

Speech by Secretary for Justice at opening of Third Asia Pacific Regional Conference of the Hague Conference on Private International Law

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the official opening of the Third Asia Pacific Regional Conference of the Hague Conference on Private International Law today (September 24):

Commissioner Lu, Secretary General Mr van Loon, your Excellencies, distinguished delegates, honoured guests, ladies and gentlemen,

It is my privilege and pleasure to welcome you to the Hong Kong Special Administrative Region on the occasion of the Third Asia Pacific Regional Conference of the Hague Conference on Private International Law.

Today we are honoured to have five Attorneys General, Ministers of Justice and Secretaries of Justice from the Asia Pacific region in our midst. In addition, we welcome senior government officials from over 20 Asia Pacific countries, prominent lawyers, legal academics, as well as representatives of non-governmental organisations from around the region.

Your presence at this conference highlights the importance of the subject we are going to discuss today and for the next two days, and that is: how we can strengthen international co-operation through the various conventions of the Hague Conference. The Olympic Games held in Beijing last month is a most vivid reminder of how closely we are interacting with our friends in other countries today. As our world and our lives are increasingly affected by the movement of people around the globe, as we enter into more and more complex commercial and personal relationships with people in other countries, the need for common yardsticks through private international law is becoming greater and more urgent.

For over 110 years, the Hague Conference on Private International Law has been working quietly and steadfastly for the progressive unification and harmonisation of private international law. The name "Hague Conference on Private International Law" may have led many to think that it is but a gathering of lawyers meeting to discuss law in an academic manner. Not at all. It is in fact a dynamic organisation engaged in concrete

actions. Apart from initiating cross-border co-operation in legal procedure and litigation, the Hague Conference has made many significant and important contributions towards the welfare of families across international boundaries, in matters as diverse as recognition of marriage and the conflict of laws relating to testamentary dispositions.

It has also carried on sterling work in relation to the protection of children including the formulation of rules for inter-country child adoption, and the reduction in the incidence of international child abduction.

Many of the Hague Conventions are concerned with people; and delegates and officials at the Hague Conference are constantly looking for ways to improve the lives of people, in particular, children, and helping them to cope with legal difficulties which may arise from cross-border situations.

Apart from promoting and overseeing the operation of "people-oriented" Conventions, the Hague Conference also makes outstanding contribution in promoting legal co-operation in international litigation and legal procedure as well as unification of the rules on private international law. Its network of Conventions in this area has resolved many problems that would otherwise confront litigants and courts. These Conventions, which include the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, have proved to be extremely effective in improving and facilitating the administration of justice in cases with an international element.

In the age of globalisation, the practical use and day-to-day benefits of the Hague Conventions cannot be overstated. The expanding volume of trans-national activities demands an effective international legal framework to address the differences arising in cases involving more than one jurisdiction. The Hague Conference stands out as a cardinal institution to devise solutions to resolve many differences when multiple systems of law are in conflict with each other.

I am also pleased to learn from Secretary-General Mr van Loon of the successful work carried on by the regional representative of the Hague Conference in Latin American in promoting the acceptance and accession to Hague Conventions. Indeed the usefulness and practicality

of Hague Conventions are not limited to countries in a particular region. They may serve as a very sound basis for international co-operation in different parts of the world, including the Asia Pacific region. This is indeed the theme of this conference.

The Hague Conventions are proactive and offer responses to the needs of our time. I need only turn to the three most recent Conventions to illustrate their diversity and relevance. These are the Convention of 2005 on Choice of Court Agreements, the Convention of 2006 on the Law Applicable to Securities held with an Intermediary and the Convention of 2007 on Child Support and other forms of Family Maintenance. Although they have not yet entered into force internationally, they have the potential of assuring individuals who feel intimidated by the legal insecurity in international commercial transactions, by the legal uncertainty arising from the different pattern of securities holdings, and by the complex and prolonged legal procedures in recovery of child support where parties involved are residents in different jurisdictions.

The Hague Conventions are readily available to member states AND non-member states of the Hague Conference alike. It means that every jurisdiction may take advantage of the existing Conventions by simply becoming a party to the Conventions. This is a quick and easy means of achieving international co-operation and has the advantage of saving valuable time and resources required in negotiating bilateral agreements to cover the same subject matters.

The Hague Conventions stand out as shining examples of a pool of international instruments, especially in the field of civil and commercial matters, which may be readily tapped into by jurisdictions around the world. Many of these instruments have been tested by time and actual cases and we can testify that they have served Hong Kong very well over the years.

Hong Kong's participation in the Hague Conference is perhaps one of the best illustrations of the success of the "One Country, Two Systems" principle.

First, we have embraced the Hague Conventions for a long time. Currently, nine Hague Conventions are applicable in Hong Kong. Some of them have been applicable here for over 40 years. And some of them are only applicable in Hong Kong but not Mainland China or Macao. This is made possible by the relevant provisions

in the Basic Law of Hong Kong and the design of most of the Hague Conventions, which allow a state party to apply a Convention to all or only some of the territorial units of a state where a different system of law is practised.

At the same time on the "one country" level, Hong Kong has been participating in meetings of the Hague Conference since 1998 as a member of the Chinese delegation. Lawyers from my department and more recently, those from the Department of Justice in the Macao Special Administrative Region, have participated in the negotiations of new Hague Conventions and in the review of the operation of Hague Conventions.

The Hague Conventions enable Hong Kong to become a member of the global network of jurisdictions that benefit from mutual legal co-operation. To the courts and individual parties caught up in cross-border civil and commercial cases, the application of Hague conventions have provided effective ways and means of overcoming hurdles inherent in the nature of such litigation and helped the parties to avoid unnecessary and unwanted duplication of procedure.

I must not forget to mention that Hague Conventions have served us in many more ways than we could imagine. A striking example is that the provisions and principles underlying the 2005 Hague Convention on Choice of Court Agreements have been used by us extensively in devising an arrangement on reciprocal recognition and enforcement of civil and commercial judgments between Hong Kong and Mainland China. The private international law framework is significant as Hong Kong remains a common law jurisdiction while Mainland China is a civil law jurisdiction. Another example is the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which has also inspired Hong Kong and Mainland China in an arrangement on the same subject that was signed and implemented in 1999.

This enhanced legal and judicial co-operation between Hong Kong and Mainland China underline the unique position of Hong Kong, not just as a premier banking and financial centre in the world but also our status as a regional centre for professional legal services.

However, in this world village, no one can prosper without collaborating and interacting with other economies. To reinforce our position as a regional legal service centre, we shall continue to look to the Hague

Conference and Hague Conventions to help us build bridges with other jurisdictions.

Ladies and gentlemen, we are most excited and grateful for this opportunity to co-host the Hague Conference for the Asia Pacific region.

In the coming two days, we shall focus our attention on the use of Hague Conventions as the basis of international co-operation in the Asia Pacific region. I hope that at the end of the conference, you will have learned more about the potential of these Conventions and how they could be used to benefit your people and your business communities. It is also our hope that your experience in this conference will convince you to become part of the Hague Conference family, thereby strengthening the bond, effectiveness and influence of the Hague Conventions in the Asia Pacific region.

Finally, I would like to thank the Hague Conference, in particular the Permanent Bureau, whose help is instrumental to the success of this conference. I would also like to thank the speakers, panellists, and delegates who will serve as moderators and reporters. I trust you will all benefit from the presentations and discussions in each of the sessions.

May I wish the conference every success and those of you coming to Hong Kong for this conference an enjoyable and memorable stay.

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