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RAPPORT SUR LES ACTIVITÉS DES BUREAUX RÉGIONAUX AMÉRIQUE LATINE ET ASIE PACIFIQUE

établi par le Bureau Permanent

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REPORT ON THE ACTIVITIES OF THE REGIONAL OFFICES IN LATIN AMERICA AND THE ASIA PACIFIC

drawn up by the Permanent Bureau

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Brief Report on the Latin American Regional Office (Buenos Aires, Argentina)

Background

1. Beginning in 2005, the Hague Conference embarked on a Special Programme for Latin American States.[1] The expansion of this programme over the past seven years has been made possible by the support and co-ordination of the Liaison Legal Officer for Latin America. In addition, the Special Programme for Latin America has benefitted from the work of a part-time Legal Assistant, who has been working with the Liaison Legal Officer for Latin America since 2009. They continue to provide essential support for activities in the region by providing the following services: responding to requests from officials, judges, practitioners and academics in the region; organising and running trainings for legal actors; assisting with the preparation of regional seminars and providing logistical and organisational support; revising and translating documents; and communicating with National Organs and Central Authorities to encourage greater participation in Hague Conference activities such as the completion of questionnaires and attending Special Commissions.

Services provided by the Latin American Regional Office

2. With the aim of 1) increasing the visibility of the Hague Conference and the Hague Conventions; and 2) improving the operation of Hague Conventions throughout Latin America, the Regional Office in Buenos Aires provides the following services:

   - Encourages and facilitates engagement of regional actors and States in the work of the Hague Conference;
   - Responds to government, practitioner, and individual requests for information regarding the work of the Hague Conference and / or its Conventions;
   - Encourages and facilitates networking among regional actors – including National Organs, Central Authorities, members of the International Hague Network of Judges, international organisations and the academic sector;
   - Facilitates the accessibility of relevant Hague Conference information to actors in the region and promotes knowledge of, and best practices under, the Hague Conventions;
   - Gathers information and conducts research in the region in accordance with the work programme of the Permanent Bureau;
   - Assists with the development and promotion of Hague Conference tools and guides (*e.g.,* INCADAT, INCASTAT, iChild, e-APP, and Guides to Good Practice, among others) for persons and entities tasked with implementing Hague Conventions;
   - Develops and promotes the work of the Hague Conference in the Spanish language; and
   - Provides and / or co-ordinates technical assistance to Latin American States in the form of trainings and seminars for judges, government officials, Central Authority officers and other professionals responsible for implementing and applying the Hague Conventions.

3. On a daily basis, officials, judges, practitioners and academics from the region reach out to the Latin American Regional Office to take advantage of the services it provides. The Regional Office then either responds directly or co-ordinates communication between the constituent and the Permanent Bureau. Furthermore,

[1] States which received support and / or worked in partnership with the Latin American Regional Office in 2012 include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, as well as Canada, Spain and the United States of America.

some of the Conference's activities in the region, including those supported by the Permanent Bureau's International Centre for Judicial Studies and Technical Assistance, are now handled by the Regional Office directly.

Summary report on the work of the Regional Office (April 2012 – April 2013)

4. From 26 to 27 June 2012, the Central American Judicial Council held its second meeting in Antigua, Guatemala. The meeting was attended by Presidents or Vice Presidents of the Supreme Courts of Costa Rica, Dominican Republic, Guatemala, Honduras, Nicaragua, and Puerto Rico. The Liaison Legal Officer was invited to the meeting to present the Hague Child Protection and Legal Co-operation Conventions. The importance of developing judicial co-operation was highlighted, and participants were invited to consider the Hague Conventions as helpful tools to develop and harmonise judicial co-operation at the regional and global level simultaneously. Participants appreciated the presentations and it was agreed that the Judicial Council should further explore how to better promote the analysis of these Conventions with a view to incorporation into their legal systems.

5. In the area of child protection, judicial trainings were organised and run by the Permanent Bureau through the Latin American Regional Office which focused on the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention) in Colombia and Argentina. Additionally, on 5 October 2012, the Liaison Legal Officer presented at and participated in the second "International Congress of operators responsible for the implementation of the rights of children and adolescents" (*Congreso internacional de los garantes del cumplimiento de los Derechos de los niños, niñas y adolescentes*) along with other experts from Argentina, Brazil, Paraguay, Peru and Uruguay. The topic of the Liaison Legal Officer's presentation at this event (organised by the Second Circuit of Guairá and the Supreme Court of Justice of Paraguay) focused on the link between the Hague Children's Conventions and compliance with the *United Nations Convention on the Rights of the Child*.

6. There have been several developments regarding the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention) in Latin America in 2012. As noted below, Uruguay and Nicaragua acceded to the Convention, and the Congresses of Chile, Paraguay and Guatemala are considering whether to become a party. The Convention is also being thoroughly studied by the Ministers of Foreign Affairs of Brazil, Bolivia and Cuba. The Permanent Bureau has been providing support and advice to these States, both at the implementation and legal analysis levels (to a considerable extent through the Latin American Regional Office).

