

**Luncheon Keynote Speech by Mr. Rimsky Yuen, SC
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**Service of Process and Taking of Evidence Abroad:
The Impact of "Electronic Means" on the Operation of
the Hague Conventions (2 November 2015)**

Georgetown University Law Center, Washington DC, USA

Secretary General, Distinguished Guests, Ladies and Gentlemen,

It is my great pleasure to attend this event today to celebrate the 50th anniversary of the 1965 Hague Service Convention and the 45th anniversary of the 1970 Hague Evidence Convention. May I also express my gratitude to the organizers for giving me this opportunity to share with you the experience of the Hong Kong Special Administrative Region (“HKSAR”) regarding the work of the Hague Conference on Private International Law with reference to the two Hague Conventions in question.

Hong Kong’s Policy towards Private International Law

2. As interaction between people of different jurisdictions increases, so is the importance of private international law. As an international and cosmopolitan city as well as an international financial centre, Hong Kong has all along placed great importance on private international law so as to ensure that its legal system and the supporting infrastructure can properly interact with those of other jurisdictions and function effectively on the international level. Accordingly, Hong Kong (whether at the time when it was a British colony or after it has become a special administrative region of the

People's Republic of China ("PRC") in July 1997) has been privy to numerous international conventions and other similar arrangements concerning private international law. As regards the Hague Service Convention and the Hague Evidence Convention, they were first applied to Hong Kong by the United Kingdom in 1970 and 1978 respectively.

3. As you would know, Hong Kong ceased to be a British colony and became a special administrative region of the PRC on 1 July 1997. Pursuant to the 'One Country, Two Systems' policy as enshrined in the Basic Law (which is our constitutional document), the Hong Kong Special Administrative Region ("HKSAR") remains a common law jurisdiction as well as maintains its separate and independent judicial system with the power of final adjudication. Besides, not only may the HKSAR make arrangements with foreign states for reciprocal juridical assistance¹, it has been authorised under the Basic Law to conclude and implement agreements with foreign states and regions as well as relevant international organizations in various fields such as economic, trade, financial, monetary, shipping, communications, tourism, cultural and sports fields². With such a special status, the HKSAR has concluded over 230 bilateral agreements with around 70 foreign governments. A total of over 250 multilateral treaties are also applicable to the HKSAR, even though some of them do not apply to the Mainland.

4. As regards the Hague Service Convention and the Hague Evidence Convention, the PRC sent a notification to the relevant depository in June 1997 stating that both Conventions would continue to apply to the HKSAR with effect from 1 July 1997. Indeed, we have been implementing the two Hague Conventions without any interruption.

¹ Article 96 of the Basic Law.

² Article 151 of the Basic Law.

Hague Service Convention

5. The Hague Service Convention has proved very useful for the continuous development of the HKSAR as an international financial centre and business hub. The various channels of service made available under the Convention have greatly facilitated international transmission of judicial and extra-judicial documents.

6. As a result of the proliferation of transnational movements and the increase of Contracting Parties to the Convention, we saw a growing trend for request for service through transmission by the Central Authority under the Convention, with over 400 annual incoming requests in recent years. We also sent, on average, about 40 outgoing requests for service through transmission by the Central Authority under the Convention. In the case of the HKSAR, we have designated competent authorities (in addition to the Central Authority in Beijing) which may receive and sent out requests directly under the Convention. Given the close ties and business relationship between the HKSAR and the US, it is not surprising that we thus far received most incoming requests from the US and that we also sent most outgoing requests to the US in recent years.³

7. Apart from the main channel of service through transmission by the Central Authority, the Hague Service Convention also provides for alternate methods of service (under Articles 8 to 11) provided that the State of destination raises no objection. In the HKSAR, many users find that certain alternate methods of service, such as service by postal channel, more convenient than service by the Central Authority. Since the objection made by China against

³ The information is based on the statistics contained in our answers to the HCCH questionnaire in 2013: http://www.hcch.net/upload/wop/2014/2014sc_14hk.pdf

postal service does not apply to the HKSAR, postal service is permissible in the HKSAR and is in fact quite common.

