

**QUELQUES RÉFLEXIONS SUR L'UTILITÉ D'APPLIQUER CERTAINES TECHNIQUES DE  
COOPÉRATION INTERNATIONALE DÉVELOPPÉES PAR LA CONFÉRENCE DE LA HAYE DE  
DROIT INTERNATIONAL PRIVÉ AUX QUESTIONS DE MIGRATION INTERNATIONALE  
(TROISIÈME NOTE DE SUIVI)**

*Note établie par le Bureau Permanent*

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**SOME REFLECTIONS ON THE UTILITY OF APPLYING CERTAIN TECHNIQUES FOR  
INTERNATIONAL CO-OPERATION DEVELOPED BY THE HAGUE CONFERENCE ON PRIVATE  
INTERNATIONAL LAW TO ISSUES OF INTERNATIONAL MIGRATION  
(THIRD FOLLOW-UP NOTE)**

*Note submitted by the Permanent Bureau*

*Document préliminaire No 8 de mars 2009 à l'intention  
du Conseil de mars / avril 2009 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 8 of March 2009 for the attention  
of the Council of March / April 2009 on General Affairs and Policy of the Conference*

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1. At its meeting of 1 to 3 April 2008, the Council on General Affairs and Policy invited the Permanent Bureau of the Hague Conference on Private International Law to continue to explore legal and technical issues related to certain aspects of international migration, in consultation with interested Members and relevant international organisations.<sup>1</sup>

2. It will be recalled that this exploration had commenced with the Note presented at the beginning of 2006, which suggested that some of the techniques developed by the Hague Conference for cross-border co-operation in the context of the Hague Conventions – originally developed for international administrative and judicial co-operation and subsequently also applied and extended to the area of protection of children and vulnerable adults – might lend itself to be applied *incrementally* and *progressively* to a *limited* number of *specific* issues that arise in the context of international migration.<sup>2</sup>

3. Examples of possible forms of international co-operation that might benefit from the Hague experience identified in the Note were:

- A) Co-operation in the implementation of temporary or circular migration programmes agreed between States concerned;
- B) Co-operation to ensure the orderly return and resettlement of migrants in other cases where this return and resettlement are based on agreement between countries of origin and countries of destination of migrants;
- C) Co-operation in establishing and monitoring a system of licensing and regulation of intermediaries involved in facilitating international migration;
- D) Co-operation in facilitating the easy and cheap transfer of remittances sent home by international migrants.

4. The Follow-up Note presented to the Council in 2007 confirmed that these areas, in particular A) and D), were among those that needed to be urgently addressed, in accordance with the views expressed at various meetings held, and documents adopted at, the global, regional and bilateral levels in 2006. The 2007 Note also referred to a number of bilateral agreements that could be a source of inspiration for a multilateral approach, either in the context of the Hague Conference or by another appropriate forum.<sup>3</sup>

5. The Second Follow-up Note presented to the Council in 2008 reported on the First Meeting of the Global Forum on Migration and Development (Brussels, 9-11 July 2007), which stressed the need for international co-operation. The Note also pointed to new developments in the European Union aimed at strengthening and deepening international co-operation and dialogue with third countries of origin and transit countries. These developments include the acknowledgment by the European Union of the importance of circular migration, the introduction of the concept of “mobility partnerships”, and the launching of pilot mobility partnership projects with two third countries (Cape Verde and Moldova). The Note also reported on work on migration in the Americas. The conclusion was that a multilateral co-operative legal framework, strictly limited to legal economic migrants and fully respectful of the competences of the participating States and the needs of their labour markets, could contribute significantly to strengthening the

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<sup>1</sup> Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (1 - 3 April 2008). This document and all Preliminary Documents cited herein are available on the website of the Hague Conference at the address < [www.hcch.net](http://www.hcch.net) >, under “Work in Progress” then “General Affairs”.

<sup>2</sup> “Some reflections on the utility of applying certain techniques for international co-operation developed by the Hague Conference on Private International Law to issues of international migration”, Prel. Doc. No 8 of March 2006 drawn up for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference.

