreement as having jurisdiction, then that court will have priority and should proceed with the adjudication of the dispute, unless the agreement states that it does not deprive any other court or courts of jurisdiction. Any court apart from the chosen court shall suspend its proceedings. Parallel proceedings are therefore resolved in such circumstances, unless a safeguard in Chapter V is invoked. Notably, unlike Article 3(c) of the 2005 Choice of Court Convention, which sets out formal validity requirements, Article 7 does not require a choice of court agreement to be concluded or documented in writing or by any other means of communication which renders information accessible so as to be usable for subsequent reference. Thus, the formal validity of such agreements would require further consideration. In addition, Article 7 does not contain an applicable law rule for substantive validity, unlike the 2005 Choice of Court Convention, which refers the matter to the law of the chosen court, including its private international law rules. Thus, the substantive validity of choice of court agreements falling under Article 7 may require further consideration.
- 35 As stated in Article 7(2), non-exclusive choice of court agreements mean choice of court agreements other than exclusive choice of court agreements defined in Article 3(a) and (b) of the 2005 Choice of Court Convention. This wording is to avoid overlap with the 2005 Choice of Court Convention, which covers exclusive choice of court agreements and is restricted to cases where the parties have chosen only a court or courts of one Contracting State and have not expressly provided that the agreement is not exclusive.
- 36 In relation to party autonomy, if a Special Commission were convened, further consideration would be needed regarding where in the Draft Text exclusive jurisdiction agreements, non-exclusive jurisdiction agreements with purely prorogatory effect, and waivers of objections to jurisdiction should be addressed: either in Article 7, in Article 8(2) or in the rules on the more appropriate court analysis. A choice of court agreement having purely prorogatory effect is one that does not limit either party to litigating in the courts of the State or States chosen. One example would be an agreement that enabled the parties to sue each other in the courts of two States and expressly permits the parties to sue each other in any other State under that State's national law. The term "exclusive jurisdiction agreements" includes but is not limited to "exclusive choice of court agreements", which is used in the 2005 Choice of Court Convention.
- 37 The defendant's "consent to jurisdiction" is also covered under Article 7. Subject to Article 6, if the defendant expressly [and positively] consented to the jurisdiction of the court of a Contracting State in the course of the proceedings, then that court will have priority and shall proceed with the adjudication of the dispute. Any other court shall stay or dismiss proceedings (Art. 7(3)) unless a safeguard in Chapter V is invoked. In this context, certain limitations of the timeframe within which the defendant should consent might need to be considered further. In addition, since Article 7 does not specify the hierarchy between paragraphs 1 and 3, issues may arise, for example, if the defendant consents to a jurisdiction other than the one designated by a prior choice of court agreement. If a Special Commission were convened, the relationship between Article 7(1) and (3) should be discussed further.

3. Jurisdiction / Connection (Art. 8)

- 38 Article 8(2) contains a list of jurisdiction / connection requirements, which will only be applied where Article 6 and Article 7 do not apply. These jurisdiction / connection requirements are particularly relevant to the obligations established in Article 8(1).
- 39 As set out in Article 8(1)(a), a court of a Contracting State will be required to suspend or dismiss the proceedings [at the request of a party to the proceedings] if it does not have jurisdiction / connection under Article 8(2) and one or more of the other courts has or have such jurisdiction / connection. Furthermore, if only one other court has jurisdiction / connection under Article 8(2), that other court shall proceed with adjudication, and parallel proceedings are therefore resolved, unless a safeguard in Chapter V is invoked. If, however, there are two or more courts with Article 8(2) jurisdiction / connection, a further step – the determination of the more appropriate court – will need to be applied to further address parallel proceedings (see paras 46 - 53, *infra*).
- 40 Pursuant to Article 8(1)(b), a court of a Contracting State which has jurisdiction / connection under Article 8(2) will be required to suspend or dismiss its proceedings if they were not started within a reasonable timeframe after proceedings were commenced in the court first seised having jurisdiction / connection pursuant to Article 8(2). As such, the court first seised having jurisdiction / connection pursuant to Article 8(2) should proceed with the adjudication of the dispute. In this context, the meaning of “a reasonable timeframe” should be further considered. In addition, it was noted that such timeframe issues may be dealt with by the provisions concerning the determination of the more appropriate court analysis. Article 8(1)(b) remains in brackets for further consideration.
- 41 Article 8(1) was added to the Draft Text without prejudice to the possibility that, in future work, further circumstances may be specified in which courts would be required to suspend or dismiss the proceedings.

