

NYGH HAGUE CONFERENCE INTERNSHIP REPORT
BROOKE ADELE MARSHALL
SEPTEMBER 2013 – FEBRUARY 2014



FOREWORD

The Nygh Hague Conference Internship (“Nygh Internship”), sponsored by the Australian Institute of International Affairs (AIIA) and the Australian Branch of the International Law Association (ILA(AB)), is an award which contributes towards the costs of an Australian student or graduate spending up to six months working at the secretariat of the Hague Conference on Private International Law (“Hague Conference”). The Hague Conference, an intergovernmental organisation located in the Netherlands, is the world’s leading organisation for the harmonisation of the rules of private international law. The Hague Conference seeks to find uniform approaches among its Members States to private international law issues in civil and commercial matters.

The Nygh Internship award aims to foster Australian involvement in the work of the Hague Conference and is established in honour of the late Hon. Dr. Peter Nygh AM. It is the brainchild of Richard Potock, a legal expert to the Permanent Bureau, who at the Closing Session of the 19th Diplomatic Session of the Hague Conference in 2002, the year of Dr Nygh’s passing, proposed the idea of an award established in his memory. The late Hon Dr Nygh was a great many things: the leading private international lawyer of his generation, a former judge of the Family Court of Australia and an active contributor to the work of the Hague Conference. His illustrious career comprised domestic and international lectureships, work at the Bar and Bench, and legal scholarship.

I was fortunate enough to take part in the Nygh Internship, which I completed from 2 September 2013 to 14 February 2014. It was an exceptional experience for me both professionally and personally; one which steered me directly onto my current course in academia. I would like to express my sincere gratitude to the AIIA and the ILA(AB) for this generous award; to the Commonwealth Attorney-General’s Department which has been a strong supporter of the work of the Hague Conference and, of course, to Dr Nygh’s family for continuing his legacy.

I would also like to convey a sincere *dank u wel, merci*, thank you to the following people:

- Drossos Stamboulakis and Tsjatsja Westerveld, the 2012 Nygh Interns, for their advice throughout the application process;
- the 2013 selection panel (Dr David Bennett QC, Professor Richard Garnett, Margaret Brewster, Nicola Nygh, First Secretary Marta Pertegás and Maryze Berkhout) for giving me this opportunity;
- the partners of Allens, Nicola Nygh and Tracey Harrip for generously hosting the presentation of the award; and
- my former boss, First Secretary Marta Pertegás, for involving me so completely in the Contracts Project and for her career advice; former Secretary General Hans van Loon and Secretary General Christophe Bernasconi for their insights on which I drew for this report; First Secretary Philippe Lortie for his career advice; Legal Officer, Cara North, for helping me to enjoy life in The Hague; and French Translator and Reviser, Alexandra Gigant, for sorting out my more than occasional reliance on *faux amis*.



2013 Nygh Internship award ceremony, from left to right: Caitlyn Byrne (AIIA), Captain Kasper Kuiper (Netherlands Consul in Queensland), Nicola Nygh (Allens), me, Cate Heyworth-Smith (ILA)

Brooke Adele Marshall

October 2014

Hamburg

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BACKGROUND

Private International Law

Private International Law ("PIL"), also known as International Private Law and the Conflict of Laws, is a body of law comprising rules that determine whether: a local court has the power to resolve a dispute between individuals or companies that crosses national borders; if so, in accordance with which country's laws; and whether a local court will decide to recognise and enforce a judgment rendered by a foreign court (see Reid Mortensen, Richard Garnett and Mary Keyes, *Private International Law in Australia*, (LexisNexis, 2nd ed, 2011) 3). As a branch of private law, PIL affects all private law relations that have a multistate element, including international contracts, cross-border torts, international property disputes, marriages between foreign parties, and international surrogacy and adoption. For an interesting recent account of how the rules of PIL, and several of the Hague Conventions, affect the personal lives of the most illustrious of people, see Maarit Jänterä-Jareborg, "Ingrid Bergman, Morals and Private International Law" in *Festschrift für Dieter Martiny zum 70 Geburtstag*, (Mohr Siebeck, Tübingen, 2014) 1117.

