125th anniversary of the
Hague Conference on Private International Law

Latin American Meeting on the Implementation and Operation of the Hague Conventions on Legal Co-operation and International Child Protection

Palacio San Martín
Buenos Aires, Argentina, 13-15 August 2018

Report

I. Introduction

From 13 to 15 August 2018, the Latin American Meeting on the Implementation and Operation of the Hague Conventions on Legal Co-operation and International Child Protection was held in Buenos Aires, Argentina, in the framework of the celebrations of the 125th anniversary of the Hague Conference on Private International Law (hereinafter "HCCH").

The meeting was supported by the Ministry of Foreign Affairs and Worship and the Ministry of Justice and Human Rights of the Argentine Republic and was aimed to discuss the challenges in the development and implementation of private international law in general and, in particular, to exchange experiences on the implementation and optimisation of the operation of the HCCH Conventions on international legal cooperation.

The meeting was attended by more than 160 participants, including representatives of National Organs, Central Authorities, child protection agencies, and international organisations, as well as Members of the International Hague Network of Judges and of the Argentinian Network of Judges in Child Protection Matters, officers of the legislative and judicial branches, diplomats, scholars, lawyers and students from 24 jurisdictions[1].

The opening ceremony was conducted by the Minister of Foreign Affairs and Worship, His Excellency Ambassador Jorge Faurie, the Minister of Justice and Human Rights, His Excellency Germán Garavano, the Vice President of the Supreme Court of Justice, Elena Highton de Nolasco, and the Secretary General of the HCCH, Dr Christophe Bernasconi.

Secretary General Dr. Bernasconi celebrated the significant increase in visibility of the HCCH in the region, supported by the work of the Regional Office for Latin America and the Caribbean (ROLAC), and invited States to join the Organisation and / or incorporate the Conventions addressed during the meeting into their national law. He also emphasised the importance of implementing the Conventions effectively,

[1] Argentina, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Germany, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, South Africa, Switzerland, United States of America, Uruguay and Venezuela.

and thus of post-Convention assistance services provided by the HCCH, so as to ensure the effective operation of the Conventions and prevent them from becoming ineffectual.

In this context, he highlighted some of the problems and challenges faced by the HCCH, including the difficulties in achieving consensus on new issues, the challenges on the content and form of new Conventions, the problems raised by the delays in the incorporation of new Conventions to the various legal systems, and the need for a greater collaboration with the academic sector, among other issues.

Uruguayan judge on the Inter-American Court of Human Rights Ricardo Pérez Manrique, made a presentation on the interrelation between the four pillars that apply across all the issues addressed in the event: "Human Rights, Access to Justice, International Legal Co-operation and the work of the HCCH", highlighting the valuable role of the HCCH in the effective access to justice. The judge stated that, in the International Law of Human Rights, States are primarily bound to respect, ensure and implement rules that allow for the effective enjoyment of human rights. For this reason, he maintained that the States are responsible for the incorporation of adequate private international law instruments in order to ensure the effective enjoyment of human rights. Furthermore, he asserted that the mere incorporation of the instruments is insufficient, and that States need to implement all necessary internal measures to ensure the effective operation of the instruments, as States may incur international responsibility for the ineffective operation of a Convention.

During the meeting more than 40 officials from Central Authorities, judges and scholars of the region made presentations and concrete proposals to address the implementation challengesfaced by the different sectors represented (Executive Branch, Legislative Branch, Judicial Branch and academia).

In order to organise the numerous presentations, seven thematic panels of selected members were created to reflect the range of jurisdictions and views represented.

This report presents a summary of the ideas shared by the speakers and panelists that will feed discussions of the HCCH and administrative authorities, judges and academics, so that each sector is able to contribute to the creation, implementation and operation of private international law.

II. General considerations on private international law and the HCCH

Private international law at present

The meeting acknowledged that, in today's world, there are increasingly more and more situations with international elements. However, it was also acknowledged that private international law is not visible enough from both the perspective of legal operators and decision makers.

Furthermore, the meeting recognised that private international law is moving towards a less formal and more practical approach, with legal co-operation instruments prevailing over classical instruments on applicable law.

Human rights and access to justice

The meeting highlighted the fact that human rights and other fundamental principleshave an impact on all branches of the law, including private international law.

Private international law strives to ensure access to justice in transnational conflicts and is ultimately the mechanism by which States make the right of access to justice and other human rights effective.