Question 5 on priority jurisdiction / connection

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

- 42 There are eleven possible and alternative jurisdiction / connection requirements in Article 8(2), and these apply on an equal footing and have no hierarchy in relation to their application. These provisions were developed by using the bases for recognition and enforcement contained in Article 5(1) of the 2019 Judgments Convention as a starting point, but they go beyond those bases. Departing from the bases listed in the 2019 Judgments Convention could affect the application of that Convention, as some judgments rendered by a court under a future instrument might not be eligible for circulation under the 2019 Judgments Convention. However, since a future instrument and the 2019 Judgments Convention would serve different purposes, it was deemed appropriate by the Working Group to consider adding additional grounds of jurisdiction / connection in Article 8(2).
- 43 The jurisdiction / connection requirements in Article 8(2) are those which are considered sufficient to establish that a court has the necessary link in order for the obligations in the Draft Text to apply. These requirements belong to traditional categories of connections in which a court will generally have some jurisdictional competency: connections between the court and the defendant (e.g. that the defendant was habitually resident in the State of the court seised at the time they became a party to the proceedings), connections between the court and consent (e.g. implied consent through the defendant arguing on the merits without contesting jurisdiction), and connections between the claim and the court seised (e.g. matters concerning contractual obligations where the performance of a contractual obligation did take or should have taken place in the State of the court seised).

44 There were discussions within the Working Group as to whether the list of jurisdiction / connection requirements in Article 8(2) should be narrow or wide. One view is that the list should be relatively narrow, limiting the number of cases with an Article 8(2) connecting factor, thereby enhancing the ability for cases to be dealt with through the operation of Article 8(1). It was pointed out that the operation of Article 8(1) provides predictability and certainty in the treatment of parallel proceedings.

45 Another view is that the Article 8(2) list should be expanded to ensure that a certain number of cases fall within the parallel proceedings framework of a future instrument, and can be decided by the more appropriate court through the determination established under Article 9, having regard to the factors set out in Article 10. In that regard, it was observed that not expanding the list sufficiently could lead to undesirable outcomes in actual cases.

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

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?

4. Determination of the more appropriate court (Art. 9)

46 Article 9 establishes a mechanism for determining the more appropriate court among the courts having jurisdiction / connection under Article 8(2). The test of the "more appropriate court", *i.e.* the factors that need to be considered when determining the more appropriate court, is set out in Article 10 of the Draft Text.

47 Article 9 currently contains two approaches, reflecting the main different policy considerations within the Working Group concerning the role of the courts seised. Both approaches involve all courts, *other than the court first seised*, suspending or dismissing their proceedings. However, they differ essentially in which court or courts then carry out a determination of the more appropriate court, and in what circumstances, and in whether courts could be obliged to do as courts of another Contracting State decide. Both approaches are also supplemented by Article 19 (avoiding denial of justice) as well as the other safeguard provisions in Chapter V, meaning that after one or more courts carry out determinations as specified in Article 9, it is open to any of these courts to decide to exercise jurisdiction under Chapter V.

- One approach gives the determination of the more appropriate court to the court first seised, and to each court / other courts at a subsequent stage but only in certain circumstances ("exceptionally" or "as appropriate" are the two options in the text). That approach also contains three options as to the nature of the determination carried out by the court(s) other than the court first seised (Approach 1).
- The second approach gives the more appropriate court determination to the court(s) other than the court first seised, while not regulating what the court first seised should then do (Approach 2). This is on the basis that the court first seised has already been given priority by a requirement for the court(s) second seised to suspend or dismiss. The second approach also would not require any court to suspend, dismiss or proceed based on the decision-making of a court in another Contracting State. A note in the Draft Text sets out the basic framework of Approach 2 to assist the reader to identify the different policy positions.