7. From 28 January to 1 February 2013, the Secretary General and the Liaison Legal Officer attended the first Centro-American Forum on Communitarian and Private International Law (*I Foro Centroamericano de Derecho Comunitario y Derecho Internacional Privado*). The forum was organised under the auspices of the European Union's PAIRCA II Programme (Second Programme to support Centroamerican Regional Integration). Participants included judges from both the Centro American Court and other regional courts (*e.g.*, Tribunal de Justicia de la Comunidad Andin, Caribbean Regional Court, and Tribunal Permanente de Revisión del Mercosur), several magistrates from throughout the region, several well known Latin American private international law professors, and members of the *Asociación Americana de Derecho Internacional Privado* (ASADIP).

8. Many of the programmes undertaken by the Latin American Regional Office with respect to particular Conventions are discussed in greater detail below.

Legal Co-operation and Litigation Conventions

a. Apostille Convention (1961)

9. Uruguay and Nicaragua deposited their instruments of accession to the Apostille Convention. Thus the Hague Convention now counts 104 Contracting States.

10. The Latin American Regional Office expects to play a key role in the 8th International Forum on the e-APP, which is scheduled to take place from 17 to 18 October 2013 in Montevideo, Uruguay. The forum will be organised by the Ministry of Foreign Affairs of Uruguay in collaboration with the Permanent Bureau. This will be the first e-APP Forum held in Latin America.

b. Evidence Convention (1970)[2]

11. Colombia deposited its instrument of accession to the Evidence Convention while the Brazilian Congress has recently approved its accession to the Convention.

c. Access to Justice Convention (1980)[3]

12. From 3 to 4 May 2012, a seminar organised by the Ministry of Justice of Brazil on Access to Justice took place in Brasilia. The seminar included a broad range of access to justice issues, including an analysis of the Access to Justice Convention and its impact on human rights generally, as well as in the context of the 1980 Child Abduction Convention more specifically; other regional Conventions; judicial co-operation; and access to justice in the context of criminal proceedings and safeguarding human rights.

d. Choice of Court Convention (2005)[4]

13. During the course of 2012, the Liaison Legal Officer attended a series of meetings in Paraguay to discuss the Choice of Court Convention. Government officials expressed their interest in the Convention and several indicated they would immediately explore the possibility of joining the Convention.

Children's Conventions

a. Child Abduction Convention (1980) and Child Protection Convention (1996)[5]

14. The Liaison Legal Officer gave a speech via video conference to participants of the third meeting of the Mexican Judicial Co-operation Network for the protection of children (*Tercera reunión de la Red Mexicana de Cooperación Judicial para la Protección de la Niñez*) which took place in Mexico, D.F. on 19 April 2012.

15. In May and August 2012, the Latin America Regional Office gave presentations as part of two trainings for public defense attorneys and family law judges in Argentina.

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[2] *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.*
[3] *Hague Convention of 25 October 1980 on International Access to Justice.*
[4] *Hague Convention of 30 June 2005 on Choice of Court Agreements.*
[5] *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.*

16. From 17 to 18 October 2012, training seminars on International Family Law and International Legal Co-operation were held at the University of Medellin in Colombia. The training was co-organised by the University of Medellin and the Hague Conference with the support of the Colombian Child Protection Authority (ICBF). Approximately 130 people from about 80 family law firms attended the training, as well as 10 judges and five law professors.

17. On 26 February 2013 the Liaison Legal Officer headed a training programme for judges and Central Authority officers in Guatemala. The event took place at the Judicial School in Guatemala and was co-organised by the Hague Conference and the Children's Unit of the Supreme Court with the support of UNICEF.

18. The Latin America Regional Office also assisted Nicaragua, Guatemala and Paraguay in the development and implementation of special proceedings for handling international child abduction Convention cases.

19. The Latin American Regional Office continues to work closely with the Permanent Bureau in The Hague to provide ongoing technical assistance to Argentina, Colombia, Costa Rica, Paraguay and Guatemala, as well as other Latin American States regarding the operation and implementation of the 1980 Child Abduction and 1996 Child Protection Conventions.

b. Intercountry Adoption Convention (1993)[6]

20. Colombia has been, and remains, one of the countries sending the most children for intercountry adoption (the greatest number of any Latin American State). The Colombian Central Authority has requested assistance from the Permanent Bureau to improve the operation of the 1993 Intercountry Adoption Convention in Colombia. In light of this request, experts from the Permanent Bureau met with the Colombian Child Protection Authority (ICBF) to discuss their concerns regarding Colombia's compliance with the Convention. In particular, experts discussed ways to best address the high number of private institutions engaging in intercountry adoptions and failing to fully adhere to the Convention's principle of subsidiarity. ICBF acknowledged these concerns and indicated it would increase its oversight of these institutions.

