

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH) – OVERVIEW OF ITS WORK IN THE FIELD OF CROSS-BORDER DISPUTE RESOLUTION

Dr Christophe Bernasconi

Secretary General

An Introduction to The Hague Academy of International Law's
2021 Hong Kong Programme



WHAT IS THE HCCH?

- An **intergovernmental organisation**, origins in 1893
- Legislative mandate: **‘progressive unification of the rules of private international law’** (Art. 1, Statute)



KEY PIL QUESTIONS

Jurisdiction

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

Applicable Law

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

Recognition & Enforcement

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

Cooperation

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



WHAT IS THE HCCH?

- 37 **HCCH** Conventions, 2 Protocols, 1 soft law instrument, dealing with:
 1. International Family & Child Protection Law
 2. International Legal Cooperation & Transnational Litigation
 3. International Commercial & Financial Law



HCCH CORE CONVENTIONS

Family and Child Protection

- 1961 Form of Wills
- 1980 Child Abduction
- 1993 Adoption
- 1996 Child Protection
- 2000 Protection of Adults
- 2007 Child Support
- 2007 Maintenance Protocol

Legal Cooperation and Transnational Litigation

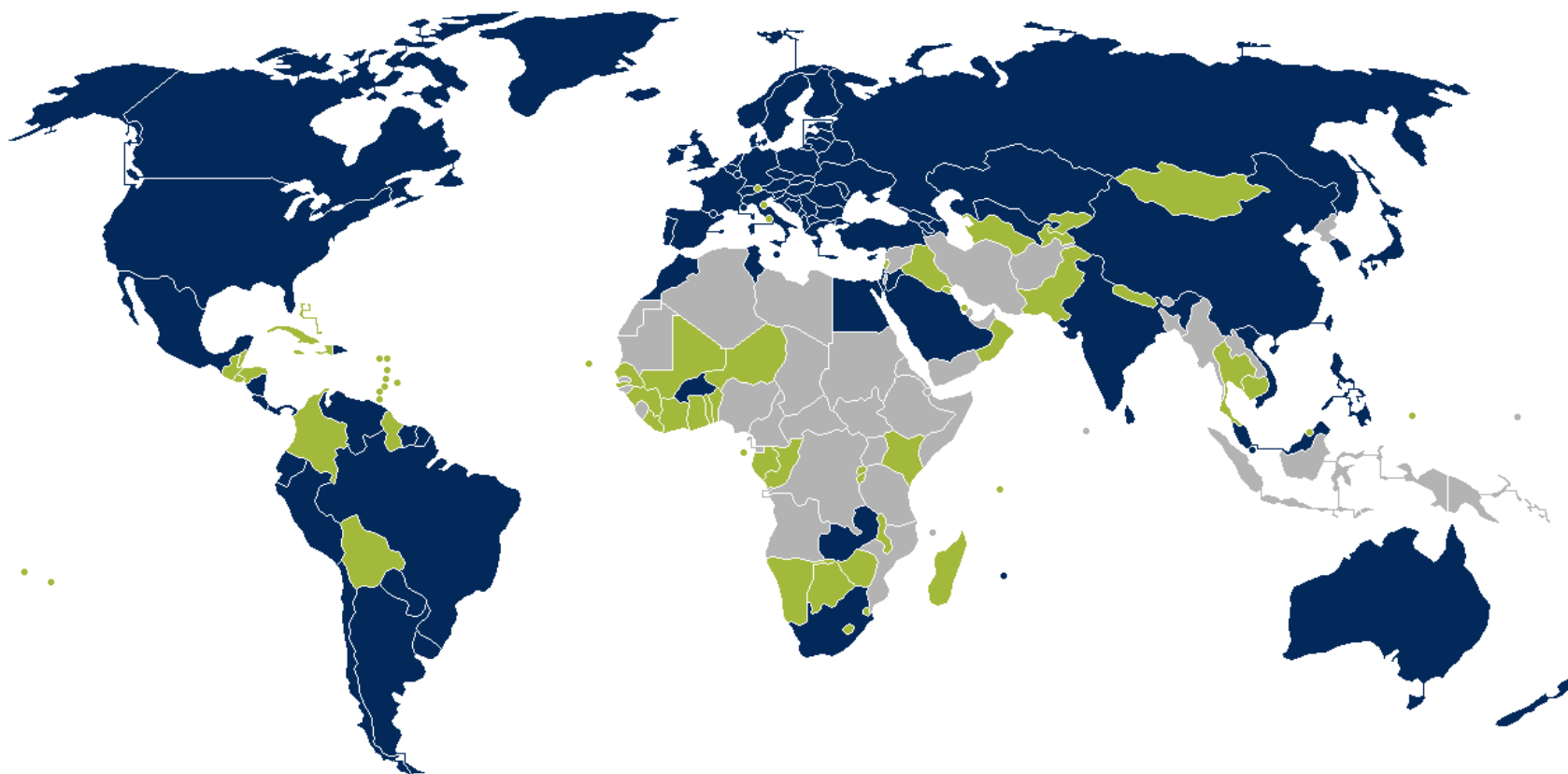
- 1961 Apostille
- **1965 Service of Process**
- **1970 Taking of Evidence**
- 1980 Access to Justice
- **2005 Choice of Court**
- **2019 Judgments**