- 48 Both approaches share common elements in addition to those touched on above:
- their operation is party-driven in the sense that both depend on a party making an application for the determination of the more appropriate court (Art. 9(1) of Approach 1 and as set out in the note reflecting Approach 2 at paragraph 2);
 - the court making the determination under Article 9 shall do so expeditiously;
 - courts are encouraged to exchange information through the communication mechanism established pursuant to Article 16 and may do so at any stage of the determination (Art. 9(6) of Approach 1 and as set out in the note reflecting Approach 2 at paragraph 3); and
 - both approaches have the same exceptions to the general obligation of a court other than the court first seised to suspend proceedings (Art. 9(5) of Approach 1 and as set out in the note reflecting Approach 2 at paragraph 2).
- 49 Under Approach 1, the court first seised is required to determine, on an application by a party, whether any other seised court in a Contracting State with jurisdiction / connection under Article 8 is a more appropriate court to resolve the dispute. Such an application should be [made no later than the first defence on the merits] or [made within a reasonable timeframe] (Art. 9(1)). The timing issue requires further consideration.
- 50 In the meantime, any court other than the court first seised [shall][must] [, on an application by a party,] suspend its proceedings in favour of the court first seised [pending the determination of the application under paragraph 1] (Art. 9(2)).
- 51 The Draft Text prescribes obligations and exceptions for the courts involved following a determination made by the court first seised:
- If the court first seised determines that another seised court is a more appropriate court, the court first seised shall suspend its proceedings in favour of that court and may only resume proceedings if that other court has not rendered, or is unlikely to render a judgment on the merits within a reasonable time, in accordance with Article 5(3) (Art. 9(3)).
 - If the court first seised decides to continue proceedings, a court that has suspended proceedings under Article 9(2) may only resume proceedings in accordance with Article 9(5), or Article 5(3)] (Art. 9(4)).
- 52 Although Approach 1 gives a primary role to the court first seised in determining the more appropriate court, this approach also provides that, [in exceptional circumstances] or [as appropriate], a court other than the court first seised may, on an application by a party, resume proceedings, if two conditions are met. First, the application is made within certain time limits: [no later than the first defence on the merits], [within a reasonable timeframe], [within a period of [30 days] from the determination in the court first seised] and second, the court other than the court first seised makes a determination that:
- [Option 1: it must hear the case to guarantee effective access to justice]
 - [Option 2: it is the more appropriate court to resolve the dispute, after taking into account the factors in Article 10]
 - [Option 3: it is the clearly more appropriate court to resolve the dispute, after taking into account the factors in Article 10] (Art. 9(5)).
- The options listed above remain in brackets as further discussion is required to determine which option should be adopted in the Draft Text.
- 53 Approach 2 requires that any court other than the court first seised [shall] [must] suspend its proceedings in favour of the court first seised (Art. 9(1) of Approach 2). However, either [in exceptional circumstances] or [as appropriate], a court other than the court first seised may, on an application by a party, resume proceedings, if two conditions are met. First, the application is made within certain time limits ([no later than the first defence on the merits], [within a reasonable

timeframe], [within a period of [30 days]] from the determination in the court first seised] and second, the court other than the court first seised makes a determination that:

- [Option 1: it must hear the case to guarantee effective access to justice]
- [Option 2: it is the more appropriate court to resolve the dispute, after taking into account the factors in Article 10]
- [Option 3: it is the clearly more appropriate court to resolve the dispute, after taking into account the factors in Article 10]. (Art. 9(2) of Approach 2)

The options listed above remain in brackets as further discussion is required to determine which option should be adopted in the Draft 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?

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.

5. Factors to be considered in the determination of the more appropriate court (Art. 10)

- 54 Upon applying the method prescribed in Article 9, the courts seised should conduct a test to determine the more appropriate court in the resolution of parallel proceedings.
- 55 The test in Article 10 requires the courts seised to [have regard to the proper administration of justice, taking] [take] into account the factors listed therein. The factors, which are most relevant in making a determination under Article 9, include:
- (a) [the burdens of litigation on the parties] [the convenience of the parties], particularly in view of their habitual residence;
 - (b) the [relative] ease of accessing evidence or preserving evidence;
 - (c) [the law applicable to the claims];
 - (d) the stage of the proceedings before each court seised [and any applicable limitation or prescription periods] [and the possibility of significant delay in one or more courts];
 - (e) [the likelihood that one court may provide a complete or significantly more complete resolution of the dispute as a whole;] and
 - (f) the likelihood of recognition and, where applicable, enforcement of any resulting judgment given in the Contracting State of any other seised court.
- 56 The factors are intended to serve different objectives, including judicial efficiency, convenience and reducing costs for litigants, assessing the potential success of each court in fully resolving the dispute and the possibility of obtaining recognition and enforcement.
- 57 When making a determination pursuant to Article 10, the courts may exchange information through the communication mechanism established pursuant to Article 16.
- 58 As a whole, the operation of the rules on parallel proceedings is supported by the cooperation provision and the communication mechanism established in Chapter IV, which encourage seised courts to cooperate with each other and to exchange information via the communication mechanism in Article 16 at any stage when making a determination under the Draft Text (Art. 15). Upon a declaration made by Contracting States, seised courts may conduct joint hearings (Art. 17). Nevertheless, there is a requirement to respect [each other's sovereignty,], the procedural rights of