The rules of PIL can originate and exist at a domestic or regional level and, as such, there are often great differences in the content of these rules. An understanding of the differences in domestic legal systems and how they conflict and coexist is essential in developing cross-border policy. The Hague Conference seeks to harmonise or unify these bodies of rules by finding common solutions between States with a view to increasing their effectiveness and providing greater certainty to parties.

Hague Conference and Permanent Bureau

The Hague Conference gives life to Tobias Asser's vision of a global ordering of richly diverse bodies of civil and commercial laws through the "progressive unification of the rules of private international law" (Art 1, *Statute of the Hague Conference on Private International Law*). Since 1955, the Hague Conference has not been a conference in the ordinary sense of the word but a permanent, inter-governmental organisation. The Hague Conference aims to provide legal security for individuals, families, companies and other entities whose activities and affairs transcend national and regional boundaries. It works to unify the rules of PIL by developing uniform approaches to jurisdiction, applicable law, and the recognition and enforcement of judgments. It does so by creating multi-lateral legal treaties known as Hague Conventions by consensus of Members (States) as well as non-binding instruments and providing post-Convention services for the implementation of these Conventions. States that are not Members of the Conference can also sign up to a Convention or non-binding instrument. The Hague Conference is comprised of Member States (76 States and one Regional Economic Organisation (the European Union) as at September 2014). The Permanent Bureau, the Hague Conference's secretariat, coordinates the activities of the Hague Conference from The Hague, the Netherlands. The Hague Conference also has both an Asia Pacific Regional Office and a Latin American Regional Office.

The Permanent Bureau is charged with preparing for and organising Plenary Sessions and Special Commissions of the Member States, liaising with delegates, experts and Central Authorities of Member States, and carrying out research relevant to Hague Conference instruments.

The work of the Hague Conference is divided into three main areas: international legal cooperation and litigation; international family and property relations; and international commercial and finance law. I worked in the latter area, exclusively on the development of the Hague Conference's first non-binding instrument, the Draft Hague Principles on Choice of Law in International Commercial Contracts ("Hague Principles"), known as the Contracts Project. The Hague Principles are "soft law"; a non-binding instrument providing a guide to best practice where parties choose the law or rules of law applicable to their international commercial contract.

Australia and Private International Law

Some have suggested that since England (as part of the United Kingdom) joined the European Union, Australia is now the custodian of the common law.¹ Australian private international law is no exception, with Australian courts crafting unique approaches in the areas of choice of law for tort, *renvoi* and *forum non conveniens*.

Since 1973, Australia has been a member of the Hague Conference. Prior to its membership, Australia acceded to a number of Hague Conventions, including the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the Service and Evidence Conventions). Australia has since ratified several other Conventions including the Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages and the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Australia currently has a strong presence at the Permanent Bureau, with three of its current staff members hailing from Down Under (Principal Legal Officer, Thomas John and Legal Officers, Cara North and Brody Warren).

Many of Australia's leading private international law experts participate in the work of the Hague Conference, including: The Honourable Justice Diana Bryant, Family Court of Australia; Dr David Bennett QC, Barrister; Professor Mary Keyes, Griffith University; Professor Richard Garnett, The University of Melbourne, Consultant, Herbert Smith Freehills; and Professor Andrew Dickinson, Fellow, St Catherine's College, University of Oxford, formerly, Professor at the University of Sydney.

¹ See Dominic Raab and Lord Judge, Transcript of Evidence to the House of Commons and House of Lords Joint Committee on Human Rights (15 November 2011) at 6-7 (<http://www.parliament.uk/documents/joint-committees/human-rights/JCHR%2015%20November%20transcript.pdf>).



The past and present Australian contingent of the Permanent Bureau, from left to right: Brody Warren (2014 Nygh Intern and now, Legal Officer), Cara North (Legal Officer), me, Thomas John (Principal Legal Officer) and Alexander Kunzelmann (former Legal Officer), behind the camera

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WORK COMPLETED

For the duration of my internship, I worked under the supervision of First Secretary Marta Pertegás, who is responsible for the Contracts Project, the Judgments Project and the Convention of 30 June 2005 on Choice of Court.

