

2013 PETER NYGH HAGUE CONFERENCE INTERNSHIP REPORT

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I. Introduction

From August until December of 2012, I served as a Peter Nygh Hague Conference Internship intern. For the first time, two candidates, rather than the usual one, were selected. What followed was an eye-opening and enriching opportunity, for which I remain thankful to the Nygh family, the Commonwealth Attorney-General's Department, the Australian Institute of International Affairs, the Australian branch of the International Law Association, and, of course, all of my colleagues at The Hague Conference on Private International Law (**Hague Conference**).

II. Background

The Hague Conference was established in 1893, and this year is celebrating its 120th birthday; an impressive feat for a body that operated on a temporary basis until 1955. For the last 120 years, The Hague Conference has worked on the "progressive unification" of rules of private international law around the globe. Due to increased globalisation, this task has expanded significantly in scope. At the most general level, the Hague Conference's projects have been traditionally split into three key areas:

- the international protection of children, family and property relations;
- international legal cooperation, including in dispute resolution and litigation; and
- international commercial and financial law.

In the last few decades, particularly, more and more matters – whether personal or commercial – have become increasingly connected to multiple jurisdictions and legal systems. This has reinforced the need for unified and harmonised rules spanning the breadth of the multitude of cross-border transactions that govern both individual and corporate life.

III. Work

I was fortunate that the timing of my internship coincided with two major commercial projects at The Hague Conference: the finalisation of the *Draft Hague Principles on Choice of Law in International Contracts* (**Principles**), and the

resumption of work on the Judgments Project. I spent the majority of my time working on these projects.

By way of background, the Principles are intended to provide a uniform and consistent set of non-binding principles to govern parties' choice of law in international commercial contracts. The Judgments Project is a longstanding project of The Hague Conference, aimed at creating a global convention supporting the uniform recognition and enforcement of foreign judgments (similar to the 1958 New York Convention for arbitral awards).

Choice of Law in International Contracts

When I joined The Hague Conference in August 2012, significant preparations were underway to facilitate the upcoming Choice of Law in International Contracts Special Commission meeting. This meeting was aimed at – and ultimately succeeded in – reviewing a set of draft Principles previously prepared by a number of experts selected from the Hague Conference's Member States.

My day to day ranged the spectrum of legal and diplomatic work. For example, I assisted with drafting correspondence such as emails and letters, and in drafting speeches and conducting legal research. I was also tasked with tactfully 'reminding' a number of delegations of the upcoming Contracts Special Commission meeting and confirming their attendance (a crash course in the soft skills of diplomacy if there ever was one!).

When the Special Commission meeting started in November, I worked as part of the Recording Secretary team for the week. This team was tasked with note-keeping and providing a summarised set of minutes of the days' proceedings. This task proved to be highly technical, involved and also rewarding. As the Special Commission was essentially engaging in a drafting exercise, I was able to observe – and comment on – the process of an international text being worked out right before my eyes. It was a great opportunity to see experts in action, and provided me with a real understanding of the practical and legal significance of the Principles across the globe.

Subsequent to the Special Commission meeting, and after I had departed from The Hague, I was tasked with drafting a report for the April 2013 General Council. The report was drafted as a concise summary of what had occurred during the meeting, where a revised form of the Principles was unanimously endorsed by the Special Commission. This legal writing was at times challenging – requiring a mastery of the nuances of arguments raised – but offered a great opportunity to consolidate my knowledge of the Principles, and the reason each provision was drafted in a particular way.

Judgments Project

At about the same time as the Contracts Special Commission was taking place, I also assisted in drafting two comprehensive Notes for the Judgments Project. These Notes were meant to provide an overview of the work conducted to date by the Hague Conference and other international organisations and bodies in the area of recognition and enforcement of international commercial judgments, and international jurisdiction rules. This involved significant legal research – particularly of a comparative nature – and familiarity with a large number of treaties and international law sources.

The research called for lines of inquiry such as: do treaties or national law, somewhere in the world, allow for enforcement or recognition of foreign judgments relating to a particular subject area; for example, nuclear liability or punitive damages? And if so – or even if not – what principled reason, if any, exists to exclude these matters from a uniform recognition and enforcement scheme? Additionally, given the long history of attempts to recognise and enforce judgments internationally, and the industry-specific regimes which have often arisen as a partial answer, should these have any relevance for a new instrument?

These are by no means easy questions. They require a deep understanding of the operation of transnational litigation and the worldwide enforcement context for cross-border transactions. I was, in a sense, lucky to be able to use my knowledge of international arbitration, where similar issues have arisen in the context of international arbitral awards, to provide background and context to this endeavour. Even with this general knowledge of the international disputes system, the research called for far-reaching inquiries into national law, treaties, international instruments and Conventions. To this end, this wide survey of global trends and perspectives in the recognition and enforcement of foreign judgments provided a particularly valuable opportunity to expand upon my knowledge of international dispute resolution.

