

Welcome Remarks by Mr Rimsky Yuen, SC
Secretary for Justice
Second UNCITRAL Asia-Pacific Summit Hong Kong 2017
Judicial Roundtable on International Trade Law
16 October 2017 (Monday)

Mr (José Angelo) Estrella-Faria [Senior Legal Officer and Head, Technical Assistance Section, UNCITRAL], Mr (Joao) Ribeiro [Head, Regional Centre for Asia and the Pacific, UNCITRAL], Distinguished Judges, Ladies and Gentlemen,

It is my great honour to have this opportunity to meet and address such a distinguished gathering of judges and legal experts. First and foremost, may I, on behalf of the Hong Kong Special Administrative Region (“HKSAR”) Government, extend our warmest welcome to all the speakers, judges and legal experts who take part in this Judicial Roundtable.

2. The first UNCITRAL Asia-Pacific Judicial Summit was held two years ago in this city focusing on the interpretation and application of the New York Convention on the recognition and enforcement of foreign arbitral awards, with participants from 39 jurisdictions. The very positive feedbacks that we have received in respect of the first Summit have strengthened our determination to serve as a platform, if not a hub, for legal and dispute resolution-related experience sharing and capacity building in this region and beyond.

3. The HKSAR Department of Justice (“DoJ”) is therefore very much honoured to have the privilege to co-organise this Summit again with the Regional Centre for Asia and the Pacific of

the United Nations Commission on International Trade Law (“UNCITRAL”) and the Hong Kong International Arbitration Centre (“HKIAC”). Indeed, the DoJ very much look forward to making this Summit a regular event in the HKSAR legal calendar so that we can gather together every two years or so to discuss matters of common interest.

4. Today, the objectives of this Second Judicial Roundtable are to enhance knowledge on international trade law and to facilitate a uniform interpretation and application of the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006) (“UNCITRAL Model Law”).

UNCITRAL’s contribution to the development of international trade law

5. Having recently celebrated in July its 50th Anniversary in Vienna, UNCITRAL has served as the most important legal body of the United Nations system in the field of international trade law, and has been making great contributions to the reduction and removal of legal obstacles which impede cross-border trade.

6. Among others, UNCITRAL texts play a remarkably significant role in the context of international trade law. They include Conventions, Model Laws and Legislative Guides which cover a wide range of areas, such as enforcement of arbitral awards, facilitating electronic commerce, corporate insolvency, transport of goods and secured transactions.

7. Clarity and certainty are two of the important factors that can facilitate international trade. Accordingly, modern and

harmonized legal frameworks are extremely important to enhance legal certainty and predictability so as to facilitate business transactions, encourage international commerce, and contribute towards international cooperation. In breaking down legal barriers to trade, the wide and effective implementation of the UNCITRAL legal instruments enable businesses to trade more extensively and at reduced costs.

8. UNCITRAL is also well-known for its inclusive and transparent process of developing its legal texts. The UNCITRAL's Working Groups and Commission are attended by UNCITRAL Member States and by observers, including other UN Member States and relevant international organisations. The sessions are conducted in all UN official languages. Relevant decisions are taken by consensus after thorough discussions. These are some of the reasons which explain why UNCITRAL texts enjoy the reputation that they represent modern, fair and harmonized rules for commercial transactions, acceptable to different legal systems for adoption and implementation.

HKSAR Experience

9. The HKSAR has benefited from the adoption and implementation of UNCITRAL instruments in terms of maintaining modern and internationally-accepted legal norms in key areas of international trade and commerce.

10. By way of example, the New York Convention, which is the topic of **Session 1** today, forms an integral component of the HKSAR's legal regime for arbitration. The New York Convention has not only made cross-border enforcement of arbitral awards efficient and effective, but has also served as a model for

arrangements within one state. Pursuant to the “one country two systems” policy, arbitral awards are enforceable on a reciprocal basis pursuant to bilateral arrangements concluded between Mainland China and HKSAR in 1999, as well as between the HKSAR and the Macao SAR in 2013.

