



**Asia-Pacific
Economic Cooperation**

2018/SOM1/EC/WKSP2/002

**The Hague Conference on Private International Law
and APEC - Working Together to Facilitate
International Trade, Commerce, and Dispute
Resolution**

Submitted by: Hong Kong, China



**Workshop on the Use of Modern
Technology for Dispute Resolution and
Electronic Agreement Management
Particularly Online Dispute Resolution
Port Moresby, Papua New Guinea
3-4 March 2018**



**Asia-Pacific
Economic Cooperation**



HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

The HCCH and APEC

*Working together to facilitate international
trade, commerce, and dispute resolution*

**Port Moresby, Papua New Guinea
March 2018**

Dr Christophe BERNASCONI
Secretary General

The Core Message



- **WHAT?**

*Establishing fair, efficient and cost-effective **framework for cross-border civil and commercial matters, incl. procedural issues and dispute resolution, and simplifying basic administrative processes among APEC member economies – and indeed around the world***

- **HOW?**

*By **removing legal obstacles (diversity) and instead creating a coherent (harmonised) international framework that reinforces legal certainty, predictability and the rule of law, providing effective co-operation mechanisms between States to overcome the (legal) challenges of cross-border procedures***

- **WHY?**

*Enabling States to increase their **ease of doing business scores, and establishing a climate more conducive to cross-border trade and investment, to foster economic and social development***

The Core Message



- ***Long-term development and sustainability of economies is also dependent on resolving legal aspects of cross-border civil and commercial procedures:***
requires harmonisation of national substantive laws and/or private international law, including, in each case, by embracing technological developments

The Tripartite



*Three sister organisations work together
developing/harmonising international law
(substantive law for UNCITRAL and UNIDROIT;
Private International Law for HCCH)
and contributing to **peace, justice and security***

What is the HCCH?



- An **intergovernmental organisation** with a **legislative function** – origin goes back to **1893**
- Works toward “**progressive unification of the rules of private international law**”
(Art. 1 of the Statute)

Four Key PIL Questions



The authorities of which State are competent to decide on questions arising from a cross-border situation?

JURISDICTION

The law of which State applies to a cross-border situation?

APPLICABLE LAW

How can judgments or decisions of a State be recognised or enforced abroad?

RECOGNITION & ENFORCEMENT

How can authorities better co-operate to improve efficiency and overcome the obstacles arising in cross-border situations?

CO-OPERATION

NB: The HCCH does not deal with substantive law – instead **building bridges** across legal systems (incl. civil law, common law, Sharia law), respecting **legal diversity**

What is the HCCH?



- An **intergovernmental organisation** with a **legislative function** – origin goes back to **1893**
- Works toward “**progressive unification of the rules of private international law**”
(Art. 1 of the Statute)
- Develops and adopts **Hague Conventions and Protocols** (currently **38 + 1 soft law** instrument), dealing with:
 - (1) *Int’l Civil Procedure & Legal Co-operation*
 - (2) *Int’l Family Law & Child Protection*
 - (3) *Int’l Commercial Law & Finance Law*
- **Practical outcomes**, with **direct benefits** for people (children and adults), commercial operators and investors – some Hague Conventions applied thousands/millions times each year



Why “HCCH”?

Hague **C**onference on Private International Law

Conférence de La **H**aye de droit international privé

Universal Mandate



Members

(incl. European Union as a Regional Economic Integration Organisation)

