

Keynote speech by SJ at "The Hague Conference at 120: Today and Future" on April 8 (English only) (with photo)

The Impact of the Hague Conference in the Asia Pacific Region

Secretary General Mr (Hans) van Loon, your Excellencies, distinguished guests, ladies and gentlemen:

It is my great honour to join you on this special occasion for celebrating the 120th anniversary of the Hague Conference on Private International Law (Hague Conference), and also to have this opportunity to briefly share with you the key development and outreach of the Hague Conference in the Asia Pacific region.

From the West to the Rest of the World

Law, whether domestic, regional or international, exists to serve the human community. As human societies change, their laws evolve. Over the past 120 years, the world has undergone dramatic changes. Back in 1893 when the Hague Conference held its first meeting, no one could possibly anticipate the invention of the Internet, nor foresee the process of globalisation and regional integration that has taken place in the past few decades. Notwithstanding the huge changes to the scene in which private international law operates, the Hague Conference has grown in strength and size as well as extended its influence in numerous areas of human activities. Indeed, the history of the Hague Conference vividly illustrates the close relationship between the development of private international law and the changes our world has experienced.

In the 1870s, the pioneers of the Hague Conference were the first generation of lawyers faced with the impact of the industrial era, especially the dramatic intensification of international communications ^{Note 1}. This set the scene for the Hague Conference's first meeting in 1893. Although the initial key participants were primarily the continental or civil law

jurisdictions from Europe, it soon embraced both civil and common law jurisdictions, especially after the coming into force of the Statute of the Hague Conference in 1955.

In the 1980s and 1990s, more states including Australia, the People's Republic of China (PRC) and several Latin American countries joined the Hague Conference. On the turn of the millennium, the work of the Hague Conference was visibly extended to cover jurisdictions in the Asia Pacific region on top of those in Latin America and other parts of the world. Apart from the setting up of its first regional office in Latin America in 2006, the Hague Conference at around the same time experienced a marked increase of the involvement of Asia Pacific countries. Sri Lanka, Malaysia, New Zealand, India and the Philippines all became Members of the Hague Conference during the period from 2001 to 2010. Further, the four Asia Pacific Regional Conferences, held in Malaysia, Australia, the Hong Kong Special Administrative Region of the PRC (Hong Kong) and the Philippines respectively in 2005, 2007, 2008 and 2011, witnessed strong participation and keen interest in the work of the Hague Conference amongst both Members and non-members within the Asia Pacific region.

As of now, the Hague Conference has become a global forum truly representative of the international community in all important aspects concerning private international law ^{Note 2}.

The Asia Pacific Region

The Asia Pacific region is a very vibrant and dynamic region. Jurisdictions within the Asia Pacific region provide strong momentum for regional and global economic growth. Take the year 2011 as an example: the total GDP of the 10 Member States ^{Note 3} of the Hague Conference in the Asia Pacific region accounted for around 26.45 per cent of the world's total GDP ^{Note 4}.

Whilst geographically close, jurisdictions within the Asia Pacific region are very diverse in terms of history, culture, religion, languages, economies as well as legal system and legal tradition. Within the region, there are both civil law and common

law jurisdictions. There are jurisdictions whose cultures are primarily Western, but also jurisdictions which are cosmopolitan and international.

The economic development and the immense diversities of the Asia Pacific region make it even more important to have a co-ordinated and harmonised network of private international law. Indeed, the greater the diversity, the stronger the need to have a common framework such as the one provided by Hague Conventions. Such a network would benefit not only the Asia Pacific region, but the world as a whole.

The establishment of the Asia Pacific Regional Office in Hong Kong is a logical and desirable development in the history of the Hague Conference. It is the natural result of globalisation, regional integration as well as the increasingly important role played by Asia Pacific jurisdictions in the global economy, international trade and other aspects of human activities.

A key objective of the Asia Pacific Regional Office is to promote the Hague Conference and its Conventions by increasing awareness of the value of the membership of the Hague Conference and the usefulness of Hague Conventions to the region, with a view to attracting more states in the region to become Members of the Hague Conference and State Parties to Hague Conventions ^{Note 5}. Put shortly, the Asia Pacific Regional Office would assist the Hague Conference in strategically positioning itself in the world map so as to further enhance its presence and influence in the region, which in turn would facilitate the achievement of the ultimate aim of progressive harmonisation of private international law.

Hong Kong and the Asia Pacific Regional Office

Since 1998, representatives from Hong Kong have been participating actively in the meetings of the Hague Conference as part of the Chinese delegation.

