

PETER NYGH HAGUE CONFERENCE INTERNSHIP

REPORT 2016

REYNA GE
MARCH – AUGUST 2016



FOREWORD

The Peter Nygh Hague Conference Internship has been a unique and unforgettable window into the world of private international law.

After completing my undergraduate studies while on exchange at the University of Amsterdam, I had thought my time in Europe had come to an end. I was most fortunate that I was offered a chance to extend my stay in The Netherlands for another six months, with an unparalleled opportunity to ponder and expand my career interests at a leading intergovernmental organisation.

In preparing this report, I am reminded that I have been very fortunate in multiple and unanticipated ways. I was most privileged to have worked with the talented and inspiring individuals at the Hague Conference on Private International Law (the “Hague Conference”), and to have enjoyed all the charms that The Hague could offer.

For these incredible six months that I have spent, I have many to thank.

First and foremost, I would like to thank Ms Nicola Nygh and the Nygh family for their continued support of and dedication to the Nygh Internship. As the eleventh Nygh Intern, I am most honoured to have played my small role in continuing the legacy of the Hon Dr Peter Nygh AM.

To the members of the 2016 Internship Selection Panel, Dr David Bennett AC QC, Ms Margaret Brewster, Professor Richard Garnett, First Secretary Ms Marta Pertegás, Ms Maryze Berkhout and Mr Brody Warren, thank you for placing your trust in me.

Additionally, I would like to express my gratitude to the organisations that continue to support the Internship: the Permanent Bureau of the Hague Conference on Private International Law; the Commonwealth Attorney-General’s Department; the Australian Institute of International Affairs; the Australian Branch of the International Law Association; and Resolve Litigation Lawyers.

Especial thanks to Professor Leon Trakman, who has so generously advised and mentored me through my various pursuits, and Representative of the Asia-Pacific Regional Office of the Hague Conference, Dr Anselmo Reyes, who first introduced me to the work of the Hague Conference. To my mentors, Professor David Dixon, Dr Rosemary Howell, Mr Alistair McKeough and Mr Andrew Dwyer, thank you for your unending support of my academic and professional development.

I have been most fortunate that my internship has brought new colleagues and friends into my life, for they are some of the brightest and most inspiring individuals I have had the luck to meet. Everyone at the Permanent Bureau has spared no effort in making me feel part of the organisation. For this, I extend particular thanks to Secretary General Christophe Bernasconi, First Secretary Ms Marta Pertegás, Principal Legal Officer Ms Mayela Celis, Senior Legal Officer Ms

Ning Zhao, Legal Officer Ms Cristina Mariottini¹ and Legal Officer Mr Brody Warren². Their positive eagerness to support my learning and their warm friendship is one of the key factors that has made the internship one of my most professionally fulfilling experiences to date.

Legal Assistants Ms Laura Luca and Ana Zanettin, as well as my fellow interns, never have I had a group as energetic, switched-on and effortlessly fun as you. Thank you for the many happy memories of our various adventures and creative banter.

On a more personal note, special thanks to the sweetest housemate one could ask for, Ms Chantal-Marie Waddell, for helping me settle into The Hague and sharing both her home and heart. Thank you also to my friends and family for continuing to support my study and work ventures abroad, and dealing with the sudden surprise of my time in The Netherlands being lengthened by another six months.

The Nygh Internship has been, in short, *heel gezellig en de beste zes maanden*. For me, I hope it is but a *tot ziens* to The Hague. And for any aspiring law graduate interested in international law, I give my unqualified recommendation to apply. The experience will bear fruits richer and more varied than one could ever anticipate.

Reyna Ge
September 2016



¹ As of September 2016, Ms Mariottini has taken up the role of Senior Legal Officer.

² Mr Warren is a former Nygh Intern.

I. INTRODUCTION

My internship was from 1st March to 15th August 2016. The selection process for the Nygh Internship started in September 2015. After submitting my application, I was contacted for an interview with the Selection Panel in mid-November, following which I received the exciting news that I had received the offer in December. By late February 2016, I was packing my bags once more to return to The Netherlands, to commence the Nygh Internship at the Permanent Bureau.

PETER NYGH HAGUE CONFERENCE INTERNSHIP

The Nygh Internship provides an outstanding opportunity for a graduate or post-graduate of the Hague Conference, in The Hague.