In this regard, HCCH Conventions on international legal co-operation were recognised as instruments of private international law which guarantee effective access to justice in cross-border cases and it was stressed that undue delays in legal proceedings constitute a human rights violation, as has been recognised by the European Court of Human Rights and the Inter-American Court of Human Rights.

Importance of the work of the HCCH

The meeting emphasised the importance of the work of the HCCH in unifying private international law rules, aimed primarily at solving the conflicts of people in cross-border situations.

Key role of the Regional Office for Latin America and the Caribbean of the HCCH (ROLAC)

The meeting recognised the key role of the ROLAC in the development of private international law and the implementation of the Conventions in the region. In this regard, the role of the Regional Office was unanimously acknowledged as:

- A channel for facilitating the implementation and operation of HCCH Conventions in Latin America and the Caribbean and for promoting the participation of States in the work of the Organisation.

- A strategic success, with regard to the creation of a work dynamic based on dialogue among stakeholders, from a perspective of co-operation and consolidation of constructive networks.

- The driving force behind an ongoing revision of regulations and the detection of practices that hinder the attainment of Convention objectives.

Post-Convention Services

The meeting recognised the concern of the HCCH in accompanying the evolution and real impact of the instruments developed under its auspices — one of its most remarkable qualities within the range of forums for the creation of international rules and regulations.

Post-convention services were not only acknowledged, but also many of the issues addressed in the panels responded to current concerns and queries arising from such

processes.

Without a doubt, the review of the operation of the Conventions, the adoption of recommendations, guides, handbooks and other soft law instruments developed by the HCCH have the objective of improving the effectiveness of what was agreed on and encouraging uniform practices and interpretations, promoting implementation mechanisms that do not depart from existing commitments.

Proper implementation of the Conventions

The meeting recognised the importance of the role of the HCCH in the obligations of every State to respect and guarantee the free and full exercise of human rights and the duty to adopt any internal legal provisions necessary for the enjoyment of these rights. Nevertheless, the meeting acknowledged that the States sometimes have difficulties to discharge their implementation obligations because of the lack of political will and necessary technical resources.

The meeting emphasised the need to use new technologies in order to reduce delays in processing cases and to facilitate international legal co-operation. It recognised that States have the technological means to do so and that there are no legal barriers to their use. A cultural change is needed for a widespread use by operators.

Private international law and academia

The meeting acknowledged the important role of academia in the incorporation of new international instruments, emphasising the need to bring the public sector closer to the academic sector so that the work of the former is nourished and enriched by the contributions of the latter.

III. Specific considerations raised by the panels

1. The challenges for the development and implementation of private international law

a) **The diplomat perspective.** Diplomats face a triple challenge: a) monitoring multiple law-making forums, b) incorporating new conventions and the analysis this entails, and c) implementing and operating the instruments adequately. One of the major problems they face is the invisibility of private international law and the difficulties in persuading other areas of the State to ratify or accede to international instruments and prioritise this work. In addition, the lack of resources and the multiplicity of forums work against the effective and swift incorporation of new instruments. For this reason, the National Organ of Argentina is planning to create a commission of experts in private international law to advise the Ministry of Foreign Affairs in the near future, taking as an example the initiatives of other States that have proven effective, as they provide quality technical expertise.

b) **The perspective of judges.** The entry into force of HCCH Conventions and their practical application ensure due process and an improvement in the

administration of justice.

Globalization and mass mobility present challenges that have destabilised the work of judges. Their work methodology was affected by a cultural change: they must be active, take initiatives, have statistics and databases at hand, and be ready to communicate with other judges in a fast and direct way. The purpose of these changes is to make improvements for society, providing a response to its demands for a swift and effective implementation of human rights.

In Argentina, most private international law provisions have been codified. However, new rules should be understood and applied in the context of the dynamic evolution of people's needs. Judges need flexible instruments which allow for anticipation and prevention, as well as follow-up.

c) **The perspective of academia.** Private international law is becoming less formal and more practical. One of the problems of private international law is that it has no publicity. It is therefore essential to raise awareness of private international law and its impact on people's lives (child support, return, international family situations such as that of immigrants, consumers, tourists, long-distance workers, etc.) and small and medium-sized enterprises in their international engagements, in order to draw the attention of the people in power.

Faced with the different perspectives and views on private international law on a global scale, having the following skills is necessary in order to tackle the problems and develop global solutions: i) a clear grasp of legal concepts as well as of legal language; ii) knowledge of comparative law; and iii) keeping an open mind.

In order to select topics, the recommendation is to address those that provide solutions to people's real problems, through a consultation process with all sectors involved. It is essential to democratise the topic selection process.