11. Another feature of the HKSAR’s arbitration regime has largely been a result of the adoption of the latest version of the UNCITRAL Model Law on International Commercial Arbitration. This Model Law has virtually been adopted in its entirety, and has also been reproduced in a user-friendly manner in our Arbitration Ordinance. We will hear presentation on how judicial support is given under the Model Law in **Session 2** today.

12. Nowadays an ever-growing portion of business is done online. We have modelled the HKSAR’s Electronic Transactions Ordinance upon the UNCITRAL Model Law on Electronic Commerce, which provides the basic framework for modern cross-border electronic commerce. Having the appropriate legal infrastructure for electronic transactions can also assist small and medium-sized enterprises to do business in a cost-effective environment and help small businesses across the world to grow. We will enjoy experts’ sharing regarding the UNCITRAL Model Law on Electronic Commerce in **Session 3** today.

Relevance of the interpretation of UNCITRAL texts and HKSAR’s collaboration with UNCITRAL

13. The adoption of an international legal instrument in domestic law is only the first step. The next and significant step, in order to achieve the goal of harmonization and modernization of the laws and regulations governing international trade, is to ensure the

effective use and implementation of such legal instruments. Obviously, harmonization cannot be achieved if different jurisdictions interpret or implement those legal instruments differently.

14. One example in this regard is Article V of the New York Convention, which sets out the grounds on which recognition and enforcement of an arbitral award may be refused. However, the question of whether an arbitration award that has been set aside by the courts at the seat of arbitration can be enforced in another jurisdiction receives divergent views.

15. In the *Hilmarton case*, the French Court of Cassation decided that the arbitral award set aside in Switzerland could be enforced. The reason given is that the decision by a national court annulling the award only extinguished it in that particular national system, and the award “survives” in the international legal order¹. On the other hand, in the recent decision of *Maximov v NMLK*, the English Court decided that the award set aside in Russia could not be enforced since it was not enough for the set-aside decisions to be wrong or even manifestly wrong. They have to be “so extreme and perverse that they can only be ascribed to bias”².

16. Given the important role played by judicial interpretation in implementing an international legal instrument, the preparation of UNCITRAL texts should be complemented by programmes which can assist parties in implementing and using them in a manner that reflects the true legislative intent of the legal

¹ The European & Middle Eastern Arbitration Review 2009 – France, Global Arbitration Review, 10 December 2008, <http://globalarbitrationreview.com/insight/the-european-middle-eastern-arbitration-review-2009/1036556/france>

² “English court refuses enforcement of Russian award set aside at the seat of the arbitration” Lexology, September 2017, <https://www.lexology.com/library/detail.aspx?g=a2ce175e-ac31-439b-83fe-e45be270e0b7>

instrument in question and thereby enhance consistency among the Contracting Parties. The objective is to achieve and preserve a uniform interpretation of the legal instruments, so as to avoid domestic-oriented interpretations which may be unduly narrow or even at times conflicting.

17. Thanks again to the efforts of UNCITRAL, much assistance can now be derived from the database known as Case Law on UNCITRAL Texts (“CLOUT”), which collects and disseminates information relating to court decisions and arbitral awards relating to UNCITRAL legal instruments, with the target of achieving uniformity in the interpretation and application of those instruments for use by judges, arbitrators, lawyers, and all interested persons.

18. Another way to promote a better understanding and the uniform interpretation of the UNCITRAL legal instruments is through capacity building and technical assistance. The HKSAR Government, for good reasons, is a keen supporter of such activities. For instance, pursuant to an agreement between the Chinese Central People’s Government and the United Nations, the HKSAR Government seconds legal counsel to the Regional Centre for Asia and the Pacific of the UNCITRAL to assist in its work in technical assistance and capacity building particularly to developing countries in the Asia-Pacific region.

19. The HKSAR Government has also been participating in various conferences and workshops which aimed at raising the capacity of government officials and judicial officers of countries in the region in the field of international trade and commercial law. We have had the UNCITRAL’s support to the DoJ in co-organising a number of workshops in the past two years during the meetings of

Asia-Pacific Economic Cooperation (“APEC”) in the Philippines, Peru and Vietnam in 2015 to 2017. In recognition of the benefits of UNCITRAL’s work, the APEC’s Economic Committee has recently granted 3-year guest status to UNCITRAL to facilitate its participation in the work of the APEC Economic Committee. We are also planning to organize another APEC workshop on the use of modern technology for dispute resolution and electronic agreement management in early 2018 in Papua New Guinea.

