

<b>Title</b>	<b>Working Group on Jurisdiction: Report of 2026</b>
<b>Document</b>	<b>Prel. Doc. No 2A of December 2025</b>
<b>Author</b>	PB
<b>Agenda Item</b>	Item II.2
<b>Mandate(s)</b>	C&D Nos 8 and 9 of CGAP 2021 C&D No 7 of CGAP 2022 C&D No 9 of CGAP 2023 C&D Nos 4-7 of CGAP 2024 C&D Nos 5-12 of CGAP 2025
<b>Objective</b>	To report on the progress of the Working Group on the Jurisdiction Project and to present the recommendation of the WG following its ninth meeting
<b>Action to be Taken</b>	<div>For Decision <input checked="" type="checkbox"/></div> <div>For Approval <input type="checkbox"/></div> <div>For Discussion <input type="checkbox"/></div> <div>For Action / Completion <input type="checkbox"/></div> <div>For Information <input checked="" type="checkbox"/></div>
<b>Annexes</b>	Annex: Working Group on Jurisdiction: Report of the Ninth Meeting
<b>Related Documents</b>	<ul style="list-style-type: none"> <li>- <a href="#">Prel. Doc. No 2B of February 2025</a> - Working Group on Jurisdiction: Report of 2025</li> <li>- <a href="#">Prel. Doc. No 2A of December 2024</a> - Message from the Chair of the Working Group on the Jurisdiction Project</li> <li>- <a href="#">Prel. Doc. No 2 of February 2024</a> - Working Group on Jurisdiction: Report of 2024</li> <li>- <a href="#">Prel. Doc. No 2 of February 2023</a> - Working Group on Jurisdiction: Report</li> <li>- <a href="#">Prel. Doc. No 7 of February 2022</a> - Report of the Working Group on Jurisdiction</li> <li>- <a href="#">Prel. Doc. No 3 of February 2021</a> - Report on the Jurisdiction Project</li> <li>- <a href="#">Prel. Doc. No 5 of February 2020</a> - Third Meeting of the Experts' Group on Jurisdiction</li> </ul>

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## Working Group on Jurisdiction: Report of 2026

### I. Introduction

- 1 The Working Group on matters related to jurisdiction in transnational civil or commercial litigation (WG), under the chairmanship of Professor Keisuke Takeshita (Japan), was established following the Council on General Affairs and Policy (CGAP) mandate in 2021.<sup>1</sup> Since that time, the WG has met nine times. The first eight meetings were held in October 2021, February 2022, September 2022, February 2023, September 2023, February 2024, October 2024 and February 2025. Reports on the progress of these meetings were provided to CGAP in 2022, 2023, 2024 and 2025, respectively.<sup>2</sup>
- 2 Pursuant to the mandate given by CGAP at its 2025 meeting,<sup>3</sup> the WG had its ninth meeting from 20 to 24 October 2025. The meeting was held in hybrid format and was attended by 60 WG members in total, representing 19 HCCH Members from various regions, one Regional Economic Integration Organisation (REIO), and two Observers.
- 3 In line with CGAP's mandate, the ninth WG meeting proceeded with a targeted agenda focused explicitly on Article 8(2), and on fine-tuning the Draft Text without reopening or introducing discussion on policy issues during the fine-tuning.
- 4 A total of 66 Working Documents (Work. Docs) have been submitted by delegates from different legal cultures, including many that were submitted jointly by several delegations, over the course of the nine WG meetings.<sup>4</sup> These Work. Docs have included proposals on a range of complex and challenging issues relevant to the development of the Draft Text.
- 5 Additionally, several Information and Discussion Papers were submitted by the Observers for the International Bar Association (IBA) as well as by a few delegates separately (in their personal capacities), with a view to facilitating discussions during WG meetings. The WG thanked the IBA and the delegations for their input.
- 6 The Draft Text now contains 23 articles in five Chapters, more specifically, 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) and Chapter V General Clauses (Arts 19-23). The Report of the Chair of the WG highlights the progress made in further developing the provisions of the Draft Text. It also contains a recommendation made by the WG to CGAP. The Report of the Chair of the WG and the revised Draft Text are set out in the Annex.

### II. Public Consultation

- 8 In advance of the ninth WG meeting, the PB prepared and circulated a draft Consultation Paper (Paper) and a set of related questions on the operation of the Draft Text, designed to facilitate the Public Consultation (Consultation) mandated by CGAP.<sup>5</sup> The WG reviewed the Paper and accompanying questions and noted that they should be further revised to reflect the changes to the Draft Text and the discussions that occurred during the ninth meeting. Noting that the

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<sup>1</sup> C&D Nos 8 and 9 of CGAP 2021 (available on the HCCH website ([www.hcch.net](http://www.hcch.net)) under "Governance" then "Council on General Affairs and Policy" and "Archive (2000-2025)").