When developing draft conventions, model laws or other instruments, it is necessary to consult academics, politicians, operators and the target groups of the rules and regulations (*e.g.*, commercial operators and central authorities as well as legal associations such as associations of civil law notaries, lawyers, judges, prosecutors) and co-ordinate among them. Though undoubtedly the hardest path, the democratisation of this process is vital.

Given the difficulties in reaching consensus among States at a global level, the possibility of legislating at different "speed rates" and reaching consensus at different levels should be pursued —just as has been happening for a long time in commercial matters.

Nowadays, the classical instruments of reservations and declarations do not seem to suffice. The creation of "legislative packages", tailored to certain State groups, should be taken into account in order to extend certain convention effects. In other words, the degree of integration and development in private international law must be considered while legislating in compliance with the standards a particular group is willing to accept on a given topic at a given

time.

Delegates in forums that draft international legislation must be experts of law and be sufficiently familiar with the topics that are dealt with and, preferably, with private international law as well.

2. Implementation and operation of the Conventions on international child protection

a) The 1996 HCCH Convention on Child Protection

The 1996 HCCH Child Protection Convention has been ratified and acceded by a small number of States in the region (as of 13 August 2018, only 5 States of the Americas: Cuba, Ecuador, Honduras, the Dominican Republic and Uruguay).[2]

The meeting recognised that the Convention covers a wide range of topics, among them the issues of child trafficking (including sexual exploitation) and unaccompanied or displaced children. Although the States of the region have very limited experience in the application of the 1996 Convention, most of the cases that have been processed before the Central Authorities are now connected to applications for the return and safe return of children. Moreover, some custody cases were presented during the meeting (applications for home study reports of custody applicants), as well as cases on co-operation between authorities to enter into agreements and their recognition and enforcement, and cases on the implementation of protective measures.

The meeting emphasised the complementary role of the 1996 HCCH Convention in relation to the 1980 HCCH Convention and, particularly, how it reinforces the provisions on access rights.

The Convention provides a mechanism for the recognition and enforcement of protective measures that requires efficient mechanisms from the States for its effective application. If States do not have such mechanisms in place, the meeting encouraged them to take any measures necessary for the development of the mechanisms before implementing the Convention.

The 1996 Convention contains some legal concepts that are more frequent in common law States, as is the case of transfer of jurisdiction. However, these concepts do not prevent States from the region from ratifying nor acceding to the Convention. In fact, several of them have already done so.

Finally, participating States where the Convention is already in force fervently encouraged the other countries of the region to incorporate the Convention into their legal systems in order to use the instrument for the greater protection of children facing multiple situations of vulnerability in intraregional cases.

b) The 2007 HCCH Convention on the International Recovery of Child Support

Brazil is the only country of the region where the 2007 Convention is in force. Therefore, its experience in the implementation of the instrument was

[2] Paraguay deposited its instrument of accession to the Convention on 12 September 2018.

especially useful. Particularly noteworthy were the following:

- the creation of a working group made up of professors in the field and of an intergovernmental group, both of which analysed the Convention, to evaluate ratification and prepare implementation;
- the use of the form suggested by the HCCH;
- the implementation of iSupport, which is currently being tested;
- the large number of requests received by the Central Authority, which greatly impacts the lives of people (approximately 130 new requests per month);
- 70% of the applications are outgoing and processed in a maximum of two months;
- the satisfactory use of this instrument.

The Central Authority of Argentina for the New York Convention shared its experience in the use of the Convention and discussed the difficulties in its operation, which in their view, would be addressed through the application of the 2007 HCCH Convention (such as translations, assistance in obtaining genetic test results, and fund transfers).

The speakers agreed that the 2007 HCCH Child Support Convention is very thorough, that it capitalises on the benefits provided by the New York Convention, that it addresses its loopholes and promotes the use of technological innovations.

The meeting noted that many HCCH Member States have begun the process of incorporating the instrument into their legal systems, so that protection to countless children will be provided in a large number of States in the near future.

Finally, with regard to the implementation of the Convention, the meeting emphasised the importance of seeking full dissemination and an adequate territorial implementation in order for the Convention to be effectively available to all potential beneficiaries in each State.

3. Implementation and Operation of HCCH Conventions on International Legal Co-operation

a. The 1965 HCCH Service Convention and the 1970 HCCH Evidence Convention

The meeting highlighted that few States in the region are parties to the HCCH Service[3] and Evidence[4] Conventions. The States that are not yet parties were encouraged to consider ratification or accession, while acknowledging that both Conventions are perfectly compatible with regional instruments that address the same issues and are already in force in most States of the region.

