The Current U.S. Judgments Agenda

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1 Background

In response to an initial proposal by the United States,1 in the 1990s a judgments project was launched in the Hague Conference. It was an ambitious undertaking, as it contemplated not only obligations regarding the recognition and enforcement of foreign judgments, but also harmonization of rules on jurisdiction.2

After several years of difficult negotiations, that effort failed. It did so for a variety of reasons, but the principal problems related to attempts to prescribe, or in some cases proscribe, bases of jurisdiction. There were strong differences, for example, with regard to activity-based jurisdiction, and it is no secret that the European delegates sought to include on the so-called “black list” of prohibited bases of jurisdiction general doing business jurisdiction as is known in U.S. jurisprudence, which was unacceptable to the U.S. side.3

With negotiations at an impasse, in the early 2000s the delegates lowered their sights and pursued instead a more limited, but still valuable, agreement. The result was the Convention on Choice of Court Agreements (“COCA”), concluded in 2005.4 This paper will address efforts to find an agreed scheme

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for implementation of the COCA in our federal system. First, however, it will examine recent attempts to revive the broader judgments project.

2 Judgments Project

A couple of years ago, interest began to build in the Hague Conference for a possible resumption of the project. Several reasons were articulated for renewing that effort. Among them:

- Enough time had passed for old wounds to heal.
- Developments in jurisprudence over the past decade or so suggested that differences regarding jurisdiction were perhaps less stark.
- Lessons learned in negotiating the COCA and the recognition and enforcement provisions of agreements like the Hague Child Support Convention5 could be applied.
- And, there was a recognition that it would be beneficial to engage a number of the key actors from the earlier negotiations while they were still active professionally.

The initial reaction of the U.S. government to this proposal was quite cautious. We explained that we were busy trying to move the COCA forward, and did not want a new negotiation in The Hague to interfere with international efforts to ratify that convention. Also, the U.S. veterans of the earlier negotiation still bear the scars of that exercise, and there were reasonable doubts about the prospects for success in a new effort.

Subsequently, however, in consulting with the State Department’s Advisory Committee on Private International Law (ACPIL) and other interested stakeholders, we determined that there was sufficient interest in reopening the subject, with an important caveat: the prevailing view was that the Hague Conference should focus on recognition and enforcement, and not try to tackle direct jurisdiction, at least at the same time. In April 2011 we informed the Council on General Affairs and Policy of the Hague Conference (which approves the work plan for the organization) that we were prepared to consider renewed work on recognition and enforcement, but that we were not prepared to go down the same road as before in pursuit of a double or mixed