It is usual for the Nygh intern to work with the team preparing for a Special Commission at which Member States review the operation of a Convention or finalise a new instrument. The Special Commission in 2014 was on the Service and Evidence Conventions, but in light of my professional interests, and the timing of the internship, I was permitted instead to work on the Contracts Project. My role focussed on the explanatory document, known as “the Commentary”, to the Hague Principles.

Summary of work completed

Below is a table summarising some of the work that I completed during the course of my internship. I am not able to disclose all of the work I completed for reasons of confidentiality.

Dates	Brief description of assignment/task/request
February 2014	Reviewing Hague Conference Annual Report entry on Contracts Project
February 2014	Research for and drafting of co-authored law review publication
January 2014 - April 2014	Assisted in aligning French version of Commentary with English version
January 2014	Assisted in the drafting of the revised Introduction to the Commentary to the Hague Principles
January 2014	Preparing annotated version of Commentary containing comments received from Member States
December 2013 - January 2014	Organising Fifth Meeting of the Working Group on the Hague Principles including preparation of agenda, working documents and talking points
December 2013	Preparing talking points and PowerPoint presentation
November 2013	Designing Hague Conference webpage to reflect a national proposal on the implementation of Hague Principles
October 2013	Research for and drafting of co-authored law review publication and preparation of Prezi presentation for related symposium
October 2013	Research for encyclopaedia contribution on the Hague Conference
October 2013	Updating a French manuscript

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- September 2013 Revising and assisting with the drafting of the Commentary including developing practical examples. This consisted of many stages of receiving tracked changed versions of the Commentary by members of the Working Group and amalgamating their changes for review by Marta Pertegás and other members of the Working Group; re-drafting parts of the Commentary and developing examples
- September 2013 Liaising with Working Group experts and circulating revised version of the Commentary
- September 2013 Preparing Mission Report for attendance at Journal of Private International Law Conference, Madrid
- September 2013 - February 2014 Maintaining bibliography of scholarly articles on the Contracts Project for Hague Conference website

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EVALUATION

Why I applied for the internship

The Nygh Internship was a long-held ambition of mine, which perhaps explains the unique experience which I had at the Hague Conference. I first learned of the internship's existence in 2010 while taking Dr Craig Forrest's Private International Law course at The University of Queensland. It was during this course that I developed a deep fascination with the complexities of private international law. In the three years following, I sought to build my profile with a view to securing the internship in 2013.

General outcomes of the internship

Through exposure to the inner workings of the Conference, the Nygh Internship allowed me to develop a nuanced appreciation of law reform and deepened my understanding of the principles of private international and comparative law. As is clear from the table above, I requested and was fortunate enough to be given a significant research component in my work as an intern. This independent research confirmed to me that my intellectual interests would be best served in an academic environment; a confirmation which led to my applying for, and accepting a position as Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg. My position entails responsibility for the regional research units of Australia and New Zealand. This role will allow me to continue to work in the spirit of the Nygh Internship, fostering Australian involvement in the work of the Hague Conference.

General outcomes of the Nygh Internship included:

- Increased contact with the Working Group of experts on the Contracts Project
- Experience in working in a multi-cultural and multi-lingual workplace
- Use of French legal language at a professional level
- Understanding of the practical issues surrounding the development of a dual language/bi-lingual instrument
- Exposure to international negotiations and decision-making
- Improved understanding of the Australian legal system from a comparative perspective

Specific outcomes

An additional outcome of the internship was my temporary engagement as a Legal Assistant from February 2014 to April 2014. My duties included assisting with the follow-up from the Working Group meeting on the Contracts Project; coordinating the finalisation of the Commentary to the Hague Principles, and alignment of its French translation, and delivering a presentation in French on the Hague Conference to Masters II Students in International Law from the University of Bordeaux. In this role, I was also most fortunate to be given the opportunity to travel to

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Muscat, Oman as a representative of the Permanent Bureau of the Hague Conference to deliver a paper at the *Conference on the 2010 UNIDROIT Principles of International Commercial Contracts in Light of International Conventions and National Laws: Launch of the Arabic Version of the 2010 Principles*. My participation in the conference was made possible by the Protection Project at Johns Hopkins University School of Advanced International Studies, which, along with the Sultan Qaboos University, organised the conference.