Commercial and Financial

- 1985 Trusts
- 2006 Securities
- 2015 Choice of Law Principles



154 CONNECTED PARTIES



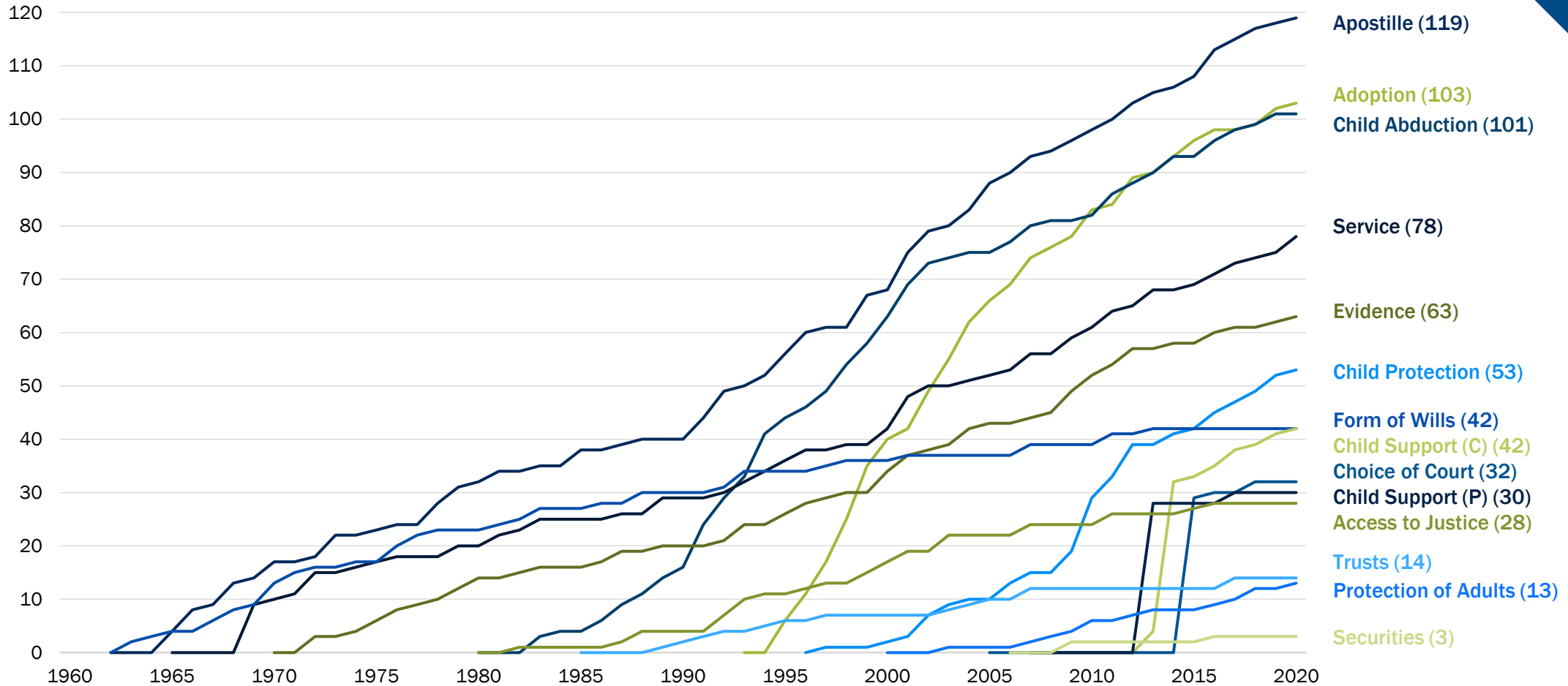
86 Members
(85 States + EU)