<sup>2</sup> "Report of the Working Group on Jurisdiction", Prel. Doc. No 7 of CGAP 2022; "Working Group on Jurisdiction: Report", Prel. Doc. No 2 of CGAP 2023; "Working Group on Jurisdiction: Report of 2024", Prel. Doc. No 2 of CGAP 2024; "Message from the Chair of the Working Group on the Jurisdiction Project", Prel. Doc. No 2A of December 2024, and "Working Group on Jurisdiction: Report of 2025", Prel. Doc. No 2B of February 2025, available on the HCCH website ([www.hcch.net](http://www.hcch.net)) (see path indicated in note 1).

<sup>3</sup> C&D No 7 of CGAP 2025, available on the HCCH website ([www.hcch.net](http://www.hcch.net)) (see path indicated in note 1).

<sup>4</sup> Available on the Secure Portal of the HCCH website ([www.hcch.net](http://www.hcch.net)) under "Working / Experts Groups" then "Working Group on Jurisdiction".

<sup>5</sup> C&D No 8 of CGAP 2025.

Consultation period would be from mid-November 2025 to late January 2026, the WG invited Members to assist with raising awareness of the Consultation. The Consultation materials, including the Paper, are available on the [HCCH website](#).<sup>6</sup>

### **III. Recommendations from the WG**

9 The Report of the Chair of the WG noted the WG’s recommendation as follows:

Recalling C&D No 10 of CGAP 2025, which “noted that it will be for its 2026 meeting to decide on the continuation of the project and whether the Secretary General should convene a Special Commission (SC) meeting”, the WG invites CGAP to decide on the continuation of the project.

### **IV. Proposals for CGAP**

10 Based on the foregoing, the PB proposes the following Conclusions and Decisions:

CGAP took note of the Report of the Chair of the WG on matters related to jurisdiction in transnational civil or commercial litigation, and the progress made by the WG to further develop provisions for a future Convention.

CGAP thanked the PB for conducting the Consultation on the Draft Text.

CGAP is invited to decide on the continuation of the project .

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<sup>6</sup> Available on the HCCH website ([www.hcch.net](http://www.hcch.net)) under “Legislative Work” then “Jurisdiction Project” then “Public Consultation on the Draft Text”.

## **ANNEX**

<b>Title</b>	Working Group on Jurisdiction: Report of the Ninth Meeting
<b>Document</b>	
<b>Author</b>	Chair of the Working Group
<b>Agenda Item</b>	
<b>Mandate(s)</b>	
<b>Objective</b>	To record the key points that were discussed during the ninth Working Group meeting and to present the recommendations of the WG following its ninth meeting
<b>Action to be Taken</b>	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
<b>Annexes</b>	Revised Draft Text
<b>Related Documents</b>	

## Working Group on Jurisdiction: Report of the Ninth Meeting

### I. Introduction

- 1 At its meeting of 4 to 7 March 2025, the Council on General Affairs and Policy (CGAP) mandated the Permanent Bureau (PB) to convene one additional meeting of the Working Group on matters related to jurisdiction in transnational civil or commercial litigation (WG), to be held in the second half of 2025. CGAP agreed that this WG meeting would have a targeted agenda specifically focused on considering Article 8(2) of the Draft Text. The WG would also review and fine-tune the entire Draft Text of a future convention, without reopening or introducing discussion on policy issues.<sup>1</sup> CGAP further invited the PB to convene an open and inclusive written consultation process on the Draft Text (Consultation) following this additional WG meeting, with a view to gathering feedback from future operators of the envisaged Convention, particularly practitioners and judges. CGAP invited the PB to prepare explanatory notes and questions, with the assistance of WG members, to support the consultation process.<sup>2</sup>
- 2 In line with the above C&Ds, the WG met for the ninth time from 20 to 24 October 2025, in The Hague, under the chairmanship of Professor Keisuke Takeshita (Japan).
- 3 In advance of the WG meeting, two Information and Discussion Papers were submitted — one by the Observers for the International Bar Association and another by the delegation of Singapore (in their personal capacities). The WG was also provided with a draft Consultation Paper, together with a set of associated questions on the operation of the Draft Text, prepared by the PB. These materials were developed to facilitate the Consultation, which is scheduled to take place from mid-November 2025 to late January 2026.
- 4 This Report highlights the progress made in further developing the provisions of the Draft Text and provides a recommendation made by the WG. The Revised Draft Text, which will serve as the basis for the Consultation, is set out in the Annex.

### II. Article 8(2)

- 5 The WG discussed six Working Documents (Work. Docs) containing proposals for new or revised jurisdiction / connection requirements under Article 8(2).
- 6 The WG acknowledged that expanding the Article 8(2) list would necessitate a departure from the bases for recognition and enforcement set out in Article 5(1) of the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (2019 Judgments Convention), which served as the basis for providing jurisdiction / connection in Article 8(2). It was noted that such a departure could affect the application of the 2019 Judgments Convention, as some judgments rendered by a court under a future instrument might not be eligible for circulation under the 2019 Convention.
- 7 However, the WG also noted that, as a possible future convention and the 2019 Judgments Convention would serve different purposes, it was appropriate to consider adding additional grounds of jurisdiction / connection in Article 8(2).

