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- Contributions from renowned figures in the field of private international law from across Europe and Latin America
- Opens a cross-regional dialogue and shifts the Eurocentric discussion on diversity and integration to a more inclusive engagement with the South in private international law issues
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Cover image: © Silvana Montañez
Cover design: www.hayesdesign.co.uk

EDINBURGH
University Press

www.edinburghuniversitypress.com

ISBN 978-1-4744-4785-0

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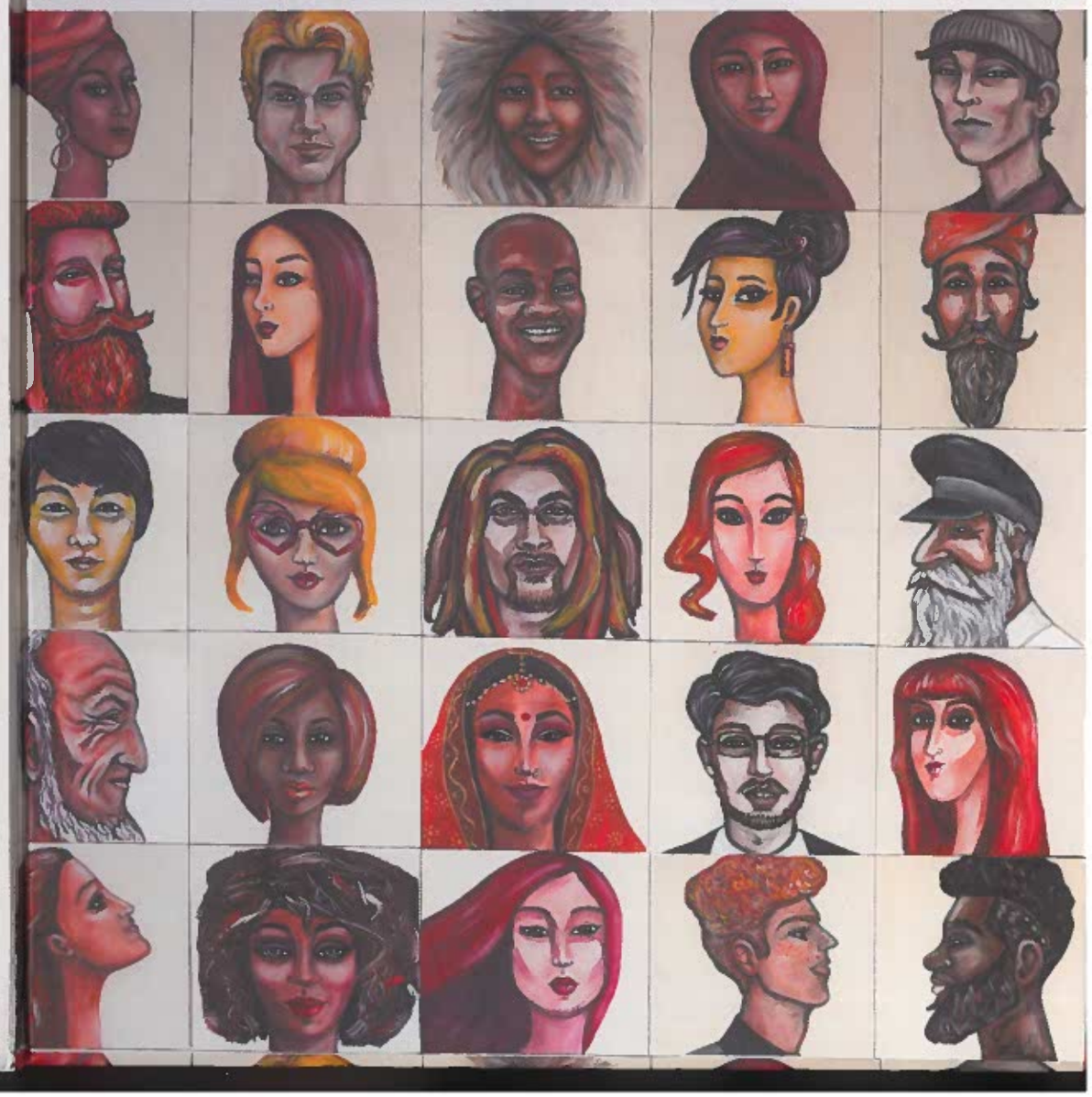

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The Key Role of Judges in the Development of Private International Law: Lessons Learned from the Work of the Hague Conference on Private International Law

*Ignacio Goicoechea and Hans van Loon**

Introduction

In practical terms, the purpose of private international law is to provide the means to solve international legal issues of private parties; to provide legal security to individuals, families and companies as well as other entities, despite the differences between legal systems. This is also the (unstated) objective of the 'progressive unification of the rules of private international law', which is the mandate of the Hague Conference on Private International Law (hereinafter 'the Hague Conference' or 'HCCH').[1]

The working cycle of the Hague Conference is based on the idea that there is a need to: (1) identify those legal cross-border issues that require tackling with private international law tools, foremost multilateral treaties or conventions; (2) develop a private international law tool to address the identified legal issue; (3) implement the new tool in the respective jurisdictions; (4) apply the new tool to the given case, in order to provide an effective solution to the issue; and (5) assess the operation of the given tool to make sure that the problems are now solved, or, if there is a need to improve the operation of the tool, develop the required support side-tools or devices, or develop a new instrument.