Hong Kong is most honoured and privileged to be chosen as the place in which to establish the Asia Pacific Regional Office.

Apart from being grateful for the support provided by the Central People's Government of the PRC (especially the Ministry of Foreign Affairs), may I take this opportunity to again express our gratitude to the Permanent Bureau of the Hague Conference as well as its Members for the trust and confidence reposed in Hong Kong. As the Secretary for Justice of Hong Kong, I can assure all of you that Hong Kong is indeed the right place for the Regional Office, and that Hong Kong will do her very best to facilitate the work of the Hague Conference.

Hong Kong has for years been, and will remain, a truly cosmopolitan and international city. Her status as an international financial and commercial centre as well as a regional logistics hub hardly requires further elaboration. Equally clear is the fact that Hong Kong is the main gateway to Mainland China, one of the key powerhouses of the world's economic engine.

Further and very importantly, Hong Kong is internationally well known for her firm commitment to the rule of law and her truly independent judiciary. By reason of the "One Country, Two Systems" concept and the provisions in our Basic Law ^{Note 6}, Hong Kong continues to maintain our common law legal system after the reunification in 1997 ^{Note 7}.

The Heritage Foundation has, for 19 consecutive years, ranked Hong Kong as the freest economy in the world ^{Note 8}. In the recent report entitled "Global Opportunity Index: Attracting Foreign Investment" published by the Milken Institute in March this year, Hong Kong came first amongst the 98 jurisdictions included in the survey. Apart from our economic policy, the rule of law and efficiency of our legal system plays an important role to enable Hong Kong to achieve these and other favourable rankings by independent international institutions.

As confirmed in our Chief Executive's latest Policy Address ^{Note 9}, it is our Government's policy to enhance Hong Kong's status as a regional hub for legal and dispute resolution services in the Asia Pacific region. With our top quality legal profession

comprising both local and international law firms and advocates, our truly independent judiciary and our modern legal infrastructure, Hong Kong is well placed to be the regional hub for legal services. Such policy and attributes of Hong Kong would be of considerable value in assisting the Asia Pacific Regional Office in the performance of its function and fulfilment of its objective.

Impact of the Asia Pacific Regional Office

As has been repeatedly pointed out, the success of the Hague Conference should not be measured solely by reference to the number of Member States signing or ratifying Hague Conventions ^{Note 10}. The benefits and impact brought about by the Hague Conference go well beyond the formal adoption or implementation of Hague Conventions.

As noted earlier, there exist vast diversities amongst the jurisdictions within the Asia Pacific region. Hague Conventions, which are intended to bridge different cultures and legal traditions, are accordingly very useful in providing a common framework for co-operation both for the states in the region and between those states within and those outside the region.

The increased membership base in the region will bring about wider representation of a diverse range of legal traditions to the Hague Conference and help develop new instruments better adapted to meet the needs of the Asia Pacific region by involving the states in the region more actively in the development of new instruments and more generally in the work of the Hague Conference ^{Note 11}.

Increasing the number of State Parties to Hague Conventions in the Asia Pacific region will provide additional opportunity for enhancing certainty and predictability of cross-border private, commercial and financial transactions and relationships, promoting judicial and administrative co-operation, and reinforcing protection of children and other vulnerable persons in trans-border cases covered by Hague Conventions. Benefits will

accrue within the region, and also between the states in and outside the region ^{Note 12}.

On the whole, the work of the Hague Conference in the region will certainly raise awareness of issues concerning private international law and will provide considerable impetus for change (whether through the means of implementing Hague Conventions or by way of domestic law reform based on contents of Hague Conventions). In addition, the progressive harmonisation of private international law brought about by the Hague Conference will in turn help to fortify the rule of law on the international level amongst Members and non-members of the Hague Conference within the region. The rule of law, whether on the domestic, regional or international level, is essential to investment and financial activities as well as economic development ^{Note 13}. Without putting in place robust domestic and trans-national legal infrastructure including an appropriate framework of private international law, economic factors alone would not be sufficient to sustain the economic growth in the Asia Pacific region.

The Work of the Asia Pacific Regional Office

The Asia Pacific Regional Office takes its role very seriously. Since its official opening on December 13 last year, the Regional Office has started its outreach by establishing a network with different institutions in the region. Amongst others, the Regional Office has entered into a Memorandum of Understanding on Academic Cooperation with Kyushu University of Japan. Similar instruments are going to be made with other institutions in the region.