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<sup>1</sup> Conclusions and Decisions (C&D) No 7 of CGAP 2025.

<sup>2</sup> C&D No 8 of CGAP 2025.

*Discussion on individual limbs*

- 8      The WG reached consensus on a proposal to expand the scope of Article 8(2)(g) to include claims concerning a non-contractual obligation arising from damage to, or loss, “or loss of value” of tangible “or intangible” property. In addition, the WG introduced new connecting factors under this sub-paragraph, “(ii) the harm was suffered in that State as the result of conduct specifically directed toward that State; or (iii) the claim arises out of goods, services, or other activities placed into or directed at the market of that State, where the defendant purposefully engaged with that market and the claim arises out of or relates to those activities.” These two items were added in square brackets for further consideration, including the possibility of merging them. It was noted that merging the two items could better reflect connecting factors in some jurisdictions.
  
- 9      The WG considered a proposal for a new limb which provides jurisdiction / connection of a court of a Contracting State to proceedings *in rem* concerning rights in movable property located in that State. The WG discussed the types of proceedings characterised as *in rem*, and it was submitted that the proceedings should have, as their object, ownership or possession. The WG also discussed the application of this limb to intangible property. As a result, the WG agreed to include this limb in square brackets in Article 8(2)(k), with the addition of a reference to ownership or possession and with a possible limitation to tangible movable property, e.g. chattels, ships, cultural property, or art objects.
  
- 10     The WG considered a proposal to include jurisdiction / connection based on the express and implied consent of a party to the jurisdiction of the court seised. During the discussion on express consent, the kind of consent that would be covered by the proposed limb was considered. It was pointed out that cases concerning exclusive choice of court agreements would be covered by the *Convention of 30 June 2005 on Choice of Court Agreements* (2005 Convention). The WG also discussed the possible application of the proposed limb to non-exclusive jurisdiction agreements with purely prorogatory effect. Although the WG could not reach consensus on the inclusion of the proposed limb, it was decided to revise the note to Article 7 to indicate the “possible need to address exclusive jurisdiction agreements, non-exclusive jurisdiction agreements with purely prorogatory effect and waivers of objections to jurisdiction either in [Article 7], in Article 8(2), or in the rules on the more appropriate court analysis”. The term “exclusive jurisdiction agreements” is used in the note to include, but not be limited to “exclusive choice of court agreements”, which is used in the 2005 Convention.
  
- 11     Regarding the implied consent of a party, it was noted that the registration by a party to do business in a State could be regarded as an implied consent to the courts of that State. However, the WG discussed and agreed to include where a defendant had “registered to do business in that State”, at the time that person became party to the proceedings in that State, and where a claim arose out of the “matters covered in that registration” as a part of the current Article 8(2)(c). This addition was placed in square brackets for further consideration.
  
- 12     The WG considered a proposal to include “the claim is for harm or loss in matters closely connected to that State and implicating important foreign policy concerns for that State” in Article 8(2). This proposal was intended to cover cases involving claims by victims of terrorism, which could give rise to the possibility of parallel proceedings as the plaintiff might sue in multiple jurisdictions. Although the WG could not reach consensus on the inclusion of this limb, it decided to include a note: “Matters involving claims by or on behalf of victims of terrorism should be further considered” under Article 2, as such matters are important and the provisions of parallel proceedings in the future instrument might not be suitable to address them.



- 13 The WG considered a proposal concerning a claim for restitution and a claim for an account or other relief against a defendant as trustee or fiduciary, giving jurisdiction / connection to a Contracting State in which the defendant's alleged liability arises out of any act done, whether by the defendant or otherwise. The proposal intended to capture claims concerning economic gains or profits. It was noted that the jurisdiction / connection granted under the proposal seemed too broad and such claims might be dealt with by Article 8(2)(g) and Article 8(2)(h). As a result, the WG did not reach consensus on its inclusion. However, as the claims dealt with by this proposal covered unjust enrichment, which is known in many countries, the WG decided to add unjust enrichment to Article 8(2)(g) in square brackets for further consideration.
- 14 The WG considered a proposal to include a claim for an injunction to order a defendant to do or refrain from doing anything within the State in Article 8(2). The WG could not reach consensus on this proposal, as the types of cases of parallel proceedings that would be dealt with by this proposal were unclear. During the discussion, the question arose as to whether such proceedings should fall within the definition of "parallel proceedings" under Article 3, specifically, 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. Accordingly, the WG decided to add a note to Article 3, stating: "There is a need to consider the inclusion of text in the Draft Text, or referring to this in the Explanatory Note, to clarify 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".
- 15 The WG considered a proposal to include "the defendant is a necessary or proper party to a claim pending before the court of the State, which has [priority][jurisdiction][connection] under this Article" in Article 8(2). While there was support for the substance of this proposal, concerns were raised about the wording of the proposed limb and the relevance of the connection to the forum State. As a result, the WG did not reach consensus. The discussion on situations involving multiple defendants raised the issue about the application of Article 3(1)(a). This issue should be further considered, in particular, whether "proceedings" refers to the proceedings as a whole, or proceedings in respect of each claim against each defendant. The discussion also raised the question of the application of Article 8. A note was added to Article 8 stating "The application of Article 8 in situations where there are multiple defendants should be further considered, in particular, whether the priority connections should be assessed either for each claim against each defendant or for the proceedings as a whole."
- 16 The WG considered a proposal to include "a claim is for a contribution or an indemnity in respect of a liability enforceable by proceedings in the court of the State" in Article 8(2). This proposal aimed to capture a court's jurisdiction over third parties who are not defendants in the proceedings against whom the principal claim is brought, but who nevertheless are, or will at some future point, be liable to bear the burden of the liability arising from that claim. The WG decided not to include this ground, as it was unclear what types of claims would be covered beyond the example of insurance cases, and that such claims or connecting factors might be unfamiliar in certain legal systems.

