



Kingdom of the Netherlands



The HCCH: The Legislative Pillar

*Three Pillars of the International Legal Work in The Hague
University of Johannesburg, 9 September 2014*

Christophe Bernasconi
Secretary General

Why “HCCH”...?

Hague **C**onference on Private International Law

Conférence de La **H**aye de Droit International Privé

Haagse Konferensie vir Internasionaal Privaatrecht

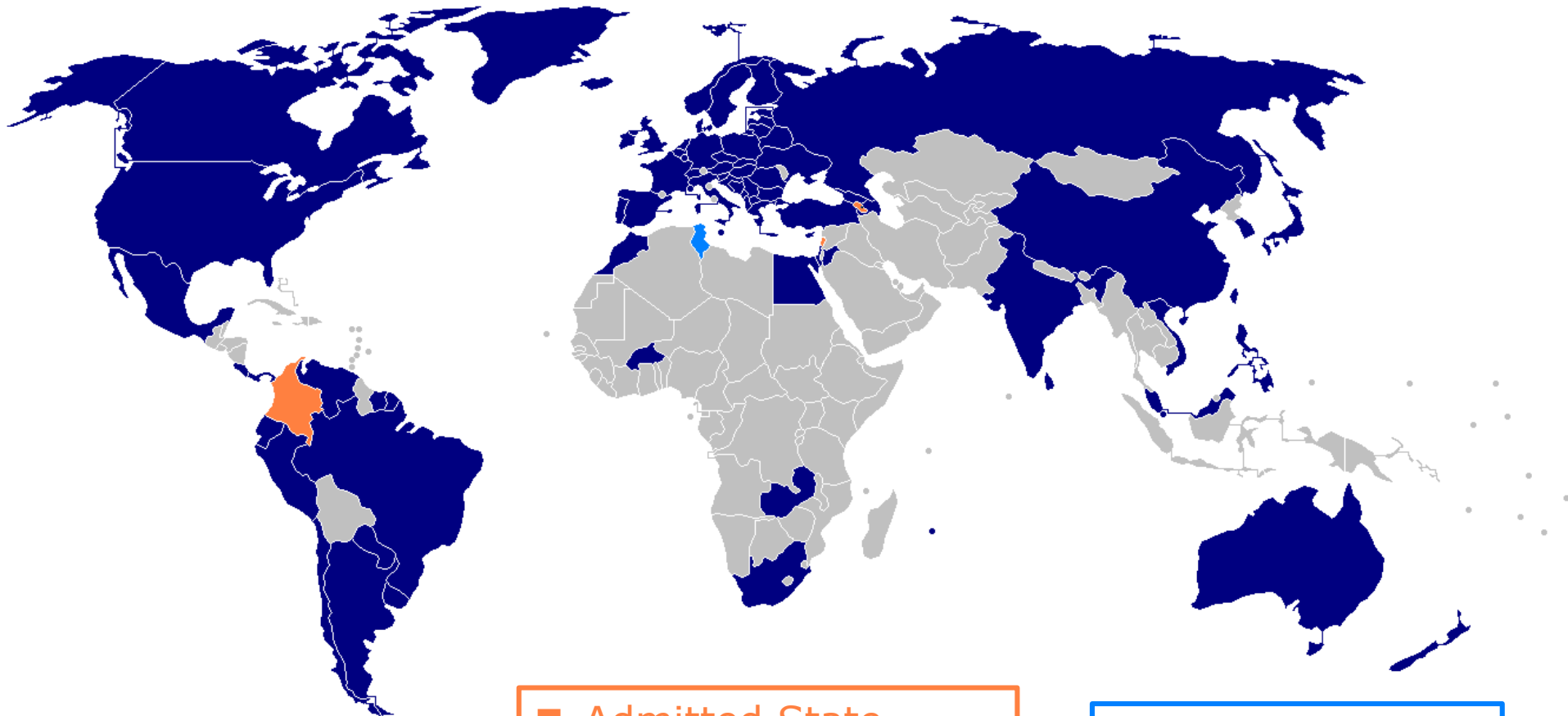
What is the HCCH?



