Integrated Bar of the Philippines Journal
Vol. 45, Issue 2 (September 2020)
https://bit.ly/3dYYGNR

THE HCCH CONVENTIONS AND THEIR PRACTICAL EFFECTS TO PRIVATE INTERNATIONAL LAW IN THE PHILIPPINES

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On March 4, 2020, the Chief Justice of the Supreme Court of the Philippines made a rare visit to The Hague, The Netherlands, together with officials of the Philippine Department of Foreign Affairs.[1] The Honorable Chief Justice Diosdado M. Peralta made the customary courtesy call on the President of the International Court of Justice, but his main engagement was with another The Hague-based international organization. He was to attend a meeting of the Council on General Affairs and Policy of The Hague Conference on Private International Law (HCCH), and in particular, to witness the deposit of the Philippines' instrument of accession to the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* or "Service Convention."

At the opening session of the HCCH meeting, Chief Justice Peralta stated that a "*notable trend in our profession is an increasing number of cases requiring international legal cooperation because of the inherent differences in the legal systems among States...*"[2] and how it affected

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[1] The Philippine delegation was composed of Chief Justice Diosdado M. Peralta and Court Administrator Midas Marquez for the judiciary, Undersecretary J. Eduardo Malaya and Atty. Jilliane Joyce R. De Dumo-Cornista of the Department of Foreign Affairs, and Ambassador Jaime Victor B. Ledda and Second Secretary and Consul Zoilo A. Velasco of the Embassy of the Philippines, The Hague. The deposit of the instrument of accession was made by Undersecretary Malaya.

[2] Diosdado M. Peralta, Speech delivered at the HCCH Meeting of the Council of General Affairs and Policy, The Peace Palace, The Hague, Netherlands (March 4, 2020).

"hundreds of overseas Filipino workers [who] *spend their hard-earned money just to serve legal documents through layers of bureaucracy."*[3] The Supreme Court thus looked to the HCCH processes and its Service Convention in facilitating inter-state legal cooperation and, in particular, helping address delays in court proceedings and enhance the administration of justice.

Despite its existence for over a century, however, the HCCH and the norm-making processes under its auspices have not figured prominently in the Philippine legal scene, at least not until recent years. The visit of the Chief Justice thus highlighted the country's deepening interest in private international law as a tool to foster international legal cooperation and underscored the vital role played by the HCCH.

Private international law has a long history in the Philippine legal system. Defined as the "body of conventions, model laws, national laws, legal guides, and other documents and instruments that regulate private relationships across national borders,"[4] it is the dualistic character of private international law (*i.e.* balancing "international consensus with domestic recognition and implementation"[5]) that gives it a continuing relevance in light of globalization and the increased mobility of people and transactions.

Specifically, rapid globalization necessitates a stable set of laws that are both recognized and enforced by different States to which the transacting parties (or the transaction itself) have a close connection to. This is because "[t]he nexus between private international law and globalization is about responsiveness to a relative interdependence of legal systems,"[6] as "the conflict rules of a given legal system reflect the degree to which that system accommodates situations arising from elsewhere."[7] In this sense, should a dispute arise from an international commercial contract, there would be an endless course of suits filed in different States (which can afford a certain level of advantage to one of the transacting parties), if there is no controlling legal principle recognized by all parties involved. Thus, with the rising number of cross-border transactions concluded periodically, globalization cannot afford unstable legal systems, as "international commercial contract[s]... in its wider sense, is the motor of economic globalization."[8]

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[3] *Id.*
[4] Don Ford, *Private International Law,* 3, *at* https://www.asil.org/sites/default/files/ERG_PRIVATE_INT.pdf (last modified August 2, 2013).
[5] *Id.*
[6] Olusoji Elias, *Globalisation and private international law: reviewing contemporary local law,* 2001 (36) AMICUS CURIAE 5, 2, *available at* https://sas-space.sas.ac.uk/3746/1/1319-1424-1-SM.pdf.
[7] *Id.*
[8] *Id.*

The Philippines is no less familiar to the situation. With its unique position in the international landscape represented by the Filipino diaspora, the country has consistently been faced with complex conflicts of law concerns, particularly in the field of persons and family law. From recognition and enforcement of divorce to issues on surrogacy and child support, it is clear that it is to the best interest of the Philippines to take an active participation in the development of conventions in this field, and ensure that the rights and welfare of the Filipino community worldwide are preserved and honored.

Thus comes the important role of international law experts and diplomats who have been in recent years looking into a body of work of international agreements,[9] and municipal laws including rules of procedures,[10] in an attempt to streamline issues on jurisdiction, choice of law, and recognition and enforcement of foreign judgments, among others.[11]

As an advocate of private international law and with a mandate to negotiate international agreements,[12] the Department of Foreign Affairs (DFA) led the push for the Philippines' membership in the HCCH in 2010, in order to adopt "best practices" (*i.e.* model standards) from other Contracting States and contribute in the discussions on inter-state legal cooperation. As the designated national organ to the HCCH, the DFA facilitates regular inter-agency discussions to ensure that the Hague Conventions to which the Philippines is a Contracting Party are properly implemented, update the competent authorities in the Philippines on significant movements in the HCCH, and develop a Philippine position and

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[9] *See* Elliot Cheatham, *Sources of Rules for Conflict of Laws* , 89 U. PA. L. REV. 430, 442 (1941), *available at* https://scholarship.law.upenn.edu/penn_law_review/vol89/iss4/2. The article stated that "[t]here was for a long doubt whether the treaty power extended over the whole field of Conflict of Laws. x x x These doubts have been completely dispelled, it is believed, by a series of recent cases. x x x Chief Justice Hughes stated the broad control of treaty-making power over Conflict of Laws: 'The treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations, and agreement with respect to the rights and privileges of citizens of the United States in foreign countries, and of the nationals of such countries within the United States, and the disposition of property of aliens dying within the territory of the respective parties, is within the scope of that power, and any conflicting law of the State must yield.'"

[10] *See* D. Josephus Jitta, *The Development of Private International Law Through Conventions,* 29 YALE L.J., 497, 499, (1920), *available at* https://digitalcommons.law.yale.edu/ylj/vol29/iss5/2. The article stated that "[t]he conception that private international law should exclusively be part of the law of a country is a too narrow conception. Private international law is certainly a matter of national regulation, it includes directions, given by the lawgiver of a country to the courts of the same country, for their guidance in matters connected with aliens, foreign laws and foreign judgments. But private international law may be considered from a higher point of view, that of a union of nations, or States... and even from the point of view of the collectivity of nations, acting as the public power of mankind and able to give to mankind universally working regulations. We have to discriminate, therefore, a national branch of private international law, and an international or universal branch. x x x"

[11] See Elizabeth Aguiling-Pangalangan, *International Judicial Cooperation through The Hague Conference of Private International Law*, 2017 Colloquium on International Law Issues, 2017 Philippine Yearbook of International Law 31, 46-48.

[12] Exec. Order No. 459 (1997), Providing for the Guidelines in the Negotiation of International Agreements and its Ratification.

strategy framework on other Hague Conventions which the country may accede to in the future.

This article gives an overview of the work of the HCCH as the premier international institution dedicated to the "progressive unification of the rules of private international law,"[13] and of the various HCCH Conventions to which the Philippines is a Contracting Party. It will also attempt to present a roadmap on other conventions which the Philippines may consider acceding to as possible ways forward.