The Hague Conference has been, in particular, a pioneer in identifying the importance of the implementation (3), operation (4) and assessment (5) phases in the development of its Conventions as an integral part of the process of establishing them as effective, practical instruments. Indeed, the Hague Conference has pioneered the development of a range of devices to support national authorities in their implementation and operation of the Hague Conventions.

When we reflect in more general terms on the development of private international

* The views expressed in this article are those of the authors and should not be attributed to the Hague Conference.

[1] Statute, Article 1, available at: www.hcch.net/en/instruments/conventions/full-text

law, and those playing a prominent role therein, we may think, at the international level, of: senior government officials and other experts who participate in private international law-making fora such as the Hague Conference, and who, in the framework and supported by the staff of such organisations, negotiate and assess new international tools. Then there are, at the national level, legislators in each country that enact domestic private international law rules and approve international conventions. In addition, the following actors also have a role in the development of private international law: judges who apply international and domestic private international law rules and adjudicate 'international cases'[2] (their role in the development of private international law is very prominent in jurisdictions which do not have comprehensive private international law legislation, common law jurisdictions in particular); academics who study the reality, identify gaps and suggest solutions; practitioners who represent and advise clients in international cases; and non-governmental organisations (NGOs), whose work in one way or another may touch on private international law matters.

The aim of this chapter is to discuss the role of judges in the development of private international law. First, we will highlight the changing role of judges in the context of contemporary globalisation. Second, we will argue that as a result of the expansion of their international duties, judges, in a way that is analogous to the working cycle of the Hague Conference, also have a role in identifying legal issues that must be addressed by private international law, developing tools to tackle those issues, ensuring the implementation and operation of these tools, and assessing their effectiveness. In this regard we will also highlight their contribution to the development of Hague Conventions. Finally, we will describe the very important role of Latin American judges in the development of special devices to promote the implementation, operation and assessment of the 1980 Hague Child Abduction Convention in Latin America.

Private International Law in the Twenty-first Century and Implementation of Private International Law Instruments

Contemporary globalisation is giving increasing visibility to private international law, since there are more and more cases with relevant international elements that have great impact on the lives of people and the conduct of business. Globalisation has encouraged the proliferation of private international law-making at national, regional and global levels. It has given a huge boost to private international law activities of legislators as well as judges around the world. At the regional level, in the Americas, the Organization of American States (OAS) and Mercosur have adopted a wide range of private international law instruments, while in Europe, the European Union has acquired powers to legislate in the field of private international law, and has made

[2] Cf. the section below on Operationalising Private International Law Instruments.

ample use of these powers. In addition, the Hague Conference has seen impressive growth of both its membership and the range of States Parties to its Conventions.

Globalisation also has an impact on the general outlook and methods of private international law. Where the nation state is no longer its sole anchoring entity, private international law must transcend its traditional boundaries, and, adapting its methodologies while preserving its integrity, must orient itself towards the idea of an emerging global community. This adaptation process has both a vertical and a horizontal dimension.

The vertical dimension appears in the growing link that manifests itself in modern private international law – and in particular in global and regional private international law instruments – between the international legal order and the national, or domestic, legal order. We see, for example, an increasing influence of global and regional human rights norms on the development of private international law. This vertical dimension is further reinforced by the activities of international organisations, such as the Hague Conference, aimed at fostering the legal regime established by their Conventions, and in particular their correct implementation and proper operation by their main protagonists, including judges.

A comprehensive view of the role of judges in international cases, therefore, requires a double focus: it must be understood both from a perspective anchored in the state – the judge remains an organ of his or her state – and from a perspective anchored in the international legal ordering – the international convention which supports or mandates the role of the judge. In other words: judges increasingly fulfil a double role: not only do they function as national organs; they also act, at the same time, as informal agents of a 'decentralised' international – regional or global – legal system.[3]

The horizontal dimension appears in the increasing need for coordination of the powers of different national administrative authorities and judges (and of the laws they are called to apply), and for mechanisms for communication and cooperation between them in cross-border civil cases. The mere volume and complexity of transnational civil legal issues in the context of contemporary globalisation make such coordination, communication and cooperation a growing necessity.