- An **intergovernmental organisation** working toward "*progressive unification of the rules of private international law*"
- The ***oldest*** international organisation in The Hague, with its origin dating back to **1893**
- The ***only*** international organisation in The Hague with a ***legislative function*** (*i.e.* not a court or tribunal)
- Fulfils its mandate by developing and adopting **Hague Conventions**, (of which there are currently 38) to which **any State** may become a party

77 Members

76 States + 1 Regional Economic Integration Organisation



■ Member State

■ Admitted State

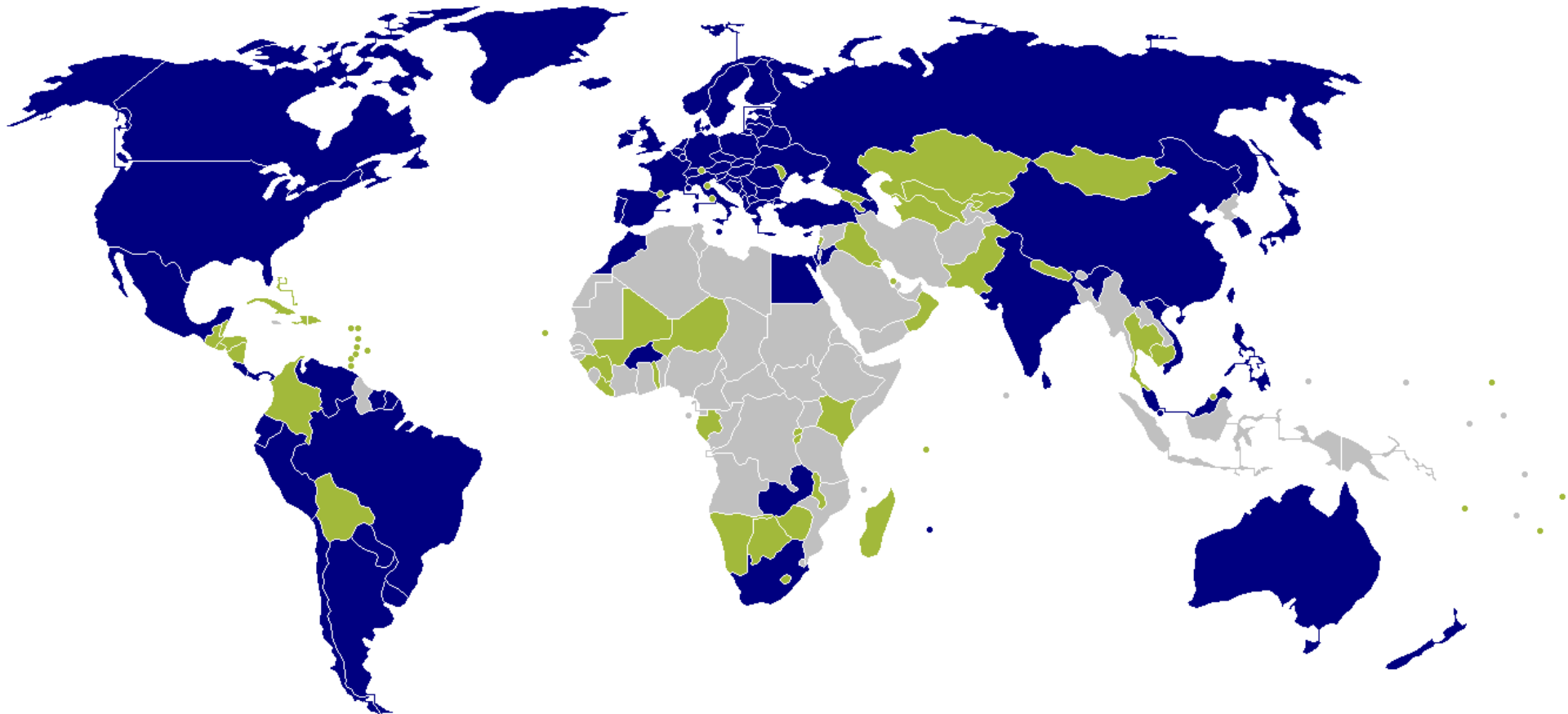
Has applied for membership and has been admitted by affirmative vote, but must still accept Statute to become a Member State