69 Other Connected Parties
(signed, ratified or acceded)

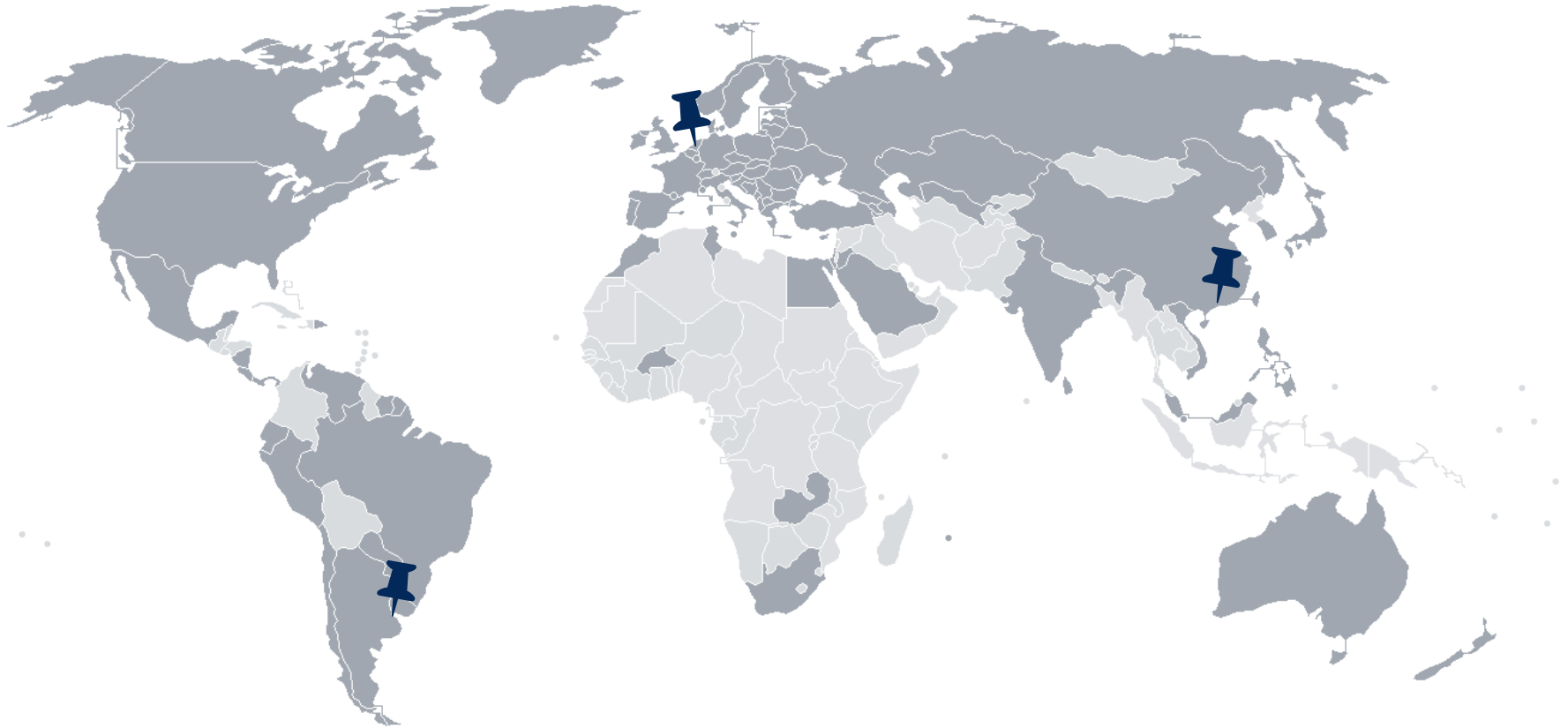
NB: Boundaries on this map are based upon those used by the UN Cartographic Section. The number of States reflects the Parties as recorded by the Depository (NL MFA). Neither should be taken to imply official endorsement or acceptance.