### Observations regarding proposals submitted on Article 8(2)

- 17 Proposals submitted for consideration at the ninth WG meeting were designed to expand the list of jurisdiction / connection requirements, enabling more parallel proceedings to be dealt with by Articles 9 and 10, on the basis that the proposed jurisdiction / connection requirements were of a nature that a court with such jurisdiction / connection should not be denied the exercise of jurisdictional competence under Article 8(2).
- 18 Notwithstanding these objectives and the additional limbs that were added to Article 8(2), there are differing views within the WG 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) (which requires a court to suspend or dismiss proceedings where it does not have Article 8(2) jurisdiction / connection and where one or more other courts in the parallel proceedings has jurisdiction / connection). It was pointed out that the operation of Article 8(1) provides predictability and certainty in the treatment of parallel proceedings.
- 19 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.
- 20 It was submitted that expanding the list in Article 8(2) would contradict the objectives of a future instrument, which are intended to avoid parallel proceedings. In addition, it was submitted that this approach could create legal uncertainty.
- 21 In this regard, it was mentioned that the Article 8(2) jurisdiction / connection limbs do not aim to establish jurisdictional competence but rather serve as connecting factors or filters for resolving parallel proceedings under a future instrument. Nevertheless, it was observed that the effect of Article 8(2) in some cases would be to deny the exercise of jurisdictional competence of a seised court without Article 8(2) jurisdiction / connection.

## III. Fine-tuning of the Draft Text

- 22 The WG agreed to remove the brackets around “on the same subject matter” and on the definition of related actions in Article 3(1).
- 23 The WG considered a noted-up version of the Draft Text prepared by the PB and agreed to align the terms used in the Draft Text to ensure consistency, including the use of the terms “this Convention” and “the Article”. The WG aligned the titles of Articles 10 and 11 and made relevant adjustments.
- 24 The WG also removed the footnotes and a few notes in the Draft Text and decided to reflect the contents contained therein in the Consultation Paper and in a future Explanatory Note.

## IV. Draft Consultation Paper and Questions

- 25 The WG considered the draft Consultation Paper and discussed the questions to be asked during the public consultation. The WG thanked the PB for preparing the draft Consultation Paper. The PB will revise the Consultation Paper in line with the changes made to the Draft Text and the views exchanged during the ninth WG meeting. The PB will circulate the final Consultation Paper and the questions to the WG for information, in advance of the launch of the Consultation. The Consultation on the Draft Text will take place between mid-November 2025 and late January 2026.

## **V. Recommendations from the WG**

- 26 Recalling C&D No 10 of CGAP 2025, which “noted that it will be for its 2026 meeting to decide on the continuation of the project and whether the Secretary General should convene a Special Commission (SC) meeting”, the WG invites CGAP to decide on the continuation of the project.

## **ANNEX**

## ***Draft text of a future convention on parallel proceedings and related actions***

### **CHAPTER I SCOPE AND DEFINITIONS**

#### **Article 1 Scope**

1. This Convention shall apply to parallel proceedings [and related actions] in the courts of different Contracting States in civil or commercial matters. It shall not extend in particular to revenue, customs or administrative matters.
2. [This Convention shall apply to parallel proceedings [and related actions] if [any of] the defendant[s] in [any of] the proceedings in a court of a Contracting State [is][are] habitually resident in another Contracting State.]
3. Chapter III shall apply only where none of the courts seised of related actions has issued a decision on the merits.

