



Australian Government
Attorney-General's Department
Civil Law Unit

14/280

14 October 2016

The Hon Stuart Robert MP
Chair, Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Chair

Joint Standing Committee Hearing – 2005 Hague Convention on Choice of Court Agreements

On 10 October 2016, I provided evidence to the Joint Standing Committee on Australia's proposed accession to the 2005 Hague Convention on Choice of Court Agreements (the Convention). I wish to provide additional information to respond to a question from Senator the Hon Chris Back regarding the relationship between investor state disputes and the Convention.

Investor-State Dispute Settlements (ISDSs) and matters under the Convention arise in different circumstances and involve different objectives. ISDS provisions are often included in the investment chapters of Free Trade Agreements (FTAs) and in investment treaties concluded between States. An ISDS mechanism in a treaty provides a foreign investor with the ability to bring a claim against a host State in an international arbitral tribunal for alleged breaches of certain investment obligations under the treaty. The tribunal will assess the claim according to the terms of the relevant FTA or investment treaty.

By contrast, the Convention applies in international cases involving exclusive choice of court agreements concluded between parties in civil or commercial matters. The Convention requires that domestic courts in Contracting States exercise jurisdiction consistent with any exclusive choice of court agreement that exists between the parties to a dispute; and creates a framework for the recognition and enforcement of judgments given by the court designated in the exclusive choice of court agreement. Disputes are resolved in accordance the terms of the contract between the parties.

Whilst ISDS disputes are submitted to an international arbitral tribunal, the Convention holds parties to their contractual obligation regarding the resolution of the dispute in the nominated domestic court. This rule in the Convention is subject to safeguards to prevent giving effect to an exclusive jurisdiction clause, or the enforcement of a resultant judgment, if to do so would cause manifest injustice or be contrary to domestic public policy considerations.

I trust this information is of assistance to the Committee. However, I would be very happy to provide further information if that would be of assistance.

Yours sincerely

Andrew Walter
Assistant Secretary
Civil Law Unit