

**HCCH Asia Pacific Week 2023 Session 1 –
The HCCH : Benefits of Membership & Key Conventions**

**Private international law and the rule of law
(11 September 2023)**

Secretary for Justice, Vice Chancellor, Secretary General,
distinguished speakers, honoured guests, ladies and gentlemen,

1. I am honoured to give this keynote speech today. It would be appropriate for me to begin by extending my most heartfelt congratulations and those of the Hong Kong Judiciary to Dr. Bernasconi and the Hague Conference on Private International Law on celebrating their 130th year anniversary this year. This places the Hague Conference amongst the oldest international intergovernmental organisations in the world, pre-dating even the United Nations, in an illustration of the importance of harmonisation in the area of private international law.

2. What is considered private international law is subject to a number of interpretations. The most narrow of these focuses on the conflict of laws – the specialised principles and rules of domestic law used by the courts to decide which law to apply in disputes involving parties of different jurisdictions, or agreements or transactions which cross different boundaries. In such circumstances, courts may have to decide whether it is the law of the forum, the law of one of the parties' nationality, or the law of the place which the agreement or transaction is performed or mainly performed in that should apply to the dispute. The principles which guide the courts in this regard may be thought of as private international law.

3. A wider interpretation of private international law extends its scope beyond the principles to be applied by the courts to any provisions in domestic law which deal with the exercise of jurisdiction over persons, property and transactions where they cross boundaries. Moreover, this definition of private international law is also extended to the enforcement of judgments of other jurisdictions. This thus includes issues of the scope of a domestic court's power to hear cases which involve parties of other nationalities or transactions with overseas elements, as well as the recognition and enforcement of overseas judgments by domestic courts.

4. These questions of the jurisdiction of domestic courts, the choice of law, and the enforcement of judgments may be considered the core of private international law issues. Such questions may also be considered the most difficult ones as well.

5. In the age in which we live, an even broader interpretation of what constitutes private international law must now be considered. As intergovernmental organisations such as the Hague Conference continue to develop principles and instruments through their many endeavours both old and new, we must now include these accomplishments in the scope of what we consider to be private international law. This is especially true of the procedures by which contradictory domestic rules may be overcome, and the underlying principles of harmonisation across different jurisdictions are applied.

6. In deference to Dr. Bernasconi and all the distinguished speakers at this conference, I shall leave the details of the instruments established under the Hague Conference to their individual sessions throughout the course of this week, which I am sure you are all

looking forward to. Each of these instruments adds a new dimension to what we consider within the scope of private international law, from the 1961 Apostille Convention, 1965 Service Convention and 1970 Evidence Convention all in support of adjudicative procedure, to the expanding frontier of financial instruments such as the 1985 Trusts Convention and the 2006 Securities Convention to the most recent and exciting work on digital currencies, digital assets and tokens, to the increasingly important instruments in the family law area, namely the 1980 Child Abduction Convention, the 1993 Adoption Convention, the 1996 Child Protection Convention, to the 2000 Adults Convention and the 2007 Child Support Convention.

7. As I mentioned earlier, the questions of jurisdiction of courts, choice of law, and the enforceability of judgments are the core of private international law, but are also potentially the most difficult ones to grapple with. In particular, it is well understood how difficult it would be to grapple with topics such as when it would be permissible for domestic courts to exercise jurisdiction over foreign parties or transactions, or a unitary approach to questions of choice of law, or the basis of recognition and enforcement of foreign judgments by domestic courts, on an intergovernmental, multilateral basis. Yet even in these areas, the Hague Conference has now succeeded in making significant progress, such as through the 2005 Choice of Court Convention, the 2015 Choice of Law Principles, and perhaps now most importantly, the 2019 Judgments Convention, which I am sure we are all particularly looking forward to hearing about.

8. In its 130 years, the Hague Conference has made significant achievements, and will no doubt continue to do so as

private international law grows in importance in an increasingly interconnected world.

9. The role of private international law, and in particular, such international multilateral conventions, in the promotion of trade, commerce and economic development cannot be understated. Whilst governmental-level initiatives are important in this regard, business remains driven by private activity, but these activities must have a legal basis – not just in being permissible under the law of the land, but in being easily understandable, accessible and enforceable by foreign parties before domestic courts. Without private international law, domestic legal and judicial regimes would serve only as obstacles to cross-border business. Thus, the growth of international multilateral conventions such as those established by the Hague Conference are critical to the facilitation of the clarity, certainty and predictability of cross-border business.

10. The gaps that are bridged by private international law in this way not only extend between different systems of law, but between economies at different stages of development, which is also critical. Private international law provides a framework through which countries that may lack certain legal infrastructure to still participate in cross-border business, where such countries might otherwise be disadvantaged in attracting international trade and investment.

