

# Peter Nygh Hague Conference Internship Report 2014



# foreword

The Peter Nygh Internship has truly been a life-changing experience.

One year ago, I was sitting in Hancock Library at the ANU, with private international law books and journal articles strewn across the table, researching until all hours in a race against the clock to finish my Honours thesis. I had not thought much past graduation, nor did I really want to, as unlike many of my peers, I had not applied for any graduate positions. I had submitted just one application, for one internship – an internship about which I felt extremely passionate.

A mere twelve months later, I find myself sitting in an office on the other side of the world, gaining first-hand experience at the forefront of private international law. I have a newfound appreciation for co-operation and negotiation in the international environment, and for the complexities of cross-border legal transactions. Every day I learn more and more, and I feel privileged to have met and worked with some incredible people, both throughout the internship and afterwards. As I brace myself for the impending European winter, I realise that I am beginning to feel at home here, and still cannot believe that everything has fallen into place so well.

Preparing this report has given me the opportunity to reflect on the experiences that I have been afforded as part of the Nygh Internship, as well as those who were instrumental in helping to get me to where I am today. To each and every one of these people, I simply could not be more grateful.

First, and certainly most importantly, I would like to thank Ms Nicola Nygh and the Nygh family, for without their dedication and support such a scholarship would not be in existence. I am honoured to have had the opportunity to continue, at least in part, the legacy of the Hon. Dr Peter Nygh AM, one of Australia's greatest experts in Private International Law and a great friend of the Hague Conference.

I would also like to sincerely thank the other members of the Internship Selection Panel, namely Ms Margaret Brewster, Dr David Bennett AC QC, Professor Richard Garnett, First Secretary Ms Marta Pertegás and Ms Maryze Berkhout. Together with Ms Nygh, and assisted by former Nygh Intern Ms Tsjatsja Westerveld, they volunteer their time to ensure that year after year, the selection process and internship experience runs as smoothly as possible.

In addition, I would like to express my gratitude to the organisations that continue to support the Internship. Of course, the Permanent Bureau of the Hague Conference on Private International



Law, the Commonwealth Attorney-General's Department, Allens, the Australian Branch of the International Law Association and the Australian Institute of International Affairs.

I would formally like to acknowledge Professor Mary Keyes, who was responsible for first inspiring my passion for private international law, and His Excellency Ambassador Pedro Villagra-Delgado, for accepting me to intern at the Embassy of the Argentine Republic in Australia, where I learnt what it means to be an intern. From the ANU, I would particularly like to thank Professor Penny Oakes, Professor Toni Makkai, Professor Jim Davis, Dr Asmi Wood and Dr Ben Wellings, for their support in my academic and professional development.

Of course, my experience as an intern at the Permanent Bureau and in Den Haag in general, would never have been as memorable without such brilliant colleagues and friends. While so many people contributed to making me feel welcome, I would particularly like to express my gratitude to Secretary General Christophe Bernasconi, Senior Legal Officer Ms Mayela Celis,<sup>1</sup> Senior Legal Officer Mr Alexander Kunzelmann,<sup>2</sup> Legal Officer Ms Cara North and former Legal Assistant Ms Brooke Marshall (also a former Nygh Intern), for their expert supervision, guidance, and friendship. Outside of the Permanent Bureau, a sincere thank you also to Mr Todd Quinn from the Embassy of Australia and Ms Marisa Macpherson from the Embassy of New Zealand.

On a more personal note, I would like to thank my friends and family, in particular my parents Wayne and Sandra and sisters Rachel and Bree, for their continuing encouragement and support. And last, but certainly not least, *hartelijk bedankt* to my fantastic *huisgenoten*, Mr Jeroen Hofstra, Mr Mathijs Koot, Mr Gilles Louwerens, Mr Teun Jager and Mr Tim de Pater, for ensuring that I know all there is to know about life in *Nederland*, and for making me feel truly at home.

*Brody Warren*  
November 2014



<sup>1</sup> Ms Celis will take up the role of Principal Legal Officer in January 2015.

<sup>2</sup> Mr Kunzelmann, also a former Nygh Intern, departed the Permanent Bureau during my internship.