The meeting also noted that delays in service and in the processing of letters rogatory are inconceivable in a globalised world where technological means are available. Therefore, the implementation of technological advances is necessary, where possible, for the effective operation of international legal co-operation instruments.

[3] Argentina, Colombia, Costa Rica, Mexico and Venezuela.
[4] Argentina, Brazil, Colombia, Costa Rica and Venezuela.

Furthermore, the Central Authorities were recognised for the significant role they play in the implementation of the Conventions. Their expert personnel and their command of foreign languages facilitate communication between States, promoting co-operation.

The meeting emphasised the importance of the tools made available by the HCCH to the States for implementing the Conventions, and in particular the usefulness of the trilingual forms developed for the HCCH Service Convention.

Among other suggestions made aiming to improve the operation of the Conventions, the following were proposed: developing a database of case law for the HCCH Service and Evidence Conventions (similar to INCADAT), to encourage the uniform interpretation of analogous cases; a better use of new technologies; a better use of existing co-operation networks, and ultimately developing new ones to include NGOs (*e.g.*, bar associations or associations of civil law notaries); encouraging States to review the reservations made to Articles 8 and 10 of the HCCH Service Convention (about notifications through means of alternative channels), and Articles 4 (on languages) and 23 (on the pre-trial discovery of documents) of the HCCH Evidence Convention in order to withdraw said reservations.

b. New technologies applied to international legal co-operation

In relation to the possible use of new technologies, all the speakers emphasised the importance of "substance over form". Speakers agreed there are no legal barriers to the use of these new technologies. This issue is rather a matter of a cultural change, since technological tools are readily available.

The topic was addressed in two panels, one focused on i) the electronic transmission of collaboration requests under the 1965 HCCH Service Convention and 1970 HCCH Evidence Convention, and the other ii) in the execution of co-operation requests using new technologies, focusing particularly on a) electronic notifications (1965 Convention), b) video-link (1970 Convention), and c) electronic Apostilles and electronic registers of Apostilles (1961 Apostille Convention).

i) Electronic transmission of co-operation requests

The meeting acknowledged the advantages of using electronic channels for the transmission of co-operation requests, and three cases were raised for discussion among the panelists: 1) letters rogatory with a digital signature received by electronic means; 2) letters rogatory scanned by the Central Authority, digitally signed by the Central Authority, and sent electronically for their processing; and 3) letters rogatory scanned by the Central Authority and sent electronically (without a digital signature), original paper copies sent subsequently.

In this regard, the representative of the Central Authority of Brazil indicated that any of these three scenarios would be viable in their jurisdiction and confirmed that Brazil has a policy of absolute openness to the use of new technologies. In fact, she reported that all co-operation requests from the United States of America currently being received and processed are made entirely through electronic means, within the framework of the 1970 HCCH Evidence Convention.

The representative of the Central Authority of Mexico, on the other hand, indicated that it was not yet feasible to process all letters rogatory in digital form in her jurisdiction, but that it would be feasible for the Central Authority to scan the letters rogatory, digitally sign them and send them for their digital processing abroad. She also reported that they already had some experience with regard to the third case, as in some cases where the requesting Central Authority had requested urgency in the procedures, the digital form was requested in advance for the process to begin, while the originals were later sent in paper form. Likewise, she informed that Mexican courts, through the National Commission of High Courts of Mexico [Comisión Nacional de Tribunales Superiores de Justicia de los Estados Unidos Mexicanos] (CONATRIB), have expressed their interest in international letters rogatory issued electronically under the international instruments to which Mexico is a party being transmitted through the Comprehensive File Tracking System [Sistema Integral de Seguimiento de Expedientes] (SISE) of the Federal Judicial Council [Consejo de la Judicatura Federal].

Moreover, the representative of the Central Authority of Costa Rica stated that the first two scenarios did not seem viable at the moment, although she did assert that it would be possible to print requests for co-operation that are received electronically and then process them in their printed form in her State, where digital signatures have already been implemented. She also informed that the new Civil Procedure Code, coming into force on 8 October 2018, requires the use of new technologies and introduces a Judicial Branch with a "paperless" policy.