11. The role of private international law goes far beyond the simple promotion of international economic development, but the promotion of the rule of law to jurisdictions in which legal infrastructure is still lacking or in development. By removing legal obstacles between different jurisdictions, not only are institutions

being built and relied upon, but also encouraged to systematically enforce and protect the rights of individuals and entities through fair and impartial laws and procedures. This in turn contributes to institutional integrity and accountability, whilst building the transparency and legitimacy of such institutions, through the adoption and enforcement of internationally recognised principles and standards.

12. In this way, private international law helps promote independent and impartial judiciaries, as well as the use of alternative dispute resolution processes such as arbitration. The enforcement of individual business rights serves to promote the protection of personal, property and consumer rights – in a uniform and systematic way.

13. As a regional and international hub for trade and finance, private international law has long been established and indeed played a crucial part in Hong Kong's economic and legal success story. This is demonstrated by the number of Hague Conventions that are applicable in Hong Kong, but perhaps best illustrated by the fact that Hong Kong is home to the HCCH Regional Office for Asia and the Pacific.

14. The strengthening of the rule of law and the significance of the Hague Conference to the Hong Kong Special Administrative Region go far beyond merely promoting economic development or facilitating business.

15. First, the contribution of the Hague Conference to the rule of law extends beyond general civil court procedure and enforcement. As it becomes increasingly easy for people to travel abroad for work

and establish families in other jurisdictions, the need for private international law to incorporate family law into its purview has never been greater.

16. In this regard, I have already mentioned the Hague Conference's efforts in respect of the 1980 Child Abduction Convention, the 1993 Adoption Convention, the 1996 Child Protection Convention, to the 2000 Adults Convention and the 2007 Child Support Convention, all of which will be discussed in detail in the course of this week.

17. The Child Abduction Convention, the Adoption Convention and the Child Protection Convention in particular serve as the foundation for international and cross-border child protection, and have increasingly been featured in family litigation in Hong Kong.

18. As families are now able to span continents, so too must the legal regimes that ensure the enforcement of their rights as well as resolve their disputes, and unfortunately, their dissolutions. These unfortunate situations not only are likely to be disruptive and emotionally harmful, but expensive and financially draining on families in situations where financial resources should not be unnecessarily drained. The Hague Conference has thus continued to lead the way with the 2007 Child Support Convention, and to be active in this continuously developing and often difficult area of law. This illustrates how the Hague Conference not only promotes the cross-border flow of trade and business and the effective resolution and enforcement of disputes, but the well-being of families and children in a wider approach to the rule of law than just economic development and prosperity alone.

19. This further illustrates how private international law as a whole continues to grow and adapt from its procedural- or business-based origins.

20. The cross-border principles of the Hague Conference have also been highly influential in the growth and development of the One Country, Two Systems Principle in the Hong Kong Special Administrative Region.

21. Following the resumption of the exercise of sovereignty in 1997, it has been necessary to establish and implement a practical regime of mutual recognition and enforcement between the legal system on the Mainland and the common law system of Hong Kong SAR preserved under the Basic Law. This regime includes the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region, implemented by the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Chapter 639 of the Laws of Hong Kong); the Record of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region; the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters Pursuant to Choice of Court Agreements signed between the Mainland and Hong Kong in 2006, implemented by the Mainland Judgment (Reciprocal Enforcement) Ordinance (Chapter 597 of the Laws of Hong Kong); and most recently, the Arrangement on Reciprocal

Recognition and Enforcement of Judgments in Civil and Commercial Matters, implemented by the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Chapter 645 of the Laws of Hong Kong), which should come into force in 2024. These arrangements draw heavy inspiration from the 2005 Choice of Court Convention as it represents an interface between common law and civil law jurisdictions, as well as the 2019 Judgments Convention, in particular, no choice of court agreement being required for the enforcement of judgments between the Mainland and the Hong Kong Special Administrative Region.

22. In this regard, the efforts of the Hague Conference have been influential and enormously beneficial to the development of the rule of law in Hong Kong under the One Country, Two Systems Principle, based on which Hong Kong's distinctive status and advantages are maintained, including Hong Kong's common law system. The application of these cross-border, private international law principles serves to illustrate how the One Country, Two Systems policy can be made to work in practice in the face of potentially difficult and similar issues of jurisdiction of courts and enforcement of judgments.

23. The impact of private international law on the rule of law can thus be seen not only in the lowering of legal obstacles to cross-border enforcement and the promotion of business and economic development, but the protection of individual and consumer rights and interests, the enhancement and development of international family law, and increasingly smooth interface between common law and civil law systems.

24. The work of the Hague Conference over the last 130 years has been exceptionally important to private international law. As the scope of private international law itself continues to expand and incorporate other elements, it will no doubt continue to be a significant contributor in this regard.

25. With this important work in mind, it remains for me to congratulate the Hague Conference on an outstanding 130 years' history and contribution to human and legal development, and in particular, to wish this conference this week every success. To all the distinguished speakers, thank you for all your hard work, and for those coming from other countries, I hope your visit is a memorable one. Finally, to all the participants in this conference, we look forward to all your contributions, and I wish each and every one of you all the best.