The Role of Judges in the Development of Private International Law

In light of the scenario that has been described above, we will now try to elaborate on the contribution of judges to the development of private international law.

Due to their particular role, judges are in a unique position to contribute to this

[3] As the French internationalist Georges Scelle would say, their role undergoes a *dédoublement fonctionnel*. For a discussion of the effects of globalisation on the nation state, on the proliferation of private international law sources, and new approaches in private international law, including the enlarged role of the courts, with a focus on the Hague Conference and its work, see van Loon, H. (2016) 'The Global Horizon of Private International Law', *Recueil des cours*, vol. 380, 1–107 (Chapter I, D and Chapter II).

development. Clearly, their most relevant function and contribution comes from their natural task of adjudicating cases. They are the ones who normally have the last word in interpreting and applying private international law tools, whether of national, regional or global origin, to international cases (the 'operational phase', to put it in terms of the working cycle of the Hague Conference referred to above). In doing so, they develop private international law jurisprudence, which may then guide judges in later cases. However, as we will argue below, in addition to the operational phase, judges can also contribute in other phases of the development of private international law.

Indeed, we may consider the role of judges in the development of private international law in terms of the various stages of the working cycle developed by the Hague Conference, and, most eloquently, in their very role in the development of private international law by the Hague Conference.

Identification of International Legal Issues (People's Needs)

During their daily work of adjudicating cases, judges are often exposed to legal gaps that they need to fill by applying their creativity and sense of justice. Those gaps are sometimes due to the lack of private international law regulations on a topic that has not been addressed before (such as international surrogacy arrangements, international tourist protection, and so on), or to incomplete regulation of issues by existing private international law instruments, which might require the development of complementary tools (such as Protocols, Principles and Guides to Good Practice).

Judges have their own fora where they meet with colleagues to discuss matters of their concern. These meetings occur within their jurisdiction at the national and international levels. The latter are set up by different public and private organisations, such as the Commonwealth Magistrates and Judges Association, the Ibero-American Judicial Summit, the International Association of Women's Judges, the Association of Family and Children Judges; there are also different meetings organised by their respective national and international judicial networks (such as the International Hague Network of Judges). In many of those meetings judges address matters relating to private international law, so as to identify possible gaps, and may even make suggestions for dealing with them. All these gatherings of judges may help not only to identify a possible legal gap, but also to measure its magnitude and geographical impact. If we consider that one of the problems worldwide is the lack of statistical information, and that the field of private international law is one that is particularly difficult to develop, we may agree that judges, and their respective meetings, are an extremely valuable source of information for identifying and assessing the existing and prospective needs of private international law. By way of example we can mention, at the national level, a recent meeting of Panamanian judges, held on 27–8 March 2017, during which the judges concluded that their current procedural norms were not suitable to deal with child abduction cases and that there was a need to develop a specific procedure tailored to meet the 1980 Hague Child Abduction Convention's requirements. At the regional level, in the recent Inter-American meeting of Central

Authorities and Hague Network Judges of the Americas, held in Panama on 29–31 March 2017, participants invited states to consider joining the 1996 Hague Child Protection Convention.[4]

Development of Private International Law Instruments

Considering that private international law tools (both hard law and soft law) are supposed to be interpreted and applied by judges, it seems advisable to include judges, or at least to solicit their views and take these into account, when drafting such norms. This is all the more necessary when drafting instruments that include a judicial cooperation component. Naturally, their involvement should be fully respectful of the division of responsibilities between legislators and courts of the given state.

The Hague Conference has a long tradition of involvement of judges as experts or representatives of their governments. As an early example, no fewer than ten judges took part in its first post-Second World War diplomatic session in 1951. Since then, there has been continuous participation of judges in national delegations during the negotiations of its Conventions.

There are also judicial fora that develop soft law tools to facilitate the operation of existing instruments. For example, in the field of insolvency, EU judges have worked together as part of the 'European Cross-border Insolvency: Promoting Judicial Cooperation' project to develop non-binding Principles and Guidelines for cross-border communication and cooperation in support of the EU Insolvency Regulation[5] (EIR);[6] while the Ibero-American Judicial Summit developed the 'Ibero-American Protocol on Judicial Cooperation', applicable to civil, commercial and criminal cases (approved at the 17th Ibero-American Judicial Summit that took place in Santiago, Chile on 4 April 2014).[7]

Likewise, some Supreme Courts, such as those of Panama and Uruguay, have the power to propose draft laws to Congress, while some others, like the Supreme Courts of Chile and Dominican Republic, are entitled to enact procedural regulations. We will provide some concrete examples of judicial regulations below, when presenting the implementation of the 1980 Hague Convention in Latin America.

