

Speech given by
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THE DUTCH-RUSSIAN SEMINAR ON LEGAL CO-OPERATION
“Better Justice, Better Business”

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1. Introduction

- Excellencies, ladies and gentlemen.
- It is with great pleasure that I am able to participate in a panel discussion with such distinguished speakers and present on the role of the Hague Conference on Private International Law in creating a reliable legal environment for international trade.

2. An introduction to the HCCH

- Many of you will be familiar with the work of the Hague Conference on Private International Law – commonly known as the “Hague Conference”, not the least for being the oldest international organisation in The Hague, with its first session taking place in September 1893.
- Since the adoption of its Statute, the Hague Conference has concluded almost forty such treaties – known as the “Hague Conventions” – which address one or more of the private international law questions, *i.e.*, jurisdiction, applicable law, recognition and enforcement, and legal co-operation in a particular subject-matter area. The Hague Conference has grown into a veritable world organisation, with a current membership base of 71 States and one regional economic integration organisation (the European Union), which represents all major geographic regions and legal systems.
- Russia and the Netherlands have been involved in the Hague Conference from its inception. It was the Dutch jurist and Nobel laureate Tobias Asser who instigated the Hague Conference and presided over the first four sessions in 1893, 1894, 1900 and 1904.
- The Netherlands obviously is host State to the Organisation, not to mention the State that has joined the highest number of Hague Conventions.
- Russia rejoined the Hague Conference as member in 2001, although it had attended a number of sessions during the 1980s (as the Soviet Union) and 1990s as observer. To date, Russia has joined six Hague Conventions, and we understand that a number of other conventions are currently being studied within the Ministry of Justice.

3. How is the work of the HCCH relevant to trade and commerce?

- My fellow esteemed panelists have stressed the important role that private enterprises nowadays play in establishing and fostering international organizations. They can attest in their day-to-day professional activities how cross-border activity and the generation of global wealth lie in the hands of private enterprises.
- To facilitate and support those cross-border exchanges, the Hague Conference Conventions and ongoing projects are designed to provide legal certainty and assist in the efficiency of international dispute resolution for individuals and entities engaged in cross-border transactions.
- The Conventions create supportive environments for international trade and investment, they provide greater certainty in commencing legal proceedings and they improve the efficiency of parties attempting to enforce their rights abroad. The Conventions thereby provide individuals and companies with the ability to enjoy a high level of legal security despite the differences between legal systems around the world.
- The importance of the Hague Conference Conventions for international trade and foreign investment has recently been acknowledged by the World Bank in its 2010 Investing Across Borders report. IAB indicators are designed to identify good practices that offer governments specific tools for improving their investment climates. The report recommends joining the 1961 Hague Apostille Convention and implementing the two components of the electronic e-Apostille program (e-register and e-app).

a. Service, Evidence and Choice of Court Conventions

- Other Hague Conventions play an important role in cross-border dispute resolution, such as the Hague Service and Evidence Conventions. These Conventions are two of the most widely accepted Hague Conventions and they are also Conventions to which both Russia and the Netherlands are party. These Conventions establish co-operation frameworks for the transmission and execution of requests to serve documents and obtain evidence. These frameworks offer significant time and costs savings for litigants as compared to extant diplomatic channels.
- Another important Hague Convention to complement the international legal framework is the 2005 Choice of Court Convention. Signalling the strong support from the international business community, the International Chamber of Commerce (ICC) "reaffirmed its support for the Hague Choice of Court Convention and urge[d] governments to bring it into force without further delay"¹. The ICC stated that the Convention is a necessary tool for effective cross-border dispute resolution as it provides increased certainty in international commercial transactions and reduces the workload of courts and party costs.
- The Convention awaits a second ratification to enter into force (Mexico being the first State to have acceded to the Convention). Many efforts are currently deployed by the European Union and the United States of America. As for Russia, in April 2012, Deputy Minister of Justice Mr Yuri Lyubimov announced to the Governing Council of the Hague Conference that an advisory committee has been set up within the Ministry to study

¹ "ICC calls on governments to facilitate cross-border litigation", *ICC Commission on Commercial Law and Practice*, Paris, (29 November 2012) available at <http://www.iccwbo.org/News/Articles/2012/ICC-calls-on-governments-to-facilitate-cross-border-litigation/>.

the Convention. In a foreseeable future, it may well be that Dutch and Russian businesses will be ensured with greater legal security when selecting a venue to decide on any disputes arising out of their commercial activities.

b. Hague Principles on Choice of Law in International Contracts

- In the same vein, the Hague Principles on Choice of Law in International Contracts are designed to give effect to the choice made by parties to a commercial transaction as to the law governing their contractual relationship.
- Work continues towards a formal adoption of these Principles in 2014. Afterwards, States will be encouraged to take the Hague Principles into account as part of legislation reform activities to ensure a modern and party-oriented approach to international contracts.

c. A global litigation scheme at last?

- The Hague Judgments Project, which was re-enlivened in 2011, is a project that is aimed at designing a global instrument that addresses the recognition and enforcement of foreign civil and commercial judgments with the possibility of including provisions on matters relating to jurisdiction and parallel proceedings.
- At present, the issue of recognition and enforcement of foreign civil and commercial judgments is regulated by reciprocity or existing bilateral or regional instruments.
- It is evident that the lack of reliable and uniform rules in this area influences the decisions of companies and individuals regarding cross-border trade and foreign investment.

4. Concluding remarks

- In today's world, cross-border trade and foreign investment are commonplace and the rate of international transactions continues to increase. Liberalised global markets and increasing international trade and foreign investment have generated numerous benefits. However, the growth in cross-border transactions also leads to risks for those companies and States involved and highlights the potential costs of protecting international investments.
- There is an endless range of questions that may arise with regard to such cross-border situations. More often than not, there is no easy answer to these questions. Accordingly, the Hague Conference has been and is working towards developing and maintaining frameworks of multilateral legal instruments with the aim of providing both individuals and companies with the ability to enjoy a higher level of legal security.