I. The role of international organizations in the field of private international law

The preeminent role of inter-state or international organizations in the formulation of norms in the field of public international law, notably those that govern the conduct of relations between and among sovereign states, is well known. Among the leading international organizations are the United Nations and the regional organizations such as the Association of Southeast Asian Nations. A similar role, albeit not as highlighted, has been played by international organizations in the field of private international law.

It has been opined that "[t]hroughout the history of private international law, a pervasive interest in certainty or predictability, and an effort to achieve uniformity of decisions whatever the forum, have weighed heavily."[14] This is in response to a "general societal interest in lucid rules and, in particular, in rules that permit private parties to form and then realize expectations."[15] These interests remain to be "the prime motivations for national or international codification" of law.[16] Thus, private international law serves the "basic purpose of ordering the international society, of creating conditions which facilitate intercourse among states."[17]

The primary sources of private international law are codifications, special legislations, case law, international customs, bilateral treaties, and multilateral treaties or conventions.[18] A facet of private international law which has piqued the interest of practitioners and scholars

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[13] Statute of the Hague Conference on Private International Law (hereinafter "HCCH Statute"), July 15, 1955, art. 1.
[14] Henry Steiner, *The Development of Private International Law by International Organizations*, 59 Proceedings of the American Society of International Law at Its Annual Meeting 1921-1969, 38, 42 (1965), *available at* http://www.jstor.org/stable/25657643.
[15] *Id.*
[16] *Id.*
[17] *Id.* at 39.
[18] JOVITO SALONGA, PRIVATE INTERNATIONAL LAW 33 (1995).

alike is the increasing importance of conventions which are the products of the work of international organizations. The conclusion however is unanimous: that the "rapid development of international organization[s] in the last ... years has already created a situation in which international law can exercise a far more constructive influence in the future than it was ever able to exercise in the past."[19]

In fact, "international organizations enter into such relations every day"[20] and deal with a broad range of issues in the fields of service contracts, bank and exchange transactions, real property, construction, transportation and insurance, liability of employment, tort, and even family law.[21] The increasing complexity of these cross-border transactions challenges international organizations in the field of conflicts of laws to crystallize applicable principles for every known permutation of these private transactions.

Clearly, international organizations play the important role as conduits of international law to private transactions, with the arduous task of balancing international consensus and domestic implementation.[22]

II. The HCCH as the center for private international law

The leading international organization in the field of private international law is the Hague Conference on Private International Law or HCCH. The acronym HCCH stands for **H**ague **C**onference on Private International Law - **C**onférence de La **H**aye de droit international privé, its name in the English and French languages. Described by Jovito Salonga as "the most remarkable international organization dealing with the unification of conflict rules,"[23] the HCCH was first convened on September 12, 1893 by Tobias Asser, a Dutch jurist, scholar, and statesman. The HCCH was convened as a multilateral platform for dialogue, discussion, negotiation and collaboration to create strong legal frameworks governing private cross-border interactions among people and businesses.[24] During this period, the HCCH produced various documents, in the areas of succession, family law, and civil procedure, including the Hague Convention on Civil Procedure.[25]

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[19] C. Wilfred Jenks et al., *The Impact of International Organisations on Public and Private International Law*, 37 Transactions of the Grotius Society, 23, 25 (1951), *available at* http://www.jstor.org/stable/743171.
[20] *Id.* at 47.
[21] *Id.*
[22] *See supra* note 5.
[23] Salonga, *supra* note 18, *at* 36.
[24] HCCH, *125 Years HCCH, at* https://www.hcch.net/en/news-archive/details/?varevent=636 (last modified Sept. 12, 2018).
[25] *Id.*

The HCCH, however, is not the only international or regional organization involved in the harmonization or unification of the internal rules or laws of various countries. The United Nations Commission on International Trade Law, of which the Philippines is a member, has been undertaking similar work for over 50 years in the field of international trade law, notably the modernization and harmonization of rules on international business and the 1980 United Nations Convention on Contracts for the International Sale of Goods. A number of conventions have also been concluded under the auspices of the United Nations, including the 1954 Convention Relating to the Status of Stateless Persons. On the regional level, the European Union has regulations for member states on mutual recognition of companies, the law applicable to contractual obligations, and the enforcement of judgments in civil and commercial matters.[26]

Over the years, the HCCH formally evolved as an inter-governmental organization under the "Statute of the Hague Conference on Private International Law" (hereinafter "HCCH" Statute"). The Statute was adopted during the Seventh Session of the Hague Conference on Private International Law on October 31, 1951 and entered into force on July 15, 1955, initially with 16 Contracting States, namely: the Federal Republic of Germany, Austria, Belgium, Denmark, Spain, Finland, France, Italy, Japan, Luxembourg, Norway, the Netherlands, Portugal, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland.[27]

Though still referred to as a Conference, the HCCH is an international organization with distinct legal personality, has a permanent headquarters, and maintains a secretariat headed by a Secretary General. It is recognized as "the paramount institution devoted to the unification of conflict rules."[28]

To date, the HCCH is a robust inter-governmental organization with 85 Members (84 States and the European Union), building bridges between legal systems and reinforcing legal certainty and security through its various Conventions.[29]

There are currently 41 Conventions (including the HCCH Statute) under the helm of the HCCH, covering cross-cutting issues in family law, commercial law, and civil procedure. A list of the 41 HCCH Conventions is found in the Annex to this article.

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[26] Salonga, *supra* note 18, *at* 35-38.
[27] HCCH Statute, *supra* note 13, ¶ 2.
[28] Steiner, *supra* note 14, at 44.
[29] HCCH, *About HCCH, at* https://www.hcch.net/en/about (last visited April 14, 2020).

Under Article 8 of the HCCH Statute, the Council on General Affairs and Policy, which is composed of all Member States,[30] may create Special Commissions to prepare draft Conventions or to study all questions of private international law which come within the purpose of the Conference.[31] The Special Commissions are also charged with monitoring the practical operations of The Hague Conventions and recommend protocols for its efficient implementation.

Apart from the 41 Conventions in place, Special Commissions have also been set-up to study emerging concerns in private international law, specifically cohabitation outside marriage, family agreements involving children, jurisdiction, parentage or surrogacy, protection orders and protection of tourists.[32]

III. The Philippines as Contracting Party in the HCCH and the role of the DFA

In the late 2000s, the DFA Office of Treaties and Legal Affairs[33] (OTLA), then headed by the first co-author as Assistant Secretary, advocated for the country's membership in the HCCH. The decision to join came rather late for the country, given the long history and existence of the HCCH. Though the Philippine Embassy in The Hague had monitored the activities of the HCCH, handling of the matter was done by another DFA office – that for the United Nations and Other International Organizations – and not OTLA. The latter office volunteered in 2009 to handle the subject matter.

After consultations with the Department of Justice (DOJ) and other relevant agencies, the DFA sought, and received approval, from the Office of the President to join the HCCH, and later deposited the instrument of accession signed by President Gloria Macapagal Arroyo with the Government of The Netherlands, which acts as the depositary for HCCH instruments.

The Philippines became a Contracting Party to the HCCH Statute on July 14, 2010, and designated the DFA as its national organ to the HCCH under Article 7(1) of the Statute.[34] As the national organ, the DFA is tasked as the communications liaison between the Philippines and the HCCH.

