Welcome Remarks by the Hon Rimsky Yuen SC
Secretary for Justice
at the Colloquium on the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention") on 1 May 2017 (Monday)

Professor Donald Donovan [ICCA President], Professor Albert Jan van den Berg [Hon ICCA President], Ms. Teresa Cheng SC, Judges, Distinguished Guests, Ladies and Gentlemen,

1. First of all, may I, on behalf of the Government of the Hong Kong Special Administrative Region ("Hong Kong SAR"), extend to all of you our warmest welcome. I would also like to express our gratitude to both the International Council for Commercial Arbitration ("ICCA") and the Asian Academy of International Law ("AAIL") for choosing Hong Kong as the venue for holding this Colloquium.

2. When Teresa approached me and asked if the Department of Justice would like to be one of the supporting organisations for this event, I readily said "yes". To me, there is every reason to support this event, and especially to support the hosting of this event in Hong Kong.

3. It has been the steadfast policy of the Hong Kong SAR Government to support and promote the development of arbitration, including of course international commercial arbitration. As part of this government policy, we welcome and encourage exchanges and interflows among different jurisdictions on matters relating to the development of international arbitration. Events of this nature, among others, provide a good platform for the international arbitration community to gather together to share their views and experience on matters of common interests.

4. It has often been said that the success of international arbitration rests on two important pillars, namely, the UNCITRAL Model Law on International Commercial Arbitration 1985 ("the UNCITRAL Model Law") and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("the New York Convention"). I do not think anyone can validly dispute this proposition. In the context of the Hong Kong SAR, both the UNCITRAL Model Law and the New York Convention form the backbone of our arbitration regime[1].

5. Of these two pillars, of course each of them has its significant role to play. Whilst the UNCITRAL Model Law is of great importance in ensuring the efficiency and fairness of the arbitral process, the New York Convention may perhaps be of special interest to the end-users of arbitration. The key reason is two-fold.

6. First, parties who choose arbitration as a means to resolve dispute naturally expect that the arbitral award made by the arbitral tribunal, in the absence of voluntary compliance, can be effectively enforced. Such an expectation is totally understandable and legitimate. Unless an arbitral award can be effectively enforced, there is little point in resorting to arbitration. Without the New York Convention, this legitimate expectation can hardly be fulfilled.

7. Second, one of the advantages of international arbitration over traditional court litigation is the relative ease of enforceability of the arbitral award. Likewise, without the New York Convention, this advantage of arbitration over litigation can hardly be achieved.

---

[1] The current Arbitration Ordinance (Cap. 609), which provides the legislative backing to the conduct of arbitration and the enforcement of arbitral award in Hong Kong, is based on the UNCITRAL Model Law (the 2006 version) and the New York Convention.

8. However, the New York Convention would remain no more than a piece of paper unless it is properly implemented by the parties who subscribe to it. And this is the aspect where joint efforts of the international community (which of course includes the judges and judicial officers of the numerous member states who are party to the New York Convention) become crucial.

9. On the one hand, there is a strong need to ensure consistency in the proper interpretation and implementation of the New York Convention. The whole point of having the New York Convention is to ensure that the end product of the arbitral process --- the arbitral award --- can be enforced in as many different jurisdictions as possible. To achieve this objective, not only do we need an extensive network of enforcement, we also need to ensure consistency, predictability and certainty in the process of enforcement, so that parties to international arbitration can know reasonably well in advance as to how the arbitral award would be treated in other signatories to the New York Convention. Not only are the three elements of consistency, predictability and certainty important for the commercial men (who are, after all, the end-users of international commercial arbitration), they are the key attributes of the widely accepted concept of the rule of law[2].

10. On the other hand, the domestic law of the jurisdiction where enforcement is sought is not completely irrelevant. For instance, Article III of the New York Convention makes reference to the recognition and enforcement of arbitral awards "in accordance with the rules of procedure of the territory where the award is relied upon". Indeed, a recent appeal heard by the UK Supreme

[2] The question of whether the regime international arbitration constitutes an independent or transnational system of arbitration (especially the relevant theory as advocated by the French jurists) apparently remains controversial. See, e.g., the recent debate between Lord Mance and Professor Emmanuel Gaillard held in Paris on 16 December 2016 (reported in the *Global Arbitration Review*). However, it is difficult to deny that: (a) the concept of the rule of law does have both a national and an international dimension; and (b) the regime of international arbitration does have a role to play in enhancing the rule of law at the international level.

Court lodged by a Nigeria oil company[3] against a requirement that it should provide security as a condition of challenging the enforcement of an arbitral award provides an illustration of an interplay between these or similar rights[4].

11. The crucial question (or at least one of the various crucial questions) is how to achieve harmony among the parties to the New York Convention so as to implement its spirit and rationale, whilst at the same time respecting the relevant domestic arbitration regimes.

12. As experience reveals, achieving harmony and consistency among the parties to the New York Convention is not always easy; striking a balance between the notion of harmony and consistency whilst respecting relevant domestic law can be even more difficult. However, with the good will and joint efforts of the international arbitration community, one should remain optimistic that appropriate solution can be found.

13. Before I conclude, may I make a slightly different point. As I understand, this Colloquium is specially designed for Asian regional judicial officers. This idea, if I may say, is a very good one, (and that is another reason why the Department of Justice supports this event).

14. As we all know, international arbitration is getting more popular now than ever before in Asia. Yet, it is a fact that Asian jurisdictions are very divergent in terms of legal system and legal culture and are progressing at different stage of developing their respective arbitration regimes. Viewed against this background, the importance of enhancing common understanding and comity is more than obvious.

---

[3] Nigerian National Petroleum Corporation.

[4] During the hearing of the appeal, Lord Sumption observed that the appeal concerned the interplay of two prima facie rights, namely, the right for security under the British civil procedure regime and the right to challenge recognition and enforcement of an arbitral award; and that the core question is whether the right to challenge is being impeded in a manner inconsistent with the New York Convention.

15. Further, there is the Belt and Road Initiative put forward by the Central Government of the People's Republic of China, which is now a very popular topic in many jurisdictions. As you know, the Belt and Road routes cover more than 60 different jurisdictions with very different legal systems and different experience in respect of international arbitration. It has been said (and which I agree) international arbitration is one of the best ways to resolve commercial or investment disputes arising from the Belt and Road Initiative. Since Asian countries have an important role to play in the Belt and Road Initiative, there is thus another reason why ensuring harmony among them in the implementation of the New York Convention is more important now than before[5].

16. Thanks to the efforts of ICCA and AAIL, events of this type provide a very good platform for judges from different jurisdictions to share their experience, so that there can be a more effective implementation of the New York Convention.

17. As a jurisdiction which espouses international arbitration, the Hong Kong SAR is all in support of the work of ICCA, and indeed looks forward to having more co-operation with ICCA on the promotion of international commercial arbitration.

18. On this note, it remains for me to wish you all very successful and fruitful colloquium. As many of you travelled from other jurisdictions to attend this event, I also wish that you will have an enjoyable stay in Hong Kong and can also find some spare time to experience the vibrancy of Hong Kong.

Thank You.

---

[5] It is appreciated that there are currently at least two schools of thought. The first one advocates the use of the current international arbitration regime (with or without modification) (which of course includes the New York Convention) for resolving disputes arising from the Belt and Road Initiative. The second advocates a new regime tailored made for the Belt and Road Initiative. For the purpose of this event, I will not deal with the second school.