Finally, the moderator mentioned Articles 2611 and 2612 of the Civil and Commercial Code of Argentina[5] and the broad duty to cooperate that arises from them. He also highlighted that *Annex 3.a: Guide to good practice for international letter rogatories for civil matters* from the *Ibero-American Protocol on International Judicial Co-operation [Protocolo Iberoamericano sobre Cooperación Judicial Internacional]* states that some jurisdictions have started implementing digitally signed electronic letters rogatory, which are scanned and forwarded through e-mail, fax or Iber@, a secure system of communication, and that, in order to accelerate the requests for legal co-operation, the possibility of using one of the previously mentioned means should be considered. Said Annex also sets forth that the requesting authority may ask the requested authority, if letters rogatory are used for the service of documents, to execute the letter rogatory through e-mail, so long as it is compatible with the law of the requested State and that, if the letter rogatory is used as a means of obtaining evidence abroad, the letter rogatory is executed through electronic means, such as through video-link.

ii) Execution of requests for co-operation using new technologies

a) The electronic Apostille and the electronic register of Apostilles (1961 Convention)

The Competent Authority of Chile has shared its experience with the implementation of the Convention, which has the following features:

[5] ARTICLE 2611.- Jurisdictional co-operation. Notwithstanding the obligations arising from international conventions, Argentine judges must offer full jurisdictional co-operation in civil, commercial and labour matters. ARTICLE 2612.- International procedural assistance. Notwithstanding obligations arising from international conventions, all communications direted to foreign authorities shall be transmitted by letters rogatory. Should the situation require it, Argentine judges may communicate directly to foreign judges that accept this practice, so long as due process is respected.

- It uses new technologies in order to offer citizens a better service. To that end:
    - All Apostilles are sent electronically (in addition to a digital signature, an electronic image of the holographic signature of the underwriting officer is attached).
    - It has a central electronic register of Apostilles, which can be checked online or through QR code.
- Implementation is decentralised not only by the issuing institution (5 Competent Authorities: the Ministries of Justice, Education, Health, Foreign Affairs and Vital Records Services) but also by their location (they can even be delivered abroad through Consulates if the user enters a request from another country through the web site).
- Around 270,000 Apostilles are issued every year.
- 9 officers work at headquarters, where they receive around 400 people per day and around 100 Apostille requests from abroad to be delivered in Consulates.
- The Apostille is free of charge in Chile.

b) Electronic service according to the 1965 Convention, the Inter-American Convention, the Ibero-American Protocol and the ASADIP principles.

It has been recognised that the 1965 HCCH Convention offers solutions which provide legal certainty and ensure due process and establishes simple and quick mechanisms. In addition, the neutrality of the Convention towards technological advances, which allows the use of new means of communication without having to formally revise the Convention, following the principle of functional equivalence, was highlighted.

Regarding security, the need to create secure platforms and regulate digital signatures in order to avoid communications being intercepted, deleted or leaked through the web was highlighted. What is more, possible difficulties in the use of technological means (such as the declaration of an electronic address, which has no physical location, that is to say, not located in any State) were pointed out. All in all, it is necessary to ensure the traceability and authenticity of communications.

Moreover, it was pointed out that, although the technology is available, a political will to implement it is vital.

Regarding the possibility and legal feasibility of implementing technological means in the framework of the Convention, it was recognised that the Inter-American Convention on Letters Rogatory [*Convención Interamericana sobre Exhortos o Cartas Rogatorias*] (CIDIP-I, Panama, 1975) and the ASADIP Principals on Transnactional Access to Justice [*Principios de ASADIP sobre el Acceso Transnacional a la Justicia*] (TRANSJUS) contain provisions which would allow electronic service to be admitted.

In that regard, it was pointed out that electronic notifications and records have been used in Uruguay for over 10 years. A Uruguayan law of 2007 allows the use of

electronic means and recognises them as the legal equivalent of their paper counterparts. This mechanism works well within the country, but in international affairs there ir a greater need to work with IT specialists.

It was noted that, according to the experience in Uruguay, electronic service is more reliable than in paper form.

At the same time, it was understood that admitting electronic service internationally would mean bypassing the "legal formalities" (see Ibero American Protocol, Rules of Procceding regarding International Letters Rogatory (number III) [*Protocolo Iberoamericano, Reglas de Actuación en materia de Exhortos Internacionales (numeral III)*]), achieving greater "procedural expeditiousness" and "procedural adaptation of classical provisions" to the requirements of international disputes.

While understanding that greater flexibility in the means does not imply setting aside legal certainty, reference was made to the ASADIP principles which establish that security of communications must be ensured in all cases. Should that security be affected, it would constitute a limit to the use of new technologies for communication, especially electronic ones.

