

**In the matter of a Letter Rogatory issued by United States District Court Eastern
District Of New York
(2003) SLR 99**

Ruling delivered on 6 June 2003 by:

PERERA J: In the case of *Vicunha Nordeste S/A, Textil Basquit (TEBASA) and Ors v Global Container lines Ltd and Ors*, case no. 02 civ 3596 (ERK) (RML) of the United States District Court - Eastern District of New York, a letter rogatory has been issued on Mr Philippe Boule, an Attorney at Law of Seychelles, through the Ministry of Foreign Affairs of Seychelles. The letter rogatory states that the sworn testimony of Mr Boule on 47 questions posed therein, "shall be used at the trial of the action" and that it is not sought as part of the pre-trial discovery process" of that action. In effect, Mr Boule would then be a witness in a trial before a foreign jurisdiction.

Generally, civil law countries view the obtaining of evidence as part of the judicial function, and the actions of Agents of a foreign Court may be seen as offending the sovereignty of the state in its judicial aspect. Hence if evidence is to be obtained in such countries, official intervention will be required through bilateral and multilateral civil procedure Conventions.

Dicey and Morris on Conflict of Laws (11 ed) state at 8 thus:

In England, unlike some continental countries and the United States, international Treaties and Conventions do not have the force of law merely by reason of having been ratified by the Government, at least in so far as the rights and duties of private persons are concerned. In the United Kingdom, a Treaty provision does not become law until it has been implemented by statute or statutory instrument.

The domestic law of Seychelles, as contained in Section 11 of the Evidence Act (Cap 74) is of purely local application.

The Republic of Seychelles has ratified the "Service abroad of judicial and extrajudicial documents in Civil or Commercial matters" of the Hague Convention of 1965, on 18 June 1981 and acceded to it on 1 July 1981 but it has not been implemented by any statute or statutory instrument. The United States of America ratified the same convention on 24 August 1967. What is relevant in the present matter is the Hague Convention on the Taking of Evidence Abroad in Civil and Criminal Matters 1970. That convention was ratified by the United States of America, but not by Seychelles. However, in respect of criminal matters, the Mutual Assistance in Criminal Matters Act 1995, has been enacted to provide for the implementation of the Commonwealth scheme relating to mutual assistance in criminal matters within the Commonwealth, and also to provide such assistance in Criminal Matters between Seychelles and a foreign country other than a Commonwealth country. There is however no corresponding

domestic law in respect of civil matters. Hence, this Court has no jurisdiction to issue summons on Mr Philippe Boule, Attorney at Law pursuant to the letter rogatory.

Record: Civil Side No 96 of 2003