

**TRAVAIL EN COURS EN MATIÈRE DE JUGEMENTS  
– CONVENTION ÉLECTION DE FOR ET PROJET SUR LES JUGEMENTS –**

*établi par le Bureau Permanent*

\* \* \*

**ONGOING WORK ON JUDGMENTS  
– CHOICE OF COURT CONVENTION AND JUDGMENTS PROJECT –**

*drawn up by the Permanent Bureau*

*Document préliminaire No 7 de février 2014 à l'attention  
du Conseil d'avril 2014 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 7 of February 2014 for the attention  
of the Council of April 2014 on General Affairs and Policy of the Conference*

**TRAVAIL EN COURS EN MATIÈRE DE JUGEMENTS  
– CONVENTION ÉLECTION DE FOR ET PROJET SUR LES JUGEMENTS –**

*établi par le Bureau Permanent*

\* \* \*

**ONGOING WORK ON JUDGMENTS  
– CHOICE OF COURT CONVENTION AND JUDGMENTS PROJECT –**

*drawn up by the Permanent Bureau*

## 1. Introduction

1. This document reports on the most important developments in the area of Judgments since the last meeting of the Council on General Affairs and Policy (the Council) in 2013 and:

- provides an update on the status of the *Hague Convention of 30 June 2005 on Choice of Court Agreements* (the Choice of Court Convention);
- presents the ongoing work on the Judgments Project; and
- summarises the Permanent Bureau's main initiatives in this area.

Pursuant to the terms of the Council's mandate,<sup>1</sup> the work on the Judgments Project should not interfere with efforts to promote the entry into force of the Choice of Court Convention. Actually, the process of promoting and monitoring the efforts of Members towards becoming Contracting States to the Choice of Court Convention informs, in a practical and considered way, the development of a new instrument.

2. Developments since the 2013 meeting of the Council include the:

- circulation in August 2013 of a Process Paper on the Continuation of the Judgments Project and responses from the participating States;
- organisation of a Conference on International Litigation in the Asia Pacific region (Wuhan University, China, 23 and 24 September 2013);
- conducting of a second Working Group meeting on the Judgments Project (24 to 28 February 2014); and
- impending entry into force of the Choice of Court Convention, following the past accession by Mexico in 2007 and the forthcoming approval by the European Union.

## 2. Progress on the Choice of Court Convention

3. The Choice of Court Convention, recently described as "the best known offshoot of the Judgments Project",<sup>2</sup> is soon to achieve the status of a binding international instrument.

4. In December 2012, the European Union (EU) adopted the Brussels I Regulation Recast,<sup>3</sup> which aligns its choice of court provisions with the key operating principles of the Choice of Court Convention. The European Commission issued a proposal for approval of the Convention on 30 January 2014.<sup>4</sup> Upon approval by the EU, the Convention will enter into force. It is expected that this may occur in the first half of 2015. If available, more specific information will be provided at the Council meeting in April 2014.

---

<sup>1</sup> At its 2011 meeting, the Council concluded that any future work on the Judgments Project "should not interfere with the ongoing efforts to promote the entry into force of the [Choice of Court Convention]".

<sup>2</sup> David Goddard QC, "The Fruits of the Judgments Project" in *A Commitment to Private International Law - Essays in honour of Hans van Loon*, 2013, pp. 195-205, at p. 196.

<sup>3</sup> See Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

<sup>4</sup> COM (2014) 46, available at < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0046:FIN:EN:PDF> >.

5. Other Members of the Hague Conference on Private International Law also work towards joining the Convention. The Russian Federation, Serbia, Turkey and Ukraine continue their efforts in this regard while in Latin America, Argentina and Costa Rica are considering joining the Convention. During a recent mission of the Secretary General to Paraguay, it transpired that there is a sound political will to assess several major Hague Conventions, including the Choice of Court Convention, and to examine the possibility of joining them.

