



CONCLUDING STATEMENT¹

**adopted by the Joint Seminar during the Brazilian Presidency of
MERCOSUR**

CHOICE OF COURT IN INTERNATIONAL LITIGATION

Brasilia, Brazil – 8 November 2010

The Joint Seminar on Choice of Court in International Litigation was held on 8 November 2010 in Brasilia (Brazil). The Seminar was organised by the Brazilian Ministry of Justice, as President *pro tempore* of MERCOSUR, and the Hague Conference on Private International Law (HCCH). Significantly, the Seminar was the first to be organised within the framework of the Memorandum of Understanding signed on 7 May 2010 between the Ministers of Justice of the Contracting and Associated States of MERCOSUR and the HCCH.²

The Seminar was attended by government officials with experience in international legal co-operation, judges, and academic experts from Brazil, Argentina, Uruguay, Paraguay, Bolivia, Chile, Colombia, Ecuador, and Peru, and benefited from collaboration with the American Association of Private International Law (ASADIP). Mexico was also represented at the Seminar as the first State to have acceded to the *Hague Convention of 30 June 2005 on Choice of Court Agreements* (Choice of Court Convention).

The main objective of the Seminar was to examine the Choice of Court Convention in relation to instruments regulating international litigation at the national and regional level, in particular the *1994 Buenos Aires Protocol on International Jurisdiction in Contractual Matters* (Buenos Aires Protocol).

Participants –

- a) Acknowledged the long-standing tradition of States in the region in adopting uniform rules of private international law, particularly in the field of international jurisdiction and the recognition and enforcement of foreign judgments,
- b) Took note of the common principles contained in the instruments of the HCCH and MERCOSUR in the field of international legal co-operation,

¹ The Representative of the Peruvian Judiciary makes a reservation with regard to the present Concluding Statement adopted during the seminar, due to the fact that he has not been authorized for this purpose. He fully concurs with the expressed acknowledgments.

² See the website of the Hague Conference at < www.hcch.net > under "News and Events" then "2010" and "Co-operation with and presence in Latin America" or directly at < http://www.hcch.net/index_en.php?act=events.details&year=2010&varevent=195&zoek=mercosur >.

- c) Emphasised the importance of legal security and predictability to fostering civil and commercial interactions in the MERCOSUR area and throughout Latin America in general, in the interests of promoting international trade and investment,
- d) Encouraged efforts to improve awareness of private international law instruments that are in force in the participating States of the region, as well as those which are open for ratification or accession by those States,
- e) Made the following concluding remarks on:

A. The Choice of Court Convention

- 1. The Choice of Court Convention is a global instrument establishing clear rules on international jurisdiction and recognition and enforcement of foreign judgments in disputes arising out of international contracts that contain a choice of court agreement.
- 2. The Choice of Court Convention offers parties greater predictability and legal certainty in transnational civil and commercial matters.
- 3. The Choice of Court Convention aims to achieve for choice of court agreements what the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958* has done for international arbitration as a dispute settlement mechanism.

B. MERCOSUR instruments in force

- 4. The Buenos Aires Protocol, in conjunction with the *1992 Las Leñas Protocol on Jurisdictional Co-operation and Assistance in Civil, Commercial, Labour and Administrative Matters* (Las Leñas Protocol), regulate, respectively, choice of court agreements and the recognition and enforcement of foreign judgments in the MERCOSUR area.
- 5. It is desirable to promote awareness amongst practitioners of the Buenos Aires Protocol and Las Leñas Protocol, and the Mirror Agreement between MERCOSUR Contracting and Associated States.

C. The interaction between the Choice of Court Convention and instruments in force in the MERCOSUR area

- 6. The Buenos Aires Protocol, in conjunction with the Las Leñas Protocol, and the Choice of Court Convention pursue similar objectives of regulating international judicial co-operation through uniform rules of international jurisdiction and of recognition and enforcement of foreign judgments in civil and commercial matters.
- 7. Upon its possible entry into force in States party to the MERCOSUR instruments, the Choice of Court Convention should be applied in harmony with these instruments, on the basis of applicable rules, in particular Article 26 of the Convention on the relationship with other international instruments.

D. The implementation of the Choice of Court Convention

8. The Choice of Court Convention aims to benefit international business by reducing the time, cost and complexity of international litigation.

9. Participants drew attention to the recent accession of Mexico to the Convention, as well as its signature by the European Union and the United States of America. It was also noted that other States, including Argentina, Australia, Canada and New Zealand, were progressing in their consideration of the Convention.

10. Participants highlighted the relevance of the Convention, as well as its consistencies with the solutions already established under the various instruments in force at the regional and inter-American level, and in the MERCOSUR Contracting and Associated States. Accordingly, it was suggested to put forward for consideration by competent authorities in each of these States the possible analysis of the Convention with a view to determining the suitability of its eventual adoption.

Acknowledgments

The participants expressed their appreciation to the Brazilian Ministry of Justice and the Permanent Bureau of the HCCH for organising and conducting the Seminar, as well as government and judicial authorities and academic experts for participating in the event and for thereby contributing to improved awareness of important international legal sources relating to choice of court agreements.

The participants also thanked the speakers for their excellent presentations, as well as the academic support of ASADIP. Finally, participants also thanked all those that contributed financially to the event through the co-ordination of the International Centre for Judicial Studies and Technical Assistance of the HCCH, notably the Hague Forum for Judicial Expertise and the Government of the Netherlands.