<sup>3</sup> “Some reflections on the utility of applying certain techniques for international co-operation developed by the Hague Conference on Private International Law to issues of international migration (Follow-up Note)”, Prel. Doc. No 23 of March 2007, drawn up for the attention of the Council of April 2007 on General Affairs and Policy of the Conference.

management of international migration, support the global dialogue, and broaden regional initiatives on circular migration and remittances.<sup>4</sup>

6. On 16 April 2008, the Secretary General of the Hague Conference met in London with Mr Peter Sullivan, the UN Special Representative for Migration and Development, who took note with interest of the work on the agenda of the Conference. The meeting confirmed the observation made in the 2007 Follow-Up Note that there may well come a point in what is at present intended to be a “long-term process”, where the Global Forum may lose momentum if it does not lead to more permanent legal frameworks for effective international co-operation.<sup>5</sup>

7. From 27 to 30 October 2008 the Global Forum on Migration and Development held a further meeting in Manila, the Philippines, which focused on three themes: “Protecting and empowering migrants for development”, “Secure, regular migration can achieve stronger development impacts” and “Policy and institutional coherence and partnerships”.<sup>6</sup> The results of the Manila meeting were discussed at the VII<sup>th</sup> Annual “Club of The Hague” meeting of the Hague Process on Refugees and Migration held on 21 November 2008 at the Peace Palace in The Hague, in which the Permanent Bureau took part. The next meeting of the Global Forum will be in Athens from 2 to 3 November 2009.

8. It is worth noting that the Organisation for Economic Co-operation and Development (OECD) in its annual Report on Migration 2008 points out that “OECD countries are currently entering what is likely to be a significant period with respect to international migration movements. The effect of the retiring baby boom cohorts and of declining youth cohorts is beginning to make itself felt in almost all countries (...) while there is a consensus about the desirability of higher skilled migration and, in many countries concerns about costs and risks associated with lower skilled migration, labour shortages are manifesting themselves in sectors where there are many lesser skilled occupations (...). Often the jobs involved are low paid and the working conditions unappealing to the domestic workforce.”<sup>7</sup> The Report, while warning that temporary migration offers a partial solution only and cannot be made to work in all cases, stresses the growing importance of temporary migration and of a resulting growing and renewed interest in return migration, which is now “a major component of migration flows”.

9. During 2008 the European Union continued its efforts in the context of its comprehensive (“global”) approach to migration and of partnerships with countries of origin and transit. The Conclusions of the Council of the European Union of 8 December 2008 emphasise the need to organise legal migration by promoting mobility, *e.g.*, through “co-development measures” that are able to “facilitate circular migration, including return and assistance to the migrant for effective reintegration in its country of origin in order to maximise the positive development effects of migration”.<sup>8</sup> In respect of the partnership programmes the Conclusions note some challenges, including “the co-ordination required between the competent administrations on both sides”, and “the

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<sup>4</sup> “Some reflections on the utility of applying certain techniques for international co-operation developed by the Hague Conference on Private International Law to issues of international migration (Second Follow-up Note)”, Prel. Doc. No 6 of March 2008 drawn up for the attention of the Council of March 2008 on General Affairs and Policy of the Conference.

<sup>5</sup> Prel. Doc. No 6, *ibidem*, para. 5.

<sup>6</sup> Report of the Proceedings, Philippines GFMD 2008 (available via the following link: [http://government.gfmd2008.org/component/option,com\\_docman/Itemid,45/task,cat\\_view/gid,58/](http://government.gfmd2008.org/component/option,com_docman/Itemid,45/task,cat_view/gid,58/) (last consulted 19 March 2009)).

<sup>7</sup> International Migration Outlook: SOPEMI 2008, p. 28.