# introduction

The Hague Conference on Private International Law ('HCCH')<sup>3</sup> is the world organisation for cross-border co-operation in civil and commercial matters. With origins dating back to 1893, it is the oldest international organisation in The Hague (Den Haag), and remains the only one with a legislative function. As per its Statute, the HCCH works toward the "progressive unification of the rules of private international law",<sup>4</sup> which it does in practice through intergovernmental agreements, called Hague Conventions. These Conventions cover areas of jurisdiction, applicable law, recognition and enforcement, and/or legal co-operation, yet do not purport to regulate the substantive law of States, instead providing support and guidance in cross-border situations. Both Members and non-Members of the organisation may join these Conventions, and at the time of writing, there are 78 Members of the HCCH,<sup>5</sup> with a further 67 non-Members being party to one or more of the Hague Conventions.

Now in its ninth year, the Peter Nygh Hague Conference Internship (and accompanying scholarship) continues to provide an unparalleled opportunity for a graduate or post-graduate student of an Australian law school to gain experience working at the secretariat of the HCCH, known as the Permanent Bureau.



I completed the Nygh Internship at the Permanent Bureau from 3<sup>rd</sup> March to 31<sup>st</sup> July 2014. Originally, my internship was due to continue until 29<sup>th</sup> August 2014, however I was very fortunate to be selected to fill the vacancy left by the departure of former Nygh intern Mr Alexander Kunzelmann. Following discussions between Ms Nygh and the Permanent Bureau, I was permitted to finish my internship duties approximately one month earlier than initially arranged, in order to start officially on 1<sup>st</sup> August 2014 as a Legal Officer in the *International Legal Co-operation and Litigation* team.



Completing the internship over the European summer was a change in timing as compared with previous years, but nonetheless a welcome one. The change was in part due to the decision to move the application and selection process, so that it would take place from September – December each year. In my case, I submitted my application in late September, completed a telephone interview with the Selection Panel in mid-November and was made an offer to undertake the internship in December 2013. After having agreed upon a starting date with the staff at the Permanent Bureau, and following the official presentation ceremony in early February, I departed Australia and arrived in Den Haag, ready to embrace the challenges that lay ahead.

<sup>3</sup> 'HCCH' is an acronym combining the name of the Conference in both of its official languages, English and French: *Hague Conference* and *Conférence de la Haye*.

<sup>4</sup> *Statute of the Hague Conference on Private International Law* (Entry into force: 15-VII-1955), Art. 1.

<sup>5</sup> 77 States and the European Union, in its capacity as a Regional Economic Integration Organisation.

# the work

## 2014 Special Commission

As has become customary for the Nygh Intern, I was welcomed into the team at the Permanent Bureau that was preparing for the meeting of the Special Commission, which in 2014 was the *Legal Co-operation and Litigation* team. Under the supervision of Senior Legal Officer Ms Mayela Celis, and also Senior Legal Officer (and former Nygh intern) Mr Alexander Kunzelmann, I assisted with the preparations for the Special Commission on the Practical Operation of the Service, Evidence and Access to Justice Conventions.<sup>6</sup>

As the meeting of the Special Commission was the principal focus of my internship, most of my tasks as an intern related to it in one way or another. The meeting itself was held from 20<sup>th</sup> to 23<sup>rd</sup> May, marking approximately half-way through my internship, which gave me the perfect opportunity to see both the tremendous amount of work that takes place before a large-scale international meeting of that kind, as well as the follow-up that is required once the meeting has concluded.



My first main task involved the receipt of the responses of States to the Questionnaires relating to the Service, Evidence and Access Justice Conventions. In November 2013, the Permanent Bureau sent these Questionnaires to States with a view to obtaining information about the operation of the Conventions, in particular statistical data, new legislative or jurisprudential developments and any challenges encountered in the application of the Conventions. The deadline for submitting responses was in early March, so my role was to collect the suite of responses as they came in, reading over them and extracting the relevant data, developments and commentary. I would then draft an “acknowledgment of receipt” to send back to the State that had returned the Questionnaires, noting different aspects of the responses and making relevant observations. This task, although somewhat formulaic and quite time-consuming, provided me with an opportunity to adjust to the Permanent Bureau’s use of diplomatic language and drafting style in both English and French, as well as a fantastic insight into the types of issues that might arise in discussions at the Special Commission meeting.