the parties to the proceedings, and the confidentiality of information under respective applicable national laws during communication between seised courts and in joint hearings set out in Chapter IV. For explanations on cooperation and communication, see paragraphs 75 - 80, *infra*.

- 59 Additional safeguards apply to the rules on parallel proceedings, which are set out in Chapter V. These safeguards include: avoiding denial of justice in Article 19, prevention of abuse of process in Article 20 and public policy in Article 21. For explanations on the safeguards, see paragraphs 84 - 93, *infra*.

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)?

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?

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.

B. Related Actions (Chapter III)

- 60 The related actions provisions apply to matters that are pending in courts of two or more Contracting States. To engage the provisions, a party would need to make an application to one court or to multiple courts. Each court, following the parties' application, should reach its own independent determination of the application within a reasonable time (Art. 11(1)). However, further consideration should be given to the form of applications in the respective courts and the possibility of introducing an order for the determinations.

1. Determination of the more appropriate court and the factors to be considered (Art. 11)

- 61 The courts should make the following determination. They should first decide whether a single court should adjudicate the entirety or any part of the related actions (Art. 11(1)(a)). It is important to note that the courts are not obligated to decide to adjudicate the proceedings in their entirety or in part. Thus,
- If the answer to the first question is negative, the courts could continue separate proceedings (Art. 14).
 - If the answer to the first question is affirmative, the courts should determine which court is the more appropriate court for resolution of the entirety or any part of the related actions (Art. 11(1)(b)).
- 62 When determining which court is the more appropriate court for related actions, the courts seised shall consider the proper administration of justice, taking into account the factors listed in Article 11(2). The factors listed in this provision, being non-exhaustive, are the same as those listed in Article 10 for the determination of the more appropriate court in the context of parallel proceedings, except for item (c), any choice of court agreements between the parties. Importantly,

unlike the parallel proceedings provisions and the requirements of Article 8(2), the related actions framework does not require that a court of a Contracting State has a connection / jurisdictional ground such as those set forth in Article 8(2). Any potential concerns about the relative strength of each court's connection to the case or parties can be addressed in the more appropriate court factors.

- 63 The Draft Text provides three different mechanisms for dealing with related actions following the determinations made by the courts. These are either: adjudicating related actions in their entirety by a single court (Art. 12), in part by a single court (Art. 13), or continuing separate proceedings (Art. 14). Further consideration should be given to the use of the word “adjudication” and possible alternative descriptions, because “adjudication” encompasses different methods of dispute resolution in the work of other international organisations in the field of international trade and commerce.

2. Adjudicating related actions in their entirety by a single court (Art. 12)

- 64 For the first mechanism, where two or more courts seised of related actions determine that: (a) a single court should adjudicate the entirety of the related actions; and (b) the same court seised is the more appropriate court for the adjudication of the related actions in their entirety, the Draft Text requires that single court to [proceed with adjudication of] [adjudicate] the entirety of the related actions case, and the other court(s) making the determinations to suspend or dismiss their case(s).
- 65 The Draft Text further sets forth that if one or more other courts seised do not make the determinations in Article 12(1) within a reasonable time or make inconsistent determinations, two or more of the courts seised are not precluded from adjudicating the entirety of the related actions pending before them.