#### **Article 2 Exclusions from scope**

1. This Convention shall not apply to the following matters –
  - (a) the status and legal capacity of natural persons;
  - (b) maintenance obligations;
  - (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
  - (d) wills and succession;
  - (e) insolvency, composition, resolution of financial institutions, and analogous matters [,except where the proceedings are based on general rules of civil or commercial law, even if the action is brought by or against a person acting as insolvency administrator in one party's insolvency proceedings];
  - (f) the carriage of passengers and goods;
  - (g) transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average;
  - (h) liability for nuclear damage;
  - (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
  - (j) the validity of entries in public registers;
  - (k) defamation;

- (l) privacy;
- (m) intellectual property;
- (n) activities of armed forces, including the activities of their personnel in the exercise of their official duties;
- (o) law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties;
- (p) anti-trust (competition) matters, except where the proceedings are based on conduct that constitutes an anti-competitive agreement or concerted practice among actual or potential competitors to fix prices, make rigged bids, establish output restrictions or quotas, or divide markets by allocating customers, suppliers, territories or lines of commerce, and where such conduct and its effect both occurred in the State where the proceedings are pending;
- (q) sovereign debt restructuring through unilateral State measures;
- [(r) to be determined.]

*[Note: Exclusive choice of court agreements and interim measures for protection should be further considered.]*

*[Note: Matters involving claims by or on behalf of victims of terrorism should be further considered.]*

2. Proceedings are not excluded from the scope of this Convention where a matter to which this Convention does not apply arose merely as a preliminary question in the proceedings, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude proceedings from the Convention, if that matter was not an object of the proceedings.
3. This Convention shall not apply to arbitration and related proceedings.
4. This Convention shall not apply to proceedings related to contracts concluded by natural persons acting primarily for personal, family or household purposes (consumers).
5. This Convention shall not apply to proceedings related to individual contracts of employment.
6. Proceedings are not excluded from the scope of this Convention by 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.
7. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

### **Article 3** **Definitions**

1. In this Convention –
  - (a) “parallel proceedings” means any proceedings in courts of different Contracting States between the same parties on the same subject matter;
  - (b) “related actions” means any proceedings in courts of different Contracting States that are not “parallel proceedings” and that involve:
    - (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].

2. An entity or person other than a natural person shall be considered to be habitually resident in 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.

*[Note: There is a need to consider the inclusion of text in the Draft Text, or referring to this in the Explanatory Note, to clarify 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.]*

#### **[Article 4 Court seised**

For the purpose of [Chapter II], a court shall be deemed to be seised –

- (a) when the document instituting the proceedings or an equivalent document is lodged with the court; or
- (b) if such document has to be served before being lodged with the court, when it is received by the authority responsible for service or served on the defendant.]

*[Note: Inclusion of this provision does not mean the adoption of certain types of rules [on first in time] for the suspension of proceedings.]*

### **CHAPTER II PARALLEL PROCEEDINGS**

#### **Article 5 Suspension, dismissal and resumption of parallel proceedings**

1. A court that must suspend proceedings in accordance with this Chapter [shall 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.
2. A court that suspended its proceedings in accordance with this Chapter shall 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.
3. A court that suspended its proceedings in accordance with this Chapter 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].

*[Note: For the situation provided in paragraph 1, the possibility of dismissal instead of suspension should be further considered.]*

*[Note: Further consideration of the recognition and enforcement of foreign judgments and on the detailed rules is required.]*

## Article 6

### *[Exclusive][Priority] jurisdiction / connection*

Where parallel proceedings which have as their [main] object rights *in rem* in immovable property [, tenancies of immovable property, or the registration of immovable property] are pending before courts of Contracting States and the property is situated in one of those Contracting States, the court of the Contracting State in which the property is situated shall proceed with adjudication on the dispute. Any other court shall [, on application by a party,] suspend [or dismiss] the proceedings.

*[Note: Application of this rule to parallel proceedings which have as the [main] object tenancies of immovable property or the registration of immovable property should be discussed further.]*

*Further consideration is necessary as to whether registration includes recordation and whether this term can be added to the text as well. Further discussion is needed to address whether the rule on tenancies should include an exception for cases where the tenant is habitually resident in a different State.*

*Further consideration is needed as to how the above provision aligns with Article 5(3) of the 2019 Judgments Convention.]*

## Article 7

### *Party autonomy*

1. Subject to Article 6, if the parties to the proceedings in both / all courts have agreed prior to the dispute that one or more courts shall have jurisdiction over the dispute, and only one of the courts seised is designated under such agreement as having jurisdiction, then that court shall proceed with adjudication of the dispute unless such agreement states that it does not deprive any other court or courts of jurisdiction. Any other court shall suspend the proceedings.
2. Paragraph 1 does not apply to an exclusive choice of court agreement. For the purposes of this subparagraph, an “exclusive choice of court agreement” means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one State or one or more specific courts of one State to the exclusion of the jurisdiction of any other courts. A choice of court agreement which designates the courts of one State or one or more specific courts of one State shall be deemed to be exclusive unless the parties have expressly provided otherwise.
3. Subject to Article 6, if the defendant expressly [and positively] consented to the jurisdiction of the court of a Contracting State [by written or oral format and addressed either to the court or to the claimant] in the course of the proceedings, then that court shall proceed with adjudication of the dispute. Any other court shall stay or dismiss adjudication of the dispute.