Using the information gathered from the responses to these Questionnaires and the documentation of previous meetings, I then created, with the guidance of Ms Celis and Mr Kunzelmann, a preliminary draft version of the agenda for the meeting of the Special Commission. Initially the draft agenda contained quite high-level topics, grouped by the Convention to which they were relevant and, where



applicable, in a heading set aside for topics relevant to both the Service and Evidence Conventions. After the draft agenda was circulated to States, we continued to work on the production of a draft annotated agenda, which, as its name suggests, included annotations to each topic, outlining the relevant comments or data collected in the Questionnaires that led to the inclusion of that particular item in the agenda. I continued to assist Ms Celis and Mr Kunzelmann (in consultation with Secretary General Bernasconi) with

<sup>6</sup> *i.e.*, the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*, and the *Convention of 25 October 1980 on International Access to Justice*.



the further development of this document, which eventually became the final agenda proposed to the Special Commission meeting.

I was also tasked with producing other “Preliminary Documents” for the meeting: namely, a compilation document of all of the responses received to each of the Questionnaires respectively (these compilations were known as “Synopsis” documents) and a consolidated version (in English, French and Spanish) of the Conclusions & Recommendations from the 2003 and 2009 meetings of the Special Commission.



By the time the Special Commission meeting arrived in May, I felt very much a part of the team and could really see the relevance and importance of the preparatory work that we had done. During the meeting, I worked as a Recording Secretary, taking minutes for three of the meeting sessions, including the final discussion of the Conclusions & Recommendations. When I was not recording these minutes, I followed the discussions and took notes of the Chair’s summaries, in order to create a preliminary draft “skeleton” document of Conclusions & Recommendations, which Ms Celis and Mr Kunzelmann would provide to the Drafting Committee.

I also attended a side-meeting during lunch on the first day, where the Australian delegation (Ms Carmen Miragaya and Mr Will Brydie-Watson from the Attorney-General’s Department) discussed in detail a proposal regarding the use of video-links in the taking of evidence abroad, which they later put forward to the Special Commission. In addition, with the permission of the Secretary General, I was fortunate enough to be able to attend both meetings of the Drafting Committee,<sup>7</sup> which met on both the Wednesday and Thursday nights to draft the text of the Conclusions & Recommendations. The Special Commission then revised, finalised and approved these draft Conclusions & Recommendations during the final session.

The Special Commission was one of the major highlights of my entire internship. It was incredible to see so many experts come together from States and international organisations alike, discussing a wide variety of topics in such detail. Having had the benefit of working in the area for even a few months prior to the meeting, I certainly found it very interesting to see the development of the narrative around the issues, incorporating the many different perspectives. There is also a certain sense of awe that comes with being present at an international meeting of that kind, looking out at the impressive façade of the Peace Palace, listening to the passionate exchange of views in English, French and Spanish.<sup>8</sup>



## Other Legal Co-operation Work

Following Special Commission, it was my task to ensure that the “Practical Information Charts” provided for each Contracting State on the Service and Evidence Sections of the HCCH website was updated to reflect, among other things, the legal developments, modifications in terminology and changes to contact details as provided in the responses of States to the Questionnaires.

<sup>7</sup> The Drafting Committee comprised representatives from Australia, Canada, China, the European Union, France, Germany, Mexico, the Russian Federation, Switzerland, and the United States of America, with Secretary General Bernasconi, Latin America Regional Representative Mr Goicoechea, Ms Celis, Mr Kunzelmann and myself present from the Permanent Bureau.

<sup>8</sup> Although English and French are the official languages of the Conference, additional funding was secured in order to provide simultaneous Spanish translation at the meeting. The use of Spanish was both very useful for the discussions and particularly interesting for me personally.

In addition, I assisted with updating the drafts of both the *Practical Handbook on the Operation of the Evidence Convention* (Service Handbook), as well as the *Practical Handbook on the Operation of the Evidence Convention* (Evidence Handbook). This process involved revising the draft versions, checking footnotes and citations, as well as inserting references to the new Conclusions & Recommendations of the Special Commission and/or to the new cases or legislation provided by the States.



At the end of June, I was offered a contract to stay on as a Legal Officer from August, which I was very pleased to accept. In light of this, I spent the final month of my internship familiarising myself more with the *Legal Co-operation and Litigation* area. In particular, I focussed on learning as much as possible about the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention), which is the most ratified/acceded to and most widely applied of all Hague Conventions. I also assisted Ms Celis and the staff at the Asia Pacific Regional Office in preparing for the *9th International Forum on the e-APP* (the electronic Apostille Program), held in the Hong Kong Special Administrative Region of the People's Republic of China. I was later fortunate enough to be able to attend this meeting once I started officially as a Legal Officer.

Further, I began to assist more with drafting responses to regular enquiries from States, concerning the application and operation of the Apostille Convention, as well as the other three Conventions in the *Legal Co-operation* area (*i.e.*, the Service, Evidence and Access to Justice Conventions).