8. On the use of modern technology under the Hague Service Convention, we have been moving forward even though our domestic law does not specifically allow service by electronic means. Our Judiciary conducted a study a few years ago to formulate the Information Technology Strategy Plan (“IT Strategy Plan”) on the application of information technology in support of its operations for the coming ten years and beyond.⁴ With a view to implementing the initiatives under the IT Strategy Plan, our Judiciary has launched a Six-year Action Plan since 2013, which set out a number of technical studies that have since been completed. Under the Action Plan, an Integrated Court Case Management System (“iCMS”) is being developed. Since the launch of some of the functions under iCMS involving electronic means, for example, e-filing, necessary legislative amendments will be introduced in due course.⁵

9. So far, some improvements have already been made. For instance, the Judiciary has just implemented an e-Register under the Hague Apostille Convention last year.⁶ Upon the completion of the Action Plan, we anticipate the operation of the Hague Service Convention in the HKSAR would be further strengthened by the use of the latest technology.

Hague Evidence Convention

10. Turning to the Hague Evidence Convention, which is yet another Hague Convention that has proved useful to us. In the

⁴ For more information in this aspect, see the LC Paper No. CB(4)430/12-13(03) at <http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0226cb4-430-3-e.pdf>.

⁵ More information is available in Reply Serial Number JA016 at http://www.judiciary.gov.hk/en/other_info/fc_questions/pdf/ja_e_1516.pdf.

⁶ See: http://www.hcch.net/upload/e-app2014_fo_pres_jw.pdf

HKSAR, we have designated competent authorities (in addition to the Central Authority in Beijing) which may receive and send out requests directly under the Convention.

11. As in some other common law jurisdictions, there has been in the HKSAR procedural regime for the examination of witnesses abroad by means of a letter of request. The process is well established, but admittedly there is room to improve its cost-effectiveness. The Hague Evidence Convention, on the other hand, provides an effective way of taking evidence abroad. While this Convention is less frequently used than the Hague Service Convention,⁷ it has undoubtedly facilitated our taking of evidence abroad in civil and commercial matters.

12. Further, the application and operation of the Convention may certainly be further improved by making use of technology. In this regard, our Judiciary has set up a Technology Court as early as in 2003, which is equipped with user-friendly features and facilities, including video conferencing, multimedia presentation of evidence, electronic documentation and exhibits handling. The aim of the Technology Court is to promote the fair and efficient disposal of the proceedings and to save costs, and is certainly one of the means to achieve the better implementation of the Hague Evidence Convention.

13. Traditionally, some common law jurisdictions have strong preference for witnesses to give live testimony instead of giving evidence via video link. The trend is, however, changing. In the case of the HKSAR, our Court of Appeal had endorsed⁸ the view

⁷ We only received about a dozen of requests and sent out a handful of requests each year under the Convention. Again, we received most requests from USA. This information is based on the statistics contained in our answers to the HCCH questionnaire in 2013: http://www.hcch.net/upload/wop/2014/2014sc_20hk.pdf

⁸ *Daimler AG v Leiduck, Herbert Heinz Horst* [2013] 2 HKLRD 822.

expressed in an earlier decision by the House of Lords in the UK⁹ to the effect that the process of cross-examination by video link “takes place as naturally and freely as when a witness is in the court room”.

14. In this regard, I also note with great interest that an *Experts' Group on the Use of Video-link and Other Modern Technologies in the Taking of Evidence Abroad* will meet in The Hague next month to identify and discuss issues that may arise in relation to the use of video-link and other modern technologies in the taking of evidence abroad. I trust that the outcome of the discussion would help us to make better use of modern technology to improve the operation of the Hague Evidence Convention.