Upon the tenth anniversary of the Nygh Internship, it is an apt time to reflect on the background of the programme and its development. The Nygh Internship was established in honour of Hon Dr Peter Nygh AM, an outstanding member of the Australian legal community. Dr Nygh made significant contributions as legal academic, counsel and Justice of the Family Court of Australia. Relevantly

to the Hague Conference, Dr Nygh also represented Australia during meetings of the Hague Conference, and commenced his extensive association with the Hague Conference from 1975. He was particularly active in assisting to draft the *1978 Hague Marriage Convention* and the *1978 Matrimonial Property Convention*. Additionally, he served as *co-rapporteur* during the first phase of the Judgments Project, producing the Explanatory Report in 2000 in conjunction with Professor Emeritus Fausto Pocar, and represented Australia in negotiations for the *1996 Child Protection Convention*.

It is Dr Nygh's illustrious legacy, particularly with regard to his profound commitment to advancing international engagement and cooperation, which is celebrated by the Nygh Internship. Since its inception, the fortunate recipient of the Nygh Internship is provided an opportunity to work at the Permanent Bureau for up to six months, which offers invaluable experience in the field of private international law and insight into the unique world of international organisations.

It is now "tradition" for the Nygh Intern to work with the team preparing for a Special Commission in their year. Interns are also encouraged to expand or demonstrate their knowledge of private international law through contributing short opinion pieces to the online media of the Australian Institute of International Affairs. Within parameters, the work programme also offers flexibility to cater for the academic or professional interests of each Nygh Intern; a proactive attitude is most certainly welcomed and encouraged.

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

As the leading intergovernmental organisation in the area of private international law, the Hague Conference originated in 1893, when its first meeting was initiated by T M C Asser (Nobel Peace Prize Winner 1911). In 1955, the Hague Conference became a permanent intergovernmental organisation. Since then, its Permanent Bureau has been situated in The Hague, The Netherlands.

The Hague Conference develops and services multilateral legal instruments in the field of private international law. Such instruments cover legal situations pertaining to personal and family or commercial situations which involve more than one country. The Hague Conference has now produced approximately 40 treaties in areas such as the protection of family and children, civil procedure and commercial law. It is through these treaties that the Hague Conference aims to achieve “progressive unification of the rules of private international law”.

With currently 81 Members, comprising of 80 Member States and the European Union, and further interest from other States, the Hague Conference fulfills an important global role by drafting and administering instruments that harmonise the rules of private international law between States. Such rules encompass key matters in cross-border legal cases, including the jurisdiction of courts, choice of law, and the recognition and enforcement of judgments.

The Hague Conference is comprised of its Permanent Bureau and two Regional Offices (which are located in Latin America and the Asia-Pacific). The three offices cumulatively engage in a variety of projects and activities, which range from investigating the feasibility of harmonising particular areas of private international law, organising and participating in conferences and seminars, to drafting explanatory documents on the Hague Conference’s conventions.



II. WORK PROGRAMME

During my time at the Permanent Bureau, I was involved in a range of tasks and projects. This mix of work enabled me to observe first-hand the difference between the work involved in drafting a new convention, as opposed to administering an existing convention.

I was involved in two projects in particular:

- the Judgments Project and preparation for its Special Commission meeting; and
- the Special Commission on the Practical Operation of the Apostille Convention.

Additionally, I was involved in tasks concerning the *2005 Choice of Court Convention*, the yearly meeting of the Council of General Affairs and Policy, and also the meeting of the Council of Diplomatic Representatives.

THE JUDGMENTS PROJECT

Currently one of the Hague Conference's priority projects, the Judgments Project concerns the drafting of a global instrument for the recognition and enforcement of foreign judgments. Its subject matter is regarded as part of the very "bread-and-butter" of private international law, and therefore has the potential to become a highly important treaty if it is successful. Particularly, the Judgments Project aims to produce an instrument that would make international litigation more competitive, operating as an equaliser to the striking popularity that international arbitration has gained through – in part – the existence of the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958* (also known as the "New York Convention").



The Judgments Project is by no means an infant project of the Hague Conference. It has been on the agenda since 1992, and has taken a number of different turns and developments through the years. Now, the Judgments Project has reached a significant and exciting milestone. Following the much-anticipated approval from the Council on General Affairs and Policy in March 2016 to

set up a Special Commission for the Judgments Project, its first meeting was held in June 2016.



During the first meeting, the Special Commission engaged in negotiating the articles of the Preliminary Draft Convention, on the basis of a Proposed Draft Text that had been prepared by the Judgment Project's Working Group between 2013-2015.