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[30] HCCH Statute, *supra* note 13, art. 4(1).
[31] HCCH Statute, *supra* note 13, art. 8(1). A similar function is undertaken by the International Law Commission for the United Nations General Assembly.
[32] HCCH, *Legislative Projects, at* https://www.hcch.net/en/projects/legislative-projects (last visited April 14, 2020).
[33] The office was titled simply as the Office of Legal Affairs. The change in office name was made in 2018.
[34] HCCH Statute, *supra* note 13, art. 7(1).

Within the DFA, OTLA, as earlier mentioned, handles all HCCH matters. Apart from conducting regular inter-agency discussions, DFA OTLA also initiates activities which can generate interest in the HCCH, its conventions and private international law in general. A year after becoming a HCCH member, DFA OTLA hosted in Manila the Fourth Asia Pacific Conference of The Hague Conference on October 26 to 28, 2011,[35] in cooperation with the Philippine Judicial Academy. The conference drew 230 delegates and participants from 28 countries across Asia, Pacific, Australia, New Zealand and the Middle East, and was graced by the presence of then HCCH Secretary General Hans van Loon.

On December 4, 2017, DFA OTLA convened a Colloquium on International Law Issues at the Jen Hotel in Manila, in partnership with the University of the Philippines Law Center – Institute for International Legal Studies.[36] The one-day event featured presentations on treaties and conventions, including HCCH Conventions, that would be beneficial to overseas Filipinos, the business community and society at large and thus recommended for ratification or accession. At the sidelines of the 7th Biennial Conference of the Asian Society of International Law in August 2019, DFA OTLA also organized the General Meeting of Philippine Competent Authorities, with HCCH Secretary General Christophe Bernasconi in attendance.

Even before it became a member, the Philippines had acceded to the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("Intercountry Adoption Convention"). Accession to specific conventions by a non-member country is allowed under the HCCH rules. After joining the HCCH in July 2010, the Philippines completed accessions to three more conventions, namely (a) *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ("Child Abduction Convention"); (b) *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* ("Apostille Convention"); and (c) *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* ("Service Convention").

Below is an overview of these conventions and the Philippines' accession and implementation thereto:

1. *Intercountry Adoption Convention*

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[35] HCCH, *The Fourth Asia Pacific Conference of the Hague Conference, Manila, at* https://www.hcch.net/en/news-archive/details/?varevent=237 (last modified Nov. 1, 2011).

[36] Department of Foreign Affairs, *International Law Colloquium Yields Recommendations For Ph Government, at* https://dfa.gov.ph/dfa-news/dfa-releasesupdate/14894-international-law-colloquium-yields-recommendations-for-ph-government (last visited April 14, 2020).

As a context, the Convention's Special Commission noted that the number of intercountry adoptions increased considerably after the World War II.[37] Because it was creating "serious and complex hum and legal problems [in the] absence of existing domestic and international legal instruments" that were targeted towards a multilateral approach,[38] the HCCH Contracting States decided to adopt the Intercountry Adoption Convention.

The Convention is intended to establish "safeguards which ensure that intercountry adoptions take place in the best interest of the child and with respect for the child's fundamental rights;"[39] and prevent the abduction, the sale of, or traffic in children.[40] It is also meant to complement Article 21 of the United Nations Convention on the Rights of the Child (UNCRC), "by adding substantive safeguards and procedures to the broad principles and norms laid down in the Convention on the Rights of the Child."[41]

Particularly, the Convention emphasizes certain principles and minimum standards which Contracting States should apply when considering intercountry adoption. These principles include the following:

1. Principle of best interests of the child – Contracting States must "ensure the child is adoptable; preserve information about the child and his/her parents; evaluate thoroughly the prospective adoptive parents; match the child with a suitable family; [and] impose additional safeguards where needed."[42] In addition, the Convention mandates that "States should establish safeguards to prevent abduction, sale and trafficking in children for adoption by protecting birth families from exploitation and undue pressure; ensuring only children in need of a family are adoptable and adopted; preventing improper financial gain and corruption; and regulating agencies and individuals involved in adoptions by accrediting them in accordance with Convention standards."[43]

2. Principle of subsidiarity – Contracting States recognize that national solutions must first be considered before intercountry adoption may be resorted to, including the

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[37] HCCH, *Information Brochure*, 5 (2017), *at* https://assets.hcch.net/docs/994654cc-a296-4299-bd3c-f70d63a5862a.pdf, *citing* G. Parra-Aranguren, *Explanatory Report on the 1993 Hague Intercountry Adoption Convention, in Proceedings of the Seventeenth Session* (1993), *available at* https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 7.
[41] *Id.* at 6.
[42] *Id.* at 6.
[43] *Id.* at 7.

option that the child may be raised by his or her birth family or extended family, whenever possible, or other forms of permanent care in the country of origin.[44]

3. Cooperation through Central Authorities – The Convention provides for a system of Central Authorities which must supervise the implementation of intercountry adoption within their given jurisdictions.[45]

The Philippines signed the Convention on July 17, 1995, and the Convention entered into force for the Philippines on November 1, 1996. There are currently 102 Contracting States to the Convention.

The Intercountry Adoption Board (ICAB) is the designated Central Authority – the term in HCCH Conventions for implementing agency – in the Philippines. Created under Republic Act (R.A.) No. 8043 otherwise known as the "An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children, and for Other Purposes,"[46] which was enacted on June 7, 1995, the ICAB is empowered "to prepare, review or modify, and thereafter, recommend to the DFA, Memoranda of Agreement respecting inter-country adoption consistent with the implementation of this Act and its stated goals, entered into, between and among foreign governments, international organizations and recognized international non-governmental organizations."[47] The DFA, upon representation of the Board, is also tasked to prepare executive agreements with countries of the foreign adoption agencies to ensure the legitimate concurrence of said countries in upholding the safeguards provided by law.[48]

It may be noted that the accession to the Inter-country Adoption Convention took place a month after the enactment of R.A. No. 8043.

ICAB officials attend relevant HCCH conferences. There are no known major issues with respect to the Philippines' implementation of the provisions of the Convention. Through the

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[44] *Id.*
[45] *Id.* at 8-9.
[46] Rep. Act No. 8043, art. II, § 4 (1995), "The Inter-Country Adoption Board. — There is hereby created the Inter-Country Adoption Board, hereinafter referred to as the Board to act as the central authority in matters relating to inter-country adoption. It shall act as the policy-making body for purposes of carrying out the provisions of this Act, in consultation and coordination with the Department, the different child-care and placement agencies, adoptive agencies, as well as non-governmental organizations engaged in child-care and placement activities. x x x"
[47] Rep. Act No. 8043, art. II, § 6(k) (1995).
[48] Rep. Act No. 8043, art. II, § 15 (1995).

programs of the ICAB, the Philippines is considered to have one of the "best practices" in the implementation of the Inter-Country Adoption Convention.[49]