21. The Permanent Bureau continues to collaborate with the Latin American Regional Office to provide ongoing support and assistance to Guatemala and Panama regarding the implementation and operation of the 1993 Intercountry Adoption Convention.

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[6] *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.*

Brief Report on the Asia Pacific Regional Office (Hong Kong Special Administrative Region of the People's Republic of China)

Background

22. The Council on General Affairs and Policy of the Hague Conference on Private International Law endorsed the establishment of the Asia Pacific Regional Office in the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR) during its meeting from 17 to 20 April 2012.

23. Following the endorsement by the Council, preparatory work for the establishment of the Regional Office progressed steadily from May to November 2012, including appointment of the Representative, recruitment of an office manager, location of suitable office accommodation and furnishing the office, as well as the negotiation and conclusion of a Host Country Agreement.

24. Mr Justice Hartmann, a non-permanent judge of Hong Kong SAR Court of Final Appeal (NPJ), was appointed as the first Representative of the Hague Conference for the Asia Pacific region. Office accommodation (Units 1409-1410, 14/F, Hong Kong Plaza, No 188 Connaught Road West, Hong Kong) was located and an office manager, Ms Alix Ng, was recruited in October 2012 to assist in furnishing the office and dealing with other administrative matters in order to prepare for the official opening of the Regional Office. The Host Country Agreement and the Memorandum of Administrative Arrangements were signed in Hong Kong on 13 December 2013.

25. The Asia Pacific Regional Office was officially opened on 13 December 2012. An opening ceremony was held at the Government House (the official residence of the Chief Executive of Hong Kong SAR). Officiating guests included the Secretary General of the Hague Conference, Representative of the Hague Conference for the Asia Pacific region and a number of senior officials including the Chief Executive of Hong Kong SAR, Vice Minister of Foreign Affairs of the People's Republic of China and the Secretary for Justice of Hong Kong SAR. Around 100 other distinguished guests, including Consuls General and representatives from around 30 countries and international organisations, also attended the event.

Summary report on the work of the Asia Pacific Regional Office (April 2012 – April 2013)

26. The Regional Office has engaged in a number of activities since the high-profile opening ceremony, which itself enhanced the visibility of the Hague Conference and the Regional Office and initiated contacts with the revenant authorities and bodies in the region.

27. In February 2013, the Representative signed a Memorandum of Understanding on Academic Co-operation with Kyushu University of Japan which will result in an intern being sent from the University to the Regional Office later this year. It is also planned that similar instruments will be entered into with other interested universities in the region providing for internship and research opportunities at the Regional Office.

28. From 27 to 28 March 2013, the Regional Office, jointly with the Hong Kong SAR Government and Macao SAR Government, organised a workshop in Macao on the 1993 Intercountry Adoption Convention for some East and Southeast Asian countries. There were over 40 participants from Cambodia, Mainland China, Hong

Kong SAR, Macao SAR, Japan, Korea, the Philippines, Thailand and Viet Nam as well as international organisations such as UNICEF and the International Social Service.

29. In the second part of 2013, the Representative and the current Deputy Secretary General are planning to attend the APEC Workshop on Simplified authentication process for production of public documents abroad through the use of the Apostille Convention in Medan, Indonesia to address 21 member economies of APEC on the Apostille Convention. With full support from the Regional Office, this APEC Workshop was proposed by Hong Kong, China and the proposal was endorsed by the APEC Economic Committee in Jakarta, Indonesia on 2 February 2013.

30. The Regional Office is planning a number of other activities in the second half of 2013. First of all, the Regional Office is planning to organise a seminar jointly with the Asian Society of Notaries Public after its inauguration later this year. Moreover, the Regional Office is exploring the feasibility, in consultation with the Permanent Bureau and the relevant Member States, of arranging meetings for experts or working groups in Hong Kong. Furthermore, the Regional Office stands ready to provide full support for the preparation of the Fifth Asia Pacific Regional Conference in the near future.

31. At the same time, the Regional Office is also looking for ways to strengthen the network of National Organs as well as Central and Competent Authorities in the region and to provide technical assistance to them as appropriate, and to enhance contacts with other officials, professional bodies and academic institutions in the region, such as by making visits to different places or arranging visits to the Regional Office.

Organisation

32. The Regional Office is headed by the Representative of the Hague Conference for the Asia Pacific region and is assisted by an Office Manager. China has offered to second a Legal Officer to the Regional Office very soon. Kyushu University of Japan has also plans to send an intern to the Regional Office later this year.