The panel in which I participated on "UNIDROIT, UNCITRAL and the Hague Conference: Tools and Mechanisms of Harmonization and Unification of the Law"



The Council on General Affairs and Policy of the Hague Conference, April 2014

Life as an intern

Life as an intern at the Hague Conference is a very pleasant existence. I was made to feel very much part of the team, regularly attended staff meetings and was invited to staff lunches and the Christmas party. I also had the opportunity to observe expert meetings of the Judgments Project and work on the development of handbooks on the Hague Conference's Service and Evidence Conventions.

The Permanent Bureau also supports interns to gain diverse exposure to other diplomatic and international fora during their internship. To this end, with the generous assistance of the Australian government representative in The Hague, I attended hearings, judgments and functions at the International Court of Justice and the Peace Palace. The Australian Embassy in The Hague is most welcoming towards and inclusive of Nygh Interns.

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Workspaces at the Hague Conference are shared generally among two or three staff. I was fortunate enough to spend most of my internship sharing an office with a French intern whose English was of the same standard as my French. This was mutually beneficial for our language skills and a lot of fun. New interns will henceforth be accommodated in the brand new headquarters of the Permanent Bureau, located in the International Zone of The Hague, at Churchillplein, between the International Criminal Tribunal for the former Yugoslavia and Europol.

All staff do most of their own administrative work, although there is some support from a team of administrative staff. This naturally differs from private practice and is something of which future interns should be aware if they have already practised as lawyers and are used to having the assistance of a secretary.

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PRACTICAL DETAILS

Internship timeline

Late January 2013	Application submitted
Early April 2013	Invited to interview
Mid-April 2013	Notification of award
Late April 2013	Contact with Permanent Bureau to confirm acceptance and settle on dates for the internship
Early June 2013	Flights booked and insurance policy taken out, confirmation of which I sent to Nicola Nygh
Late June 2013	Funds transferred
Mid-July 2013	Award ceremony generously hosted by Allens
Late August 2013	Arrived in The Hague
2 September 2013	Commenced internship
14 February 2014	Concluded internship

Health care

Nygh interns must take out a policy of travel insurance prior to departing Australia for the duration of the internship. Australia and the Netherlands have a reciprocal healthcare arrangement which entitles Australian citizens to the same access to the public health care system as Dutch citizens. To be eligible for this, you must complete an A111 Certificate of Eligibility arranged through Agis Zorgverzekeringen. Further information is available here: <http://www.humanservices.gov.au/customer/services/medicare/reciprocal-health-care-agreements>.

Residency permit

There is an arrangement between the Hague Conference and the Netherlands' government under which interns are eligible to be registered with the Ministry of Foreign Affairs. Human Resources at the Permanent Bureau will arrange for you to apply for a MFA card on your arrival in The Hague. In order to leave Australia, I advise you to request from the Permanent Bureau a letter confirming that you have been engaged to do an internship, that you are exempt from the requirement to hold a visa and that you will apply for an MFA card on arrival in The Hague. The airline required that I present this on departure from Australia.



Languages

Interns are required to speak French or English fluently (preferably both) which are the two official languages of the Hague Conference and which most staff members speak interchangeably. That said, proficiency in any foreign language is likely to be viewed as an asset. Spanish and German are also regularly spoken in the Permanent Bureau, although French, English and Dutch are the languages which are heard on a daily basis. The proficiency of English spoken by Dutch people is second to none, so your opportunities to speak Dutch, unless you already have a sound knowledge, will be limited. If you do wish to learn Dutch, it is advisable to find share house accommodation with Dutch housemates.