Promotional work of the HCCH Asia Pacific Regional Office

15. As I mentioned at the outset, the HKSAR places great importance on the promotion of private international law. We are very privileged in that the HCCH set up its Asia Pacific Regional Office in the HKSAR in 2012. Given the importance of both the Hague Service Convention and the Hague Evidence Convention, they are naturally two of the Hague Conventions being actively promoted by the HCCH Asia Pacific Regional Office.

16. For instance, in August 2014, in collaboration with the HCCH Asia Pacific Regional Office, we organized an APEC Workshop in Beijing on “*Ease of Doing Business through Hague Conventions*” to promote, among others, the Hague Service Convention and the Hague Evidence Convention among 21 APEC member economies. For the benefit of those who might not have the chance to check out the situation, it might be useful to highlight the following conclusions and recommendations made at the Workshop.¹⁰

⁹ *Polanski v Conde Nast Publications Ltd.* [2005] 1 WLR 637.

¹⁰ See http://www.hcch.net/upload/apec2014workshop_concl.pdf

17. First of all, it is recognized that the mechanisms under the two Conventions are effective global means to facilitate cross-border investment, movement of goods and services by providing efficient means for cross-border cooperation in procedural matters, thereby simplifying and expediting judicial procedures and allowing for effective litigation management.

18. It was also acknowledged that “the Service Convention has greatly facilitated international transmission of judicial and extra-judicial documents (including demands for payment, protests with respect to bills of exchange and promissory notes) and that the Hague Evidence Convention has established effective methods of cooperation for the taking of evidence abroad in civil or commercial matters by means of letters of request, and by diplomatic or consular agents and commissioners.”

19. The Workshop delegates and participants also appreciated “a growing need to transmit judicial and extrajudicial documents and to take evidence abroad given market globalization and rising cross-border disputes in civil and commercial matters”. They considered that “facilitating international transmission of documents and taking of evidence abroad will enhance ease of doing business by reducing litigation time and cost, contributing to more efficient resolution of disputes”. They accordingly “encourage APEC member economies to enhance cooperation in transmission of documents and taking of evidence abroad through the Service Convention and the Evidence Convention, and to accede to the Conventions, as applicable”.

20. Further, noting the developments in the use of technology in implementing the two Hague Conventions, the Workshop delegates and participants acknowledged that “transmission and receipt of requests by electronic means will facilitate expeditious execution

under both Conventions and encourage their competent authorities to improve the current regimes by modern IT”.

21. On the part of the HKSAR, we echo those conclusions and recommendations made at the APEC Workshop last year. More importantly, the outcome of the APEC Workshop illustrates the positive impact of the Hague Conference on Private International Law and the work of its Asia Pacific Regional Office in the region.

Conclusion

22. Before I conclude, may I share one other aspect of our experience. While the Hague Service Convention does not govern internal service within a State (and hence cannot apply between the Mainland and the HKSAR), an *Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts*, which was modelled on the Hague Service Convention, was signed in 1999¹¹ (pursuant to Article 95 of the Basic Law). This demonstrates that the impact of the Hague Conventions can go beyond Contracting States in the traditional manner, and may, with the necessary modifications, provide a model of legal cooperation in different contexts.

23. Ladies and gentlemen, I would like to take this opportunity to pay tribute to the significant contributions made by the Hague Conference on Private International Law in facilitating legal cooperation among different jurisdictions. The work of the Hague Conference on Private International Law has been successful in linking up different jurisdictions with different legal systems and traditions around the world, as demonstrated by the Hague Service Convention and the Hague Evidence Convention.

¹¹ <http://www.doj.gov.hk/eng/topical/pdf/mainlandmutual1e.pdf>

24. On our part, we would reaffirm our support for the work of the Hague Conference on Private International Law generally and also the Asia Pacific Regional Office in promoting the Hague Conventions (including the two Conventions in question), and look forward to working jointly with all of you to achieve this common aim.

25. On this note, may I wish this event every success and all of you a fruitful and enjoyable day. Thank you.