The Regional Office also provided support to countries in the region and became a focal point by bringing together countries in the region. On March 27 and 28, 2013, the Regional Office, jointly with the Hong Kong Government and the Macau Government, successfully organised a workshop on the 1993 Hague Inter-country Adoption Convention, which was attended by around 40 participants from six countries in the region as well as from international

organisations.

The Regional Office will further its outreach by providing support to the APEC (Asia-Pacific Economic Cooperation) Workshop on Simplified Authentication Process for Production of Public Documents Abroad through the Use of the Hague Apostille Convention in Indonesia in late June this year.

The Regional Office is also planning other seminars and meetings. One of them is the plan to organise a seminar jointly with the Asian Society of Notaries Public after its inauguration later this year. Apart from exploring the feasibility of arranging meetings for experts or working groups in Hong Kong, the Regional Office stands ready to provide full support for the preparation of the Fifth Asia Pacific Regional Conference to be held in the near future.

At the same time, the Regional Office is actively looking for ways to strengthen the network with the national organs, central and competent authorities in the region and to provide technical assistance to them as appropriate, as well as to enhance contacts with other officials, professional bodies and academic institutions in the region.

Concluding Remarks

Ladies and gentlemen, the processes of globalisation, regional integration and technological advances will continue. States are becoming more and more interdependent and there is bound to be even more interaction between people from different jurisdictions. The need to have a co-ordinated or harmonised framework of private international law becomes even more important.

In his speech delivered at its first meeting held in 1893, Mr Tobias Asser, the great Dutch scholar and one of the key founders, described the commencement of the Hague Conference as a dream of his youth that has just started on the road to realization ^{Note 14}. For the well-being of our global human society,

this dream must continue.

On this happy and memorable occasion of the 120th anniversary of the Hague Conference, may I wish the Hague Conference, its Permanent Bureau, its Latin America Regional Office and the Asia Pacific Regional Office every success in the noble task of harmonisation of private international law in the many more years to come.

Ends/Monday, April 8, 2013

Note 1: Arthur Efffenger, *The Hague International Centre of Justice and Peace* (Jongbloed Law Booksellers, The Hague), p. 93.

Note 2: See also the discussion contained in David McClean, "Common Lawyers and the Hague Conference", collected in *E Pluribus Unum* (Martinus Nijhoff Publishers) (1996), pp. 205-218 (especially at pp.211-212 & 281).

Note 3: The 10 Member States are Australia, the PRC, Hong Kong, India, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines and Sri Lanka.

Note 4: This is based on GDP figures of the World Bank.

Note 5: "Proposal to establish an Asia Pacific Regional office of the Hague Conference on Private International law in the Hong Kong Special Administrative Region of the People's Republic of China", para. 3.

Note 6: The Basic Law of Hong Kong is often regarded as the mini constitution of Hong Kong.

Note 7: See, amongst others, Articles 18, 19 and 80 to 96 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

Note 8: See the 2013 Index of Economic Freedom issued by the Heritage Foundation on 10 January 2013.

Note 9: See para. 39 of the 2013 Policy Address, delivered by the Chief Executive, The Hon. CY Leung, at the Legislative Council on 16 January 2013.

Note 10: See, e.g., Peter J. van Krieken & David McKay (ed.), *The Hague: Legal Capital of the World*, Chapter 14 (Hague Conference on Private International Law) (by Hans van Loon) at p. 523; and John David McClean, *The Contribution of the Hague Conference to the Development of Private International Law in Common Law Countries* (The Hague Academy of International Law), p. 285.

Note 11: "Proposal to establish an Asia Pacific Regional office of the Hague Conference on Private International law in the Hong Kong Special Administrative Region of the People's Republic of China", para. 5.

Note 12: "Proposal to establish an Asia Pacific Regional office of the Hague Conference on Private International law in the Hong Kong Special Administrative Region of the People's Republic of China", para. 6.

Note 13: For discussion on the rule of law on the international level, see, eg., Robert McCorquodale, "The Rule of Law Internationally: Lord Bingham and the British Institute of International and Comparative Law", Andenas & Fairgrieve (ed.), *Tom Bingham and the Transformation of the Law* (OUP)

Note 14: See: *The Influence of the Hague Conference on Private International Law: Selected Essays to Celebrate the 100th Anniversary of the Hague Conference on Private International Law* (Martinus Nijhoff Publishers), footnote 3 on p. VIII of the Preface.