HCCH CORE CONVENTIONS



REGIONAL PRESENCE



**Permanent Bureau
Main Office**
The Hague
(est. 1955)

**Regional Office for Asia
and the Pacific**
Hong Kong
(est. 2012)

**Regional Office for
Latin America and the
Caribbean**
Buenos Aires
(est. 2005)

NB: Boundaries on this map are based upon those used by the UN Cartographic Section. The number of States reflects the Parties as recorded by the Depository (NL MFA). Neither should be taken to imply official endorsement or acceptance.



WHY HCCH...?

Hague Conference on Private International Law

Conférence de La Haye de droit international privé

www.hcch.net



HCCH 2019 JUDGMENTS CONVENTION

*Convention of 2 July 2019 on the
Recognition and Enforcement of Foreign
Judgments in Civil or Commercial Matters*



“

A CONVENTION THAT OFFERS ONE GLOBAL FRAMEWORK PROVIDING CERTAINTY AND PREDICTABILITY IN RELATION TO THE GLOBAL CIRCULATION OF FOREIGN JUDGMENTS. AN IMPORTANT GAP IN THE LANDSCAPE OF PRIVATE INTERNATIONAL LAW HAS FINALLY BEEN FILLED.



OBJECTIVES

The Judgments Convention aims to:

- Enhance effective access to justice
- Promote international trade and investment and mobility

It does this by:

- Ensuring meaningful judgments
- Reducing duplicate proceedings
- Reducing costs & timeframes
- Allowing informed choices



GENERAL FEATURES

The Judgments Convention:

- Deals only with recognition and enforcement of foreign judgments between Contracting States (Art. 1(1))
- Does not allow review of the merits (Art. 4(2))
- Provides an exhaustive list of commonly-accepted grounds of ‘indirect jurisdiction’ – assessing eligibility of a judgment (Arts 5 and 6)
- Provides an exhaustive and non-mandatory list of grounds for refusal
- Does not prevent R&E under national law (Art. 15) – it sets a floor, not a ceiling, for R&E
note: Art. 6 contains one exception to this rule



2005 CHOICE OF COURT CONVENTION & JURISDICTION PROJECT



2005 CHOICE OF COURT CONVENTION

Scope

- Exclusive choice of court agreements
- Presumption in favour of exclusivity
- Agreement must be concluded or documented in writing or other means of communication which render information accessible (e.g. e-agreements)
- Agreement concluded after entry into force for the State of the designated court

Key obligations

- **Article 5**
The chosen court shall hear the dispute
- **Article 6**
Any non-chosen court shall suspend / dismiss proceedings
- **Article 8**
Judgment given by the chosen court shall be recognised and enforced



RELATIONSHIP BETWEEN CHOICE OF COURT & JUDGMENTS CONVENTIONS

	Choice of Court Convention	Judgments Convention
Same goals	Enhancing access to justice & promoting international trade and investment by providing legal certainty and predictability in	
	parties' choice of court agreements	circulation of judgments
	ensuring a meaningful judgment, enhancing effectiveness of the transactions, reducing costs and timeframes, reducing duplicate proceedings, allowing parties to make an informed choice.	
Complementary	Exclusive choice of court agreements	Non-exclusive choice of court agreements and other matters
Aligned	Provisions and structures are largely aligned. Differences were made with justified reasons.	

Together, they have the potential to become the litigation equivalent of the 1958 New York Convention