[4] Conclusion and Recommendation No. 29, available at: https://assets.hcch.net/docs/4388950c-c5c2-4a1c-bb7d-7a92384ddfa7.pdf

[5] See EU Cross-border Insolvency Court-to-Court Cooperation Principles, available at: www.trileiden.eu/uploads/files/EU_Cross-Border_Insolvency_Court-to-Court_Cooperation_Principles.pdf

[6] Recital 45 and Articles 41–4 and 56–9 EIR Recast, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0848&from=EN

[7] Among other things, the Protocol recommends that states incorporate different international conventions, and incorporated as an annex is the full text of the 'Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges', available at: www.cumbrejudicial.org/c/document_library/get_file?uuid=0db452e9-4509-43cb-bf2e-629fa183db53&groupId=10124

Implementing Private International Law Instruments

The successful development of a private international law convention only goes halfway to helping people resolve their legal problems. Often, the challenge of implementation is no easier than its development – 'implementation' is here understood in a broad sense, encompassing incorporation into the national legal system, adjustment of internal regulations or procedures, training of operators and publicity about the availability of the convention.

Some authors prematurely conclude that a convention is failing to fulfil its purposes, either because it only has a small number of States Parties, or because its application in some cases shows undesirable results. A brief comment on both points may be useful.

Practice indeed shows that it takes several years for a convention to enter into force, and many more years, sometimes decades, for a convention to receive a considerable number of ratifications. There may be different reasons to explain such delays, but certainly one of the most relevant is the lack of political support from decision-makers in the relevant states. Political agendas at state level are very much driven by urgent, short-term concerns, and the analysis and implementation of a new private international law instrument is rarely seen as an urgency, and is therefore left for 'less busy times' which hardly ever come. As a result, very useful and straightforward instruments may take many decades to achieve a considerable number of States Parties (for example, the Hague Legal Cooperation and Litigation Conventions, and many other instruments produced by other fora both at global and regional levels). Often, the efforts of stakeholders advocating the incorporation of a new convention are required for many of these instruments to receive the necessary political attention to undergo analysis by different agencies in the executive, and later on to navigate the difficult waters of congresses, until they are finally approved and incorporated into the relevant legal systems.

On the other hand, even if a convention has been incorporated into a legal system, this does not guarantee that it works smoothly in serving its purposes. First, this is because there may still be a need to adjust internal regulations, or coordinate the work of relevant authorities (in particular when establishing a Central Authority to operate the convention). Second, there is often a need to train users in the operation of the instrument (including judges). Last but not least, there is often a need to raise awareness among the public so they know that they can benefit from the new tool.

Judges can essentially only apply a convention once it has been implemented in their country. Otherwise, when faced with a situation addressed in the convention that has not (yet) entered into force for their jurisdiction, they are forced to apply less efficient solutions or mechanisms to their cases. Often this implies either considerable delays – such as the taking of evidence abroad via ordinary letters rogatory, instead of using an efficient mechanism such as that provided by the Hague 1970 Convention on Taking of Evidence Abroad; or accepting less satisfactory results – for example, in

the case of a child support order that needs to be enforced abroad, where the judge's country is not a Party to the Hague 2007 Child Support Convention.

Faced with the limitations of their legal systems in the absence of a convention, judges can also be considered stakeholders regarding the call for the ratification of (or accession to) and implementation of the relevant private international law tool. In fact, some supreme courts have assumed this role, and have addressed executives and parliaments, requesting them to join certain conventions. For example, the Supreme Court of Uruguay has addressed its Ministry of Foreign Affairs, requesting the incorporation of the Hague Legal Cooperation and Litigation Conventions, while the Supreme Court of Argentina has urged Congress to consider regulating an adequate procedure to apply the Hague Child Abduction Convention.[8]

Finally, another key aspect of the implementation phase is the raising of awareness of the existence of the new tool and training users in operating it. Naturally, if legal actors (including judges) do not know about the existence of the tool, it will not be applied (and people will not benefit from it). If it is not duly applied, it might generate undesirable outcomes in cases. Judges may need to be trained to make better use of judicial cooperation mechanisms to mitigate this risk.

Judicial authorities have been instrumental in many jurisdictions to implement the necessary adjustments to the internal legal system and to train judges in the operation of international conventions.

Operationalising Private International Law Instruments

Judges' adjudicatory role makes them the primary interpreters of private international law techniques and the actors in charge of an appropriate application of these tools to do justice in an international case. This prominent role of judges in the development of private international law is increasing as a result of the developments described above, as the following examples may illustrate.