6. Australia and New Zealand recently underscored the importance of the Convention. In October 2013, the Trans-Tasman Proceedings Regime, a bilateral cross-border civil procedure regime that implements essential elements of the Choice of Court Convention,<sup>5</sup> entered into force. Earlier in 2013, the Chief Justice of the High Court of Australia and the Solicitor-General of the Commonwealth of Australia both called for the signing and ratification of the Convention.<sup>6</sup> With Singapore considering joining the Convention,<sup>7</sup> and the Chief Justice of the Supreme Court of Singapore strongly championing Singapore becoming a Contracting State,<sup>8</sup> awareness and support for the Choice of Court Convention steadily progresses in the Asia Pacific region.<sup>9</sup>

7. Encouraging is also the clear support the Convention receives from the international legal practice community. In October 2013, the German Bar Association (*Deutscher Anwaltverein*, or DAV) expressed its support for the EU's approval of the Convention. There is also a continued desire of the legal community in the Americas to see the Convention enter into force, with the Inter-American Bar Association (IABA) recommending in June 2013 that States should join it.<sup>10</sup>

---

<sup>5</sup> See s20 of the Australian *Trans-Tasman Proceedings Act 2010* (Cth), available at < <http://www.comlaw.gov.au/Details/C2013C00646> >. See also New Zealand's mirror law at s25 of the *Trans-Tasman Proceedings Act 2010* (NZ), available at < <http://www.legislation.govt.nz/act/public/2010/0108/latest/DLM2576223.html> >.

<sup>6</sup> Chief Justice Robert French, AC, "International Commercial Dispute Resolution and the Place of Judicial Power", International Commercial Law and Arbitration Conference, Sydney - 22 August 2013, especially pp. 15-17. The full text of the speech is available at < <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj22aug13.pdf> >. Justin Gleeson SC, Solicitor-General of the Commonwealth, Australia, "An Australian Perspective on International Commercial Litigation: The Challenges and Opportunities", Conference "International Litigation in the Asia Pacific Region", Wuhan, People's Republic of China, 23-24 September 2013 (The full text of the speech is available at < <http://www.hcch.net/upload/wuhan2013au.pdf> >).

<sup>7</sup> See 2013 Report of the Law Reform Committee of the Singapore Academy of Law on the Choice of Court Convention, available at <http://www.sal.org.sg/digitallibrary/Lists/Law%20Reform%20Reports/Attachments/37/01%20LRC%20Hague%20Convention%202005.pdf>.

<sup>8</sup> Chief Justice Sundaresh Menon of the Singapore Supreme Court, who in a keynote address in August 2013 to the Association of Southeast Asian Nations (ASEAN) Law forum called for ASEAN countries to consider recognising one another's civil court judgments, so they can be enforced throughout the region. His Honour also suggested that Singapore should consider signing the Choice of Court Convention as a "ready-platform" (the full text of the address is available at < <http://cil.nus.edu.sg/wp/wp-content/uploads/2013/09/Keynote-by-CJ-Menon.pdf> >).

<sup>9</sup> See further below paras 13 *et seq.*

<sup>10</sup> See < [http://www.hcch.net/index\\_en.php?act=events.details&year=2013&varevent=321](http://www.hcch.net/index_en.php?act=events.details&year=2013&varevent=321) >. Members will recall that the International Chamber of Commerce (ICC) issued a similar call back in 2012. "ICC calls on governments to facilitate cross-border litigation", ICC Commission on Commercial Law and Practice, Paris - 29 November 2012, available at < <http://www.iccwbo.org/News/Articles/2012/ICC-calls-on-governments-to-facilitate-cross-border-litigation/> >.

8. The Permanent Bureau continues to support the progress on the Choice of Court Convention, supervising the Conference's Choice of Court Convention Implementation Dialogue. Recently, representatives from Serbia and Ukraine joined the Dialogue.<sup>11</sup>

### **3. Progress on the Judgments Project**

9. In 2013, the Council took note of the reports of the Working Group and Experts' Group of February 2013, as well as the fact that members of the Groups were continuing to consult on next steps for the Project. Members of both Groups engaged in extensive consultations with regard to the process going forward. In order to facilitate these consultations, in August 2013, the Permanent Bureau circulated a letter from the Secretary General and a Process Paper to all Members of the Organisation. The purpose of the Paper was to "assist the members of the Working Group and the Experts' Group in advancing their positions on possible ways to further organise and sequence the work, before reporting to the Council meeting of 2014".<sup>12</sup> The Process Paper recalled the respective mandates of the two Groups, summarised the views that were previously expressed by the States as to the sequencing of work, and suggested a possible path forward.