*[Note: Possible need to address exclusive jurisdiction agreements, non-exclusive jurisdiction agreements with purely prorogatory effect, and waivers of objections to jurisdiction, either in this Article, in Article 8(2), or in the rules on the more appropriate court analysis.]*

*[Note: Relationship between paragraph 1 and paragraph 3 should be discussed further.]*

*[Note: For paragraph 1 of this Article, the formal validity of the agreement needs to be considered further. Cf. Article 3(c) of the 2005 Choice of Court Convention.]*

*[Note: Certain limitations of the timeframe within which the defendant should consent might need to be considered further.]*



## Article 8

### *Jurisdiction / Connection*

1. Subject to Articles 6 and 7, where parallel proceedings are pending before the courts of Contracting States, a court of a Contracting State shall suspend or dismiss the proceedings [at the request of a party to the proceedings] if –
  - (a) it does not have jurisdiction / connection pursuant to paragraph 2 of this Article and one or more of the other courts has or have such jurisdiction / connection; or
  - [(b) proceedings in that court were not started within a reasonable timeframe after proceedings were commenced in the court first seised having jurisdiction / connection pursuant to paragraph 2 of this Article.]

*[Note: The meaning of “a reasonable timeframe” in sub-paragraph (b) should be further considered. Also, it should be noted that such timeframe issues may be dealt with by the provisions concerning the determination of the more appropriate court analysis. Further discussion on these issues is needed. Further rules need to be considered in the determination of the more appropriate court analysis.]*

*This Article is added 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.]*

2. A court of a Contracting State has jurisdiction / connection if [at least] one of the following requirements is met –
  - (a) the defendant was habitually resident in that State at the time that person became party to the proceedings;

*[Note: Possible need to define the term “defendant”, as a defendant may be a claimant in another State – adopt language of Article 5(1)(a) of the 2019 Judgments Convention, specifying the time at which the defendant was joined to the proceedings. Also, need to clarify the situation of multiple defendants.]*

- (b) the defendant is a natural person who had their principal place of business in that State at the time that person became party to the proceedings as regards a [dispute] [claim] arising out of the activities of that business;
  - (c) the defendant maintained a branch, agency, or other establishment without separate legal personality in that State[, or registered to do business in that State,] at the time that person became party to the proceedings in that State, and the claim arose out of the activities of that branch, agency, or establishment[ or the matters covered in that registration];

*[Note: Or should the timing be tied to the activities of that branch, agency or other establishment?]*

- (d) [the proceedings have as their object] [the claim concerns] [the action concerns] a contractual obligation and the performance of that obligation took place, or should have taken place, in that State, in accordance with –
    - (i) the agreement of the parties, or
    - (ii) the law applicable to the contract, in the absence of an agreed place of performance, unless the activities of the defendant in relation to the transaction clearly did not constitute a purposeful and substantial connection to that State;

*[Note: Which phrase, [the proceedings have as their object], [the claim concerns], or [the action concerns] should be adopted needs further consideration also for sub-paragraphs (d)-(h).]*

- (e) the claim [is brought on] [concerns] a lease of immovable property (tenancy) [or the registration of immovable property] and the property is situated in that State;
  - (f) the claim concerns a contractual obligation secured by a right *in rem* in immovable property located in the State, if the contractual claim is brought together with a claim against the same defendant relating to that right *in rem*;

- (g) a claim concerns a non-contractual obligation arising from death, physical injury, damage to or loss or loss of value of tangible or intangible property[, or unjust enrichment] and –
  - (i) the act or omission directly causing such harm [or enrichment] occurred in that State, irrespective of where that harm [or enrichment] occurred; [or
  - (ii) the harm was suffered in that State as the result of conduct specifically directed toward that State; or
  - (iii) the claim arises out of goods, services, or other activities placed into or directed at the market of that State, where the defendant purposefully engaged with that market and the claim arises out of or relates to those activities;]
- (h) the claim concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and –
  - (i) at the time the proceedings are instituted, the State was designated in the trust instrument as a State in the courts of which disputes about such matters are to be determined; or
  - (ii) at the time the proceedings are instituted, the State is expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

This sub-paragraph only applies to proceedings regarding internal aspects of a trust between persons who are or were within the trust relationship;

- (i) a counterclaim arises out of the same transaction or occurrence as the original claim, if the court of the State has [priority] [jurisdiction] [connection] for the original claim under this Article and the original claim is pending in that court;
- (j) the defendant argued on the merits without contesting jurisdiction within the timeframe provided in the law of the State of the court, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;

*[Note: Should this connecting factor in (j) be prioritised? It should be considered to whom “it is evident”.]*

- [(k) the proceedings [are *in rem* and concern] [have as their object] ownership or possession of rights in [tangible] movable property located in that State [at the time the court was seised];]
- [(l) to be determined.]