At this time, it was highlighted that the challenge of implementing electronic service is more technical (which specialists must solve) than legal, since legal bases would not be an obstacle any more.

The final goal must be the priority. This goal is that the person to be served is indeed served, rather than the "formalities" that each national law or convention establishes to achieve that goal. In other words, as long as the person is served, how they are served (whether in paper form or electronically) is not important.

c) Videoconferencing: direct questioning by the requesting authority in accordance with Section 9.2 of the 1970 Convention and its relation to the Ibero American Convention on the use of videoconferencing for the Conference of Ministers of Justice of Ibero American Countries [*Convenio Iberoamericano sobre el uso de la video conferencia de la COMJIB*]

It was highlighted that using technology facilitates access to justice and optimises judicial proceedings. It was also mentioned that there are instruments related to the use of videoconferencing, including Council Regulation (EC) No 1206/2001 of 28 May 2001 on the use of videoconferencing to obtain evidence in civil and commercial matters,[6] and at the regional level, the Ibero American Treaty on the use of Videoconferencing in the Co-operation between Judicial Systems [*Convenio Iberoamericano sobre el uso de la Videoconferencia en la Cooperación Internacional entre Sistemas de Justicia*], which entered into force 17 July 2014 and has 8 States Parties, as a means of legal international co-operation.

With regard to Argentina, it was noted that it had incorporated into its Civil and Commercial Code Sections 2611 and 2612,[7] which establish the duty to co-operate for Argentine judges and enable direct judicial communications with foreign judges.

[6] Available at: https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32001R1206&qid=1540827037030&from=EN.
[7] Op. Cit. Note 5.

In accordance with Article 9 of the 1970 HCCH Evidence Convention, the judicial authority which executes a Letter of Request applies its own law. However, the requesting authority may request a special procedure (for example: a videoconference) unless a) it is incompatible with the internal law of the requested State; b) it cannot be applied in the requested State; or c) there are practical difficulties.

Article 5 of the Ibero American Convention on the Use of Videoconferencing [*Convenio Iberoamericano sobre el uso de la videoconferencias*] states that the authority of the requesting State as well as the authority of the requested State may conduct a videoconference directly, but with the address of the authority of the requesting State in the latter case.

Nowadays, in accordance with Article 9.2 of the HCCH Evidence Convention, direct interrogation by the requesting authority would be possible in Argentina.

Meanwhile, in Mexico, using videoconferencing to obtain evidence is allowed by international treaties, which are the supreme law in that country, notwithstanding what is established in the national law. After the constitutional amendments of 2017, there is a constitutional provision that states the order of priority of substance over form. Just like in Argentina, direct interrogation by the requesting authority would now be possible in Mexico, in accordance with Article 9.2 of the HCCH Evidence Convention.

4. Challenges for the local implementation of private international law. How to be more efficient.

a) Implementing a "new" international treaty in the jurisdiction

Experience of the Ministry of Foreign Affairs plus academia

The experience of the Mexican Ministry of Foreign Affairs was shared. As in other States, the Mexican Ministry of Foreign Affairs has a group of expert advisers on private international law who draft reports on various topics and legal instruments, including topics that contribute to Mexico's position in various international fora and analysis on the way in which Mexico could apply various international instruments. This group is made up of approximately 20 expert advisers, members of the Mexican Academy of Private International Law and Comparative Law.

Role of the Legislative Branch (Argentina)

The need for the Legislative Branch to accelerate the internal mechanisms for the incorporation of international treaties was recognised. Consequently, the creation of a permanent group made up of representatives of the Executive and Legislative Branches and the Regional Office for Latin America and the Caribbean (ROLAC) was proposed in order to boost the ratification of treaties and discuss matters related to their implementation.

Role and work method of academia

It was pointed out that private international law should seek fair solutions to multinational issues. Academics should focus on the theoretical and practical implementation, consider who will implement and invoke the rules as well as who will use them. Academics should not become an intellectual exercise - it

should solve people's problems.

To ensure the right to access to justice, an effective implementation of treaties is necessary, since their main goal is to solve the problems of every citizen in their international life.

In Latin America there is not enough communication between academia and other actors. That is why incorporating ASADIP as an Observer at the HCCH is so important, since its participation would give a voice to the academic community.

Some of the highlighted proposals were the following:

- Creating a database for research projects.
- Adding Private International Law as a compulsory course to become a lawyer in order to create a wide, tolerant and inclusive dialogue.
- Achieving adequate communication with political actors, so that academia takes part in the practical part and can, thus, make a contribution.
- Creating a database for all information related to plans for regional research projects.
- Creating an Observatory with regional case law (based on INCADAT)
- Conducting Moots on topics related to judicial co-operation.