10. Following the circulation of the Process Paper, the Permanent Bureau received responses from a number of participating Members indicating general support for the path forward suggested in the Paper. As such, on 20 December 2013, the Secretary General sent a letter to all National and Contact Organs, updating them on the outcome of the ongoing consultations and convened a second Working Group meeting on the Judgments Project scheduled from 24 to 28 February 2014. The report of the Working Group meeting will be circulated separately in advance of the next meeting of the Council in 2014 and added as an annex to this Preliminary Document. No meeting of the Experts' Group is expected to take place before April 2014.

### **4. Raising awareness about the Conference's work on Judgments**

11. On 23 and 24 September 2013, the Permanent Bureau, along with its Asia Pacific Regional office, organised a Conference on International Litigation in the Asia Pacific region in collaboration with the Government of the People's Republic of China and Wuhan University. Over 40 judges, government officials, academics and other experts from 13 Asia Pacific States including, Australia, Cambodia, China, India, Indonesia, Republic of Korea, Lao People's Democratic Republic, Myanmar, New Zealand, Singapore, Sri Lanka, Thailand, and Vietnam, attended the Conference.<sup>13</sup>

12. The purpose of the Conference was twofold. Firstly, to highlight the features and benefits of the Choice of Court Convention and, secondly, to provide participating States with an overview of the Judgments Project and to share experiences and gather information about the rules with respect to international jurisdiction and recognition and enforcement of foreign judgments within the region. In preparation for the Conference,

---

<sup>11</sup> Representatives from Argentina, Australia, Canada, Costa Rica, Germany, Mexico, New Zealand, Serbia, the EU, the United States of America and Ukraine participate in the implementation dialogue. For further information on implementation tools serviced by the Permanent Bureau, see the presentation delivered at the Wuhan Conference by Cara North, Legal Officer at the Permanent Bureau, on 23 September 2013, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Judgments Project" then "News & events".

<sup>12</sup> "Process Paper on the Continuation of the Judgments Project", Document of August 2013, submitted by the Permanent Bureau for the attention of the Working Group and the Experts' Group – February 2014, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Judgments Project" then "Recent Developments".

<sup>13</sup> Additional information about the Conference including a link to the press release, Conference agenda, Conference flyer, Conclusions and Recommendations, presentations given during the Conference and responses to the Questionnaire are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "News and Events" on both the "Judgments Project" and the "Choice of Court Section" webpages.

States were requested to complete a short questionnaire on their rules with respect to international jurisdiction and the recognition and enforcement of foreign judgments. The information gained from the Questionnaire responses is currently being compiled and will be available on the Judgments Project webpage on the website of the Hague Conference upon completion. This table will provide useful background information for future work on the Judgments Project.

13. At the conclusion of the Conference, the participants recognised the utility and practical functionality of the Choice of Court Convention for States in the Asia Pacific region, and it was suggested that the Choice of Court Convention be put forward for consideration by competent authorities in those States. Moreover, the Conference concluded with participants expressing strong support for the Judgments Project and encouraging the participating States to resume their meetings, taking into account the path forward suggested by the Permanent Bureau in its August 2013 Process Paper.

14. The Permanent Bureau presented the Choice of Court Convention and the Judgments Project at a number of other events in 2013.<sup>14</sup>

15. This year, the Permanent Bureau is organising a one-day conference in collaboration with the Ministry of Justice of the Russian Federation. The conference will be run as a side event to the Fourth St. Petersburg International Legal Forum, which will take place from 18 to 21 June 2014. The one-day conference will feature a series of presentations and practical sessions on the Hague Conference's work in the area of Judgments.

16. The Permanent Bureau thanks all stakeholders for their ongoing interest in, and support for, the Hague Conference's work in the area of Judgments.

