

# **Out now: The Korean Journal of International and Comparative Law, Volume 12 (2024), Issue 1**

*The following information has been kindly provided by Wilson Lui, PhD Candidate, Melbourne Law School; Part-time Lecturer, Faculty of Law, University of Hong Kong.*

The latest issue of the Journal is available online and features the following papers delivered at the ILA-Korea's 60th Anniversary Conference on Private International Law held in Seoul, Korea on 11 June 2024:

## **Preface to the Special Issue: ILA-Korea's 60th Anniversary Conference on Private International Law**

Seokwoo Lee

## **Harmonization of Jurisdictional and/or Choice-of-Law Rules: Introduction to the Asian Principles of Private International Law (APPIL) Project**

Naoshi Takasugi

This article aims to introduce the Asian Principles of Private International Law (APPIL) Project, which endeavors to facilitate the exchange of ideas on Private International Law (PIL) among scholars and to harmonize PIL within the Asian region. The APPIL Project emerged from the longstanding scholarly exchanges between Korea and Japan, and Korean scholars and Korean law have significantly contributed to the APPIL Project discussions. Given the considerable diversity within Asia, the need for harmonization of PIL in this region is even more pressing than in Europe or the Americas. If successful, the harmonization experiment in Asia could serve as a model for the rest of the world.

## **Challenges of Private International Law in Asia**

Yuko Nishitani

The presence of Asia in the global arena has become notable due to its thriving economy. Arguably, it is time to consider how private international law (or conflict of laws) should develop in Asia and what kind of opportunity it can engender, considering that private international law has the potential to promote economic and legal cooperation without unifying substantive law. First, this paper considers the role of the Hague Conference on Private International Law (HCCH) and the varying significance of its conventions on judicial assistance, litigation, and child protection in the pursuit of private international law unification in Asia. Second, this study elaborates and supports the use of non-binding instruments (or *soft law*) - model laws, principles, legislative guides, etc. - as a fallback method of harmonizing private international law. Third, this paper examines the increasing extraterritoriality of regulatory norms of the US, the EU, China, and other countries in the global market. This will clarify the problems of conflicting, overlapping regulations and allow scrutiny of potential pathways to restrict the exercise of the states' prescriptive jurisdiction. Some future perspectives will conclude this study.

## **“Asian” Principles for the Recognition and Enforcement of Foreign Judgments? Singapore as a Case Study**

Adeline Chong

This paper considers if there can be said to be an “Asian” body of principles for the recognition and enforcement of foreign judgments. Tapping on the results of a research project which was conducted from 2016 to 2020, it is submitted that the answer to this query is in the negative. However, it is suggested that what marks out the “Asian” approach to private international law is the willingness of Asian countries to look outwards for reform and development and to balance the adoption of international norms against important local norms and objectives. Singapore's approach to the recognition and enforcement is discussed as a case study of this Asian approach.

## **Asian Private International Law and Hong Kong**

Wilson Lui

This article explores the current opportunities and challenges in the development of Asian private international law. Reflecting on the experience of the Hague Conference on Private International Law and the *Studies in Private International Law - Asia* series published by Hart Publishing, this article argues that Asian private international law is currently thriving. However, there remain four practical difficulties in the further development of Asian private international law and the harmonisation of Asian states' practices on cross-border issues. This article then considers potential contributions from Hong Kong in the development of Asian private international law, both as a facilitator for dialogues and collaborations among common law and civil law systems, and as an exemplar of interregional cooperation through developing and refining private international law frameworks within the Greater Bay Area and the Greater China.

## **ILA Guidelines on Intellectual Property and Private International Law**

Dai Yokomizo

This paper aims to analyze the International Law Association's Guidelines on Intellectual Property and Private International Law (hereafter referred to as the "Kyoto Guidelines") and to examine their significance and future challenges. As the number of cross-border intellectual property (IP) disputes has increased since the 1990's, issues of conflict of laws (private international law) in IP disputes have become the subject of worldwide discussion. One of the most notable outcomes of this discussion has been the creation of soft-law typed principles or proposals dealing with conflict of laws issues. After some principles or proposals were drafted, the International Law Association Committee "Intellectual Property and Private International Law" was established in November 2010, and, after long discussions, the Kyoto Guidelines drafted by the Committee were approved by the ILA 79th Biennial Conference held (online) in Kyoto on December 13, 2020. What is the significance of these Guidelines and what challenges remain for the future? This paper will examine these questions.

## **Territoriality and Intellectual Property Infringement Proceedings**

Zheng (Sophia) Tang

This article examines the principle of territoriality in intellectual property rights (IPR?s) and its implications for cross-border infringement proceedings. It highlights the complexities arising from globalization and digital technologies, which challenge the traditional territorial nature of IPR?s. The article compares jurisdictional approaches in the United States, the European Union, Korea, noting the strict adherence to territoriality in validity disputes and the varied stances on infringement claims. It also explores the innovative measures adopted by national courts, particularly in the context of Standard Essential Patents (SEP?s), to extend their jurisdiction while respecting territorial limits. The article underscores China's pragmatic approach, balancing respect for territoriality with judicial efficiency, and its proactive role in setting global FRAND terms for SEP?s. The analysis suggests that while territoriality remains a fundamental principle, evolving judicial practices are adapting to the demands of a globalized economy.

## **Admissibility of ILA Principles on Intellectual Property and Private International Law in Vietnam**

Bui Thi Quynh Trang, Phan Dinh Nguyen, and Nguyen Thi Hong Trinh

Private law on intellectual property (IP) has achieved significant international harmonization, but international jurisdiction is subject to national regulations. As a result, enforcement of IP rights is carried out on a country-by-country basis. This approach leads to multiple concurrent legal proceedings, increasing the risk of conflicting judgments and escalating litigation costs. These costs create a disparity between multinational corporations and small and medium-sized enterprises. As a potential model for future international agreements on intellectual property and private international law, the International Law Association (ILA) Committee on 'Intellectual Property and Private International Law' seeks to address cross-border IP disputes. This paper will explore whether the ILA principles can be utilized as models for legislators, judges, arbitrators and other competent authorities in Vietnam, a legal system characterized by a lack of case law on the topic.