2. *Child Abduction Convention*

With 101 Contracting Parties as of 2019, the objective of the Convention is to protect children from the harmful effect of international abduction and retention across international boundaries by a parent by providing a procedure for prompt return of the children to their country of habitual residence.[50] This is based on the presumption that "save in exceptional circumstances, the wrongful removal or retention of a child across international boundaries is not in the interests of the child, and that the return of the child to the State of the habitual residence will promote his or her interests by vindicating the right of the child to have contact with both parents, by supporting continuity in the child's life, and by ensuring that any determination of the issue of custody or access is made by the most appropriate court having regard to the likely availability of relevant evidence."[51]

Although predating the UNCRC, the Convention in part implements[52] UNCRC Articles 11[53] and 35,[54] and helps give effect to the fundamental rights of the child under UNCRC Articles 9.3[55] and 10.2.[56]

Prior to the Philippines' accession, parents who have been separated from their minor children may opt to file for a petition for custody and *writ of habeas corpus* under

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[49] *See The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide To Good Practice, Guide No. 1* (2008), *available at* https://assets.hcch.net/docs/bb168262-1696-4e7f-acf3-fbbd85504af6.pdf.
[50] HCCH, *Child Abduction Section, at* https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction (last visited April 14, 2020).
[51] HCCH, *Outline of the 1980 Hague Child Abduction Convention* (2014), *at* https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf (last visited April 14, 2020).
[52] *Id.*
[53] United Nations Convention on the Rights of the Child (hereinafter "UNCRC"), Sept. 2, 1990, art. 11: "1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."
[54] UNCRC, *supra* note 53, art. 35: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form."
[55] UNCRC, *supra* note 53, art. 9.3: "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."
[56] UNCRC, *supra* note 53, art. 10.2: "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents x x x"

Administrative Matter (A.M.) No. 03-04-04-SC.[57] With the Convention however, these parents may seek the assistance of Central Authorities in securing the return of the child.[58] The Central Authority in receipt of the application is mandated to take all appropriate measures to obtain the voluntary return of the child,[59] or if not possible, through a judicial or administrative proceeding.[60]

With respect to the judicial or administrative authority hearing the case, it is given a wide latitude of powers to be able to determine if the child should be returned or not to the requesting parent.[61] It is noted however that should a return order be issued by the judicial or administrative authority, such order is not a custody determination; rather, it is an order that the child be returned to the jurisdiction which is most appropriate to determine custody and access.[62]

The Philippines deposited its instrument of accession to the Convention on March 16, 2016, and the Convention entered into force for the Philippines on June 1, 2016, with the DOJ - Office of the Chief State Counsel (OCSC) as the Central Authority.

To date however, no guidelines have been issued by the DOJ OCSC to implement the Convention, despite it clearly stating that no legislation or similar formality may be required in the context of the Convention.[63]

The challenge, it seems, is the need for the DOJ OCSC to accordingly coordinate with the Public Attorney's Office and the Judiciary to discuss the nuances of a judicial proceeding for the return of the child. Domestic courts already have the framework for similar proceedings under A.M. No. 03-04-04-SC; it only needs representation from the Central Authority to streamline the requirements of the Convention.

Parents – whether residing in the Philippines or overseas – who have been separated from their minor children could not at present avail of the simplified return procedure under the Convention and have been much anguished by the situation.

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[57] A.M. No. 03-04-04-SC, April 22, 2003, Re: Proposed Rule on Custody of Minors and Writ of Habeas Corpus In Relation to Custody of Minors.
[58] Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "Child Abduction Convention"), art. 8.
[59] Child Abduction Convention, *supra* note 58, art. 10.
[60] Child Abduction Convention, *supra* note 58, art. 11.
[61] Child Abduction Convention, *supra* note 58, arts. 11-15.
[62] *Outline of the 1980 Hague Child Abduction Convention*, *supra* note 51.
[63] Child Abduction Convention, *supra* note 58, art. 23. "No legalisation or similar formality may be required in the context of this Convention."

3. *Apostille Convention*

The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, more commonly known as the "Apostille Convention", simplifies the authentication process of public documents whenever they are used abroad or in foreign jurisdictions.

The DFA OTLA and DFA Office of Consular Affairs had identified accession to the Convention as a priority starting in the late 2000s in order to lessen the administrative burdens on the business community and the overseas Filipino workers, among other sectors, who needed to present documents in other countries. The Philippine Chamber of Commerce and Industry had also recommended accession. The earlier challenges were the need to upgrade the authentication database and ensure recognition by the Judiciary of the new authentication format as a valid piece of evidence.

The HCCH explained the Convention's importance in the following wise:

> "Public documents, such as birth certificates, judgments, patents or notarial attestations (acknowledgments) of signatures, frequently need to be used abroad. However, before a public document can be used in a country other than the one that issued it, its origin must often be authenticated. The traditional method for authenticating public documents to be used abroad is called legalization and consists of a chain of individual authentications of the document. This process involves officials of the country where the document was issued as well as the foreign Embassy or Consulate of the country where the document is to be used. Because of the number of authorities involved, the legalisation process is frequently slow, cumbersome and costly... Where it applies, the treaty reduces the authentication process to a single formality: the issuance of an authentication certificate by an authority designated by the country where the public document was issued. This certificate is called an *Apostille*."[64]

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[64] HCCH, *The ABCs of Apostilles: How to ensure that your public documents will be recognized abroad*, 2, *at* https://assets.hcch.net/docs/6dd54368-bebd-4b10-a078-0a92e5bca40a.pdf, (last visited April 14, 2020).

In essence, the *apostille* replaces the authentication certificate (or commonly known as the "red ribbon" in consular affairs) by certifying the origin of the public document to which it relates.[65]

The usual authentication process is comprised of the following steps: (1) a document is first certified by the issuing government agency such as the Philippine Statistics Authority for birth certificates; (2) the certified document is then submitted to the DFA for authentication; and (3) the authenticated document will be submitted to the relevant foreign Embassy or Consulate for legalization. In contrast, the *Apostille* Convention trims down the process down to two steps: (1) a document is first certified by the issuing government agency; and (2) the certified document is *apostillized* by the DFA.[66] The *apostillized* document is automatically recognized by all 117 Contracting States (except Austria, Finland, Germany and Greece),[67] to the Apostille Convention; hence, the document no longer needs to pass through another authentication or legalization by the foreign embassies in the Philippines.

The Apostille however only applies if both the country where the public document was issued and the country where the public document is to be used are Parties to the Convention.[68] If the document to be used originated from or to be used in a country which is not a party to the Convention, such as some ASEAN Member States, or if it originates from or to be used in Austria, Finland, Germany and Greece,[69] the usual authentication ("red ribbon") process will apply.

Because of its practical effects, the Apostille Convention has attracted the highest number of ratifications and accessions.[70]

The Convention entered into force for the Philippines on May 14, 2019, with the DFA Office of the Consular Affairs as the Competent Authority. As of January 2020, the DFA Office

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[65] *See* Department of Foreign Affairs, *Question-And-Answer and Infographics on Authentication Through Apostille*, *at* https://dfa.gov.ph/dfa-news/dfa-releasesupdate/22280-question-and-answer-and-infographics-on-authentication-through-apostille, (last visited April 14, 2020).

[66] *Id.*

[67] The Federal Republic of Germany, Finland, Republic of Austria, and the Hellenic Republic have objected to the Philippines' accession to the *Apostille* Convention, and thus as of this writing do not recognize the *apostilles* issued by the country. *See* HCCH, *Declarations/Reservations/Notifications to the Philippines' Accession, at* https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1398&disp=type.