■ Candidate State

Has applied for membership and has the six-month voting period running

144 “Connected” States

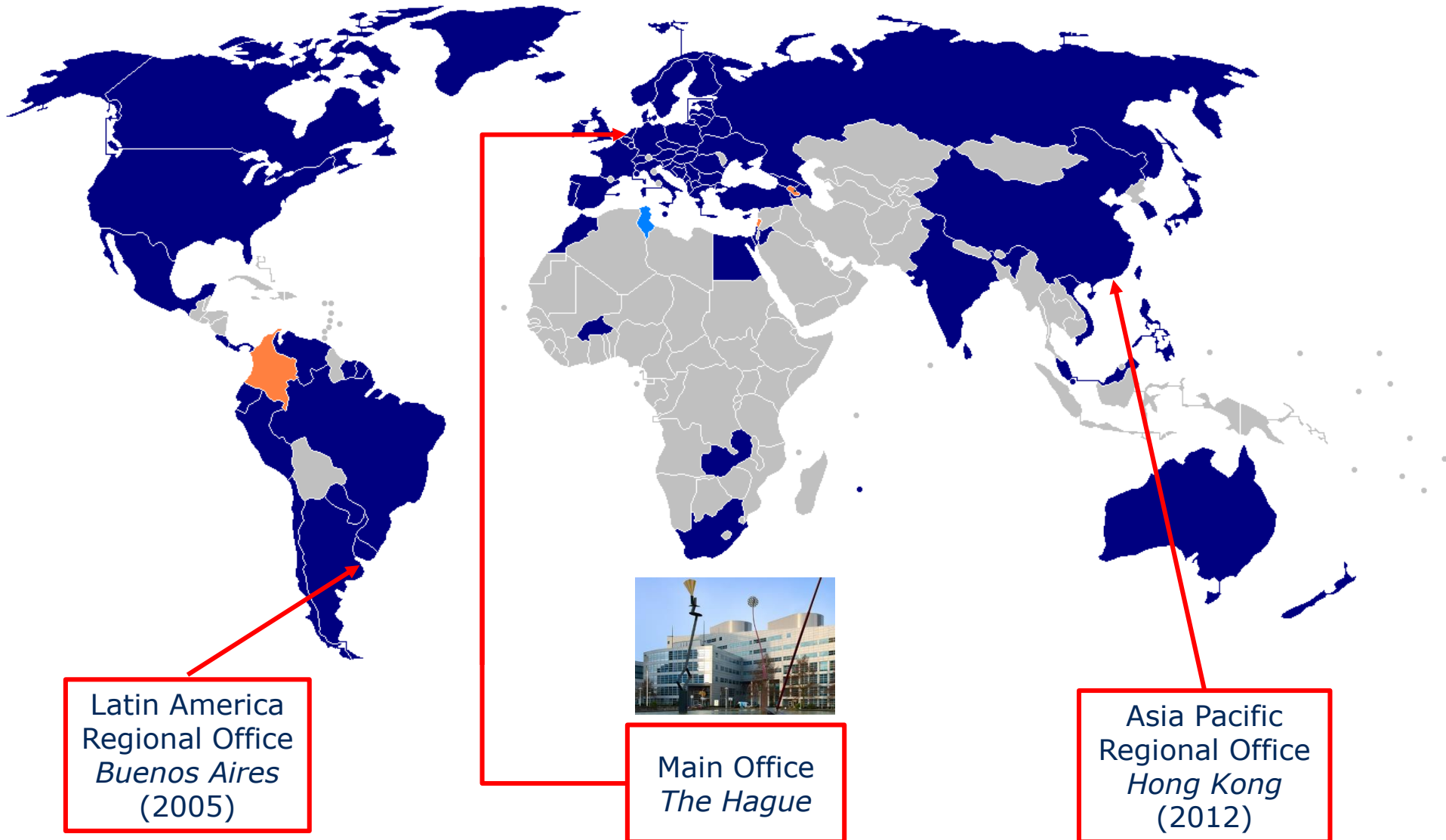
A “Connected” State is either a Member or a Contracting State to one or more of the Hague Conventions



■ Member State “Connected” State

■ Non-Member “Connected” State

Regional Presence



The 38 Hague Conventions...

... provide "road signs" in cross-border situations, in one or more of these areas:

JURISDICTION

Which State's authorities are competent to decide matters in a cross-border situation?

APPLICABLE LAW

Which State's laws apply to a cross-border situation?

RECOGNITION & ENFORCEMENT

How may one State's judgment or decision be recognised/enforced in another State?

LEGAL CO-OPERATION

How can authorities work together to improve efficiency and overcome challenges in cross-border situations?

N.B. Hague Conventions are about harmonising PIL, not substantive law

The Three Pillars:

Child Protection, family & property relations

1980 Child Abduction Convention (93)
1993 Intercountry Adoption Convention (93)
1996 Child Protection Convention (41)
2007 Child Support Convention and Protocol [5(31)]

Legal co-operation and litigation

1961 Apostille Convention (107)
1965 Service Convention (68)
1970 Evidence Convention (58)
1980 Access to Justice Convention (26)
2005 Choice of Court Convention (1)

Commercial & Finance law

1985 Trusts Convention (12)
2006 Securities Convention (2)

Resulting Benefits of Hague Conventions

Facilitating international trade, commerce and foreign direct investment

By providing legal certainty and predictability

&

By establishing uniform standards to be enforced internationally

Giving effect to human rights

The Conventions on Child Abduction, Child Protection, Adoption, and Child Support give effect to fundamental principles expounded in 1989 UN Convention on the Rights of the Child