3. Adjudicating related actions in part by a single court (Art. 13)

- 66 For the second mechanism, where two or more courts seised of related actions determine that: (a) a single court should adjudicate part of the related actions; and (b) the same court seised of a related actions case is the [more appropriate court for that part of the related actions, the Draft Text requires that single court to [proceed with adjudication of] [adjudicate] that part of the related actions, and the other court(s) making the determinations to suspend or dismiss that part of the related actions.
- 67 Like the first mechanism, if one or more other courts seised of related actions do not make the determinations in Article 13(1) within a reasonable time or make inconsistent determinations, two or more of the courts seised are not precluded from adjudicating any part of the related actions pending before them.
- 68 [In addition, the Draft Text does not preclude the courts from determining that different parts of the case may be most appropriately assigned to different courts.]
- 69 Under this article, the possibility to allow partial consolidation, as well as the most appropriate way to draft such a rule, should be further discussed, taking into account practical considerations and whether such rules could further the goals of this Chapter, namely, improved procedural efficiency and the avoidance of irreconcilable judgments.

4. Continuing separate proceedings (Art. 14)

- 70 Under the third mechanism, separate proceedings may be continued if one of the following conditions is met. First, when any court seised decides not to adjudicate the entirety or any part of the related actions under Article 12 or Article 13, or if any court seised makes a determination that is inconsistent with the determination of any other court under Article 12 or Article 13, then such a court shall proceed with the related actions case before it. Or, if one or more courts seised do not

make the determinations under Article 12 or Article 13 within a reasonable time, any other court seised may, upon application of a party or of its own motion, [proceed to adjudicate] [adjudicate] the proceedings before it. On the other hand, any court seised that has suspended the entirety or any part of its proceedings under Article 12 or Article 13 may resume proceedings if the court in favour of which it has suspended its proceedings has not assumed jurisdiction in relation to the entirety or the relevant part of proceedings within a reasonable time.

- 71 If a Special Commission were convened, further consideration should be given to a possible scenario in which one of the courts initially seised has suspended proceedings pending a determination in another court seised of only part of the proceedings before it, after which the court that has suspended will need to resume its own proceedings, taking into account the findings of the other court.
- 72 In addition, the related actions framework proposed in this Chapter does not specifically address a related actions case requiring a determination of rights *in rem* in immovable property. Further consideration should be given as to how to best address this topic within the framework.
- 73 As a whole, the operation of the rules on related actions is supported by the cooperation provision and the communication mechanism established in Chapter IV, which encourage seised courts to cooperate with each other and to exchange information via the communication mechanism in Article 16 at any stage when making a determination under the Draft Text (Art. 15). Upon a declaration made by Contracting States, seised courts may conduct joint hearings (Art. 17). Nevertheless, there is a requirement to respect [each other's sovereignty,], the procedural rights of the parties to the proceedings, and the confidentiality of information under respective applicable national laws during communication between seised courts and in joint hearings set out in Chapter IV. For explanations on cooperation and communication, see paragraphs 75 - 80, *infra*.
- 74 Additional safeguards apply to the rules on related actions which are set out in Chapter V. These safeguards include: avoiding denial of justice in Article 19, prevention of abuse of process in Article 20 and public policy in Article 21. For explanations on the safeguards, see paragraphs 84 - 93, *infra*.

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.
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C. Cooperation and Communication (Chapter IV)

- 75 The Draft Text includes a provision encouraging courts to cooperate with each other, where appropriate (Art. 15) and a communication mechanism (Art. 16) aiming to facilitate judicial cooperation and communication between courts seised when applying the Draft Text.

1. Cooperation provision (Art. 15)

- 76 The Draft Text provides that, where appropriate, seised courts [undertake] [are encouraged] [shall endeavour] to cooperate with each other, and as part of that cooperation, courts are encouraged to exchange information through the communication mechanism under Article 16 and may do so at any stage when making a determination under the Draft Text.
- 77 Thus, cooperation forms an important component of a future instrument and applies to the entire Draft Text. Although the courts seised are not obliged to cooperate, the provision is intended to enable the courts to cooperate with each other and to exchange information through the communication mechanism established under Article 16.

2. Communication mechanism (Art. 16)

78 Courts seised should endeavour to communicate with each other (Art. 16). The Draft Text provides four types of communication methods, either direct or indirect methods, namely:

- (a) direct communication between courts,
- (b) indirect communication via a competent authority [central authority],
- [(c) communication combining (a) and (b)], and
- (d) indirect communication through the parties.