In the first place, the mere notion of 'international case' is undergoing a paradigm shift. Traditionally, private international law instruments require a foreign element for their application, such as only applying between parties having their habitual residence in different states. This reflects a perspective from within the nation state that views the international as the exceptional, and the domestic as the common situation. By contrast, recent instruments, such as the 2005 Hague Choice of Court Convention, which entered into force in 2015, and the 2015 Hague Principles on Choice of Law, take the opposite view. Both apply 'in international cases' only. According to both, however, cases are 'international', unless the parties are resident in the same Contracting State and the relationship of the parties and all other relevant elements regardless of the location of the chosen court or the chosen law, are connected only with that state. Thus the paradigm shifts: the international (transnational) dimension,

[8] Supreme Court of Argentina, case G., L. si por su hijo G.P., T. por restitución s/ familia p/ rec. ext. de inconstit. – casación, of 27 December 2016, consideration No. 22.

rather than being viewed as the exception, becomes the normal scenario for the application of the instrument, with the purely internal case as an exception.

In this way, both the 2005 Convention and the 2015 Principles encourage judges to transcend the boundaries of their own legal system. Moreover, the 2005 Convention requires a court other than the chosen court to determine the validity of the choice of court agreement in terms not of its own law, but of the law of the chosen court.[9] A similar rule applies to the court requested to enforce the judgment of the chosen court. Thus the judge must put him or herself in the shoes of the chosen court. Moreover, the Principles make a bold step by opening the door for courts to apply non-state law, such as the UNIDROIT Principles on International Commercial Contracts – something arbitrators have been doing for a long time.

The enlarged international role of the judge emerging from both these recent Hague instruments follows from the enlarged recognition of the role of party autonomy. Once broadly applied, these instruments will significantly improve the coordination of adjudicatory jurisdiction and applicable laws, and increase the involvement of judges in commercial dispute resolution through civil courts.

A second example is the expanding role of judges in the field of cross-border judicial and administrative cooperation. Initially, the lead in this area was taken by the development of cross-border cooperation through Central Authorities (1965 Convention on Service of Documents Abroad, 1970 Convention on the Taking of Evidence Abroad, 1980 Access to Justice Convention). The 1980 Child Abduction Convention then enlarged the role of the Central Authority, and at the same time made necessary more intense cooperation between Central Authorities and judges. The next step was the development of direct cross-border communication between judges themselves. Both the latter developments initially raised concerns about possible tensions with the principle of judicial independence, but their increased use, and benefits to secure effective operation of justice are gradually consolidating their application.

For the purpose of this chapter, it is worth highlighting the invaluable benefits of developing a smooth and efficient working relationship between judges and Central Authorities. The operation of the Child Abduction Convention has provided ample examples where improving their working relation has resulted in improving the overall operation of the Convention in the given country.

Direct judicial communications (DJCs) refer to communications that take place between sitting judges concerning a specific case.[10] Their use has been expanding

[9] Readers familiar with the 1980 Hague Child Abduction Convention will be reminded of the rule of Art. 3(1)(a) of the 1980 Hague Child Abduction Convention, which requires the court of the state of refuge to apply not its own law but the law of the state of the previous habitual residence to determine whether or not there is a breach of rights of custody.

[10] As defined in 'Emerging Guidance Regarding the Development of the International Hague Network of Judges and General Principles for Judicial Communications, Including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, Within the Context of the International Hague Network of Judges', 12, available at: www.hcch.net/en/publications-and-studies/details4/?pid=6024&dtid=3. For further explanation on the Hague Network and DJCs, see Lortie, P. and I. Goicoechea (2013) 'The Future of Judicial Co-operation: Building on Recent Innovations', *International Family Law*, special issue in Honour of The Rt Hon. Lord Justice Thorpe, Head of International Family Justice for England & Wales, 107–218, at 129–33.

considerably during the last years in the commercial area in the field of international insolvency, and notably in the application of instruments dealing with the mobility of children and families, foremost the Hague Child Abduction and Child Protection Conventions, which provide for coordination of judicial powers.[11] It is precisely because two judges, two different jurisdictions, two different legal systems, are involved, that practice has shown that it is also crucial for these judges to be able in certain cases to exchange information. The information may relate to laws on custody and access, but also to measures of protection that may be ordered, for example to protect the child's safety when the return is ordered despite allegations of domestic violence or abuse by the left-behind parent. In short, such information, shared directly or through Network Judges, may well be essential as a means of building the trust that is necessary to make the return mechanism work. It is conceivable that the scope of application of these cross-border communications between judges could be extended to other matters than insolvency and child protection, such as access and proof of foreign law; recognition and enforcement of precautionary measures and civil protection orders; and recognition and enforcement of foreign judgments in civil and commercial matters.

Obviously, the fact that judges may now be in contact with their counterparts in other countries also widens their horizons, empowers them and supports them in cultivating the international outlook which they need to develop, alongside their firm grounding in their own domestic legal system, to apply the international instruments in an international spirit.

