

*The Legal Adviser*

Washington, D.C. 20520

May 5, 1992

Georges Droz, Esquire  
Secretary General  
The Hague Conference on  
Private International Law  
6, Scheveningseweg  
2517 KT The Hague  
Netherlands

Dear Mr. Secretary General:

The United States would like by this letter to make a proposal for future work by The Hague Conference on Private International Law between its 17th and 18th sessions with a view to the adoption of a convention at the conference's 18th session.

For some time the Department of State has been concerned by the anomaly resulting from the large number of countries party, as is the United States, to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") and the few successful conventions dealing with the recognition and enforcement of judgments. The United States is a party to no convention or treaty dealing with the recognition and enforcement of judgments.

We have received from the Permanent Bureau of The Hague Conference a number of preliminary documents drawn up for the June 1-4 session of the special commission on general affairs discussing possible subjects for future Hague Conference work. The United States would like to propose that The Hague Conference resume work in the field of recognition and enforcement of judgments with a view to preparing a single convention to which Hague Conference Member States and other countries might become parties and that would enter into force only between ratifying or acceding States that agree that it should enter into force as between them.

The Hague Conference and its Permanent Bureau could play a potentially important role in an effort that could bring together Hague Conference Member States in a fundamental legal endeavor. As the Hague Conference includes among its Member States the Member States of the European Community and those of the European Free Trade Area, the organization seems especially suited to be the forum for the preparation and negotiation of a convention that would involve the participation of these States and the organization's

other Member States -- from many regions of the world including Eastern-Europe, North America, Central and South America and the Far East. Much of the research and cooperation that went into preparation and negotiation of the 1971 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and its Supplementary Protocol will be generally useful in further work by the Hague Conference in this field. That Hague Convention was in effect superseded by subsequent events -- the Brussels Convention that is obligatory among Member States of the European Community and more recently the Lugano Convention between Member States of the European Community and the European Free Trade Area. While taking account of the 1971 Hague Convention, we would propose that The Hague Conference build on the Brussels and Lugano Conventions in seeking to achieve a convention that is capable of meeting the needs of and being broadly accepted by the larger community represented by the Member States of The Hague Conference. For example, it appears that it might be possible to accept certain of the bases of jurisdiction and bases for recognition and enforcement of judgments set out in the Brussels and Lugano Conventions and thereby make provision for a generally accepted system for use in Europe and beyond. However, other aspects of these Conventions may not be so broadly acceptable and would need change to accommodate the needs and preferences of countries from other regions of the world than Western Europe. It seems to us that we need not necessarily choose between a *traité simple*, dealing essentially only with those judgments that are entitled to recognition and enforcement in party States, and a *traité double* also dealing with permissible bases of jurisdiction for litigation involving persons or entities habitually resident in party States. We believe that there should be consideration of the possibility for party States to utilize jurisdictional bases for litigation that are not designated as permissible or exorbitant by the convention. So long as such jurisdictional bases are not excluded as exorbitant, judgments based on them would not be entitled to recognition and enforcement under the convention, but party States would remain free to recognize and enforce them under their general law.

We would like to request the Permanent Bureau to prepare a preliminary document examining the major issues likely to be involved if The Hague Conference were to resume work on a judgments convention. It would be especially helpful if such a document could be made available to Hague Conference Member States for consideration and examination before the June session of the special commission on general affairs that will be making recommendations with regard to the work of The Hague Conference after its 17th session in May 1993 and at its 18th session in 1996.

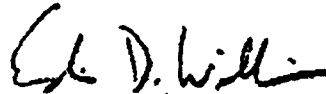
If the special commission on general affairs were to recommend in June that the Hague Conference's 17th session make the preparation of a judgments convention a priority topic for Conference work until and at its 18th session, we would hope that

the Permanent Bureau would be able to prepare a report for review by the 17th session with a more complete examination of the issues involved as a means of facilitating work on this project by a special commission of The Hague Conference that would be devoted to this project.

We believe that the effort to prepare a convention on the recognition and enforcement of judgments would represent a worthy endeavor for The Hague Conference at the beginning of its second century and that the Conference and its Member States, together with the Conference's highly competent Permanent Bureau, offer a splendid opportunity for important accomplishments and progress in this field.

Please let Mr. Peter H. Pfund, Assistant Legal Adviser for Private International Law, know if you require any further information from us with regard to this proposal.

Sincerely,



Edwin D. Williamson