Role of the HCCH. Private International Law today at the HCCH

The work methods of the HCCH were highlighted, as well as its ambition for universality and incorporation of decentralisation as a pragmatic idea. In this connection, the creation of the regional office was recognised not only as a success but also as a great help.

Moreover, the communication and consulting system implemented by the HCCH through questionnaires was praised, together with the use of the responses collected as foundation for the support of the work of the Organization, highlighting the system as an example of democratisation and openness that brings the Organisation closer to interested parties, governments, judges, academics, officials, experts, etc.

It was highlighted that the HCCH has to keep its social focus, tackling issues that affect children, family protection, etc., but it also has to tackle economic issues related to commerce and globalisation, which are currently the most important phenomenons.

The HCCH has to innovate and consider developing private international law principles that go beyond practical solutions and provide guidance - principles or rules that States cannot avoid.

b) Revision and optimisation of the operation of an existing

Convention. The case of the 1980 HCCH Convention on the Civil Aspects of International Child Abduction.

Emphasis was made on the importance of States periodically reviewing the operation of the instruments establishing structures for legal co-operation. These instruments have to be considered as being in a state of constant and progressive implementation. Their operation should be evaluated aiming to implement all good practices and legal adjustments necessary for their most effective operation.

In the case of the HCCH Child Abduction Convention, all speakers highlighted the importance of having an adequate set of procedural rules, and specific experiences were shared, showing the way in which taking specific measures has had an impact in reducing processing times, during the administrative as well as the judicial stage.

In that regard, representatives of Chile, the Dominican Republic and Uruguay, States where special proceedings for international child abduction cases have been adopted, shared concrete information on reducing processing times in their respective States: in Chile, from almost a year to 95 days (around 3 months); in the Dominican Republic, from at least a year to 2 months; and in Uruguay, from 2 and a half or 3 years to 3 months. The adopted procedures which helped reduce processing times included the following features: short timeframes for each stage of the process, limitation of the number of appeals, concentration of jurisdiction (Uruguay and the Dominican Republic), *sua sponte* designation of a lawyer to the requesting party (Uruguay) and simplification of all procedural and administrative steps.

Furthermore, the speakers emphasised the importance of the training of officers of the judicial branch (judges, defenders, psychologists and social workers) and indicated the various models adopted for systematising the training.

Concentration of jurisdiction was recognised as an extremely useful tool, since it facilitates specialisation and training of judges, which results in a better and more efficient implementation of the Convention.

The importance of Central Authorities interacting in a smooth and coordinated manner with Members of the International Hague Network of Judges from their respective countries was also highlighted - as Members of the IHNJserve as key communicators to the other judges from their countries - as well as their incorporation in the implementing legislation for the Convention.

The use of new technologies and flexibility in the means were highlighted as being useful tools to reduce case processing times.

IV. Corollary: from thought to action

Proposals and practices identified to tackle the challenges to generating and implementing private international law efficiently.

1. CHALLENGE: LACK OF VISIBILITY OF PRIVATE INTERNATIONAL LAW
ON A POLITICAL LEVEL
• **Developing adequate information for decision makers**, explaining: a) The relation between the protection of human rights, access to justice and private international law;

b) The responsibility of States to meet their international undertakings, duly implementing private international law instruments.

ON AN ACADEMIC LEVEL

- Encouraging **Private International Law to be compulsory** in the law curriculum, as well as in the **training** of judges, diplomats, prosecutors and public and child defenders.
- Developing a **database** for all information related to plans for regional research projects on private international law.
- Developing an observatory for regional case law (based on INCADAT)
- Developing moots on topics related to private international law, especially related to international judicial co-operation.

2. CHALLENGE: LACK OF RESOURCES TO FOLLOW UP ON DEVELOPMENTS AND ISSUES RELATED TO PRIVATE INTERNATIONAL LAW AT MINISTRIES OF FOREIGN AFFAIRS

- **Encouraging communication with the academic community**, to benefit from advice and research as needed.
  - The Mexican Ministry of Foreign Affairs has a group of academics for advice on issues related to private international law (created through a resolution by the Ministry of Foreign Affairs on 26 November 2012).
  - The Argentine Ministry of Foreign Affairs stated its intention to establish a commission of scholars to advise the Ministry on issues related to private international law.
  - Other existing communication models used between the academic community and the Ministries of Foreign Affairs of Canada, the Netherlands and the United States were mentioned.

