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The Apostille, Service and Evidence Conventions in Latin America

Submitted by: Hong Kong, China



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As you might have already realized, APEC has the particularity of being a meeting point for the work of the Asia Pacific and Latin American Regional Offices of the Hague Conference, providing an excellent opportunity to develop synergies, and therefore making the experience of this workshop all the more interesting and helpful to us.

Turning to my subject, I've been asked to refer to the situation of international legal co-operation in Latin America, the status of the Hague Apostille, Service and Evidence Conventions and how these matters are linked to the development of international trade.

With your indulgence, I would like to begin my presentation with a few comments and examples which should highlight the importance of developing a framework of international legal co-operation as a means to facilitate the development of international trade.

In order to illustrate this, let me quote Hon. Robert McClelland (former Attorney-General of Australia) who, in an article published in December 2011, stated:

*"...Efficient and effective legal rules and procedures relating to the resolution of international disputes facilitate the advance planning of transactions and can simplify and expedite the resolution of those disputes. They assist in minimising transaction, litigation and enforcement risks and create a supportive environment for international trade. The co-ordination of these rules and procedures with those of other countries involved in the particular transaction is an important aspect of the efficiency and effectiveness of the legal context of international transactions."*¹

I think that this quote is extremely clear, and applicable to any region in the world. Furthermore, I can give you a regional example of the Americas, which might also demonstrate that the awareness on the importance of developing international legal co-operation as a means to facilitate trade is growing in different regions and among different sectors. Last year, during its annual meeting, the Inter-American Bar Association issued a Declaration recommending States to join the Apostille, Service and Evidence Conventions, saying, among other things, that *"the incorporation of this type of conventions into national legal systems facilitates and simplifies an effective access to justice to persons (natural and legal), improves the operation of justice and facilitates the development of international business."*²

It is also worth mentioning that there are some subregional instances of this recognition. For example, in Central America, where within the framework of the CAFTA-DR Agreement (Dominican Republic-Central America-United States Free Trade Agreement), the Apostille Convention was identified and recommended as an instrument that would facilitate international trade and foreign investment, cutting the red tape in international commercial transactions. As a result the

¹ "International civil legal co-operation", The Hon. Robert McClelland (Attorney General, Commonwealth of Australia) and Mary Keyes (Griffith Law School, Australia), Commonwealth Law Bulletin, Vol. 37, No. 4, December 2011, 661–669.

² Inter-American Bar Association, Declaration of 24 June 2013 available at: http://www.hcch.net/upload/decl_iaba2013s.pdf

HCCH was requested to provide technical assistance to these countries in order to facilitate the implementation of the Apostille Convention (now, all the States parties to the CAFTA-DR Agreement are parties to the Apostille Convention -with the exception of Guatemala where the Convention is currently before Congress in the process of approval-).

After making reference to the importance of developing an international legal co-operation framework as a means to enhance the ease of doing business, it might be helpful to say a few words on the remarkable developments that this subject matter has had in recent years, as well as the reasons why it is believed that this trend will continue even faster in the years to come, due to the proliferation of modern technologies.

Historically, international legal co-operation operated mainly through letters rogatory that were sent back and forth via official diplomatic channels, which involved the participation of several offices both in the requesting and requested States, causing extreme delays in proceedings.

Then, in recent decades, and largely due to the work of the HCCH, legal co-operation conventions started to include the figure of the Central Authority, which provided a simplified and swifter way to channel co-operation requests. The Service and Evidence Conventions have pioneered the development of this co-operation and networking via Central Authorities. Today, the concept of Central Authorities is used widely and successfully in numerous conventions adopted in different international forums.

The increasing use of modern technologies has also started to influence international legal co-operation. The use of email, videoconference, joint hearings, and direct judicial communications have started making their way into international co-operation, while the use of public e-documents has raised the need for e-notarization and e-authentication.

Against this background, it might be helpful to recall the benefits that the Hague Apostille, Service and Evidence Conventions can provide. In particular, considering the new challenging environment that surrounds the development of international legal co-operation in the 21st Century, which claims for an increasing application of modern technologies. In this regard, to avoid repetitions I would simply refer to the presentations delivered by our SG, and would only recall what has been said since 2003 in the Special Commissions organized by the HCCH, i.e.: *"the SC noted that the spirit and letter of the Conventions do not constitute an obstacle to the usage of modern technology and that their application and operation can be further improved by relying on such technologies."*³

Furthermore, in the most recent meetings of the Special Commissions that examined the practical operation of the Apostille (October 2013) and the Service and Evidence Conventions (May this year), it was clearly demonstrated that the application of modern technologies to the operation of these Conventions is

³ Conclusion and Recommendation N°4, of the Special Commission on the Practical Operation of the Hague Service, Evidence, and Access to Justice Conventions, held from 28 October to 4 November 2003, available at: http://www.hcch.net/upload/wop/jac_concl_e.pdf

already a reality, and that we can expect this trend to continue in years to come. The Permanent Bureau has the mandate to continue monitoring developments in this area and encouraging States to transmit and receive requests by electronic means in order to facilitate expeditious execution.

Let me now share some information on the status of the Hague Apostille, Service and Evidence Conventions in Latin America, making special reference to Latam APEC Members:

The Apostille Convention is currently in force in 14 Latam States (out of 19). Many of them joined the Convention within the last 5 years, and three other States are in the process of incorporation (Brazil, Chile, and Guatemala).

The Service and Evidence Conventions have enjoyed wide and successful operation in Mexico, Argentina and Venezuela for many years, and recently we have identified considerable interest in these instruments elsewhere in the region. For example, Colombia has joined both of them in the last two years, and there are many other States that are currently considering becoming parties to these Conventions (among others Costa Rica and Uruguay).

Brazil, because of the size of its economy, deserves a special reference, and it is encouraging to report that during the current year has joined the Evidence Convention, and is already in the process of joining the Service and Apostille Conventions.

It is also worth noting the increasing awareness that the development of international legal co-operation has achieved within the Judiciaries of the region. As a significant development, early this year, the Ibero-American Judicial Summit (which gathers the judiciaries of 23 States –including the three Latam APEC States-), has adopted a Protocol on International Legal Co-operation, which among other things, encourages the broad application of modern technologies to the operation of international legal co-operation, and provides a list of Conventions which States are encouraged to join. The Hague Apostille, Service and Evidence Conventions have been included in this list.

To report more specifically, on Latam APEC Members:

Mexico has been operating the Apostille Convention since 1995, and has had an electronic e-register in operation since February 2010.

The Service & Evidence Conventions have been in force for many years. It might be interesting to note the value given by practitioners and academics to the operation of international legal co-operation frameworks for the development of trade. To reflect this, the next meeting of the Mexican Association on Private International Law (AMEDIP), to be held in October, has the general title of “PIL & business”, and international legal cooperation matters are important subtopics included in the programme.

Perú joined the Apostille Convention in 2010 and has used an e-register since the entry into force of the Convention. It is not yet a party to the Service & Evidence Conventions.

In **Chile**, the Congress approved the Apostille Convention last year and Chile has made significant progress in the implementation process (they have already announced that will implement e-register and e-Apostille from the outset). The Service and Evidence Conventions are currently being considered for their prospective incorporation into domestic law.

To conclude, there seems to be general consensus on the importance of developing a framework of international legal co-operation to facilitate the ease of business. Modern international legal co-operation claims for an increasing application of modern technologies, and therefore for a legal framework that allows for this. The Hague Apostille, Service and Evidence Conventions are key instruments to develop the foreseen legal framework in order to support the development of international trade among APEC members and beyond.