It was this project that primarily engaged me during the first three months of my internship. During this

time, I assisted First Secretary Ms Marta Pertegás, Senior Legal Officer Ms Ning Zhao and Legal Officer Ms Cristina Mariottini. My work fell into three broad categories. The varied tasks were engaging and offered experience in both the administrative and research aspects of the Judgments Project, which provided me with interesting insights into the process of treaty negotiation.

Legal research

- Examining how the Proposed Draft Text may handle collective action proceedings, and the potential issues regarding this;
- Examining the interaction of the 2016 Preliminary Draft Convention with unitary intellectual property rights;
- Collating materials and commentary on the meaning of "civil or commercial"; and
- Reviewing and finalising research notes on topics including: the meaning of "sovereignty and security" in the context of public policy exceptions; and the concept of "internal disputes relating to [the] trust".

Preparation for the Meeting of the Special Commission

- Drafting and reviewing correspondence with Member States and interested States concerning the meeting of the Special Commission;
- Drafting and reviewing preparatory documents, such as the Explanatory Note and annotated agenda, for the Special Commission; and
- Attending internal team meetings to co-ordinate preparation for the Special Commission meeting.

Meeting of the Special Commission

- Assisting staff of the Permanent Bureau and the Bureau of the Special Commission with tasks throughout the meeting; and
- Completing Recording Secretary work, which involved drafting the minutes of the meeting and later assisting with finalising the minutes.

SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE APOSTILLE CONVENTION

Following the conclusion of the Special Commission on the Judgments Project, I also joined the team that was preparing for a meeting of the Special Commission in November 2016. This was the Legal Co-operation and Litigation team, which comprised of Principal Legal Officer Ms Mayela Celis and Legal Officer Mr Brody Warren. With their guidance, I undertook tasks to assist with preparing for the Special Commission on the Practical Operation of the Apostille Convention.

The Apostille Convention, also known as the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, has the highest number of Contracting States out of all the Hague Conference instruments. The convention facilitates the circulation of public documents executed in one Contracting State and to be produced in another Contracting State, by simplifying and harmonising the formalities of legalising such documents.



For the meeting of the Special Commission, the Permanent Bureau had sent out a Questionnaire to each Contracting State, requesting information on how the Apostille Convention was administered. Questions included requesting information on national legislation concerning the Apostille Convention, statistical data, and any legal or practical issues encountered in operating the Convention. My tasks primarily related to this Questionnaire.

Particularly, my tasks encompassed:

- Collating and reviewing responses to the Questionnaire from each State;
- Assisting with updating internal and public databases concerning information on the Central Authorities that administer the Apostille Convention; and
- Drafting correspondence in answer to inquiries and other communication from States concerning the Questionnaire and the meeting of the Special Commission.

The information that was gathered from the responses provided me with a picture of how each country managed the Apostille Convention and an understanding of how the text of a Convention “comes to life”. It demonstrated to me the processes that may need to be put in place in order to make legal rules a reality. That we were documenting the operation of a Convention that had day-to-day relevance in a large number of States in the world was both a thrilling, and humbling, thought.

Though the tasks also erred on the administrative side, tasks such as drafting correspondence allowed me to practise using the diplomatic language necessary for communicating with State bodies. It also reinforced that it was not enough to simply draft a multilateral legal instrument. To ensure that the instrument served the purposes it was meant to, it was necessary to conduct such surveys into the operation of the instrument. In this way, I came to appreciate this side of the Permanent Bureau's work.

OTHER TASKS

During my internship, I also had the opportunity to engage with work on the year-to-year operations of the Hague Conference and become involved in projects that were of personal interest.

In the first two weeks of my internship, I was engaged in preparation for the meeting of the Council on General Affairs and Policy ("CGAP"), which was held on 15-17 March 2016. I assisted with drafting and conducting research for preparatory documents, called Preliminary Documents, which were to be tabled during the meeting. Review of these Preliminary Documents also offered a great opportunity for me to gain a holistic overview of the operation of the Hague Conference.



During the meeting of the CGAP, I assisted by staffing the "Secretariat" table, which involved answering enquiries from representatives of the Member States, distributing documents during the meeting and assisting the staff of the Permanent Bureau. Though primarily administrative in nature, the role enabled me to listen to all the discussions and learn about the various different teams of the Hague Conference and the many projects that they were engaged in. It was also a highly interesting first insight into international diplomacy in action.

In addition to CGAP, I also assisted with the second meeting of the Standing Committee of the Council of Diplomatic Representatives and the 2016 meeting of the Council of Diplomatic Representatives ("CDR"). For these two meetings, I served as Recording Secretary, which involved taking minutes of each meeting for subsequent circulation to Member States. The meetings also provided me with a unique window into the financial and administrative aspects of the Hague Conference.

As I had a particular interest in the intersection between intellectual property and private international law, I requested to participate in the collaboration project between the Hague Conference and the World Intellectual Property Organization ("WIPO"). First Secretary Ms Marta Pertegás was most supportive of my interests, by involving me in the correspondence and some teleconferences related to this collaboration project. This also offered me an opportunity to observe how these leading international organisations co-operate and co-ordinate with each other, demonstrating that these organisations definitely do not operate in isolated silos.

III. LEARNING & PROFESSIONAL EXPERIENCE

Throughout my internship, it was a true privilege to be able to support the work of intelligent and globally-focused legal minds at the Hague Conference. In addition to the challenging technical tasks such as legal research and analysis, I was also able to develop an informed understanding of the unique world of international organisations and their place in the global order.

Here, I outline what I viewed as my more substantive professional and academic outcomes from undertaking the Nygh Internship.

UNDERSTANDING OF PRIVATE INTERNATIONAL LAW



Though I had taken on the Nygh Internship with a broad understanding of some aspects of international law, particularly regarding international dispute settlement, international trade law and international economic law, I had a superficial understanding of private international law. Thus, it was academically fulfilling to learn about private international law, also known as “conflict of laws”, particularly with regard to how

pervasive it is within our increasingly globalised world. The area concerns many forms of private law matters with a cross-border element, which includes:

- family law matters, such as adoption, custody and maintenance;
- litigation matters, including service of documents and production of evidence; and
- commercial law matters, for instance securities and choice of law in commercial contracts.

In the context of work for the Judgments Project, I came to understand the (lack of an) international regime for the recognition and enforcement of foreign judgments. This involved learning about the different bilateral and regional instruments for recognition and enforcement, such as the *Trans-Tasman Agreement, 2008*, between Australia and New Zealand, and the European Union’s regional framework of Regulation (EU) No 1215/2012 of 12 December 2012 (that is, Brussels I *bis*). It has also made me engage with specific issues within the sphere of recognition and enforcement, particularly with regard to matters such as intellectual property and collective action proceedings.

THE PROCESS OF CONVENTION DRAFTING

My relatively extensive involvement in the Judgments Project, the Hague Conference's key legislative project at the present moment, also provided me with a unique opportunity to observe the convention drafting process. In particular, leading up to the meeting of the Special Commission, I assisted in reviewing the Explanatory Note that provided background on the Proposed Draft Text and that identified issues for further discussion. From reviewing this document, I came to appreciate the different mindset that is used by lawyers playing a legislative role. Working on the document required me to be alive to the balancing of various policy considerations and the stark differences in legal systems across the world. It demonstrated that policy and theoretical issues were not just reserved for academic debate, but had very real implications in practice. This was a very different mindset to that of a legal practitioner, who usually applies existing laws in order to advise or serve the interests of clients.



CHALLENGES ENCOUNTERED IN THE OPERATION OF CONVENTIONS

From working with the Legal Co-operation team, I came to appreciate that a convention is much more than just a bunch of words on a page (or website, as is often the case these days). It has tangible, real-life implications that manifest in particular processes, governmental bodies and documentation. It can greatly impact outcomes for individuals and States.

This reality comes with the attendant consequence that the application and operation of conventions are only as good as the human actors and processes who bring it to life. While collating responses to the Questionnaire for the Special Commission on the Apostille Convention, for instance, I was struck with how different each response could be, despite each State being a signatory of the same Convention. This reinforced the importance of the Hague Conference in continuing to monitor and administer its conventions to ensure that they still served their respective objectives and to promote harmonisation of process as well.

IV. INTERN LIFE IN THE HAGUE

In addition to the fulfilling learning and professional growth that I was lucky enough to experience through the Nygh Internship, my months in The Hague were also fantastically enjoyable both in and out of the office. It is impossible to capture all the fond memories that I have created over the internship. For future applicants, here are some of the best aspects of the Nygh Internship for which I envy you for having before you. For past Nygh Interns, I am sure you can relate to some of the highlights and memories that I am imparting.

THE PERMANENT BUREAU: A TRULY INTERNATIONAL OFFICE



After previously gaining work experience at a couple of firms that prided themselves for being “international offices”, I thought that I knew what to expect at the Permanent Bureau. The day-to-day experience, however, proved to be very different.

The permanent staff and interns alike at the Permanent Bureau come from not only all walks of life, but also various countries. Nearly all the individuals speak two languages – or more. It was always fascinating to listen to the lively chatter in the lunchroom, which often rotated between three languages. Everyone was also highly inclusive and open-minded. I loved learning new words in different languages and new insights into different cultures, and likewise greatly enjoyed sharing stories and facts about Australia in return.

I believe that this aspect of the Permanent Bureau is very much unique to its character as an international office. Additionally, it is also a great asset, by enabling the interchange of ideas and knowledge in a field that intrinsically involves the comparison of different legal systems. The staff always made me feel comfortable to ask technical questions about systems that were relatively unfamiliar to me, such as the European Union’s Brussels *1 bis* regime.

And outside of office hours, the staff of the Permanent Bureau also knew how to wind down and have fun. In addition to team lunches, the Judgments Project team engaged in some team bonding by rowing down one of the canals in The Hague. The “End of Summer Event”, held at Scheveningen Beach, is another memory that I will definitely cherish.

THE HAGUE: STATELY AND CULTURED

Sometimes called the Canberra of The Netherlands, with its parliamentary buildings and embassy residences, the idea of living in The Hague initially did not hold much appeal to me. I had been fortunate enough to live in the buzzing city of Amsterdam for my exchange programme just a couple of months prior, such that The Hague appeared too quiet and retired in comparison.



It is without any exaggeration, however, that I would now name The Hague as one of my favourite cities in the world, and one that I would gladly return to. With its plethora of governmental and non-governmental institutions, The Hague boasts a lively expat community. This manifests in meeting many interesting individuals, in both planned and unplanned circumstances. Being in such close proximity to institutions such as the International Court of Justice also offered

unique opportunities. In the first couple of weeks in The Hague, I listened to the first round of oral arguments to *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)* at the International Court of Justice, and witnessed the crowds outside the International Criminal Tribunal for the former Yugoslavia on the day that the decision on Radovan Karadžić was handed down. I even attended the ANZAC Day ceremony that is jointly organised by the Embassies of Australia and New Zealand, which curiously fostered a sense of pride in the Australian identity in addition to providing me with a chance to eat my year's worth of Anzac biscuits. (For this, I must thank Mr Brody Warren for inviting me to the event.)

The Hague and other Dutch cities also hold many festivals and events. I was never at a loss for something to do during my weekends. I visited wonderfully assorted street markets in The Hague and Delft, and visited the world-famous Keukenhof gardens during the spring. Like the rest of The Netherlands, I also donned orange garb to celebrate King's Day (or "Koningsdag"), joining many in raising a glass of beer to the good health of the King. On my last weekend in The Hague, I was given a lovely farewell by the city as I watched the evening skies light up with fireworks at Scheveningen Beach during the International Fireworks Festival.

In addition to such events, the proximity of The Hague to other Dutch cities and Schipol airport – as well as the gloriously functioning transport systems of The Netherlands – opened up a wealth of weekend destinations. It was possible to go on day trips to cities like Utrecht, Rotterdam and Maastricht, and do weekends away in Austria, Belgium and France. The ease with which it was possible to travel between countries with such different cultures, landscapes and languages is a colourful hallmark of my life in The Hague.

Of course, it wasn't all sunshine. (Any expectation of good weather, as one will quickly learn from living in The Hague, is likely to face disappointment.) However, I can easily mark my time in The Hague as one of the best times to date.



V. FOR PROSPECTIVE APPLICANTS

I highly recommend all students with an interest in private international law, an adventurous spirit and a global outlook to apply for the Nygh Internship. The challenges of grappling with a complex field of law and having to set up life in a foreign country are ones that will truly develop you professionally and personally.

From speaking with previous Nygh Interns and reading their reports, I must also add that each Nygh Intern has vastly different experiences, though I am confident all would speak fondly of their months in The Hague. Therefore, I encourage lucky future recipients to be flexible and open in their approach to the internship, and to shape the experience according to their personal interests.

For applicants who have any practical queries, or wish for further information on my experience at the Permanent Bureau, feel free to get in contact: reyna.ge11@gmail.com

VI. A FINAL WORD

Again, a *hartelijk bedankt* to all those who have made my internship at the Hague Conference possible. The generous financial support of the Nygh family and the institutions below have been essential to my wonderful and fruitful six months.



Australian Government
Attorney-General's Department

Resolve >
Litigation Lawyers