Assessing and Improving the Operation of Private International Law Instruments

Private international law instruments that are focused on or include a component of international legal cooperation may greatly benefit from periodic reviews that assess their operation. The reason for this is that their efficacy basically depends on the evolving practice of their application.

The Hague Conference has been a pioneer in monitoring and assessing the operation of this type of convention, starting with its first Special Commission on the operation of the Hague Service Convention in 1977. Such a Special Commission brings together the primary actors in the operation of the legal cooperation Conventions, that is, Central Authorities and judges, to discuss and exchange experiences about

[11] The coordination of the dynamic balance between the jurisdiction of the court of the state to which a child has been removed or where the child is retained (the state of refuge) and the state of the former habitual residence (the state of origin) is even crucial for their proper operation, cf. Arts 12–20 Child Abduction Convention, and Arts 7 and 11 1996 Convention.

the following sort of questions: is the Convention working properly? Are there any problems which have been identified in its operation? Is there a need to achieve greater consistency in certain aspects of interpretation? Are there still gaps not covered by the Convention, and, if so, might they be filled by developing a side tool to the Convention? This has laid the basis for a rich variety of gatherings and tools to promote, monitor and support the operation of Hague Conventions. Since the 1993 Intercountry Adoption Convention,[12] a standard article in Hague Conventions provides that 'at regular intervals . . . a Special Commission [shall be convened] in order to review the practical operation of the Convention'.

At the regional level there are also fora that assess the operation of conventions. In Ibero-America, IberRed organises meetings of experts/contact persons to assess the international cooperation developed in civil and criminal law, including specific topics such as child abduction, adoption and child support. The assessment operation is also developed in national jurisdictions, in many cases in the framework of judicial meetings or seminars, notably during the meeting of national judicial networks (for example in Spain, Mexico and Argentina). As mentioned above, in March 2017 the Supreme Court of Panama, in partnership with the Hague Conference Regional Office for Latin America and the Caribbean (ROLAC), organised a Judicial Seminar. One of its main purposes was to assess the operation of the Hague Child Abduction Convention in Panama, identify challenges and suggest concrete actions to be implemented in order to improve the Convention's operation. The exercise proved to be extremely helpful and produced a concrete road map of implementing measures, which was submitted to the Supreme Court for its consideration.

In all these meetings at the global, regional and national levels, judges play a key role, contributing their unique experiences in operating relevant instruments, and making suggestions for recommendations that should lead to a more efficient operation of the conventions.

The Implementation of the 1980 Child Abduction Convention in Latin America

We have described above the outstanding importance of the implementation phase in order to secure the correct operation of Hague Conventions, in particular those that include judicial and administrative cooperation mechanisms.

In the case of the Hague Child Abduction Convention, after more than thirty years of application and numerous meetings to assess its operation (seven times at the global level),[13] there are some practices that have consolidated as key recommendations when thinking of the implementation of the Convention. Among the most relevant recommendations are the following: (1) review and where necessary adjust procedural regulations so as to have cases decided expeditiously, as required by the Convention; (2) develop international cooperation through the work of Central

[12] Art. 42.

[13] See www.hcch.net/en/instruments/conventions/publications1/?dtid=57&cid=24

Authorities and Judicial Networks, by promoting the use of DJCs and encouraging a smooth and efficient working relationship between Hague Network Judges and Central Authorities; (3) consider concentration of jurisdiction as a possible means to facilitate the development of judicial expertise, and more efficient handling of cases; and (4) train judges in the interpretation and operation of the Convention.

The described practices are gradually being considered and many of them implemented in Latin American jurisdictions, to a considerable extent thanks to the work of judges. This judicial action has been promoted and developed by Latin American members of the Hague International Network of Judges (IHNJ), Supreme Courts and other judicial authorities in the region.

Reviewing Procedures

If we take the recommendation to review procedures, the first milestone in the region has been the development of the Inter-American Model Law of Procedure (hereinafter 'Model Law'), which was mostly developed by Latin American Hague Network Judges (adopted in Buenos Aires during the 2nd Expert Meeting on Child Abduction that took place on 19–21 September 2007).[14] The Model Law has been a primary source for many states that have regulated, or are in the process of regulating, their procedural norms applicable to the Child Abduction Conventions (both the 1980 Hague Convention and the 1989 Inter-American Convention on the International Return of Children). Since the adoption of the Model Law, the Dominican Republic, Uruguay, Chile and Venezuela have regulated the child abduction procedure, while several others, namely Panama, Peru, Paraguay, Mexico and Argentina, are working on draft laws. In some of the cases it was the Supreme Court that regulated the procedure, in others it was, or it is going to be, the legislator; but in all cases draft laws have been developed by or with the participation of the respective Hague Network Judge.