[68] *The ABCs of Apostilles*, *supra* note 64, at 7.

[69] *See supra* note 67.

[70] HCCH, *Apostille Handbook on the Practical Operation of the Apostille Convention*, 1 (2013), *available at* https://assets.hcch.net/docs/ff5ad106-3573-495b-be94-7d66b7da7721.pdf.

of Consular Affairs has had issued over 520,000 apostilles. These apostilles may be verified online by inputting the appropriate number or code written in the issued apostille.[71]

The Philippines' accession has been welcomed by several groups, including legal professionals, the business sector, overseas Filipino workers, and the overburdened Philippine embassies and consulates worldwide. The Convention has enabled them to legalize public documents for foreign use with less rigidity and cost, while taking advantage of present technology.[72]

On the part of the DFA and its foreign service posts, the use of apostilles has significantly eased their workload and given them added safety nets to ensure that the signature in the document they are presented with is indeed authentic.

Immediately after the Philippines' accession and due representations by the DFA OTLA, the Supreme Court of the Philippines complemented the action and moved to recognize the *apostille* as a valid piece of evidence in domestic courts. Such reference may be found in Section 3(e) of A.M. No. 19-08-14-SC or the Rules of Procedure for Admiralty Cases,[73] and Section 24, Rule 132 of A.M. No. 19-08-15-SC or the 2019 Amendments to the Revised Rules on Evidence.[74] Section 24 of Rule 132 on Proof of Official Record states, in part, as follows:

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[71] Department of Foreign Affairs, *Apostille Verification, at* https://www.dfa.gov.ph/verify-apostille, (last visited April 1, 2020).

[72] Jomel Managig, *Goodbye ribbons! Hello apostilles!*, BUSINESS MIRROR, May 28, 2019, *at* https://businessmirror.com.ph/2019/05/28/goodbye-ribbons-hello-apostilles/, (last visited April 14, 2020).

[73] RULES OF PROCEDURE FOR ADMIRALTY CASES, § 3(e). Verified Complaint. – The verified complaint shall state or contain: x x x (e) Specification of all evidence supporting the cause of action, such as affidavits of witnesses... **Official documents from a foreign jurisdiction shall be considered as admissible when duly authenticated in accordance with The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, otherwise known as the Apostille Convention**. x x x

[74] REVISED RULES ON EVIDENCE, Rule 132, § 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
If the office in which the record is kept is in a foreign country which is a contracting party to a treaty or convention to which the Philippines is also a party or considered a public document under such treaty or convention pursuant to paragraph (c) of section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.
For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in which the record is kept, and authenticated by the seal of his or her office.
A document that is accompanied by the certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or

A document that is accompanied by the certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

Moving forward, the DFA Office of Consular Affairs is taking steps towards implementation of the successor e-Apostille program, which "promotes the use of technology to further enhance the secure and effective operation" of the Apostille Convention.[75]

4. Service Convention

Another initiative which DFA OTLA spearheaded is the accession to the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,* or simply the "Service Convention," as a tangible contribution to efforts in fostering inter-state legal and judicial cooperation, and more importantly, in addressing delays in court proceedings and enhancing the administration of justice.

With at least 73 Contracting States, the Service Convention is an effective tool to facilitate the "transmission of documents (whether judicial or extrajudicial document) from one State to another State."[76] For the Convention to apply, the following requirements must be met:

1) A document is to be transmitted from one State Party to the Convention to another State Party for service in the latter (i.e., the law of the State of origin determines whether or not a document has to be transmitted abroad for service in the other State);
2) An address for the person to be served is known;
3) The document to be served is a judicial or extrajudicial document; and

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convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

[75] Mayela Celis, *11th International Forum on the e-APP (electronic Apostille Program) will be held in Fortaleza, Brazil, from 16 to 18 October 2019,* at http://conflictoflaws.net/2019/11th-international-forum-on-the-e-app-electronic-apostille-program-will-be-held-in-fortaleza-brazil-from-16-to-18-october-2019/ (last modified April 7, 2019).

[76] HCCH, *Frequently Asked Questions on the Service Convention*, XLV ¶ I.1, *at* https://assets.hcch.net/docs/aed182a1-de95-4eaf-a1ae-25ade7cd09de.pdf, (last visited April 14, 2020).

4) The document to be served relates to a civil and/or commercial matter.[77]

Under the Convention, the authority or judicial officer competent under the law of the requesting State shall transmit the document to be served to a Central Authority of the requested State (*i.e.* the State where the service is to occur).[78] The request for service transmitted to the Central Authority must comply with the Model Form annexed to the Convention, and be accompanied by the documents to be served (the list of documents to be served is to be determined according to the law of the requesting State).[79]

The Central Authority however may refuse execution of the request if the Central Authority considers that the request does not meet the formal and substantive requirements of the Convention,[80] or if it considers that execution of the service would infringe the sovereignty or security of the requested State.[81] As stated in the Convention's title, it is applicable to documents in civil and commercial cases and not to criminal cases.

The Service Convention is meant to address efficiency issues in the justice system, as it allows for the direct transmission of documents to a competent judicial authority who may execute the service.

Prior to the Convention, outbound documents from domestic courts are first transmitted to the DFA main office in Manila, which then forwards them to the relevant Philippine Embassy or Consulate General abroad. The Embassy or Consulate General then requests the host Ministry of Foreign Affairs to have the service done by local authorities. The Embassy or Consulate General at times send the documents directly via registered mail. The turnaround time for the service often take four to six months. On some occasions, there is no return (result) of service.

On the other hand, prior also to the Convention, inbound documents from foreign jurisdictions are first transmitted to the Ministry of Foreign Affairs, which then transmits them to their Embassy in Manila. The latter in turn transmits the documents to the DFA main office. The DFA OTLA then sends the documents to the Executive Judge of the area where the service is expected to be made, with a request to serve the same. The turnaround time for the service is the same as for outbound documents, and within that period, cases are on a standstill while awaiting the return (result) of service.

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[77] *Id.* at XLV-XLVI, ¶ 3.
[78] *Id.* at XLVI, ¶ 7.
[79] *Id.* at XLVII, ¶¶ 10-11.
[80] *Id.* at XLIX, ¶ 19.
[81] *Id.*

Under the Service Convention, this roundabout way of serving will no longer apply, as documents will henceforth be directly transmitted from one Central Authority to another. The experience under the Convention is that documents are served within one and a half months.[82]

After securing the concurrence of the Supreme Court to the accession to the Convention and approval for such accession from the Office of the President, the DFA deposited the instrument of accession on March 4, 2020 in The Hague. For the Philippines, the Convention enters into force on October 1, 2020, absent any objection from other Contracting States.

The Central Authority for the Philippines is the Office of the Court Administrator in the Supreme Court, which will issue guidelines to operationalize the Convention. In the meantime, legal professionals have the assurance that a service made under this Convention is legally recognized under A.M. No. 19-10-20-SC or the 2019 Amendments to the 1997 Rules of Civil Procedure, specifically under Rule 14, Section 17 thereof.[83] Rule 14, Section 17 provides that extraterritorial service "may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or as provided for in international conventions to which the Philippines is a party or by publication in a newspaper of general circulation x x x."