3. CHALLENGE: LACK OF INTERNAL COMMUNICATION WITHIN STATES TO DEVELOP PRIVATE INTERNATIONAL LAW

- The importance of **setting up permanent follow-up mechanisms for private international law issues** was highlighted:
  - The experience in Peru was presented. In Peru there is a multidisciplinary committee made up of two representatives of the Ministry of Foreign Affairs and two representatives of the Ministry of Justice. The aim of the commitee (created through Ministerial Order number 227-204-PCM on 2 August 2004) is to study and analyse all issues debated at the HCCH, in order to adapt and incorporate those topics into its legislation, and to constantly and systematically analyse and prepare the position of Peru on draft treaties on matters related to

private international law to be signed with other countries.

- The representative of the Argentine Legislative Branch proposed the creation of a permanent group made up of representatives of the Executive Branch, the Legislative Branch and the Regional Office in order to encourage the ratification of conventions and discussions on private international law issues.

4. CHALLENGE: SELECTION OF ISSUES AND DEVELOPMENT OF INSTRUMENTS ON PRIVATE INTERNATIONAL LAW

- Regarding the selection of topics, it was proposed that international forums conduct **comprehensive consultations with all stakeholders**, ensuring that people's true needs are addressed (democratisation of the selection of issues).
- The possibility of **developing flexible instruments** with different levels of harmonisation should be explored, in order to address different realities (given the difficulty in developing hard law instruments that meet the needs of hundreds of States).
- Consider **adequate mechanisms so experts in private international law from different countries may effectively participate in the development of international instruments.** In that regard, the budget limitations of States to send experts to technical meetings held abroad must be taken into consideration. These costs are usually covered by officers of the Diplomatic Missions, who lack the time and adequate technical abilities to draft private international law instruments. For that reason, it was agreed that it is convenient to restrict the number and duration of meetings to maximise the possibilities of undertaking work remotely, taking full advantage of new technologies.
- Strive to innovate and explore the possibility that the HCCH develops **principles to guide contemporary private international law.**

5. CHALLENGE: REDUCING THE TIMEFRAME FOR INCORPORATION OF A PRIVATE INTERNATIONAL LAW INSTRUMENT INTO DOMESTIC LAW

- It was agreed that there are **undue delays in the incorporation of private international law instruments** to domestic law (statistics show that it may take decades), which is unacceptable, especially regarding instruments that help protect human rights and provide effective legal protection to those rights.
- It was concluded that there is a need to explore options so States **accelerate the process of incorporation of private international law instruments**, in order to make people's lives easier.
- All the proposals and practices described to tackle the previously mentioned challenges should also help tackle this challenge.

6. CHALLENGE: ACHIEVING AN ADEQUATE IMPLEMENTATION AND OPERATION OF PRIVATE INTERNATIONAL LAW INSTRUMENTS ON INTERNATIONAL LEGAL CO-OPERATION

- It was concluded that States should **regularly review the operation of these instruments and implement good practices** to optimise their operation.
- It was agreed that it is convenient to **apply new technologies** as much as possible, so as to gain efficiency and expeditiousness:
    - It was highlighted that it would be convenient to implement an electronic record of Apostilles and issue electronic Apostilles to achieve a better operation of the Apostille Convention.
    - It was recognised that it would be convenient to work towards the electronic transmission of requests for legal assistance under the 1965 Service Convention and the 1970 Evidence Convention.
    - It was recognised that it would be advantageous to use videoconferencing so as to efficiently take evidence abroad.
    - It was recommended that States intending to implement the Child Support Convention use iSupport.
- Regarding the **optimisation of the operation of the 1980 Child Abduction Convention**, it was concluded that the main challenge are the delays in processing cases. The following was recommended for tackling this issue, based on the successful experiences presented by States which managed to drastically reduce case processing times:
    - Developing **special processing rules** for 1980 HCCH Convention cases.
    - **Training all officers of the judicial branch** (judges, defenders, psychologists and social workers)
    - **Concentration of jurisdiction** for child abduction cases.
    - **Smooth and co-ordinated interaction between the Central Authorities and Members of the International Hague Network of Judges** from their respective countries, as Members of the IHNJ serve as key communicators to the other judges from their countries - as well as their incorporation in the implementing legislation for the Convention.
    - **Using new technologies and having flexible procedures** were also recognized as useful tools (remote audience, etc.)