Judicial Networks and DJCs

The second recommendation, on judicial networks and DJCs, was initiated with the official designation of Hague Networks Judges in the region. The IHNJ started its development in Latin America in 2005, when Mag. Ricardo Perez Manrique from Uruguay was officially designated by the Supreme Court of his country as a member of the Network. The IHNJ then developed at swift and constant pace,

[14] The initiative was decided in a judicial meeting held in The Hague in margins of the 2006 SC. Central Authorities and Hague Network Judges that participated in the meeting realised that one of the greater challenges in the application of the Convention was to decide cases within the limited timeframes envisaged by the instrument. There was agreement that many procedural codes or regulations in the region did not provide for such a swift procedure, and that law reform should be considered. Therefore, the development of a model law was recommended, in order to encourage and facilitate the work of those states that would be willing to review their procedures. In early 2007, under the coordination of the HCCH, a group of Uruguayan judges prepared the first draft Model Law of Procedure, which was then reviewed and enriched by most of the Latin American IHNJs.

and a few years later each of the seventeen Latin American states, then parties to the Hague Convention, were represented in the IHNJ (Bolivia, who joined the Convention in 2016, is currently the only Latin American country that has not yet designated a Judge to the Hague Network). Judicial authorities have supported the IHNJ by being receptive to the underlying idea of the Network, making designations and supporting the work of the Network Judges. From their side, Network Judges have been supporting the operation and implementation of the Convention, and the progressive use of DJCs. Furthermore, some of them have promoted the creation of National Networks in their own jurisdictions (Argentina and Mexico). Others have promoted the regulation of DJCs in their own system. DJCs are now specifically regulated in procedural laws (Uruguay[15] and Chile)[16] and in Civil Codes (Argentina)[17], and they have also been incorporated into the Ibero-American Protocol on Judicial Cooperation[18] (another purely judicial initiative).

Concentration of Jurisdiction

The third recommendation, on concentration of jurisdiction, has been promoted by Hague Network Judges and implemented by respective judicial authorities in Uruguay, Peru, Mexico City, Guatemala, Brazil and the province of Cordoba in Argentina.

Training

Finally, in terms of *training*, Hague Network Judges have been promoting and developing judicial training in their respective jurisdictions, and have become key partners to ROLAC in these endeavours. ROLAC, in partnership with the judicial and administrative authorities of states in the region, has organised more than fifty judicial training sessions in the region in the last decade.

Although we have mentioned above that the described recommendations/good practices are gradually being implemented in the region (as part of the long and progressive process of implementation of conventions), practice is confirming their value with measurable results. In the Latin American region we can refer to the following examples, all linked to the work of judges:

Uruguay

The Uruguayan example can be seen as the model example of implementation, because it is the jurisdiction where the four abovementioned recommendations have been fully implemented. The judicial procedure was regulated by Law No. 18.895,

[15] Art. 28, Law 18.895.
[16] Art. 13, Supreme Court Acta No. 205-2015
[17] Art. 2612, Argentine Civil and Commercial Code.
[18] Available at: www.cumbrejudicial.org/c/document_library/get_file?uuid=0db452e9-4509-43cb-bf2e-629fa183db53&groupId=10124

adopted on 11 April 2012. This law developed a new specific procedure for the application of the Hague Convention, which has been tailored to meet the requirement of speed of the Convention. It also establishes the role of the Hague Network Judge and provides for the development of DJCs. Likewise, the Supreme Court enacted a complementary regulation, Acordada No. 7758, on 24 December 2012, which concentrated jurisdiction and organised the role of the Hague Network Judge (which includes being informed about every incoming case, and the task of producing statistics on the length and outcome of cases). Uruguayan statistics on incoming cases decided after the implementation of these procedural regulations show that the average time needed to obtain a decision decreased from one year for a first instance judgment (to which the second instance and an appeal in cassation to the Supreme Court of Justice must be added) to sixty days for a final second instance judgment, without the possibility to appeal.

Dominican Republic

The Dominican Republic experience should also be noted. Its statistics show that for cases tried after the new regime implemented by the Supreme Court Regulation No. 480-2008, enacted on 6 March 2008 (fully inspired by the Inter-American model law, and proposed by the Hague Network Judge), the length of procedures diminished considerably: from four to twelve months under the old regime, to two to four months under the new procedure (provided no appeal is lodged with the Supreme Court).

Chile

The Hague Network Judge prepared a draft law which was adopted by the Supreme Court through Acta 205-2015 of 3 December 2015. It established a swift procedure which diminished the length of the judicial procedure, saving about 120 days in comparison to the former procedural regime.