Main Office of the Permanent Bureau
The Hague

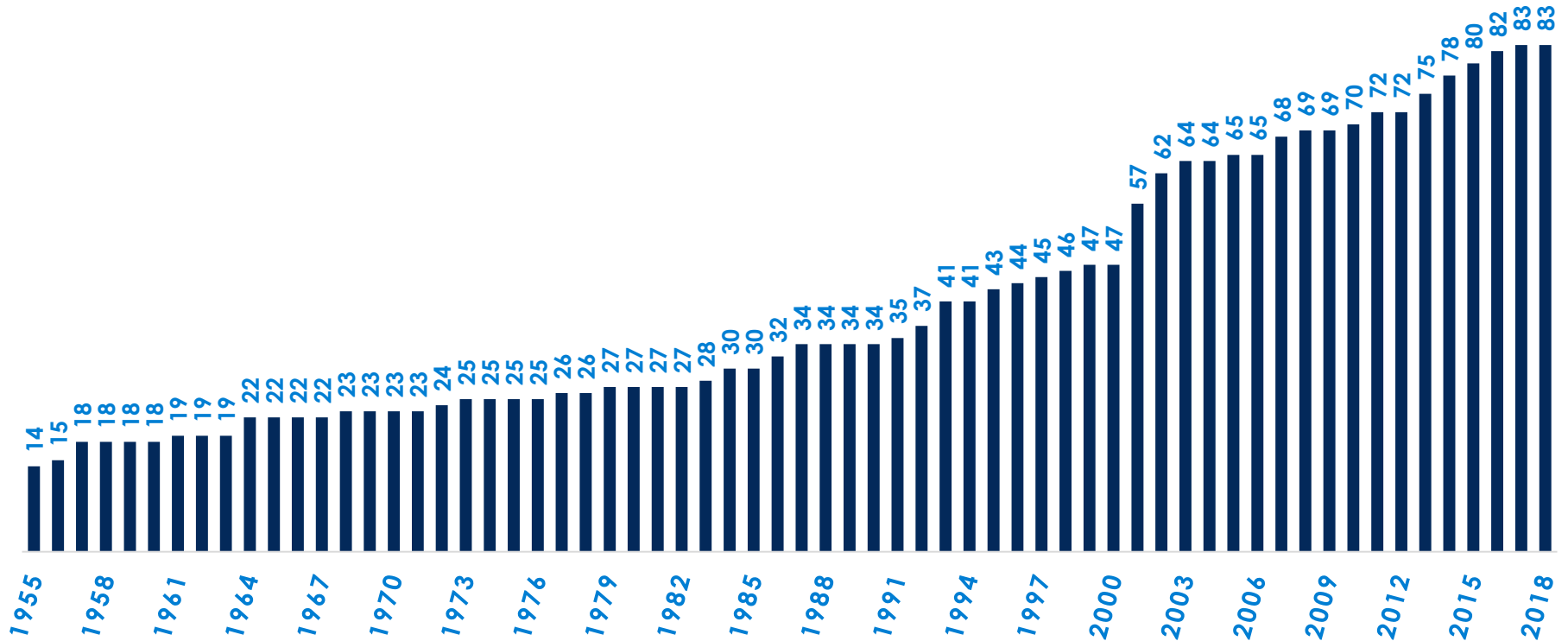
Latin America Regional Office
Buenos Aires (2005)

Asia Pacific Regional Office
Hong Kong (2012)

The following 16 APEC Member Economies are also Members of the HCCH:

Australia
Canada
Chile
People's Republic of China
Japan
Republic of Korea
Malaysia
Mexico
New Zealand
Peru
Philippines
Russian Federation
Singapore
Thailand
United States of America
Viet Nam

Membership Growth



36 New Members since 2000 (43% of Membership):

- **13 in Asia**
- **11 in Europe**
- **5 in Africa**
- **4 in South America**
- **2 in North America**
- **1 in Oceania**

Global Coverage



Parties

“Connected”

*(either a Member or Contracting Party
to one of the Hague Conventions)*

Including the following 17 APEC Member Economies:

Australia	Japan	Philippines
<u>Brunei Darussalam</u>	Republic of Korea	Russian Federation
Canada	Malaysia	Singapore
Chile	Mexico	Thailand
People’s Republic of China	New Zealand	United States of America
	Peru	Viet Nam