*[Note: Interaction of this paragraph with Articles 6, 7, or 9 needs further consideration.]*

*[Note: Substantial further discussion and work on Article 8 is required to address concerns raised by several WG members as to its purpose, scope, implications, and application, including the potential for tactical litigation.]*

*[Note: The application of Article 8 in situations where there are multiple defendants should be further considered, in particular, whether the priority connections should be assessed either for each claim against each defendant or for the proceedings as a whole.]*

## Article 9

### **Determination of the more appropriate court**

1. Subject to Articles 6 and 7, where parallel proceedings are pending in the courts of two or more Contracting States that have jurisdiction / connection under Article 8, [the court first seised shall determine, on an application by a party [made no later than the first defence on the merits] [made within a reasonable timeframe], whether any other seised court in a Contracting State with jurisdiction / connection under Article 8 is a more appropriate court to resolve the dispute. When making this determination the court first seised shall take into account the factors in Article 10.

- 2.] 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].
- [3. If, following a determination made under paragraph 1, 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 in accordance with Article 5(3).
4. If, following a determination made under paragraph 1, the court first seised decides to continue proceedings, a court that has suspended proceedings under paragraph 2 may only resume proceedings in accordance with paragraph 5 or Article 5(3)].
5. [In exceptional circumstances] [As appropriate], a court other than the court first seised may, on an application by a party, resume proceedings if:
  - (a) the application is made [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
  - (b) the court other than the court first seised determines 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].
6. A court making a determination under this Article 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.

*[Note: this Article has interlinked brackets to reflect different views in the WG concerning the role of the court first seised. The following sets out the text excluding the words that are undoubtedly included in the interlinked brackets (with the yellow highlighted changes of (i) the numbering of the paragraphs and (ii) a capital letter to small letter), clarifying the alternative basic framework reflecting a different view:*

1. Subject to Articles 6 and 7, where parallel proceedings are pending in the courts of two or more Contracting States that have jurisdiction / connection under Article 8, any court other than the court first seised [shall][must] suspend its proceedings in favour of the court first seised.
2. [In exceptional circumstances] [As appropriate], a court other than the court first seised may, on an application by a party, resume proceedings if:
  - (a) the application is made [no later than the first defence on the merits] [within a reasonable timeframe]; and
  - (b) the court other than the court first seised determines 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].
3. A court making a determination under this Article 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.

*Whether or not the remaining brackets are the interlinked brackets and what should be changed to reflect the above-mentioned different views remain open for consideration.]*

*[Note: Issues concerning the provisions for non-priority [connection] [jurisdiction] should be considered further.]*

### Article 10

#### ***Factors to be considered in the determination of the more appropriate court***

In making a determination under Article 9, the court shall [have regard to the proper administration of justice, taking] [take] into account the following factors in particular:

- (a) [The burdens of litigation on the parties][ the convenience of the parties], including 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.

The courts may exchange information through the communication mechanism established pursuant to Article 16.

## CHAPTER III RELATED ACTIONS

### Article 11

#### ***Determination of the more appropriate court and the factors to be considered***

1. Where related actions are pending in the courts of two or more Contracting States, any such court shall, upon application of a party, determine within a reasonable time:
  - (a) Whether a single court should adjudicate the entirety or any part of the related actions; and if so,
  - (b) Which court is the more appropriate court for resolution of the entirety or any part of the related actions.

*[Note: In this model, parties may make applications to multiple courts and each court would reach its own independent determination of the application before it. 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.]*

*[Note: Further consideration should be given to whether the phrase “a single court should adjudicate” adequately reflects the intended purpose and whether (a) and (b) can / should be separated.]*

2. In making its determination of which court is the more appropriate court, a court shall consider the proper administration of justice, taking into account the following factors:
  - [(a) [the burdens of litigation on the parties] [the convenience of the parties], including in view of their habitual residence;
  - (b) the [relative] ease of accessing evidence or preserving evidence;
  - (c) [any choice of court agreements between the parties];
  - (d) [the law applicable to the claims];
  - (e) 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];

- (f) [the likelihood that one court may provide a complete or significantly more complete resolution of all, or the relevant part of, the matters at issue;] and
- (g) the likelihood of recognition and, where applicable, enforcement of any resulting judgment given in the Contracting State of any other seised court.]

*[Note: The related actions framework proposed herein does not require that a court of a Contracting State has a connection / jurisdictional ground such as those set forth in draft Article 8(2). The related actions framework is intended to be flexible and discretionary. It was understood that this might raise concerns for some delegations where one court's jurisdiction is based on a so-called "exorbitant" ground. These concerns can be addressed in the more appropriate court factors—taking into account all relevant sensitivities in drafting. This list remains non-exhaustive and subject to further consideration.]*

## **Article 12**

### ***Adjudication of related actions in their entirety by a single court***

1. For the purposes of an application of Article 11, if 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,

that court shall [proceed with adjudication of] [adjudicate] the entirety of the related actions case, and the other court(s) making the determinations shall suspend or dismiss their case(s).
2. Nothing in this Article precludes two or more of the courts seised from adjudicating the entirety of the related actions pending before them, if one or more other courts seised do not make the determinations in paragraph (1) within a reasonable time or make inconsistent determinations.