There are many other examples of implementing efforts that have been developed in coordination with Hague Network Judges. Among others, in Mexico, one of the Hague Network Judges promoted and assisted with the implementation of concentration of jurisdiction in Mexico city. In Nicaragua, the Hague Network Judge drafted the Administrative and Judicial Procedure that is currently applied to Hague cases, and together with the Judicial School has developed the first specialised diploma programme on child abduction. In Guatemala, the Supreme Court passed a Regulation which concentrated jurisdiction and determines that the swiftest available internal procedure should be applicable to return procedures. In Venezuela, the Hague Network Judge drafted the procedural regulation applicable to Hague cases, which was adopted by resolution of the Supreme Court of the country.[19] In Argentina, the National Network of Judges adopted a Protocol to be applied to the Hague and

[19] Resolution 2017-0019, 4 October 2017, Tribunal Supremo de Justicia de Venezuela.

Inter-American Child Abduction Conventions,[20] while the Hague Network Judge promoted and assisted with the implementation of both concentration of jurisdiction and a procedural law for the Province of Cordoba.[21]

Despite the above described actions, it is to be acknowledged that the Child Abduction Convention does not always work smoothly in Latin America. Statistics show that the challenge of delays in deciding cases is still there, and probably can be singled out as the most severe obstacle to overcome in the next few years. We can choose to see the glass half full or half empty, but there is certainly a lot of work to be done if we would like to see the Convention fulfilling its objectives in most of the cases. In this regard, the regional assessment of the Convention's operation that took place in Panama on 29–31 March 2017 with the participation of Central Authorities and Hague Network Judges of the Americas left us with some helpful recommendations that are strongly worth supporting.[22] One of the most important messages that arose at the meeting was probably the Network Judges' conclusion that 'there was a need to review their internal procedures to assess whether they allow for decisions to be taken within the timeframe of the 1980 Child Abduction Convention (cf. Article 11), and if not, to adjust the relevant procedures accordingly'.

Conclusions

This chapter has shown the prominent role that judges have in the different phases of the development of private international law. While they naturally have a primary role in adjudicating cases (and operating international instruments), they may also have a role in identifying international legal issues, developing private international law instruments, implementing them, and assessing and improving their operation.

The levelling of the global economic playing field and the increasing interconnectivity of societies and people worldwide in practically all areas of life – that is, globalisation – which is overwhelmingly a matter of private initiative, increases the role of private international law and thereby that of judges in the development of private international law. This role is bound to expand further in the future.

We have also highlighted the importance of the implementation phase, in particular in the case of private international law instruments that include a legal cooperation component, and have provided several examples of the active role that judges have played, and are playing, in this phase in the Latin American region, especially regarding the 1980 Hague Child Abduction Convention.

Against this background, we would hope that international organisations and

[20] The Protocol, which has been officially recommended by the Supreme Court of Argentina, can be accessed at: www.cij.gov.ar/adj/pdfs/ADJ-0.305074001493756538.pdf. For further references on the Protocol, see All, P. and N. Rubaja (2017) 'El Protocolo de Actuación para la Sustracción Internacional de Niños', *Revista La Ley*, 14 June 2017 (AR/DOC/1426/2017).

[21] Law No. 10.419 adopted by the Provincial Legislature on 21 December 2016.

[22] The report of the meeting and its conclusions and recommendations can be accessed at: www.hcch.net/en/news-archive/details/?varevent=551

state authorities that are tasked with the development of private international law consider judges as relevant stakeholders and invaluable partners in their endeavours to develop private international law, all the more so when dealing with matters involving cross-border judicial cooperation.

Finally, in relation to the Hague Conference, it should be noted that currently judicial meetings of the International Hague Network of Judges are lacking a solid formal (and financial) foundation. Such a firm footing would be helpful to secure regular meetings, efficient participation in the Hague Conference's relevant work and sustainability of essential tools to support the Network – such as the Judges' Newsletter or the regular collection and analysis of statistics – all of which are also crucial in linking judges and Central Authorities. Likewise, the useful 'Emerging Guidelines regarding the development of the International Hague Network of Judges'[23] have no formal status. This informality has advantages: it provides flexibility and makes further organic growth possible. However, it comes at a price, because for want of a formal basis the system is fragile, and its continuity is not guaranteed.[24] We would hope, therefore, that efforts to obtain a firm legal and financial basis for these tools will be continued and intensified. Input from the judges themselves in these efforts is of course, in our view, vital.

[23] See above fn. 10.

[24] In this respect the European Judicial Network in civil and commercial matters, based as it is on a decision of the European Council (2001, and since 2009 also of the European Parliament) has a more solid foundation. The Red Iberoamericana de Coopéracion Juridica Internacional (IberRed) would also seem to benefit from a more solid supportive framework.