79 The methods of communication are flexible. While (d) indirect communication through the parties is a default method and available in each case (Art. 16(3)), Contracting States may choose to accept, by way of declaration, one or more of the other three methods of communication that can be engaged (Art. 16(2)). Further consideration is needed as to the possibility for a Contracting State to withdraw from the method(s) provided in Article 16(2) by a notification.

80 The Draft Text also provides guidance to the courts with a view to facilitating communication with other courts (Art. 16(4)). It contains practical rules on writing and translation requirements in relation to initial communications between courts (Art. 16(4)(a)), namely, that communication shall be in writing and be provided either in an official language of the Contracting State of the receiving court, or in an official language of the Contracting State of the sending court, together with a translation into an official language of the Contracting State of the receiving court. In addition, the Draft Text includes rules on how further communications may be carried out between such courts, more specifically, using any translation method or common language agreed upon by the relevant courts or relevant competent or central authorities. Article 16(4) is in brackets for further consideration.

3. Joint hearings (Art. 17)

81 The Draft Text provides an additional avenue of cooperation and coordination among courts – joint hearings. This provision allows Contracting States to declare they permit joint hearings (Art. 17(1)), and allows their courts to conduct joint hearings where they are of the view it would be useful (Art. 17(2)). Such a mechanism is intended to be flexible and non-mandatory. Article 17(3) further provides guidance on how joint hearings should be conducted. More specifically, courts shall agree on the scope, process, format, and other aspects related to the joint hearing, which may be based on a proposal by the parties. In addition, each court shall retain power and independence over the conduct of its own proceedings, consistent with applicable national laws.

82 Further consideration is needed as to the possibility for a Contracting State to withdraw from joint hearings by a notification.

4. [Sovereignty,] procedural rights, and confidentiality of information (Art. 18)

83 Since there will be different rules or standards regarding confidentiality of information or procedural rights of the parties under national laws, the Draft Text provides safeguards when courts conduct communication and joint hearings. Namely, the courts seised should respect State sovereignty (currently in brackets), procedural rights as well as confidentiality of information of parties under the respective applicable national laws.

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?

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

D. Safeguards in relation to the application of a future instrument (including dealing with potential tactical use) (Chapter V)

84 With a view to addressing the concerns that may potentially arise in relation to the application of the Draft Text, such as respecting the interest of the forum State, safeguarding procedural rights and ensuring access to justice for the parties, the Draft Text lays down three safeguards in Chapter V (General Clauses): avoiding denial of justice (Art. 19), prevention of abuse of process (Art. 20), and public policy (Art. 21). Compared with public policy, which is commonly used as a safeguard in instruments regulating private international law, provisions on avoiding denial of justice and prevention of abuse of process are relatively novel.

1. Avoiding denial of justice (Art. 19)

85 Article 19 provides that nothing in the Draft Text shall prevent a court from exercising its jurisdiction if the court determines it is reasonable and foreseeable that its exercise is necessary in order to avoid a [manifest] denial of justice. The underlying principle of this safeguard is to enhance access to justice. Accordingly, if there is any risk of a denial of justice arising from the application of the Draft Text, thereby hindering access to justice, courts will be able to exercise jurisdiction and proceed with the case despite other provisions in the Draft Text. The provision does not describe what constitutes a denial of justice. However, the following is an example: a court, which should dismiss a case based on the rules of the Draft Text, may decide not to decline jurisdiction if sending the parties to another court would prevent one party from effectively presenting their case, e.g. due to a lack of legal representation, legal aid, or the lapse of a limitation period in the other court.

86 The Working Group agreed that this safeguard was important but highlighted the exceptional nature of this rule. Whether to set up a higher threshold of “manifest” in relation to denial of justice would need to be considered further. It should be noted that this provision is intended to operate as a safeguard but is not intended to create new grounds of jurisdiction. Since there are still questions remaining for consideration, such as what constitutes a denial of justice and whether an exception concerning Article 6 ([exclusive] [priority] jurisdiction / connection) should be included, the text of this provision is placed in brackets for further consideration.

2. Prevention of abuse of process (Art. 20)

87 Article 20 provides that nothing in the Draft Text shall prevent a court from suspending, dismissing, continuing or resuming proceedings to prevent an abuse of process. Abuse of process is a distinct concept from public policy and denial of justice, as it does not focus on the interests of the State or primarily on the interests of the parties. This safeguard is introduced to preserve the court’s prerogative to ensure that its processes are used appropriately.