HKIAC and Latest Developments of Arbitration Law in the HKSAR

20. Allow me also to say a few words about the HKSAR’s position in respect of international arbitration and international law, as well as the opportunities ahead of us.

21. The HKSAR is an international and cosmopolitan city. It is also an international financial and commercial centre. Being international is one of the key attributes of the HKSAR; another is our respect for the rule of law (both in the domestic and international contexts).

22. It is against this background that we place great emphasis on, among others, two aspects. The first aspect is international arbitration and international law including international trade law, as both are essential elements that strengthen the foundation of international trade, which plays a vital role in this globalized world. The second aspect is collaboration and co-operation with the international community, which we believe are in our mutual interest and more important than ever.

23. International arbitration, as a form of dispute resolution, is

a means to ensure protection of commercial and property rights, as well as a form of access to justice. This is why the HKSAR Government has all along been a strong supporter of international arbitration.

24. As early as in the 1980s, we established the HKIAC (which is the other co-organizer of this event). Over these 30 odd years, the HKIAC has been instrumental in promoting arbitration both within the Asia-Pacific region and beyond. With its modern arbitration rules, experienced international secretariat and top-quality facilities, the HKIAC is ranked the most preferred arbitration institution outside Europe in the 2015 International Arbitration Survey conducted by the Queen Mary University of London.

25. Over the years, the DoJ has been working closely with the HKIAC and other stakeholders to continuously enhance our arbitration regime. In June this year, two important sets of legislative amendments were passed by our legislature:

- (a) First, the Arbitration Ordinance has been amended to clarify that disputes over intellectual property (“IP”) rights are capable of resolution by arbitration, and it would not be contrary to public policy to enforce an award solely because the award involves a dispute over IP rights;
- (b) Second, both the Arbitration Ordinance and the Mediation Ordinance have been amended to clarify that third-party funding for arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty.

26. Looking ahead, the visionary Belt and Road Initiative announced by China in 2013 will no doubt open up immense business opportunities for economies along the route and beyond. As more and more governments and enterprises around the world are participating in this Initiative, the related economic activities will generate a huge demand for cross-border legal and dispute resolution services.

27. By reason of the “one country, two systems” policy which guarantees the continuation of our common law legal system, the HKSAR is well-placed to play the role of facilitator and promotor for trade and investment between Mainland China and the rest of the world, including the economies along the Belt and Road route.

28. Further, we have established dynamic collaborative relationship with various international organisations, including the International Monetary Fund, the Bank for International Settlements and the Hague Conference on Private International Law (“HCCH”). All of them have set up offices in the HKSAR.

29. The DoJ from time to time sends representatives to participate in, as well as support, events organized by relevant international organisations. We participated, for instance, actively in the Special Commission Meeting on the Hague Apostille Convention in November 2016. With the support of the Central People’s Government and the Hague Conference on Private International Law, a colleague from the DoJ was elected as the Chair of the Special Commission. In April 2018, we are going to co-organise with the Hague Conference on Private International Law a global event in the HKSAR to celebrate its 125th anniversary. Further, as I said earlier, we have collaborated with the UNCITRAL in its technical assistance and capacity building

activities, including those through the APEC platform.

Concluding Remarks

30. Distinguished judges, ladies and gentlemen, history tells us that the world has always been changing. However, globalization, technological changes, the economic growth taking place in the Asia-Pacific region, together with the propelling force of the Belt and Road Initiative, will definitely reshape the world at such a speed that we have never seen before.

31. Faced with this global phenomenon, no jurisdiction can isolate itself from the rest of the world. Speaking for the HKSAR, we welcome and treasure opportunities to work with international organizations and indeed the entire international community. We believe that there is a lot we can learn from each other, and that joint efforts is the key to find effective solutions to overcome challenges that we all face.

32. On this note, it remains for me to wish this Second Summit every success, and I look forward to welcome you back to the HKSAR at the Third and many more UNCITRAL Asia-Pacific Summits in the years to come as well as other occasions.

Thank you.