<sup>8</sup> Council of the European Union, “Council Conclusions on the evaluation of the global approach to migration and on the partnership with countries of origin and transit”, Brussels, 8 December 2008, para. 16(c), (available at <http://soderkoping.org.ua/files/pages/22134/1.pdf> (last consulted 19 March 2009)).

limitations of the various partners' administrative and technical capacity" – both familiar challenges in the context of Hague Conventions on administrative and judicial co-operation, and for which the Conference has developed its well-known post-Convention services of monitoring, support and assistance.

10. In respect of remittances, the Conclusions of the Council of the European Union of 8 December 2008 note that "the transfer of remittances must be facilitated. In particular, this means improving information about and access to banking services and to other financial operators, as well as promoting co-operation between the relevant operators. Productive investments by migrants in their countries of origin could also be supported by means of mechanisms to encourage such investment, such as special savings instruments".<sup>9</sup> Recent studies on migration also recommend the introduction of competition and anti-trust law to local remittance industry. There is ample evidence that the remittance industry is particularly uncompetitive, which means that most remittances are taken up with administrative costs depriving the families concerned and the countries of origin of a most valuable source of income.<sup>10</sup> These studies reinforce the suggestion made before that a multilateral framework could assist in bringing transparency to the remittance market and that the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* which makes special provision for co-operation in respect of efficient methods available to transfer funds (payable as maintenance) may be a source of inspiration here.<sup>11</sup>

11. The current global financial and economic crises may lead some to think that the question of managing international migration is now of less concern. However, if these crises demonstrate anything, it is that our societies and economies are far more interconnected than many may have thought, and that facing these crises requires a co-ordinated global response. But this is also true for the phenomenon of international migration. Recently, Pascal Lamy, Director General of the World Trade Organisation, pointed to two "black holes" in world governance: "finance, with its bursting bubbles, and migration, a sector without a bubble but with dramas occurring every day".<sup>12</sup> Labour migration is here to stay, if only because of fundamental demographic changes in many countries which, as the 2008 OECD Report (*supra* para. 8) brings out, will lead to a systemic shortage of workers in several sectors.

12. The proposal of the Permanent Bureau to start dealing with certain aspects of migration, in particular temporary migration and related remittances through a co-operative framework – precisely because of its limited scope – may be a concrete step towards managing the international movement of migrants at the global level, not least in the interest of future generations.

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<sup>9</sup> *Ibidem*, para. 19(b).

<sup>10</sup> See, e.g., M. Cirasino, "The Committee on Payment and Settlement Systems and the World Bank General Principles on International Remittance Services" (May 2006) (available via the following link: <http://siteresources.worldbank.org/INTACCESSFINANCE/Resources/AF11Cirasinoarticle.pdf> (last consulted 19 March 2009)); Bank for International Settlements and the World Bank, General Principles for International Remittance Services, (January 2007), see in particular Part 3.4 p.17 *et seq.* (available via the following link: <http://www.bis.org/publ/cpss76.pdf> (last consulted 19 March 2009)); *The Economist*, "Cost of Remittances" (30 October 2008) (available via the following link: [http://www.economist.com/markets/indicators/displaystory.cfm?story\\_id=12517031](http://www.economist.com/markets/indicators/displaystory.cfm?story_id=12517031) (last consulted 19 March 2009)); L. Suki, "Competition and Remittances in Latin America: Lower Prices and More efficient markets" (February 2007), Inter-American Development Bank and Organisation for Economic Co-operation and Development (available via the following link: <http://www.oecd.org/dataoecd/31/52/38821426.pdf> (last consulted 19 March 2009)); World Bank, Remittance Prices World Wide, (available via the following link: <http://remittanceprices.worldbank.org/> (last consulted 19 March 2009)).

<sup>11</sup> Cf. Prel. Doc. No 6, *op. cit.* note 4, para. 8.

<sup>12</sup> "Il existe deux 'trous noirs' dans la gouvernance mondiale: la finance, avec ses bulles qui éclatent, et les migrations, un secteur où il n'y pas de bulle, mais des drames quotidiens", P. Lamy: "Il faut une régulation contraignante", *Le Monde*, 9-10 November 2008, p. 10 (< [www.lemonde.fr](http://www.lemonde.fr) >).