Benefits of HCCH Membership



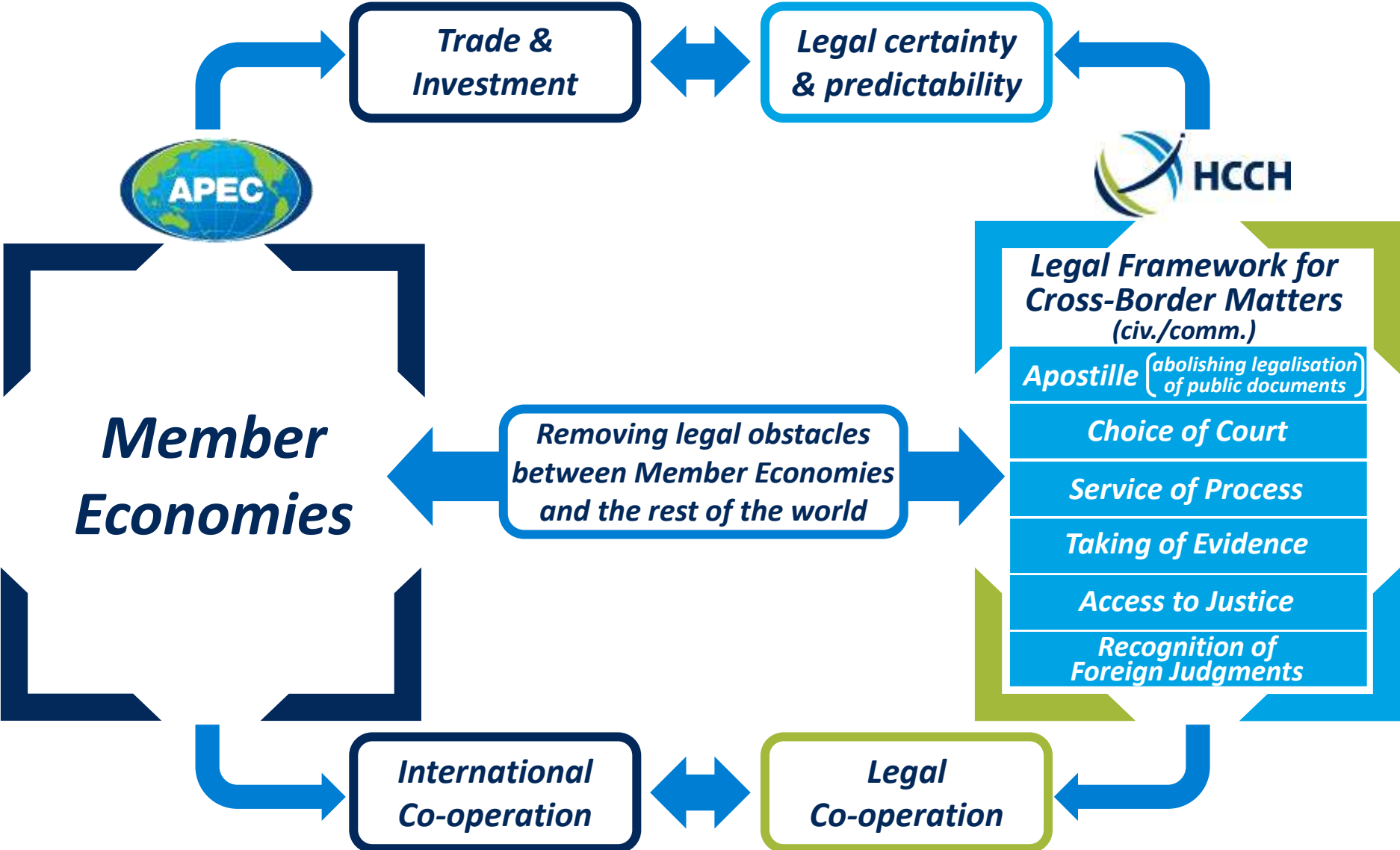
Determining the *work programme* of the **organisation** and the **Permanent Bureau** (Secretariat)

Attending *all meetings* of the HCCH; a seat at a **world forum for dialogue** between legal cultures

