



*Figure 1: Windmills at Zaanse Schans, Zaandam, NL*

# 2022 Peter Nygh Internship Report

Rachel Van Der Veen

## Foreword

The Peter Nygh Hague Conference Internship has been an extremely valuable learning opportunity in the field of private international law (PIL). I was privileged to work with the talented and supportive legal officers at the Hague Conference Private International Law (HCCH), and have gained knowledge and experience in the functions of the HCCH as an international organisation, as well as the Conventions it creates and maintains.

I would like to extend my heartfelt thanks to Ms Nicola Nygh and the Nygh family, as well as the Commonwealth Attorney-General's Department, the Australian Institute of International Affairs, the Australian Branch of the International Law Association and Resolve Litigation Lawyers for their continued support of the Peter Nygh internship. It was my honour and privilege to play a small part in continuing the legacy of Dr Peter Nygh AM.

I would like to thank all the staff at the HCCH for their friendliness and encouragement in my learning, particularly my supervisors Mr Harry Cheng and Dr Gérardine Goh Escolar, who generously afforded me many opportunities to expand my knowledge and practice of PIL. The staff of the HCCH were a key reason why for me the internship such a valuable and enjoyable experience. Thank you to Secretary General Christophe Bernasconi for his continued enthusiasm of the internship program. I extend my thanks and best wishes also to my fellow interns, who were a constant source of knowledge, support and good times.

On a personal note, unending gratitude is due to the family I stayed over my five months in the Netherlands. I am grateful for the generosity they showed me during this time, and I highly value being included in the family. It is not goodbye, but until next time!

Finally, to any law graduate considering applying for the Peter Nygh Internship at the Hague Conference on Private International Law, I give my unequivocal recommendation for the program. The people, the country, the work and the overall experience will enrich your life both personally and professionally.

Rachel Van Der Veen

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*Figure 2: The Peace Palace, The Hague*

## Work Programme

### HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference)

The internship took place from 29 August 2022 – 27 January 2023. I was assigned to the Commercial, Digital and Financial team and reported to Deputy Secretary General Dr Gérardine Goh Escolar and Legal Officer Harry Cheng. I was assigned to assist with preparations and the running of the 2022 CODIFI conference. The conference aimed to highlight developments in the digital economy and fintech industries as well as clarifying the roles of core HCCH instruments including the *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* (**1985 Trusts Convention**), the *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (**2006 Securities Convention**), and *HCCH Convention of 30 June 2005 on Choice of Court Agreements* (the **Choice of Court Convention**). The conference addressed PIL issues concerning digital platforms, including jurisdiction, applicable law, choice of forum, party autonomy, recognition and enforcement, and international cooperation mechanisms. Examples of discussion among the experts attending the conference included that the concept of *situs* would pose challenges for a PIL framework concerning digital assets, because it would be technically and legally difficult to identify a location where digital assets are located. In addition, the pseudonymity of users and the immaterial nature of digital assets increase the difficulty of identifying useful connecting factors. Experts at the conference also discussed options to determine applicable law, such as applying the law of the State specified in the digital asset itself, and applying the law of the State specified in the system or platform in which the digital asset is recorded.

A large proportion of my work during the internship focussed on the PIL issues of commercial, digital and financial law that were identified through the CODIFI conference. I undertook research and writing into areas such as jurisdiction, applicable law, choice of forum, laws relating to regulation of financial technology such as Central Bank Digital Currencies and Decentralised Autonomous Organisations, as well as PIL issues relating to artificial intelligence and automated contracting. My research and learning of international cooperation mechanisms also touched on the partnerships with other international law organisations such as the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT). The cooperation between UNIDROIT, UNCITRAL and the HCCH is a key aspect of fostering harmonisation of international legislative guidance, a focal point of efforts in the private international law sector. My research supported the drafting of reports for the upcoming Council on General Affairs and Policy, addressed below.

### Preparation for the 2023 Council on General Affairs and Policy

The HCCH Permanent Bureau administers the mandate received by Member States at the Council for General Affairs and Policy (CGAP), according to the Budget reviewed by the Council for Diplomatic Representatives. CGAP is the annual meeting at which Member States discuss the work of the HCCH over the past year, revise the progress of current projects and the ongoing work concerning past conventions, and agree upon the future work programme of the HCCH. At the CGAP meeting the Permanent Bureau presents reports of its work, followed by discussions and questions from the floor.

A key aspect of my work between October and January was the research, drafting and editing of reports that will be presented at the next CGAP meeting. I worked primarily on reports that addressed work undertaken over the last year by the HCCH, and possible future work for the HCCH

on the commercial, digital and financial aspects of insolvency and trusts.<sup>1</sup> The insolvency report focused on the applicable law of insolvency in the crypto and digital currency space. To inform my work for this report I read widely across previous internal HCCH reports on insolvency and digital currency, as well as reports from the HCCH sister organisations, UNCITRAL and UNIDROIT. The trusts report required research and analysis of trust analogous instruments, primarily from civil and Islamic law jurisdictions, and other jurisdictions that are yet to sign the 1985 Trusts Convention. I was well-placed to lead on this research and drafting because Australia is a common law country that has trusts legislation, and I received specific education on this subject at university. The HCCH has a very international and multicultural workforce, and as many colleagues came from civil law jurisdictions that do not have trusts, I was glad to be able to assist in this area. I also wrote an extended research memo into the possibility of including a list of trustee fiduciary duties in the 1985 Trusts Convention or in its supporting materials.