Other work completed

I completed various other tasks – again slated towards the commercial field, but covering the field of The Hague Conference’s activities. For example, I looked into discrete research questions, such as the impact of the newly adopted Chinese Private International Law Code on party autonomy, and the progress of the UNCITRAL Online Dispute Resolution project, and what, if any, impact this would have on the Judgments Project. I assisted in drafting articles, such as an article on parallel litigation, and the European approach to parallel proceedings in the first-in-time *lis pendens* doctrine. I also helped to draft presentations, such as a presentation for an international business audience outlining the current work of The Hague Conference in the commercial field.

I served as part of the Recording Secretary team for the Expert Group meeting on the Financial Aspects of Intercountry Adoption, and for the Apostille Convention Special Commission meeting (which occurred in the week prior to the Contracts Special Commission). An “International Day” – a mini “world-fair” for all international organizations based in The Hague – was also held, and many members of the Permanent Bureau (the Hague Conference’s Secretariat), including myself, helped to man our information booth.

IV. The Hague Conference Team

I was surprised by the small workforce the Hague Conference’s Permanent Bureau employs, relative to their work output. I had the most experience working on commercial matters, and was continually impressed by how much each legal officer and diplomat took on and managed. Each person had a large amount of discretion to shape and respond to legal and practical considerations. I was floored by the depth – and breadth – of knowledge each individual had in their respective fields, as well as the polished diplomatic skills required in the international law sphere to facilitate ongoing debate, drafting, and discussion, between Member States and interested parties.

I was also particularly struck by the people I worked with who spoke a number of languages fluently and were able to interchange between them rapidly and without hesitation. The Hague Conference is, of course, a bilingual organisation, which works in both French and English. However, beyond a *bonjour*, I couldn’t contribute much to this side of the Conference. The linguistic highlight for me was at the Contracts Special Commission meeting, when my direct supervisor, Marta Pertegás followed proceedings equally well in the three languages spoken at the Commission: French, Spanish and English – having no need for the simultaneous interpretation offered – and then returning to the office to discuss a few final matters in Dutch. Before this, I had not truly appreciated how directly beneficial a mastery of languages could be for both legal comparative work, and also for the soft skills of diplomacy mandated by the international nature of the Hague Conference’s work.

V. Life

“The world is a book and those who do not travel read only one page.” – St. Augustine

Living in The Hague was an eye-opening experience in a number of respects, particularly coming from the large suburban sprawl that is Melbourne. I learnt a few important lessons early on: if you don’t have a bicycle, there is something wrong with you; that my conception of what is close is very different from a Europeans’; and, that seasons actually exist and can be seen, when the leaves suddenly decide to drop – and the temperature follows just as quickly.

Surprisingly for the most densely populated country, there are a lot of parks, woods, beach and open space in The Hague. The running and cycling tracks are excellent. One of the highlights of my time in The Hague was cycling part of the incredibly scenic North Sea route, a cycle path surrounded by a sea of undulating sand dunes topped with greenery. It is also very convenient and safe to bike nearly everywhere. There are few places in the world where you can ride a bike from a beautiful beach, through dense woods, to the heart of international law in a modern city, in less than half an hour. The cycle paths are sacrosanct and separated from traffic. The beauty of this is that cars respect the bike lanes, which are very well designed, with a lot of clearance. It is thus a very safe way to travel, as opposed to the door-dodging experience that is bike commuting in Melbourne.

The Hague and its surrounding cities, which are easily accessible by train - Antwerp, Amsterdam, and the student cities Leiden and Utrecht, and perhaps even Paris and Brussels - are great concert and festival locations, with multiple events on literally every weekend. The Hague, and nearby Rotterdam, are also excellent cultural seats, with internationally recognised dance companies and classical ensembles, with absurdly low student and youth rates available. The Hague is also a great base to explore parts of Europe - particularly the North. It's very convenient to get to and from the international airport in Schiphol, which offers many flight options across Europe. The Hague Conference was more than willing to allow us to use a day or two of leave on a Monday or Friday, meaning that long weekends in exotic destinations were more than doable.

Last, but still very close to my heart: food. The Dutch have clearly worked deserts out, with traditional favourites like the stroopwafel (two thin waffles with a layer of caramel syrup in the middle) and appeltaart (apple... tart) adding kilos to each expat's waist line. With the high value of the Australian dollar, and the lower cost of living in The Hague, it is also surprisingly affordable eat out. A lot of restaurants offer all kinds of international cuisine - particularly good is the Indonesian food, given the strong ties coming from the Netherlands' former colonial link to Indonesia.

VI. Conclusion

Being immersed in the Hague Conference environment is a completely different experience to the domestic legal practice we largely focus on in Australia. Every outward communication is done conscious of the global impact The Hague Conference has. There is no such thing as a national approach; all work conducted is comparative, requiring a great degree of international expertise from every member of the Permanent Bureau. Living in The Hague - the international law capital of the Netherlands, and most likely the world - only enhances this perception of internationality. You almost forget that borders exist with the passport-free travel

within the Schengen Area, and the meld of native languages heard on every corner provides a radical counter-point even to multi-cultural Australian cities.

I take away from this experience not only a raft of new friends and professional contacts, but also a greater grounding in the nuances of international commercial dispute resolution, and a greater appreciation of the utility of foreign languages in diplomacy and legal harmonisation. I recommend a stint at The Hague Conference to anyone with an interest in private international law: it will change the way you think and work.