IV. A proposed HCCH roadmap for the Philippines

Ever since becoming a HCCH member in 2010, the Philippines has been attending the various conferences and negotiating sessions and studying the various HCCH conventions and evaluating which ones to prioritize for accession. As earlier mentioned, the DFA OTLA hosted on December 4, 2017 a Colloquium on International Law Issues at the Jen Hotel in Manila, and Professor Elizabeth Aguiling-Pangalangan, co-author of a book on Private International Law[84]

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[82] HCCH, *Authorities and Practical Information on the Service Convention, at* https://www.hcch.net/en/instruments/conventions/authorities1/?cid=17 (last visited April 14, 2020).

[83] REVISED RULES ON CIVIL PROCEDURE, Rule 14, § 17. Extraterritorial service. — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; **or as provided for in international conventions to which the Philippines is a party**; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) calendar days after notice, within which the defendant must answer. (15a)

[84] ELIZABETH AGUILING-PANGALANGAN & JORGE COQUIA, CONFLICT OF LAWS: CASES, MATERIALS, AND COMMENTS (2010).

and a participant in a number of HCCH conferences as a member of the Philippine delegation and subject matter expert, presented a paper on the HCCH Conventions which "will be advantageous to us" (Filipinos)[85] and may be recommended for accession, specifically the Apostille Convention, Evidence Convention, Service Convention, Child Support Convention, and the Choice of Court Conventions.

As of this writing, accessions to two of the above five recommended conventions – the Apostille and the Service Conventions – have been completed. The DFA is currently undertaking studies and consultations with relevant agencies, notably the Supreme Court of the Philippines and the DOJ, on the three other Conventions, namely the Evidence Convention, Child Support Convention and the Choice of Court Convention, as well as a fourth one - the Recognition and Enforcement of Foreign Judgments Convention. These Conventions are discussed below.

1. Evidence Convention

The *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* ("Evidence Convention") states that a Contracting State may designate a Central Authority which shall receive Letters of Request (to obtain evidence) from a *judicial authority* of another Contracting State and transmit them to the authority competent to execute them. The executor of the request may be a judicial authority,[86] diplomatic officer,[87] or a commissioner as appointed by a competent authority.[88] If so desired, the presence of a judicial authority of the requesting party may be allowed upon prior authorization by the competent authority.[89] Certain States have in fact amended their domestic rules in order to permit techniques which will allow the presence of judicial authorities from the requesting State to participate in the evidence-taking proceeding (i.e., authority to use video-links, live conferencing).[90] However, the execution of the request to obtain evidence may be refused by a subject person if it will violate his or her rights or privilege under his or her internal laws.[91]

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[85] *Aguiling-Pangalangan, supra* note 11.
[86] Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (hereinafter "Evidence Convention"), art. 9.
[87] Evidence Convention, *supra* note 86, arts. 15-16.
[88] Evidence Convention, *supra* note 86, art. 17.
[89] Evidence Convention, *supra* note 86, art. 8.
[90] HCCH, *Outline of the Evidence Convention, at* https://assets.hcch.net/docs/ec1fc148-c2b1-49dc-ba2f-65f45cb2b2d3.pdf, last visited April 14, 2020.
[91] Evidence Convention, *supra* note 86, art. 11.

In current practice, the Letters of Request may be equated with the letters rogatory issued by a foreign state to request for assistance in the taking of depositions locally, which is a recognized legal procedure under Sections 11 and 12, Rule 23, of the 1997 Rules on Civil Procedure.[92] These requests are entertained by judicial authorities only when coursed through the proper diplomatic channels.[93] With the Evidence Convention, a direct line may be made between the judicial authority of the requesting State to the judicial authority in the Philippines, and vice-versa, which will make the process of evidence-taking efficient and easy to coordinate.

The Evidence Convention is bound to benefit Filipino law practitioners who are engaged in cases requiring the testimony of witnesses in foreign jurisdictions, or submission of documents originating abroad or in the custody of a foreign institution. One hurdle however is the need for the Philippine competent authority, possibly the Office of the Court Administrator, to designate domestic courts per judicial region to do the evidence-taking and determine with clarity the requirements for a Letter of Request to be accommodated.

Should the Philippines consider becoming a Contracting Party to the Evidence Convention, it will join the roster of 63 other Contracting Parties,[94] which include the United States, countries in the European Union, China, South Korea, and Singapore, among others. To do this, there must first be a determination on which national government agency will undertake the functions of the competent authority. Once determined, the would-be competent authority will have to submit its concurrence to the proposal to the DFA so that the process of accession[95] may begin.

2. Child Support Convention

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[92] RULES ON CIVIL PROCEDURE, Rule 23, §§ 11-12. § 11. Persons before whom depositions may be taken in foreign countries. In a foreign state or country, depositions may be taken (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines; (b) before such person or officer as may be appointed by commission or under letters rogatory; or (c) the person referred to in section 14 hereof.
§ 12. Commission or letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such direction as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed to the appropriate judicial authority in the foreign country.

[93] *See* Office of the Court Administrator, OCA Circular No. 169-2018, *Re: Policy to Entertain Letters Rogatory Only When Coursed Through the Proper Diplomatic Channels* (2018), *available at* http://oca.judiciary.gov.ph/wp-content/uploads/2018/08/OCA-Circular-No.-169-2018.pdf.

[94] HCCH, *Status Table of the Evidence Convention*, *at* https://www.hcch.net/en/instruments/conventions/status-table/?cid=82 (last visited April 14, 2020).

[95] Exec. Order No. 459 (1997), Providing for the Guidelines in the Negotiation of International Agreements and its Ratification.

The completion of the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* ("Child Support Convention") and its Protocol on the Law Applicable to Maintenance Obligations is the culmination of work which had begun in the 1990's to update[96] the existing Hague Conventions concerning maintenance and the 1956 United Nations Convention on the Recovery Abroad of Maintenance (otherwise called the "New York Convention").[97]

The Philippines is already a signatory to the New York Convention, with the Office of the Solicitor General as the designated central authority. This Child Support Convention replaces the New York Convention in so far as its scope of application as between such States coincides with the scope of application of the Hague Convention.[98]

For the Philippines, the Convention will directly benefit the increasing number of Filipinos (and their children) who have been abandoned by their foreign spouses without any form of support. With 41 Contracting States, including the United States, European Union countries, and Canada,[99] the Philippines stands to benefit from the modern, efficient and accessible international system for the cross-border recovery of child support and other forms of family maintenance.[100]

In particular, the Convention covers obligations arising from: (1) maintenance obligations under (a) a parent-child relationship towards a person under the age of 21 years (however, States may reserve to limit the age to 18 years), regardless of the marital status of parents; and (b) a family relationship, parentage, marriage or affinity, including obligations in respect of vulnerable persons; and (2) recognition and enforcement or enforcement of a decision for spousal support.[101]

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[96] Special Commissions of November 1995 and April 1999 on the operation of the Hague Conventions relating to maintenance obligations and of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance.

[97] HCCH, *Outline of the Child Support Convention*, *at* https://assets.hcch.net/docs/70cda9de-283c-4892-80ec-292daec4f667.pdf (last visited April 14, 2020).

[98] Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (hereinafter "Child Support Convention"), art. 49. "In relations between the Contracting States, this Convention replaces the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention."

[99] HCCH, *Status Table of the Child Support Convention*, *at* https://www.hcch.net/en/instruments/conventions/status-table/?cid=131 (last visited April 14, 2020).