## Other Duties

Throughout my internship, I was able to be present for a variety of meetings (in particular a teleconference with a representative from the Attorney-General's Department) and was also fortunate enough to be involved in several other projects that were outside of the scope of the preparations for the Special Commission.

One such project was assisting with the finalisation of the Secretary General's introductory presentation for the Council on General Affairs and Policy (CGAP), held from 8 to 10 April. He reported on the major work that had been conducted by the Permanent Bureau in the preceding twelve months, and I assisted by compiling data and statistics on the use of the various Conventions and publications produced by the Permanent Bureau, as well as with the design and format of the presentation. This was a fantastic opportunity for me to understand more about the operation of the organisation and to work closely with Secretary General Bernasconi. Later, I also assisted the Secretary General in finalising several other presentations for international missions that he undertook during my internship, each time learning more and more about the active work that is done in promoting the Hague Conventions and work of the Organisation as a whole.



Interns also generally assist by staffing the "Secretariat" table at the CGAP. Although not a particularly demanding role, it provides an opportunity to observe the discussions that take place in planning and mandating the work of the Permanent Bureau for the year ahead. This is certainly one of the benefits of Nygh Interns arriving earlier in the year, to be able to witness the CGAP in action.

In addition, I was a Recording Secretary for a meeting of the Working Group on Budgetary Practices at the end of April, as well as at the Council of Diplomatic Representatives. Both of these meetings gave me a remarkable insight into the operational side of the organisation, in particular the latter, as it is where the Secretary General annually submits the budget for approval.

# life in den haag

As I mentioned earlier, the Peter Nygh Internship was truly a life-changing experience, but this was of course not only because of the work that I was able to undertake. The Hague seems to me to be a kind of European version of Canberra, but with the addition of a beach. While this may not sound overly appealing to some, neither city could receive higher praise from me. Like its Antipodean counterpart, Den Haag boasts many governmental and non-governmental institutions, a diverse cultural scene as well as a vibrant student and intern lifestyle, not to mention a population passionate about cycling. However, The Hague has comparatively more international organisations, comparatively more bikes, and comparatively more rain (“there is no such thing as bad weather, just bad clothing”). Of course, it has the added bonus of being ideally placed in Western Europe, and is proximate to many other great cities as well.

Apart from the work at the Permanent Bureau, purely being in the international legal capital of Den Haag has its advantages. At the end of my first month in The Hague, I was able to be present in the courtroom as the International Court of Justice delivered its judgment in the Australia-Japan whaling dispute.<sup>9</sup> Just a few weeks later, I attended the ANZAC Day ceremony jointly organised by the Embassies of Australia and New Zealand, along with my Australian colleagues from the Permanent Bureau. In June, thanks to Mr Quinn from the Australian Embassy, I was also able to attend the men’s final of the Hockey World Cup, held The Hague, in which Australia quite convincingly defeated the Netherlands. Throughout June and July, the football-mad nation of the Netherlands also went wild with festivities for the 2014 Football World Cup, including for the Australia vs Netherlands match early in the tournament. Together with some other interns from the Permanent Bureau, I later crossed into one of the closest points of Germany (a mere two hours away) to watch the World Cup final in the country that would become World Champion.

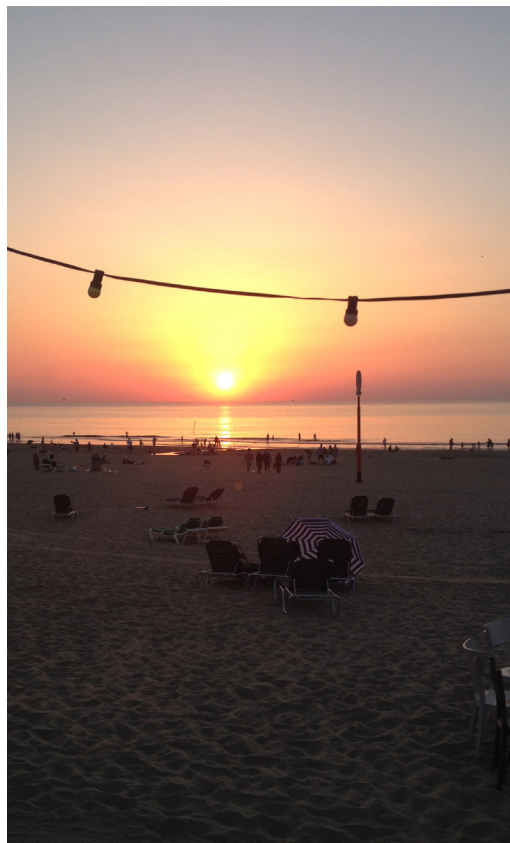
In this report, I have not included much by way of practical information and this is for a few reasons. First, it is my view that part of the value of the internship itself also comes through learning to navigate the aspects of life in a foreign country. As important as the *destination* is, it is often the *journey* that matters most; it thus follows that the experience of every new intern will be unique. I acknowledge that it may be challenging at times (it certainly was for me), but that is all part of the fun. I am also conscious of the fact that anything that I write here by way of practical information, could just as easily change for future interns, rendering my counsel out of date, in some cases almost as soon as it is recorded in this report.

