Saving the Hague Choice of Court Convention

William J Woodward Jr (Temple) has posted "Saving the Hague Choice of Court Convention" on SSRN. It is forthcoming in the *University of Pennsylvania Journal of International Law*, Vol. 29, 2008. Here's the abstract:

> *Developing an international regime that would require some level of international recognition or enforcement of the judgments of courts of other countries has been a goal for international lawyers, particularly those in the United States, for many years. Concluded in 2005, the Hague Choice of Court Convention may not be the gold ring, but it promises to make substantial improvements in international judicial dispute resolution and thereby add immensely to international economic well-being. Through the Convention, States will agree to recognize or enforce the judgments of other State parties, when those judgments follow valid choice of court agreements defined (and also regulated) in the treaty. Since most international trade begins with a contract, and since most of those contracts already contain dispute resolution provisions, the Convention may have delivered a great advance in this area. But it is obvious from the nature of the Convention that its success depends critically on widespread international acceptance of the Convention; if only a few States join it, the international system will not have become much better than it is now.*
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> *Unfortunately, there have been no ratifications in more than two years since the Convention was concluded and it seems in danger of dying a slow death for lack of interest. Leadership by the United States, a primary advocate for an international accord, may be in order.*
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> *The problem is that the Convention, as drafted, will not find uniform, reliable enforcement within the United States. In two particular kinds of contracts covered by the Convention, franchise contracts and what I call mass market contracts, some choice of forum provisions are difficult or impossible to enforce in several U.S. states under current law. Some of this law has developed very quickly. The state of domestic law presents a compliance problem for the United States in the first instance if it joins the Convention, but*

that problem may be dwarfed by the very practical problem of leading other countries to join the Convention thereby ensuring its success. This will be very difficult if other States perceive the United States, owing to these developments, and the diversity in its state commercial law, making less of a commitment under the Convention than other States will make if they join the Convention.

After developing the state of the case law in the United States that will cause the problems, this article considers alternative solutions, concluding that the Convention itself supplies the best approach, one that the United States should embrace in its efforts to lead other countries in improving the international dispute resolution system.

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