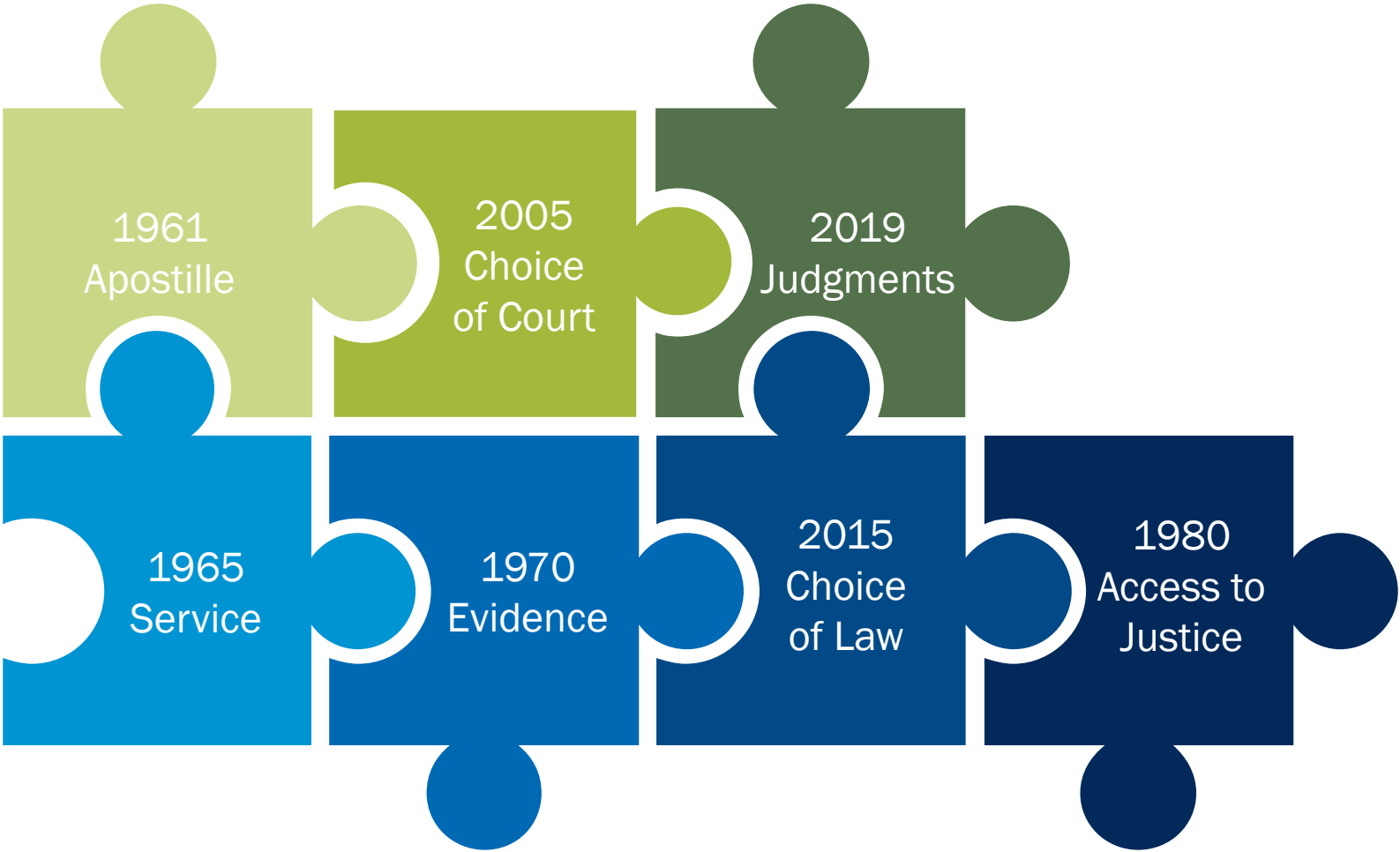
NEXT STEPS

Jurisdiction project

- On which grounds should the parties to a civil or commercial dispute be able to seize the courts of a certain State?
- How can harmonised rules in this area reduce the risk of parallel litigation in multiple States?



CIVIL PROCEDURE CONVENTIONS



1965 SERVICE CONVENTION

1

Main Channel (Art. 5)

Central Authority | Model Form | Certificate of Service

2

Alternative Channels* (Arts 8, 9, 10)

Diplomatic/consular channels | Postal channels | Direct communication

3

Derogatory Channels (Arts 11, 19, 24, 25)

Bilateral and multilateral agreements



1970 EVIDENCE CONVENTION

1

Chapter I
Letters of Request

2

Chapter II*
Diplomatic officers | Consular agents | Commissioners

3

Derogatory Channels
Other Channels | Less restrictive conditions | Bilateral/multilateral agreements



ELECTRONIC MEANS

Transmitting

a request
by electronic means

(as provided for by the Convention)

Executing
the request
by electronic means

(as provided for by domestic law)



Christophe Bernasconi

Secretary General

www.hcch.net



HCCH

Connecter Protéger Coopérer Depuis 1893
Connecting Protecting Cooperating Since 1893