Apostille Convention

Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents

- Substitutes the cumbersome, long and costly legalisation process with a simple, **one-step authentication process**: the issuance of an Apostille
- 107 Contracting States (**most ratified/acceded to Hague Convention**) – including: *Botswana, Cape Verde, Lesotho, Liberia, Malawi, Mauritius, Namibia, Sao Tome and Principe, Seychelles, South Africa, Swaziland* and most recently *Burundi* (May 2014)
- Millions of Apostilles issued every year
- Effective and secure operation of the Convention further supported by the **electronic Apostille Program (e-APP)**, which encourages the issuance of **e-Apostilles** and the use of **e-Registers** of Apostilles

- *Investing Across Borders* report (2010) by the **World Bank** found that the Convention simplifies establishing a business in a foreign State, thus facilitating investment across borders and international trade
- **International Chamber of Commerce** also encourages accession to the Convention as it cuts red tape and greatly facilitates authentication process of relevant public documents
- **World Trade Organisation, World Customs Organisation, International Labour Organisation** and **Interpol** also support the Convention/e-APP

Service & Evidence Conventions

Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

- 68 Contracting States (including *Botswana, Egypt, Malawi and Morocco*)
- **Simplified and expedited** methods of transmission of documents for service via:
 - A simple, efficient, always available “**Main Channel**”
 - “**Alternative Channels**” (e.g. diplomatic, consular, postal, direct communication)
 - “**Derogatory Channels**” for regional and bilateral needs
- 75% of requests executed in **under 2 months**

- 58 Contracting States (including *Morocco and South Africa*)
- Means to **overcome differences between legal systems** with respect to taking evidence via:
 - Letters of Request (**Chapter I**)
 - Diplomatic Officers, Consul Agents and Commissioners (**Chapter II**)
 - “**Derogatory Channels**” for regional and bilateral needs
- 55% of Letters of Request executed in **under 4 months**

- Operation based on the designation of **Central Authorities**
- Seen as **international standards** of legal cooperation that commercial entities expect to be in place
- Also relevant in numerous **family law matters**

Choice of Court Convention

Convention of 30 June 2005 on Choice of Court Agreements

- Ensures **effective choice of court agreements**
- Establishes 3 key obligations:
 - **Chosen** court must **hear the dispute**
 - Any **non-chosen** court **must suspend/dismiss** proceedings
 - **Judgment** given by chosen court **must be recognised and enforced**
- Provides **greater legal certainty and predictability** for companies engaging in business activities abroad, by promoting the principle of party autonomy (same core justification as the 1958 NY Convention)
- Offers real **alternative to arbitration** for small/mid-sized companies
- Not yet entered into force, **expected in 2015** (EU)

International Chamber of Commerce, the Council of Bars and Law Societies of Europe, Inter-American Bar Association and other major organisations **support the ratification of / accession to the Convention**

Contracts Principles

Hague Principles on Choice of Law in International Commercial Contracts

- A **non-binding instrument** concerning the choice of law in international commercial contracts, that:
 - Affirm the principle of **party autonomy**
 - Allow the **law chosen by the parties the widest scope of application**, subject to clearly defined limitations
 - May be used as a **model for national, regional, supranational, international** instruments; to interpret, supplement and develop rules of private international law; by courts and by arbitral tribunals
- **Subsidiary but effective** means of further pursuing the progressive unification of private international law rules

Provides increased **legal certainty and predictability** in the drafting and enforcement of **international commercial contracts**, facilitating investment and encouraging trade

Securities Convention

Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary

- Provides **certainty** as to the law applicable to **clearance, settlement and secured credit transactions** that cross national borders (perfection, priority and other effects)
- Markedly improves **transactional efficiencies** in global securities markets
- **Reduces systemic risk** in cross-border transactions and intermediary holdings
- Facilitates cross-border **capital flows**

- G30 recommends the Convention “be **ratified as quickly as possible** by **as many nations as possible**”
- *Ex ante* legal certainty afforded by the Convention also very **important** under revised capital adequacy framework (**Basel II/III**)

Facilitating Trade & Investment

Apostille Convention

Choice of Court Convention

Service Convention

Contracts Principles

Evidence Convention

Securities Convention

These instruments create a clear
(but non-intrusive) framework that:

- sets uniform **international standards**
- reduces **costs and delays**
- enhances **co-operation** between States, saving **consular/legal resources**
- provides legal **certainty and predictability** for parties
- improves the **rule of law**

Ultimately facilitating cross-border trade and encouraging foreign investment

Christophe Bernasconi

cb@hcch.nl



www.hcch.net