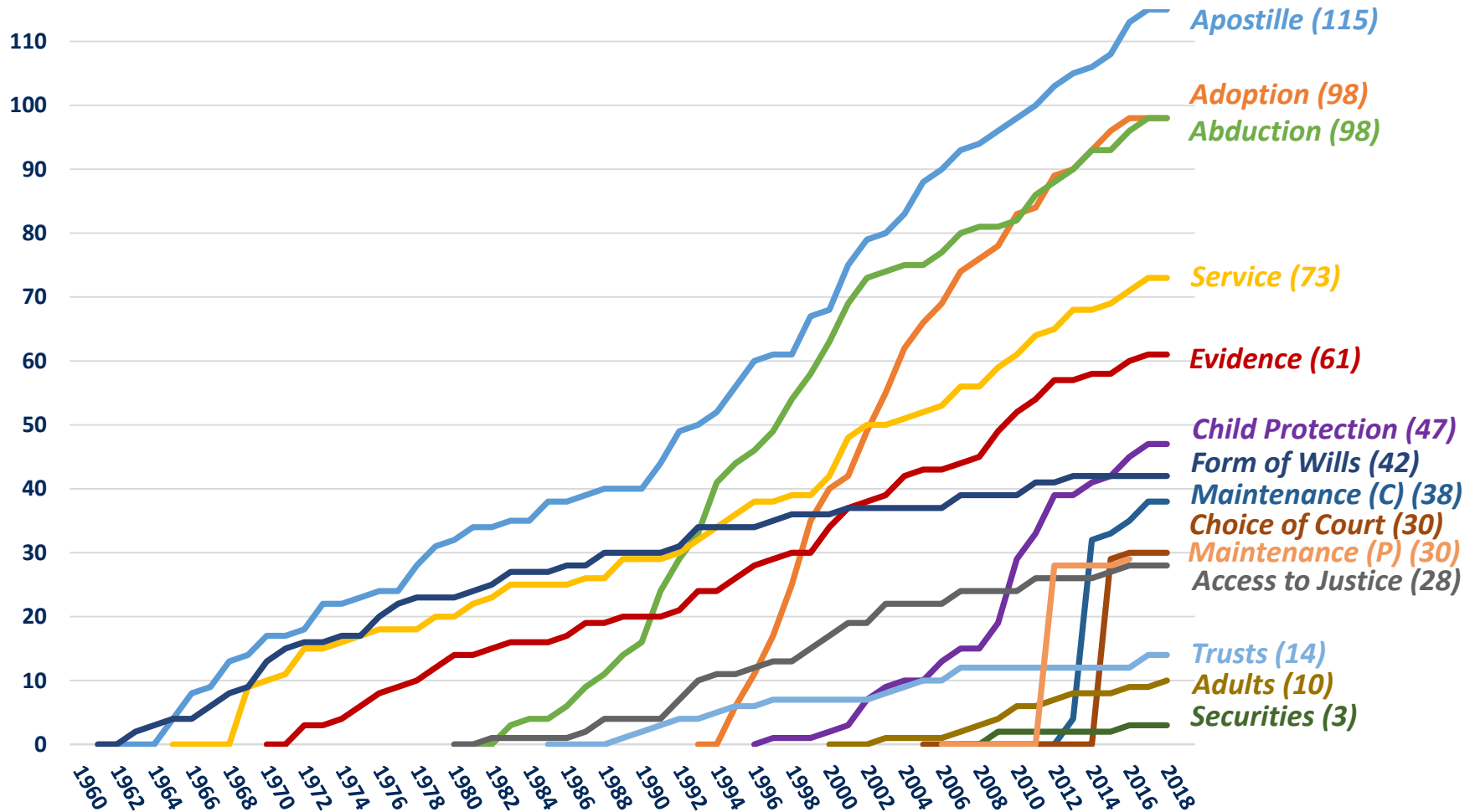
Priority access to “post-Convention” technical assistance
to implement Hague Conventions

*Development of international law and legal capacity-building,
with modest financial contributions from Members*

HCCH & APEC



Number of Contracting Parties (incl. REIOs) to the Core Hague Conventions



The HCCH in action



At the Permanent Bureau

- Budget of the HCCH is just **€ 4.1 million** (approx. US\$ 4.8 million)
- *Less than 30 members staff*
- Smaller context for ***Experts' & Working Groups, or Standing Committee*** (up to 40 participants)



At the Hague Academy Building (Peace Palace)

- Larger Context for ***plenary-style*** meetings:
 - ***Special Commissions***
 - ***Council on General Affairs***
 - ***Council of Diplomatic Representatives***
- Up to 300 participants

International co-operation and consensus across all HCCH Meetings!

Work in the Pipeline



Work relating to possible new instruments:

- **Judgments** Project
- Recognition and enforcement of cross-border **family agreements involving children**
- Use of **video-link** and other modern technologies in the taking of evidence abroad
- Private international law issues surrounding the **status of children**, including issues arising from international surrogacy arrangements
- Co-operation in respect of **protection of tourists** and visitors abroad
- Recognition and enforcement of foreign **civil protection orders**



Final Reflections



Acceding to core Conventions

Contracting Parties:

- *benefit from proven, global standards*, making them an “*acquis*” *among APEC Member Economies*
- *effectively address legal aspects of cross-border transactions* and personal interactions, *enhancing cross-border co-operation* in civil or commercial matters

Joining the HCCH

Members:

- *fully benefit from the legal capacity-building* offered by the HCCH, especially through *support and assistance* from the Permanent Bureau (its Secretariat)
- play an *active role in the development of new Conventions and instruments*, thus formulating new “international standards”



Dr Christophe Bernasconi
cb@hcch.nl

www.hcch.net