Approximate budget

It is important to remember that the Nygh award is a contribution towards the living costs of the Nygh Intern in The Hague. You will need to have your own savings to supplement this contribution. Below is an approximate guide to the cost of living in The Hague:

- Rent – €400 – 600 per month for a shared furnished apartment including utilities; €550 – 1400 per month for a single furnished apartment including utilities
- Transport and travel – I did not use public transport in The Hague, with the exception of travelling to Schiphol Airport, Amsterdam or other cities in the Netherlands. To give you an indication, a return trip to Amsterdam is approximately €20 unless you have a subscription for a reduced rate. I signed up for one of these when I first arrived – a Dal Voordeel Abonnement – which costs about €40 initially but entitles you to a 40% discount on your fares outside of peak hours and on the weekends. It is helpful to download the 9292 app to your phone to plan your journeys: <http://9292.nl/en>
- For international travel, The Hague is exceptionally well placed. Paris and Antwerp can be reached by train in approximately 2.5 and 1.5 hours respectively. For flights, Schiphol Airport is extraordinarily well organised and the train literally leaves from below the terminal. The journey from Schiphol Airport to The Hague is approximately 30 minutes
- Unsurprisingly, travel in The Hague is really all about the bicycle. To get some local inspiration for your future dream Hague bike, take a look at BecauseFixie: <http://www.becausefixie.com>. The Permanent Bureau may also be able to lend you an intern bike although these are limited
- Groceries – even in the Centrum, groceries are significantly less expensive than inner city Brisbane, Sydney or Melbourne
- Travel insurance – my travel insurance policy for the duration of my internship cost AUD\$110.20
- Phone – about €30 a month for a prepaid sim card. I recommend that you purchase a prepaid plan with a small calling/messaging package but a large data allowance, as everyone uses Viber and WhatsApp



A winter evening in Amsterdam



Leave

Interns have the same leave entitlements as Permanent Bureau employees meaning that they accrue leave at a rate of 2.5 days per month. This gives you approximately three weeks to travel during the course of your six-month internship. You must take your MFA card and passport when travelling.

Bank account

It is absolutely essential that you have a Dutch bankcard. Cash is so seldom used that some shops refuse to accept it. "Pinnen" is King in The Hague. Many shops will not accept a foreign bankcard or credit card and crucially, the train station machines and main supermarket, Albert Heijn, require a Dutch bankcard or approximately €20 in coins (you cannot travel by train with a balance of less than €20). Contact the ABN Amro international client service to arrange an appointment: international@clients.nl.abnamro.com.

Accommodation

I recommend that you try to organise your accommodation before you leave Australia. You may wish to avoid the extraordinarily high commission (2 months rent plus 9 percent of the monthly rent) that real estate agents charge tenants by going through a subletting site such as Funda: <http://www.funda.nl/koop/den-haag/>. Do take heed of the warnings, however, as fraudsters abound. I would advise that you do not exchange any money with the sublessor until you arrive. If you have limited mobility, then you should look for a ground floor apartment as most Dutch apartment buildings do not have elevators.

Life in The Hague

The Hague is a very small city, however, feels incredibly green and open considering the large population that resides there. You can access the whole city by bicycle.

Coffee – the Dutch do not seem to have the same discerning palate for coffee as Australians but the two places I can recommend in The Hague are: Café Blossom and Brood & Koffie bij Clarence:

<http://www.cafeblossom.nl/?lang=en>; <http://www.yelp.at/biz/brood-en-koffie-bij-clarence-den-haag>. And if you really have a hankering for Australian fare, jump on a train to Amsterdam and go to Little Collins for brunch: <http://www.littlecollins.nl>.

Restaurants – two of my favourites in The Hague are Grapes and Olives and A Taste of Persia:

<http://www.grapesandolives.nl>; <http://www.tasteofpersia.org>. Ron's Gastrobar in Amsterdam is also not to be missed: <http://www.rongastrobar.nl>.

Markets – The Haagse Markt is one of the largest open-air markets in the Northern Hemisphere and is a wonderful place to spend a Saturday morning: <http://www.dehaagsemarkt.nl>.

Weather – the weather in The Hague is notoriously unpredictable. I suggest you buy one of these umbrellas from



Senz to help with the 70+ kmph winds while raining: <http://www.senzumbrellas.com>. However the beauty of the city makes up for it.

Reference – other useful information is available in the Survival Guide which the Permanent Bureau will give to you on the first day of your internship. I also recommend that you read *The Undutchables* to give you an insight into Dutch culture: <http://www.undutchables.com>.



The Peace Palace