

Articles on Hague Choice of Court and Evidence Conventions

The current issue (Spring 2007) of the *American Journal of Comparative Law* contains a couple of articles dealing with private international law issues. First, there is an article by Martin Davies on “**Bypassing the Hague Evidence Convention: Private International Law Implications of the Use of Video and Audio Conferencing Technology in Transnational Litigation**” (55 *Am. J. Comp. L.* 205). Here’s the abstract:

New technologies for video and audio conferencing have made it possible to take testimony or depositions directly from witnesses in remote locations. This article considers the private international law issues that arise when a witness in one country gives evidence directly via conferencing technology to a court in another. The probative force of evidence given remotely from another country is affected if there is no effective sanction for perjury or contempt by the witness, or if the witness claims a privilege that would not be available in the jurisdiction where the court sits. The Hague Evidence Convention makes no provision for such situations, which must therefore be resolved by national law. This article undertakes a comparative analysis of the relevant law in several common law countries and stresses the need for a uniform international solution. Unless the Hague Evidence Convention provides that solution, it will become superseded in practice, at least so far as the evidence of witnesses is concerned.

Secondly, Guangjian Tu has written an article on “**The Hague Choice of Court Convention - A Chinese Perspective**” (55 *Am. J. Comp. L.* 347). The blurb reads:

In 1992, upon the initiative of the United States, the Hague Conference on Private International Law began to negotiate a convention on jurisdiction and the recognition of judgments. The project suffered a series of setbacks and was eventually abandoned in favor of a less ambitious undertaking, a Convention on Choice of Court Agreements. This Convention was eventually concluded on June 30, 2005 at the Twentieth Diplomatic Session of the Hague Conference. While it

is a “double convention” addressing both issues of jurisdiction and of judgment recognition, its scope is rather limited because it deals only with forum selection clauses and their consequences. It is now open for signature and ratification (or accession). Informal consultations have already taken place in several interested States. They will be followed by formal consultations with a view to the signature and ratification once the Explanatory Report is finalized. As a member of the Hague Conference, the People’s Republic of China has participated in the negotiations for this Convention. Will China sign and ratify it? This is an important question since China is now not only a member of the World Trade Organization (WTO), its economy is also growing rapidly, comprising a market of over a billion people, and playing an increasingly important role in the world. As a result, Chinese and foreign businesses interact in an increasing number of cases and contexts.

This essay discusses the Hague Choice of Court Convention from the perspective of Chinese law to explore whether China can sign and ratify the Convention. It does not analyze its articles one by one but focuses only on the key issues. Part I explains the sources of Chinese law regarding international jurisdiction as well as recognition and enforcement of foreign judgments. Part II will examine the key issues of the Convention in light of the pertinent domestic law of China, analyze how these key issues are dealt with, and, in particular, whether there are conflicts between the Convention and Chinese law and how any such conflicts can be resolved. Part III will conclude that the Convention is acceptable to China and that China should ratify it.

The *Journal’s* website doesn’t seem to be fully up-to-date, but both articles are available to Westlaw subscribers in the World Journals category.