### Special Commission on the 2000 Protection of Adults Convention

I worked as a Recording Secretary for the Special Commission on the *Convention of 13 January 2000 on the International Protection of Adults (2000 Protection of Adults Convention)*, held in The Hague in November 2022. The role of the Recording Secretary is to prepare the minutes of each meeting. The minutes summarise the salient points of discussion using the language of the delegates. Along with the audio recordings, the minutes are an important record of the discussion and comprise part of the *travaux préparatoires* of the Convention. Recording Secretaries are rostered in pairs and on a rotating basis, to enable them to produce minutes in both English and French in a timely manner. I took down the English language minutes at each afternoon session in partnership with another Recording Secretary who was a native French speaker and could verify the translations of the meeting parts in which delegates spoke in French. This Special Commission had a particularly high level of contributions in French, in part because the Chair delivered all her actions in French. Close cooperation with the other Recording Secretaries was essential for the timely delivery of the minutes, and we worked into the evening with the assistance of the audio recordings in order to complete the minutes. Attending and assisting with the Special Commission gave me insight into the process of maintaining multilateral Conventions. It also provided me the opportunity to gain familiarity with the work of the HCCH family law team and specifically the 2000 Protection of Adults Convention, which was otherwise outside my usual remit while working in the CODIFI team. In preparation for the Special Commission, I read documents from the Working Group, regular meetings at which several individuals prepared proposals in the preceding months that would be considered and discussed at the Special Commission. I was also fortunate to witness a ceremony at the Special Commission for Malta to sign the Convention.

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<sup>1</sup> The following are reports with which I assisted: Prel. Doc. No 3A of January 2023 - Digital Economy and the HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference): Report; Prel. Doc. No 3C of January 2023 - Proposal for Joint Work: HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens; Prel. Doc. No 4 of February 2023 - Private International Law and Insolvency: Update; Prel. Doc. No 10A of January 2023 - 2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update; Prel. Doc. No 10B of January 2023 - 2015 Principles on Choice of Law: Updates and possible future work; and Prel. Doc. No 10C of December 2022 - 1985 Trusts Convention: Updates and possible future work.





Figure 3: Malta signs the 2000 Protection of Adults Convention, photo courtesy of the HCCH<sup>2</sup>



Figure 4: Recording Secretaries at the Special Commission

## Other work

While interning at the HCCH I also completed short-term research tasks, primarily on commercial, digital and financial law. For example, I undertook research on the following subjects: torts in metaverses, international initiatives in private international law and digital assets, how service can occur via non-fungible tokens, commonly used conflict of law rules for factoring contracts, and research for and drafting of talking points for HCCH senior staff to use at upcoming meetings.

During the internship I also completed tasking from other divisions, which helped to give me a more holistic understanding of the work of the HCCH. For example, in October I assisted at the HCCH Open

<sup>2</sup> <https://www.hcch.net/en/news-archive/details/?varevent=882>

Day, where members of the public could come to the HCCH and learn about the organisation's work. This experience was useful when later in the year I assisted with redrafting and providing suggestions on the presentation that was used at the Open Day. I also assisted in preparing the HCCH Representation CGAP report, which gave me insight into the diversity of staff at the HCCH, and the opportunity to gain exposure to an area of work outside my usual remit.

I was also fortunate to have multiple opportunities for learning and training while interning at the HCCH. For example, I attended multiple online conferences by the HCCH sister organisations UNCITRAL and UNIDROIT about automated contracting, artificial intelligence, cross-border insolvency and digital assets. I also attended lecture series of the Hague Winter Academy about third-party funding in international arbitration and Jurisdictional limitations in international disputes involving states. I would like to express my heartfelt thanks to the HCCH for affording me the opportunity undertake training and gain wider awareness and understanding of these areas of private international law. HCCH interns are not expected to be experts on private international law, rather, the internship is considered an excellent opportunity to gain exposure and understanding of different legal cultures. I found the permanent staff to be extremely accommodating and supportive as I undertook legal research and writing, treating my efforts as opportunities to learn and improve.

The interns were generally included in all regular office activities, including staff meetings and the end of year party. I feel grateful to have been welcomed and included as part of the team, and count the positive and friendly working relationships with the other interns and permanent staff as a highlight of the internship.



*Figure 5: The Hague Academy of International Law*

## The Hague

I found the Netherlands to be an extremely pleasant place to live. Future Peter Nygh interns should be aware that while the funding for the internship will cover the cost of flights, insurance and go toward rent, it will not cover all your expenses for the internship duration. While accommodation is difficult to secure in The Hague, the city is well connected with great public transport and cycling options. The Hague is also a handy starting point to reach the rest of the country, all the better for some day trips to see areas such as Amsterdam, Rotterdam, Delft, Gouda, De Haar castle and more. I would definitely recommend finding niche events that occur seasonally outside the bigger cities. For example, I participated in an 'urban trail' running event in Haarlem, which gave me the opportunity to see parts of the city that otherwise I might not have thought to visit. I also joined a community orchestra, which was at times complicated because of the language differences, but was an amazing local experience through which I met many lovely people. Playing with the orchestra again helped me to see more of the country, as we performed concerts in Rotterdam, Zoetermeer and Nieuwerkerk aan den IJssel.

## Recommendation

The internship was an invaluable learning experience that I would highly recommend. It exposed me nuances of private international law and it was fascinating to observe and begin to understand how an international organisation operates, as well as how it sets and achieves its objectives. It was my pleasure and honour to be a representative of Australia at the HCCH Permanent Bureau, and to contribute to the organisation's influential work.