*[Note: Further consideration should be given to the use of the word "Adjudication" and possible alternative descriptions.]*

## **Article 13**

### ***Adjudication of related actions in part by a single court***

1. For the purposes of an application of Article 11, if 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,

that court shall [proceed with adjudication of] [adjudicate] that part of the related actions, and the other court(s) making the determinations shall suspend or dismiss that part of the related actions.
- [2. Nothing in this Article precludes the courts from determining that different parts of the case may be most appropriately assigned to different courts.]
3. Nothing in this Article precludes two or more of the courts seised from adjudicating any part of the related actions pending before them, if one or more other courts seised of related actions do not make the determinations in paragraph (1) within a reasonable time or make inconsistent determinations.

*[Note: 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.]*

#### **Article 14** ***Continuation of separate proceedings***

1. If any court seised decides not to adjudicate the entirety of the related actions under Article 12 or any part of the related actions under Article 13, or 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.
2. 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 on its own motion, [proceed to adjudicate] [adjudicate] the proceedings before it.
3. 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.

*[Note: Further consideration should be given to a possible third 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.]*

*[Note: The related actions framework proposed herein does not specifically address a related action case requiring a determination of rights in rem in immovable property. Further consideration will be given as to how to best address this topic within the framework.]*

### **CHAPTER IV** **COOPERATION AND COMMUNICATION**

#### **Article 15** ***Cooperation***

For the purposes of the application of this Convention, where appropriate, seised courts [undertake] [are encouraged] [shall endeavour] to cooperate with each other. As part of that cooperation, courts are encouraged to exchange information through the communication mechanism established pursuant to Article 16 and may do so at any stage when making a determination under this Convention.

#### **Article 16** ***Communication mechanism***

1. For the purposes of the application of this Convention, each court may communicate with other courts, either directly or indirectly.
2. Contracting States may, at the time of the deposit of their instruments of ratification, acceptance, approval or accession or at any time thereafter, notify the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention, that they will allow one or more of the following methods of communication:



- (a) direct judicial communication between courts, and if so, whether their laws allow for communication outside the presence of the parties or their representatives (*ex parte* communication); or
  - (b) indirect judicial communication through a competent authority [central authority]; or
  - [(c) a combination of (a) and (b) with each Contracting State using its preferred method.]
3. The absence of such notification means that the Contracting State in question allows only for indirect communication through the parties to the proceedings.
- [4. Any communication, where appropriate, shall occur in the following manner:
- (a) The initial communication under this Article from each court seised of parallel proceedings or related actions 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.
  - (b) Further communications between such courts may be carried out using any translation method or common language agreed upon by the relevant courts and, where applicable, the competent authorities [central authorities].]

*[Note: The possibility for a Contracting State to withdraw from the method(s) provided in paragraph 2 by a notification should be considered further.]*

#### **[Article 17 Joint hearings**

1. Contracting States may, at the time of the deposit of their instruments of ratification, acceptance, approval or accession or at any time thereafter, notify the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention, that they will allow courts seised of parallel proceedings or related actions to conduct joint hearings.
2. If the Contracting States of two or more courts seised of parallel proceedings or related actions cases allow joint hearings under paragraph 1, then such courts may conduct a joint hearing.
3. Courts participating in a joint hearing under this Article 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. Each court participating in a joint hearing shall retain power and independence over the conduct of its own proceeding, consistent with applicable national laws.]

*[Note: The possibility for a Contracting State to withdraw from joint hearings by a notification should be considered further.]*

#### **Article 18 [Sovereignty,] procedural rights, and confidentiality of information**

Any communication and joint hearings set out in this Chapter shall respect [each other's sovereignty,] the procedural rights of the parties to the proceedings, and the confidentiality of information under the respective applicable national laws.

## **CHAPTER V GENERAL CLAUSES**

### **Article 19 *Avoiding denial of justice***

[Nothing in this Convention shall prevent a court from exercising its jurisdiction if that court determines it is reasonable and foreseeable that its exercise is necessary in order to avoid a [manifest] denial of justice.]

### **[Article 20 *Prevention of abuse of process***

Nothing in this Convention shall prevent a court from suspending, dismissing, continuing or resuming proceedings to prevent an abuse of process.]

### **[Article 21 *Public policy***

Notwithstanding provisions from Article # to Article #, the court shall not be obligated to suspend or dismiss the case if the proceedings may involve sovereignty or security interests of the forum State or the suspension or dismissal would be manifestly incompatible with the public policy or fundamental principles of the forum State.]

### **Article 22 *Declarations with respect to specific matters***

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.
2. *[Reciprocity to be considered]*

### **Article 23 *Uniform interpretation***

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.