88 The provision does not define what constitutes an abuse of process. The Working Group provided the following examples: where the first proceeding was initiated with the aim of frustrating upcoming or potential proceedings in another court in bad faith; where its own process is being abused or there is deception on the court; or where the proceedings are multiple or successive and cause vexation or oppression.

- 89 Potential tactical use of the rules of the Draft Text was also raised. The Working Group noted that tactical or strategic litigation is part of civil or commercial litigation in practice and that this provision is not aimed at preventing this where it does not rise to the level of abuse of process. Often, it may be difficult to determine whether a proceeding is abusive. For example, proceedings for negative declarations are sometimes legitimate, but they can sometimes be described as a means to avoid the merits of a dispute being properly dealt with. In any event, tactical litigation in bad faith or manipulation may be addressed under national law, including court rules.
- 90 Due to the difficulties of drawing a line as to what might constitute an “abuse of process” and knowing what particular tactical use of the Draft Text should be prevented by this provision, further consideration, including how to reduce the risks that the Draft Text may be misused, is required.

3. Public policy (Art. 21)

- 91 This provision aims to safeguard sovereignty or security interests of the forum State as well as the public policy or fundamental principles of the forum State. It releases the court from its obligations to suspend or dismiss the proceedings required by the Draft Text, in situations where the proceedings may involve the sovereignty or security interests of the forum State, or where the suspension or dismissal would be manifestly incompatible with the public policy or fundamental principles of the forum State.
- 92 In line with Article 7(1)(c) of the 2019 Judgments Convention, the term “manifestly” is introduced to establish a high threshold of public policy, ensuring that the court does not suspend or dismiss the case, which it otherwise should do under the operative provisions of the Draft Text, only if there is a compelling public policy reason to hear that particular case. The word “manifestly” is used to discourage the overuse of the public policy exception and to limit its use to situations where suspension or dismissal of the case would lead to an intolerable result.
- 93 Although the public policy exception is commonly used under national law and international instruments in recognition and enforcement of foreign judgments, further consideration is needed as to whether such a safeguard needs to be introduced in the context of addressing parallel proceedings [and related actions] and the consideration of whether to continue, dismiss or adjudicate such cases. For this reason, the entirety of Article 21 is in brackets for further consideration.

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?

E. Other General Clauses

- 94 Chapter V of the current Draft Text contains two other general clauses: declarations with respect to specific matters (Art. 22) and uniform interpretation (Art. 23). These two provisions are commonly used in HCCH Conventions.

1. Declarations with respect to specific matters (Art. 22)

- 95 The Draft Text provides that where a State has a strong interest in not applying the Draft Text to a specific matter, the State may declare that it will not do so (Art. 22(1)). The purpose of this Article is to permit Contracting States to extend the list of excluded subject matters beyond those enumerated in Article 2(1) through a declaration. Matters, such as those involving claims by or on

behalf of victims of terrorism, or cases in which the law of one or more of the Contracting States involved provides for exclusive jurisdiction in their own courts, could be dealt with under this Article.

96 While this Article provides flexibility for the States, it contains certain safeguards. First, a State should only make a declaration where it has a strong interest to do so and the declaration should not be broader than necessary. Secondly, the specific matter excluded must be clearly and precisely defined. This ensures that the parties and other States are able to easily identify the scope and reach of the declaration.

97 Article 22(1) originates from Article 21 of the 2005 Choice of Court Convention and Article 18 of the 2019 Judgments Convention. These two Conventions also establish reciprocity for declarations made thereunder; thus, how the Draft Text should establish reciprocity in relation to the application of the Draft Text with other States should be further considered.

2. Uniform Interpretation (Art. 23)

98 Article 23 states that in interpreting the Draft Text, regard must be had to its international character and the need to promote uniformity in its application. It stresses that a future instrument should be interpreted in a uniform manner and that courts applying the Draft Text must interpret it in an international spirit to promote uniformity of application.

99 This Article originates from Article 23 of the 2005 Choice of Court Convention and Article 20 of the 2019 Judgments Convention.

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.

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

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?

Question 14 - comments

What other comments, if any, do you have?