[100] HCCH, *Child Support Section*, *at* https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support (last visited April 14, 2020).

[101] Child Support Convention, *supra* note 98, art. 2(1).

A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority, with the following functions: transmit and receive such applications; initiate or facilitate the institution of proceedings in respect of such applications; provide legal assistance; locate the debtor or the creditor; obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets; encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes; facilitate the ongoing enforcement of maintenance decisions, including any arrears; facilitate the collection and expeditious transfer of maintenance payments; facilitate the obtaining of documentary or other evidence; provide assistance in establishing parentage where necessary for the recovery of maintenance; and initiate or facilitate the institution of proceedings to obtain any necessary provisional measures.[102]

Consequently, recognition and enforcement of maintenance decisions issued by the Contracting States is also highlighted. The Convention only allows for the refusal to recognize or enforce maintenance arrangement or decision if it is manifestly incompatible with the public policy of the requested State; it was obtained by fraud or falsification; or if it is incompatible with a decision rendered between the same parties and having the same purpose, provided that the latter decision fulfills the conditions necessary for its recognition and enforcement in the State addressed.[103]

It was observed "the only ground for the Philippines not to recognize a foreign judgment compelling a Filipino husband who is living in the Philippines to pay for support of his child residing in another State is when recognizing such foreign judgment will violate Philippine public policy."[104] Considering the "strong-held policy of the country to protect the best interest of children,"[105] this is highly unlikely. If on the other hand it is the Filipino spouse who seeks for support either abroad (in a Contracting State) or in the Philippines, the decision over such application is expected to be mutually recognized and enforced domestically or in the foreign Contracting State.

In current practice, foreign decision of support may be enforced under Section 48, Rule 39 of the Rules on Civil Procedure.[106] However, under this rule, "a foreign judgment or order

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[102] Child Support Convention, *supra* note 98, arts. 5-7.
[103] Child Support Convention, *supra* note 98, art. 30(4).
[104] Aguiling-Pangalangan, *supra* note 11, at 52.
[105] *Id.*
[106] RULES ON CIVIL PROCEDURE, Rule 39, § 48. "Effect of foreign judgments. – The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows: (a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and (b) In case of a judgment or final order against a person, the judgment or final order is presumptive

against a person is merely presumptive evidence of a right as between the parties,"[107] and "may be repelled, among others, by want of jurisdiction of the issuing authority or by want of notice to the party against whom it is enforced."[108] The party impugning a foreign judgment has the burden of overcoming the presumption of its validity.

The challenge again for the Philippines is to identify a national government agency which is best suited to undertake the functions of the designated Central Authority, with the requisite competencies. At the outset, the Public Attorney's Office may also be considered for the role, considering that it has a nationwide network of lawyers who may take up the cudgels for the Filipino spouse and child to file support cases in any jurisdiction within the Philippines. There may also be a need to communicate with the Judiciary if there is a necessity to amend the rules of procedure to conform with the requirements of the Convention as regards the recognition and enforcement of maintenance obligations or support.

3. *Choice of Court Convention*

Subject to certain conditions, the *Convention of 30 June 2005 Choice of Court Agreements* ("Choice of Court Convention") allows the parties, by agreement, to designate for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts.[109]

There are three basic principles[110] that Contracting States must adhere to when acceding to the Convention: (1) the chosen court must in principle hear the case;[111] (2) any court *not* chosen must in principle decline to hear the case;[112] and (3) any judgment rendered by the chosen court must be recognized and enforced in other Contracting States, except where a ground for refusal applies.[113] Consequently, the chosen court shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.[114]

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evidence of a right as between the parties and their successors in interest by a subsequent title. In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

[107] St. Aviation Services Co., Pte., Ltd., v. Grand International Airways, Inc., G.R. No. 140288, Oct. 23, 2006.

[108] *Id.*

[109] Convention of 30 June 2005 Choice of Court Agreements (hereinafter "Choice of Court Convention") art. 3(a).

[110] HCCH, *Outline of the Choice of Court Convention*, *at* https://assets.hcch.net/docs/89beobce-36c7-4701-af9a-1f27be046125.pdf (last visited April 14, 2020).

[111] Choice of Court Convention, *supra* note 109, art. 5(2).

[112] Choice of Court Convention, *supra* note 109, art. 6.

[113] Choice of Court Convention, *supra* note 109, arts. 8-9.

[114] Choice of Court Convention, *supra* note 109, art. 5(2).

The Convention applies to cases where there is an exclusive choice of court agreement concluded in civil or commercial matters, except those pertaining to contracts of employment, including collective agreements; the status and legal capacity of natural persons; maintenance obligations and other family law matters; wills and succession; insolvency, composition and analogous matters; the carriage of passengers and goods; marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage; anti-trust (competition) matters; liability for nuclear damage; claims for personal injury brought by or on behalf of natural persons; tort or delict; rights in rem in immovable property, and tenancies of immovable property; the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs; intellectual property; and the validity of entries in public registers.[115] The reasons for these exclusions are, in most cases, the existence of more specific international instruments, and national, regional or international rules that claim exclusive jurisdiction for some of these matters.[116]

The Convention is also not applicable to arbitration and relevant proceedings,[117] but judicial settlements are enforced under the Convention.[118]

Moreover, a judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognized and enforced in other Contracting States,[119] provided that the same may also be enforced in the State of origin.[120]

There as so far 32 Contracting States to the Convention.

The governing principle behind the Convention is *lex loci intentionis,* in which "parties are allowed to identify a particular court where the case will be heard should there be any dispute arising from a contract."[121] However, Philippine courts have consistently equated choice of court stipulations as an agreement on venue, which may be waived impliedly or expressly,[122] and not of jurisdiction, under the principle that jurisdiction is conferred by law and not subject to any stipulation of the parties.[123] Thus, to be able to accede to this Convention, the hurdle on jurisdiction must first be overcome.

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[115] Choice of Court Convention, *supra* note 109, art. 2(2).
[116] *Outline of the Choice of Court Convention*, *supra* note 110.
[117] Choice of Court Convention, *supra* note 109, art. 2(4).
[118] Choice of Court Convention, *supra* note 109, art. 12.
[119] Choice of Court Convention, *supra* note 109, art. 8(1).
[120] Choice of Court Convention, *supra* note 109, art. 8(3).
[121] Aguiling-Pangalangan, *supra* note 11, at 53.
[122] Gumabon v. Larin, G.R. No. 142523, Nov. 27, 2001.
[123] Ley Construction and Development Corporation v. Sedano, G.R. No. 222711, Aug. 23, 2017.

4. *Recognition and Enforcement of Foreign Judgments*

The *Convention of 02 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* ("Recognition and Enforcement of Foreign Judgments Convention") is the newest agreement concluded under the HCCH auspices. It was concluded on July 2, 2019 and has not yet entered into force.[124] Already an HCCH member at the time the subject was taken up, the Philippines was present at the negotiation sessions.

With the goal of promoting "effective access to justice for all and to facilitate rule-based multilateral trade and investment, and mobility, through judicial co-operation,"[125] through "an international legal regime that provides greater predictability and certainty in relation to the global circulation of foreign judgments, and that is complementary to the Convention of 30 June 2005 on Choice of Court Agreements,"[126] this Convention was concluded to facilitate the effective recognition and enforcement of judgments in civil or commercial matters.