33. Mr Justice Hartmann, NPJ, has elected to step down from his role as the Representative for personal reasons, but will be engaged as an Honorary Consultant to the Regional Office. Professor Anselmo Reyes, an experienced legal practitioner and a former Hong Kong SAR High Court judge, now a law professor with substantial expertise in private international law, has been appointed by the Secretary General as his successor, effective as of 1 April 2013. A brief CV of Professor Reyes is attached as Annex A.

Brief Curriculum Vitae of Professor Anselmo Reyes

1. Personal background

Born in Manila, the Philippines on 22 November 1959

Nationality: Canadian

Permanent Resident of the Hong Kong Special Administrative Region of the People's Republic of China

2. Education

Professor Reyes was educated in the top tertiary institutions in the United States of American and the United Kingdom:

June 1980 *A.B. (Harvard) (Concentration: Economics)*

June 1982 *B.A. (Law) (Cambridge)*, admitted to M.A. Degree January 1986

June 1983 *LL.M. (Cambridge)*

December 1987 *Ph.D. (Law) (Cambridge)*

Dissertation: English and French Approaches to Personal Laws in South India: 1700-1850

3. Legal and judicial experience

Professor Reyes obtained legal qualifications in England, Hong Kong and Singapore. He was a lecturer at the Department of Law of the University of Hong Kong from 1986 to 1988. He practised as a barrister in Hong Kong between 1989 and 2003. He was appointed as a Senior Counsel in 2001 and then appointed as a judge of the Court of First Instance, High Court of Hong Kong SAR from 2003 to 2012. He is now the Professor of Legal Practice at the Faculty of Law of the University of Hong Kong. He is also currently a fellow of the Chartered Institute of Arbitrators, a CEDB accredited mediator and a fellow of the Hong Kong Institute of Arbitrators.

4. Hague Conference experience and language proficiency

During his professional and judicial career, Professor Reyes has had practical experience with the operation of the Service Convention and the Evidence Convention.

Professor Reyes also offered invaluable input to the Chinese government during the negotiations of the Choice of Court Convention.

Professor Reyes is able to communicate in Chinese, English, French, German, Italian, Japanese and Spanish.

5. Other Activities

<u>Hong Kong Law Journal</u>

- Reviews Editor, May – October 1987
- Case Notes Editor, October 1987 – January 1990

<u>Hong Kong Law Reports</u>

- Chief Sub-Editor, July 1989 – December 1996

Hong Kong Law Digest (later *Hong Kong Law Reports & Digest*)

- Consultant Editor, June 1998 - July 2003

Member, Hong Kong Bar Council, January 1993 – January 1996; January 2002 – July 2003

Hong Kong University, Department of Law

- Taught course on *Selected Issues in Commercial Legal Practice* with Prof. Lusina Ho. Second Semester 2005-2006.
- Taught course on *Topics in English and European Legal History* with Mr. Alfred Cheng. Second Semester 2009-2010.

Halsbury Society Lecture, Merton College, Oxford

- Lecture on Sir Thomas Strange (Chief Justice of Madras 1801-16) and the Development of Anglo-Hindu Law, May 2006

Hong Kong Maritime Law Association

- Lecture series on *Civil Procedure under Civil Justice Reform*. Delivered six one-hour lectures between February and April 2009 on Civil Justice Reform.
- Lecture series on *The Sale of Goods*. Delivered five two-hour lectures on the Sale of Goods (including the Carriage of Goods by Sea).
- Lecture series on *How To Be An Arbitrator: A Personal View*. Delivered five two-hour lectures between January and February 2012 on Arbitration.

Emirate of Abu Dhabi

- Judicial Training Seminar on *Management and Adjudication of Construction Litigation*: 15-16 April 2009. Spoke on case management and arbitration in relation to construction disputes.

6. Publications

Book review. Sir Orby Mootham, *The East India Company's Sadar Courts: 1801-1834.* (1984) *Cambridge Law Journal* 311.

Book review. MacKenzie & Phillips, *A Practical Approach to Land Law,* (1987) 17 *Hong Kong Law Journal* 269.

Case note. Conflict of Laws. "The ADHIGUNA MERANTI", (1988) 18 *Hong Kong Law Journal* 141.

Chapter. "Shipping Law" in Halkyard & Smart (eds.), *Trade and Investment Law in Hong Kong* (Butterworths Asia: 1993).

Book review. Byrnes, Chan & Edwards (eds.), *Hong Kong Public Law Reports Vol. 1*: 1991. (1994) 24 *Hong Kong Law Journal* 152.

Address. "On Two Suggested Alternatives to the Rule in Hadley v. Baxendale", (2008) 38 *Hong Kong Law Journal* 347.

Book review. Cameron & Kelly, *Principles and Practice of Civil Procedure in Hong Kong.* (2009) 28 *Civil Justice Quarterly* 159.

Address. "From Uncommon Asian Laws to a Ius Commune" (2010) 40 *Hong Kong Law Journal* 805.