All this being said, while these are my personal views, I acknowledge that my predecessor Ms Brooke Marshall, in her 2013 Nygh Internship Report, has included some very useful information, which was up to date at least as of a month or two ago, so I would advise those interested to refer back to her report as well. In addition, I will also be here in The Hague for some years, and would welcome any interested parties to contact me, should they be looking for further information about my experience as an intern or about living in The Hague more generally. I can be contacted at the Permanent Bureau: [bw@hcch.nl](mailto:bw@hcch.nl)

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<sup>9</sup> *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014 I.C.J. 148 (31 March 2014)







# the experience

I applied for the Nygh Internship because I hoped to experience the inner workings of the HCCH first-hand, to broaden my horizons in terms of legal areas, and because I saw great value in gaining an international comparative perspective, to better understand foreign systems and better assess our own. While each of these goals have indeed been fulfilled, I certainly did not realise the extent to which my experience as a Nygh Intern would exceed my expectations.



First, the internship has indeed provided me the opportunity to gain exposure to the operation of the HCCH and to the procedures it employs to best progress the harmonisation of the rules of private international law. I have seen the complexities involved in intergovernmental coordination and in achieving consensus between representatives of large numbers of States, and have been exposed to legal rules, principles and perspectives (especially concerning civil procedure) from a range of different nations and legal traditions.



Second, the international nature of the HCCH and its work has also given me the opportunity to forge many new connections and networks. In addition to the regular staff at the Permanent Bureau, during my time as an intern, I worked with fellow interns from Argentina, Canada, Germany, Japan, Latvia, the Netherlands, Romania, Spain and the USA. Although I had worked in international environments before, never before have I been in a workplace where so many different nationalities are represented, and I thoroughly enjoy

being able to practice four different languages (with native speakers) in a single day. My language skills have significantly improved and I feel even more comfortable discussing complex legal concepts in foreign languages. In fact, I have found that some of the most fascinating discussions at the Permanent Bureau to be those in which the translation of certain legal concepts and terms has been discussed, often requiring three of us to sit with a legal dictionary in our own native language, with the conversation flowing between all three.

Third, from a professional experience perspective, working as an intern at the HCCH taught me a lot about the importance of procedure in managing long-term projects. In the past, I rarely had the opportunity to work on projects spanning multiple years, or with as many “stakeholders” and interested parties as is the case at the Permanent Bureau. For each of the documents and publications that are produced, there are many steps in the approval process, which reinforces the importance of both effective communication and meeting deadlines. For example, I was not previously accustomed to factoring in the need for translation time, as well as subsequent revisions in both the





original and translated texts. Similarly, time had to be allowed for formatting and reviewing the documents, to ensure that they conformed with the style of the organisation that has been established over the course of many years, and needs to remain as uniform as possible across all documentation of the HCCH, irrespective of the content.

Individually, I also found that the management of multiple State enquiries and the parallel production of multiple documents allowed me to refine my own organisational skills, as the staff at the Permanent Bureau are generally responsible for their own administrative work. While I have been told that this is a significant change from work in a private firm, it did not pose any difficulties for me personally, having transitioned from study and part-time employment, where administrative duties were entirely my responsibility.

Fourth, and perhaps most evidently, the Nygh Internship has led to my employment at the Permanent Bureau of the HCCH. I must confess that I never for a second anticipated staying in the Netherlands before I arrived, and yet now, I cannot imagine what it would have been like had I left in August. I am constantly learning and gaining new experiences in areas to which I would never have been exposed had I stayed in Australia. I am already looking forward to being able to welcome at least the next few Nygh interns to the Permanent Bureau and hope to be able to support the internship and its participants long after that.





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