In particular, the Convention applies to the recognition and enforcement in one Contracting State of a judgment in a civil or commercial matter given by a court of another Contracting State, except[127] the status and legal capacity of natural persons; maintenance obligations and other family law matters;[128] wills and succession; insolvency, composition, resolution of financial institutions, and analogous matters; the carriage of passengers and goods; transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average; liability for nuclear damage; the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs; the validity of entries in public registers; defamation; privacy; intellectual property; activities of armed forces, including the activities of their personnel in the exercise of their official duties; law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties; anti-trust (competition) matters, except where the judgment is based on conduct that constitutes an anti-competitive agreement or concerted practice among actual or

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[124] Under Article 28 thereof, the Convention shall enter into force on the first day of the month following the expiration of the period during which a notification may be made in accordance with Article 29(2) with respect to the second State that has deposited its instrument of ratification, acceptance, approval or accession referred to in Article 24.

[125] Convention of 02 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (hereinafter "Recognition and Enforcement of Foreign Judgments Convention"), 2nd preambular clause.

[126] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, 4th preambular clause.

[127] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, art. 2.

[128] This matter is specifically covered by the Child Support and Maintenance Convention discussed earlier.

potential competitors to fix prices; or sovereign debt restructuring through unilateral State measures. This Convention shall also not apply to arbitration and related proceedings.[129]

In general, a judgment is eligible for recognition and enforcement if one of the following requirements is met: the person against whom recognition or enforcement is sought was habitually resident in the State of origin at the time that person became a party to the proceedings in the court of origin; the natural person against whom recognition or enforcement is sought had their principal place of business or a branch, agency or establishment in the State of origin; the defendant expressly consented to the jurisdiction of the court of origin; the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law; the judgment ruled on a lease of immovable property (tenancy); the judgment ruled against the defendant on a contractual obligation secured by a right in rem in immovable property located in the State of origin; the judgment ruled on a tort; the judgment concerns trusts; or the judgment was given by a court designated in an agreement concluded or documented in writing, other than an exclusive choice of court agreement.[130]

However, recognition or enforcement may be refused on the following grounds:[131] an evidence/document was not presented to the respondent/defendant; judgment was obtained in fraud; recognition or enforcement would manifestly be incompatible with public policy; proceedings in court of origin were contrary to an agreement; judgment is inconsistent with a judgment given in the requested State; judgment is inconsistent with a judgment given in another State between the same parties and cause of action; or judgment award does not compensate for actual loss or harm suffered.[132]

The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State.[133]

As with the Child Support Convention, an action to recognize and enforce judgments on civil and commercial matters also falls under Section 48, Rule 39 of the Rules on Civil Procedure.[134] In similar vein, it may be necessary for the Judiciary to examine the Convention's

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[129] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, art. 2.3.
[130] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, art. 5.
[131] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, art. 7.
[132] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, art. 10.
[133] Recognition and Enforcement of Foreign Judgments Convention, *supra* note 125, art. 13.
[134] *See supra note* 106. *See also* Asiavest Merchant Bankers (M) Berhad v. Court of Appeals, G.R. No. 110263, July 20, 2001.

framework and determine if there is a possibility to incorporate these best practices to the current rules of procedure.

As mentioned earlier, there are currently 41 HCCH Conventions, covering cross-cutting issues in family law, commercial law, and civil procedure. In addition, Special Commissions are studying emerging concerns, specifically parentage or surrogacy, cohabitation outside marriage, family agreements involving children, jurisdiction, protection orders and protection of tourists. Engagements with HCCH will therefore be an ongoing concern for the country.

V. Making private international law work for people

In an interconnected, globalized world, interactions among people across state borders have intensified exponentially, and these have given rise to civil, commercial and other transactions, such as marriages and sales contracts, and consequently to innumerable cases with foreign elements. This phenomenon is best exemplified by the increasing number of Filipino companies that conduct business in the Southeast Asian region and the millions of overseas Filipinos who reside and work across the globe. Their activities have led at times to problems in contracts, torts, marriages, family relations and property rights involving diverse foreign laws, cultures, religions and traditions. This brings to fore the need for a universally accepted system of conflicts of law.

Because of its wide scope, private international law has the capacity to address complex issues on cross-border transactions and eventually produce tangible benefits for the people. By taking the lead in efforts to harmonize the rules of procedures of different countries, the HCCH has made significant gains in addressing cross-border legal challenges and facilitating international legal cooperation. Their methodologies also often represent the best practices in the field.

Yet, the dynamic nature of private international law can only be fully harnessed if complemented with an equally vigorous interest and study of the conventions already developed or being developed in various international platforms. The task therefore is also up to the legal profession, the law academe, the business community, and the rest of society to remain engaged with each other and the relevant national government agencies in order to ensure that the dialogues and discussions thrive and continue.

The Philippine Supreme Court recognized this situation and acted on it, believing further that, in the words of Chief Justice Peralta, acceding to the Service and other Conventions "*is [also] a golden opportunity for the Philippine Supreme Court to be recognized*

as an emerging champion of private international law in the Philippines and in the Asia Pacific Region..."[135]

For its part, by giving priority to the HCCH and its processes, the DFA has seen the usefulness of its work in terms of direct relevance and benefits to the overseas Filipinos, the business community and the society in general, and reaffirmed that certain legal issues faced by our people can be addressed and resolved through diplomacy and international law advocacies.

With this recognition and being continually engaged with the HCCH processes and private international law, the Philippines can look forward to enhanced legal cooperation with other States and also "overcome the systemic legal barriers faced by many Filipinos"[136] here and abroad.

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[135] *See supra* note 2.
[136] Aguiling-Pangalangan, *supra* note 11, at 54.

Annex: List of HCCH Conventions, Protocols and Principles

1. Statute of the Hague Conference on Private International Law
2. Convention of 1 March 1954 on civil procedure
3. Convention of 15 June 1955 on the law applicable to international sales of goods
4. Convention of 15 April 1958 on the law governing transfer of title in international sales of goods
5. Convention of 15 April 1958 on the jurisdiction of the selected forum in the case of international sales of goods
6. Convention of 15 June 1955 relating to the settlement of the conflicts between the law of nationality and the law of domicile
7. Convention of 1 June 1956 concerning the recognition of the legal personality of foreign companies, associations and institutions
8. Convention of 24 October 1956 on the law applicable to maintenance obligations towards children
9. Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children
10. Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
11. Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions
12. Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents
13. Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions
14. Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
15. Convention of 25 November 1965 on the Choice of Court
16. Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
17. Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
18. Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations
19. Convention of 4 May 1971 on the Law Applicable to Traffic Accidents
20. Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
21. Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons
22. Convention of 2 October 1973 on the Law Applicable to Products Liability

23. Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
24. Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations
25. Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes
26. Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages
27. Convention of 14 March 1978 on the Law Applicable to Agency
28. Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
29. Convention of 25 October 1980 on International Access to Justice
30. Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition
31. Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods
32. Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons
33. Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
34. Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
35. Convention of 13 January 2000 on the International Protection of Adults
36. Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary
37. Convention of 30 June 2005 on Choice of Court Agreements
38. Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
39. Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations
40. Principles on Choice of Law in International Commercial Contracts
41. Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters