



HCCH

HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

PETER NYGH HAGUE CONFERENCE INTERNSHIP REPORT 2017

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FOREWORD

This report recounts my experiences as the Peter Nygh Hague Conference Intern at the Permanent Bureau of the Hague Conference on Private International Law ('the Hague Conference', 'the HCCH'), a position I was privileged to be afforded in 2017.

During the first half of 2016 I spent my days surrounded by towers of books and academic journals writing my Honours thesis on private international law. I never anticipated that the following year I would be at the Hague Conference on Private International law surrounded instead by leading experts in the field and working each day to further the objectives of private international law doctrine.

Preparing this report has given me the chance to reflect on the many unique experiences and opportunities that have been given to me as part of the Nygh Internship, as well as the many individuals who were instrumental in guiding and encouraging me along the way. I feel most fortunate and privileged to have been the twelfth intern to contribute to the important work of the Hague Conference, and for this there are many I wish to sincerely thank.

First and foremost, I would like to extend my gratitude to Ms Nicola Nygh and the Nygh family for their dedicated support of the Nygh Internship. I am most honoured to have played a small role in continuing the remarkable legacy of the Hon Dr Peter Nygh AM and I look forward to being part of the growing number of Nygh alumni.

I wish to thank the members of the Internship Selection Panel, namely Dr David Bennett AC QC, Professor Richard Garnett, First Secretary Ms Marta Pertegás, Mr Alex Kunzelmann, and Mr Brody Warren, for placing their confidence in me.

I would also like to thank the organisations which provide valuable financial and organisational support to 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.

To my legal mentors who first sparked my interest in the conflict of laws, Professor James Stellios and the Hon William Gummow AC, thank you for guiding my ventures into private international law and for your continued support and encouragement – it is appreciated most deeply.

Of course, my time at the Permanent Bureau and life in The Hague would not have been as memorable without such excellent colleagues and friends. For this, I would like to express my wholehearted thanks to the members of the International Family Law team, First Secretary Mr Philippe Lortie, Senior Legal Officer Ms Maja Groff and fellow intern Ms Charlotte Mol, with whom I had the privilege to work alongside. I learned and benefited a great deal from their collective expertise and passion for private international law.

Equally, I would like to express my gratitude to Secretary General Mr Christophe Bernasconi, First Secretary Ms Marta Pertegás, Attaché to the Secretary General Mr Thomas John, and the members of the Internship Committee – Principal Legal Officer Ms Mayela Celis, Legal Officer Mr Frederic Breger and Legal Officer Mr Brody Warren.

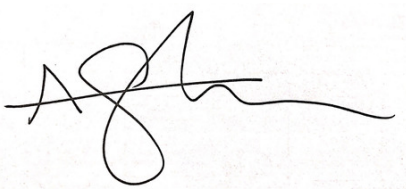
My thanks also go to the many fellow interns with whom I became close and fast friends during my time at the Hague Conference. To Chung Ho Lee, Ana Carolina Pedrosa Massaro, Morgane Frappart, Anni-Maria Taka, Sharon Zervaas, Charlotte Mol, Alina Gagarin, Mohadeseh Jahangiri, and Sarah Coco, it was an absolute blast working together and exploring Den Haag and the Netherlands.

Outside of the Permanent Bureau, I must sincerely thank the Hon Brett Mason, Ambassador of Australia to the Netherlands, and Ms Christina Hey-Nguyen of the Australian Embassy, for inviting me into the vibrant expat community in The Hague.

Lastly, I wish to thank my friends and family, and especially my parents, for their love and support.

The Nygh Internship and life in The Hague has been an unparalleled experience. It is a unique opportunity to see firsthand the development of international law through diplomatic negotiation, to be involved at the very centre in the creation and maintenance of important international treaties, and to live in a vibrant city dedicated to the principles of peace and internationalism.

To any aspiring law graduates and young lawyers interested in international law, I give my unqualified recommendation to apply.



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London, United Kingdom
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1. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW



Introduction

The Hague Conference on Private International Law is the global organisation for cross-border cooperation in civil and commercial matters. One of the oldest international legal organisations, the Hague Conference has produced and serviced international conventions since its inception in 1893 and is presently responsible for 40 international treaties in the areas of child protection, family and property relations, legal cooperation and litigation, and commercial and finance law.

As per its statute, the HCCH works toward the “progressive unification of the rules of private international law”. To achieve this goal in practice, the HCCH implements intergovernmental agreements, called Hague Conventions, covering the areas of jurisdiction, applicable law, recognition and enforcement, and/or legal cooperation. Importantly, these instruments do not regulate the substantive law of States but instead operate to provide support and guidance in cross-border situations. In this way, the Hague Conference fulfils an important bridging role between legal systems in providing legislative mechanisms to harmonise rules. In turn, the HCCH provides legal certainty and predictability for parties engaged in cross-jurisdictional activities, enhances legal, consular and procedural cooperation between States, and generally reduces costs and delays in legal processes, which ultimately improves the rule of law.

The presence of the HCCH is ever-growing. Both Members and non-Members of the organisation may join these Conventions. Presently, there are 83 Members of the HCCH and a further 68 non-Members are party to one or more of the Hague Conventions.

The Permanent Bureau

The Permanent Bureau performs the role of Secretariat of the Hague Conference (being the network of Members) and directs its work programme. In doing so, the Permanent Bureau consults with States and stakeholders in drafting and servicing Conventions, organises meetings and commissions, conducts legal research and analysis of data, publishes guides to good practice and informative documentation, provides training, and generally engages in any activities to support the implementation and operation of the Hague Conventions.

2. THE NYGH INTERNSHIP

Now in its twelfth year, the Peter Nygh Hague Conference Internship provides a unique opportunity for a young graduate of an Australian law school to gain valuable experience working at the Permanent Bureau of the Hague Conference.

The internship was established in memory of the Hon Dr Peter Nygh AM, an outstanding member of the legal community who made significant contributions to the law as an academic, Justice of the Family Court of Australia, and most relevantly, as a representative of Australia during meetings of the Hague Conference. Dr Nygh first became involved with the Hague Conference in 1975 and was actively engaged in the draft *1978 Hague Marriage Convention* and the *1978 Matrimonial Property Convention*. He represented Australia in negotiations for the *1996 Child Protection Convention* and served as co-rapporteur of the first phase of the Judgments Project, producing the Explanatory Report in 2000.

The internship celebrates Dr Nygh's legacy and commitment to international legal cooperation. Each year, the recipient of the Nygh Internship is given the opportunity to work at the Permanent Bureau to advance that commitment, to gain practical experience in the field of private international law, and to receive an insight into the internal workings of international legal organisations.



3. WORK PROGRAMME

When I arrived at the Permanent Bureau in January 2017 I was welcomed into the International Family Law team where I worked for the entirety of my internship.

I worked closely First Secretary Mr Philippe Lortie and Senior Legal Officer Ms Maja Groff on a great variety of tasks that related to the maintenance of the *1980 Child Abduction Convention*, *1996 Child Protection Convention* and the *2007 Child Support Convention*. Although I had studied the conflict of laws at the Australian National University and subsequently written my Honours thesis in the field, I had little previous exposure to international family law. As such, I faced a steep learning curve but was excited at the opportunity to broaden my horizons and expand my private international law knowledge.

Simultaneously, I was involved with the Special Commission on the Judgments Project which met for the second time from 16 to 24 February and produced the February 2017 draft Convention. Consequently, the first few weeks of my internship were exciting, fast-paced and incredibly stimulating.

There were three major projects I was involved with during my internship:

- i. The Judgments Project;
- ii. The Draft Guide to Good Practice on Article 13(1)(b) of the *1980 Child Abduction Convention*; and
- iii. The Protection Orders Project.



i. The Judgments Project

The Judgments Project is the Hague Conference's current flagship project. Simply put, it is the drafting of a new Hague Convention to facilitate the worldwide recognition and enforcement of civil and commercial judgments. Such a convention would essentially allow judgments rendered by a court in one country to be recognised and enforced in another country.

Currently, the system is characterised by a disjointed international framework where states apply their own rules in the absence of an international convention. Consequently, this area has been identified by the HCCH as a top priority of its work programme and the organisation has taken substantial steps toward realising the conclusion of an international convention on the recognition and enforcement of foreign judgments. As such, it was an exhilarating time to be involved with the Judgments Project, which is very much ramping up to its completion.

I acted as a recording secretary during the length of the second meeting of the Special Commission at the Peace Palace in The Hague, which involved attending several sessions and taking detailed notes of the negotiations. Producing the bilingual English-French reports of the meetings meant I was intricately involved with the subject matter of the discussions, and as a result I learned a great deal. I was also involved in the weeks leading up to the Special Commission, notably in the preparation and compilation of Preliminary Documents.



The week itself was just as exciting socially as it was professionally. There were many interesting discussions to be had during the coffee breaks, and over canapés at the evening events. It was also a great opportunity to meet with the members of the Australian delegation who were actively involved in proceedings, notably Professor Richard Garnett and Mr Andrew Walter.

With hindsight, this was one of the major highlights of my internship. It was incredible to see so many

experts come together from different countries and international organisations, discussing and debating a wide variety of topics in such detail. What was truly amazing was that, after seven intense working days, a draft Convention had been produced. I felt I had observed diplomacy and international law in action.



ii. Draft Guide to Good Practice on Article 13(1)(b) of the *1980 Child Abduction Convention*

A major focus of my internship involved the drafting of a Guide to Good Practice on the operation of Article 13(1)(b) of the *1980 Child Abduction Convention*.

The Article in question concerns an exception to the operation of the Convention. It states that a judicial or administrative authority involved in an abduction case is not bound to order the return of a child to his or her home country if there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The application of this exception is complicated and often poses challenges to practitioners and judges alike. The Guide is intended to promote greater consistency in the application of the exception in accordance with the overarching objectives of the Convention.

I was excited to be part of this project as it felt like an opportunity where my work and contributions, although small, would have a positive effect on the world, and especially on vulnerable families and children. It was a strong motivating factor knowing that the Guide would be used by judges faced with complex child abduction cases for assistance when resolving difficult international family law issues.

I worked primarily on Part IV of the Guide which outlines potential case scenarios and fact patterns that are likely to arise in child abduction cases, and how they might be dealt with. Being tasked with such a major aspect of the Guide felt like a great responsibility and much of my work was connected in some way to the development of this chapter. Along with a fellow intern, Charlotte Mol, I conducted a great deal of research – finding case law from many jurisdictions and immersing myself in the academic literature – and worked on fleshing out the skeleton draft that we had produced. There was a great sense of teamwork (Charlotte and I became known as the ‘Dynamic Duo’), and we had regular meetings where we provided updates on our progress and sought direction on how to proceed. I was also involved with preparing and compiling the annexes to the Guide, and in the completion of footnoting and referencing.

By the time of the end of my internship, the draft Guide was completed and sent to experts for their suggestions and comments. The Guide will be discussed at the Seventh Meeting of the Special Commission on the *1980 Child Abduction Convention* and the *1996 Child Protection Convention* from 10 to 17 October 2017 and will hopefully be published and circulated in the near future.





iii. The Protections Orders Project

Another major item of work I was tasked with was the Protections Order Project. This project concerns the development of a new international legal instrument on the recognition and enforcement of foreign civil protection orders. Still very much in its early and exploratory stages, this project primarily required me to work on drafting a memorandum to assist the Council of General Affairs and Policy in determining the feasibility of such an instrument.

There is a diverse range of protection orders across jurisdictions: civil, criminal, administrative and hybrid. Characterising protection orders, as well as conceptualising how a future legal instrument would deal with this diversity, was challenging. Much of the memorandum focussed on examining these types of protection orders and using various sources (academic, judicial, legislative, and responses to questionnaires) to provide a clear picture of the types of protection order regimes that exist worldwide. Once again, the international nature of the work was very apparent as this research consisted of analysing 191 different jurisdictions.

The memorandum also provided solutions to the issue of diversity of protection order types. Much of my responsibility in this project was examining how diverse protection order regimes have been dealt with in existing private international law systems. I took on this task with zeal, as finding solutions to the complex problems of characterisation in the conflict of laws is of great interest to me and was in fact a major aspect of my Honours thesis.

I examined how the United States had dealt with this issue both at the domestic level via the *Violence Against Women Act of 1994* and the *Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002* and internationally through the bilateral *Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act*. I also researched and wrote on the Australian and Canadian model laws on domestic violence orders, the European Union Protection Orders Directive and Protection Measures Regulation, the Council of Europe Istanbul Convention, and the existing Hague Conventions. By analysing the variety of ways these legislative schemes had dealt with the issues involved in the cross-border recognition and enforcement of protection orders, we were able to present potential solutions to the same problems but on a truly international scale.



Other tasks

As a member of the International Family Law team I was tasked with many smaller projects, ongoing projects. Such tasks included:

- Maintaining a chronology of events related to India's accession to the *1980 Child Abduction Convention* (a very topical issue during my internship);
- Responding to Member State inquiries into the operation of the Conventions;
- Carrying out ongoing work related to the Malta Process and cross-frontier child protection and family law;
- Drafting letters to non-Member States inviting them to participate in the Working Party on Mediation;
- Simplifying the 2000 Adults Convention and producing an accessible text; and
- Developing the International Hague Network of Judges (IHNJ).

Throughout the internship I was often presented with opportunities to work for the other divisions of the HCCH, to attend meetings and conferences, take part in media interviews, and prepare presentations. Taking up a variety of tasks meant I felt I gained a holistic appreciation of the organisation and its functions. For example, I completed research on the operation of trusts in various jurisdictions for the purposes of the Judgments Projects, took part in the Working Party on Mediation held at the Canadian Embassy in The Hague, and transcribed an interview between Secretary General Mr Christophe Bernasconi and a South Korean media official.

I also acted as recording secretary for the Council of General Affairs and Policy, and the Council of Diplomatic Representatives. I assisted with drafting and conducting research for preparatory documents for these meetings, which were tabled during the meeting, and produced reports of the meetings. This was a great insight into the internal workings of an international legal organisation and left me with a better appreciation for the important structures that govern how the organisation operates.

4. PROFESSIONAL DEVELOPMENT AND LEARNING EXPERIENCES

During the course of internship I was consistently exposed to challenging, meaningful work and was always surrounded by incredibly intelligent legal minds. I now have a deeper appreciation of private international law doctrine, a more refined perspective of international comparative law, and I better understand the operation of diplomacy and international legal organisations. Moreover, I had the opportunity to work bilingually in a professional environment and to represent Australia abroad. I really learned a great deal and am confident this experience puts me in good stead into the future as I embark on my career in the law.

Understanding private international law doctrine through practice

I applied for the Nygh Internship because I wanted to expand my horizons and broaden my knowledge of private international law. Often categorised into three pillars, (i) jurisdiction, (ii) choice of law, and (iii) recognition and enforcement of foreign judgments, I had really only studied these categories superficially or solely in the context of Australian law.

Working day-to-day at the Permanent Bureau in practical matters related to private international law allowed me to apply what I had learned at law school in a broader context. Much of the research I conducted was used, in one way or another, in the maintenance of the Hague Conventions or in the development of a future legal instrument, and I was in regular correspondence with Member States responding to their enquiries. Consequently, I felt I came to understand the workings of private international law through practice rather than just theory. For example, in the context of recognition and enforcement, my involvement in the Judgements Project as well as the Protections Order Project allowed me to gain a much better understanding of the significance of legal instruments in creating legal procedures that



promote certainty and uniformity. I was exposed firsthand to the problems engendered by a patchwork system of laws and given the chance to work on solutions to those problems. This was a fantastic experience.

The art of diplomacy and negotiation in action – the convention drafting process

A unique element of the Nygh Internship was the opportunity to be actively involved in the negotiation of a major international treaty. As recording secretary during the Special Commission on the Judgments Project, I saw firsthand how representatives and experts from different countries conducted themselves during sessions.

It was also interesting to see how particular issues were sometimes solved over a coffee break, or by parties meeting together to discuss their reservations, and to return to the plenary session with a solution or compromise. As foreign affairs and diplomacy is a strong interest of mine, being part of this process and seeing how consensus is achieved between states that often share little in common was an incredible experience.



I also came to appreciate the legislative function of the Hague Conference and the skill required in balancing competing policy considerations and the diverse elements of the legal systems in each State. Creating law, rather than applying it, was something I had not previously been exposed to, and as such, was a very eye-opening experience.

Building my academic and professional credentials

International family law was something that I had not previously studied or worked in. Admittedly I was slightly apprehensive before beginning the internship as I thought this might impact on my ability to contribute meaningfully to the work of the organisation. In the weeks leading up to my departure I had covered the relevant chapters in *Nygh's Conflict of Laws*, but I quickly found upon my arrival that I was not expected to be an expert from day one. Rather, the internship was a learning experience. After six months, I came away with a nuanced knowledge of international family law, and the *1980 Child Abduction Convention* and *1996 Child Protection Convention* in particular.

Additionally, as the work of the Permanent Bureau in private international law generally aims to find agreement on common solutions between different states, the internship emphasised the importance of understanding different legal cultures. For example, I dealt with common law, civil law and sharia law jurisdictions on a near day-to-day basis. As a result, I am now much more confident in researching and understanding different legal jurisdictions, and understanding how legal systems operate. I believe this exposure to working with comparative law and the opportunity to refine and perfect my legal analysis will be particularly useful as I aspire to complete an LLM abroad in the future.

The internship also provided an opportunity to meet some amazing people. The Permanent Bureau is replete with great legal minds backed with diverse experience and expertise. Through meetings and social events, the internship is also a chance to meet individuals from other organisations from all over the world. The internship is very much an opportunity to expand one's professional networks internationally and I feel I took full advantage of this.



As a bilingual office, the internship provides a fairly unique opportunity for an Australian to work in two languages, and be exposed to many more. Although English is most commonly used, it is definitely an asset (though not essential) to have a working knowledge of French or another language. I found my knowledge of French to be particularly useful during the Special Commission meetings when delegations intervened in French, in my legal research into francophone jurisdictions, and around the office socially.

The internship is a rigorous experience, presenting challenges and difficulties that really test you. Consequently, I grew a great deal and that I have a lot to show from my time in The Hague. I am confident I will be drawing from my knowledge and experience gained at the Permanent Bureau for the years to come.



5. THE HAGUE

I quickly fell in love with The Hague and the Dutch way of life. Writing now from London, I realise I miss the ease of cycling everywhere, the picturesque houses and windmills, and most especially *stroopwafels*.

Living and working

The Hague is a fantastic city to live and work in, and one that is easy to settle into and quickly call home. It is a great place to get a taste of Dutch culture, cuisine and way of life while also feeling like you are at the centre of international law.

There is a lot to do in The Hague. The city proper offers many cafes, restaurants and bars to try, narrow alleys to explore, and galleries and museums to visit. Come summer, the squares Plein and Grote Markt are full of people and a great place to enjoy the long evenings and sample Dutch beers. Outside of the city centre, visiting the beach is a must when the weather is warm. Scheveningen is the commercialised strip with beach bars and beach clubs abounding. The opposite end, Kijkduin, is far quieter while the Westduinpark is good place to go for a walk, run, or ride. There is also a strong ex-patriate culture in The Hague, and I would strongly recommend going along to the events organised by expat groups.



The proximity of The Hague to other Dutch cities and the efficiency of the railway network made it easy to explore all corners of the Netherlands. Day trips to Amsterdam, Utrecht, Rotterdam and Maastricht were quick to organise and great fun. The smaller cities Delft, Leiden and Gouda are also must-visits. Schiphol airport is easily reached from The Hague, opening up much of Europe for weekend trips away.

Food is a great insight into Dutch life and culture, and I was quick to sample as much as I could. The traditional Dutch classics – *bitterballen* (Dutch take on croquettes), *Hollandse nieuwe haring* (pickled herring), *poffertjes* (little, fluffy pancakes), *hagelslag* (chocolate sprinkles on bread), *lekkerbekje* (Fish and chips Dutch style), *stroopwafel*, *speculoos*, Dutch *pannenkoeken*, *rookworst*, *goudse kaas*, *drop*, and of course *frites* with plenty of mayonnaise – are all a must.



6. CLOSING WORDS

It has truly been a great privilege to be the 2017 Peter Nygh Intern at the Hague Conference on Private International Law.

I take away from this experience not only a number of new good friends and professional contacts, but also a greater appreciation for private international law and a stronger grounding in the nuances of diplomacy and the role of international legal organisations. I think, however, that the most significant aspect of the internship for me has been the transformation of my perspective from one centred on Australia to one that is truly international.

I again wish to express my sincere gratitude for the financial and organisational backing from the Nygh family and supporting institutions, which together have seen this wonderful award come to fruition.