---

<sup>14</sup> Some specific events include the Dutch-Russian seminar on Legal Co-operation, "Better Justice, Better Business" held in The Hague, on 6 March 2013; a seminar on the "Choice of Court Agreements Convention 2005 and the Hague Conference Asia Pacific Regional Office" held in Canberra, Australia, on 20 August 2013; a presentation on "the benefits of regional and global litigation instruments for foreign trade and investment" at the 5<sup>th</sup> Journal of Private International Law Conference in Madrid, Spain, on 12-13 September 2013; and a presentation on the Choice of Court Convention at the 15<sup>th</sup> Conference of the Chief Justices of the Asia Pacific in Singapore, from 27 to 30 October 2013. For further information, see the "News and Events Section" of the "Choice of Court Section" available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) >.

ANNEXE / ANNEX

## Second Meeting of the Working Group on the Judgments Project (24-28 February 2014)



### Report

From 24 to 28 February 2014, the **Working Group on the Judgments Project** (“the Working Group”) met at the premises of the Permanent Bureau of the Hague Conference on Private International Law for the second time under the chairmanship of Mr David Goddard QC. The Working Group was composed of 31 participants from 19 Members.<sup>15</sup>

### CURRENT PROGRESS

Guided by the mandate given by the Council on General Affairs and Policy of the Conference (“the Council”) at its April 2012 meeting,<sup>16</sup> the Working Group continued its work towards the preparation of draft provisions for inclusion in a possible future instrument.

The Working Group made good progress towards this goal.

Useful work was done on the drafting of:

- a) provisions in relation to the scheme for recognition and enforcement of judgments, closely modelled on the corresponding provisions of the *Hague Convention of 30 June 2005 on Choice of Court Agreements*; and
- b) provisions specifying the categories of judgments to which the future instrument would apply, giving effect to the approach outlined in the Working Group’s first Report, *i.e.*,:
  - the instrument would provide for recognition and enforcement of both money and non-money judgments (with certain exceptions, and certain specific issues that require careful analysis);
  - the instrument would not provide for recognition and enforcement of provisional and protective measures, but the possibility of their inclusion should be discussed at a later stage;
  - the instrument would provide for recognition and enforcement of default judgments; and
  - the instrument would provide for enforcement of judicial settlements.

The Working Group addressed the criteria for recognition and enforcement of judgments at a conceptual level on the basis of a number of proposals. The Working Group made some progress on these issues, which will be the focus of its next meeting, with the benefit of the inter-sessional work described below.

<sup>15</sup> The participating Members were Argentina, Australia, Belarus, Brazil, Canada, China (People’s Republic of), Costa Rica, Cyprus, the European Union, Germany, Mexico, the Republic of Korea, the Russian Federation, Serbia, South Africa, Spain, Switzerland, the United Kingdom and the United States of America.

<sup>16</sup> The mandate given by the Council to the Working Group was “to prepare proposals for consideration by a Special Commission in relation to provisions for inclusion in a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters” (Conclusions and Recommendations adopted by the Council of 17 to 20 April 2012, para. 17).



## **FUTURE WORK**

The Working Group confirmed its intention to continue work in accordance with its mandate.

To this end, the Group determined that it would need to meet on at least two more occasions. The third and fourth Working Group meetings are tentatively scheduled for September / October 2014 and February 2015, respectively.

The Group also decided that inter-sessional work should be carried out on the following topics:

- judgments relating to tort / delict claims and contract claims;
- judgments rendered in proceedings for collective redress (including class actions);
- consumer and employment matters; and
- intellectual property matters.

The inter-sessional work should start as soon as possible, using information and communication technology (including tele-conferencing and video-conferencing as well as a possible online forum hosted by the Permanent Bureau) wherever possible and appropriate.

The Working Group thanked the Permanent Bureau for its research paper on personal jurisdiction and *forum non conveniens* in the enforcement context and requested the Permanent Bureau:

- to continue its work on the research paper on judgments rendered in proceedings for collective redress (including class actions); and
- to facilitate an exchange of information on matters of national law of particular relevance to this project.