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CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

PROPOSITION EN VUE D'ÉTABLIR UN BUREAU RÉGIONAL ASIE PACIFIQUE POUR LA CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ DANS LA RÉGION ADMINISTRATIVE SPÉCIALE DE HONG KONG DE LA RÉPUBLIQUE POPULAIRE DE CHINE

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PROPOSAL TO ESTABLISH AN ASIA PACIFIC REGIONAL OFFICE FOR THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

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Introduction to the Proposal to Establish an Asia Pacific Regional Office for the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China – A Note by the Permanent Bureau

1. The attached *Proposal to Establish an Asia Pacific Regional Office for the Hague Conference on Private International Law* ("the Conference") *in the Hong Kong Special Administrative Region of the People's Republic of China* ("Proposal") presents the culmination of common efforts of Hague Conference Members and the Permanent Bureau to respond to the need, born out of growing interest for the Hague Conference and its work in the Asia Pacific Region, and expressed by both Members and non-Member States, to establish a physical presence of the Hague Conference within the Region. As detailed in the Proposal, the Regional Office would serve as a knowledge and resource centre for States and relevant Authorities throughout this area of the world.

2. Since the turn of the century, the Hague Conference has seen an impressive increase of the involvement of Asia-Pacific countries in the Organisation and its work. Indeed, Sri Lanka (2001), Malaysia (2002), New Zealand (2002), India (2008), and the Philippines (2010) all became Members of the Hague Conference in the past decade, joining Japan (a Member since 1957), Australia (1973), China (1987) and Korea (1997). Moreover, the number of non-Member States that joined one or more Hague Conventions also increased significantly.

3. At each of the four Asia Pacific Regional Conferences, held in Malaysia (2005), Australia (2007), Hong Kong SAR, China (2008) and the Philippines (2011), the participating experts from the Region expressed great interest in the Hague Conference and its work. They expressed unanimous support for the expansion of the Organisation's regional activities and encouraged it to facilitate greater co-operation within the Region and provide additional opportunities for the use of regional and sub-regional groups to expand the number of States Parties to Hague Conventions and membership within the Organisation. The Council (before 2007: Special Commission) on General Affairs and Policy of the Hague Conference was, at each of its meetings. informed and took note with interest, of the outcomes of these regional meetings. In addition, during the Council on General Affairs and Policy Meetings in 2010 and 2011, Asia Pacific States expressed general support for a Draft Proposal presented to Members of the Region.

4. The experts at the most recent Fourth Asia Pacific Conference held in Manila in 2011, where 26 States from the Region were represented, unanimously endorsed the creation of an Asia Pacific Regional Office and agreed that doing so constituted an "excellent measure to strengthen the presence of the Hague Conference in the Region" and "encouraged the early establishment of the Regional Office as soon as practicable in the next year".[1]

5. As the Proposal observes (para. 13), the Permanent Bureau has already been called to provide assistance and support, often delivered in co-operation with Members both within and outside the Region, to a number of Asia Pacific States in relation to the 1993 Intercountry Adoption Convention, the 1980 Child Abduction Convention and the 1961 Apostille Convention, among others. The interest and participation of Members even from outside the Region in these efforts is worth stressing as a manifestation of globalisation in the areas covered by the Hague Conference. It is to be expected that the demand for technical co-operation will further increase, and the creation of a Regional Office will assist in providing and facilitating such co-operation.

[1] See "Conclusions and Recommendations of the Fourth Asia Pacific Conference", Info. Doc. No 9 of April 2012, also available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs".at p. 6.

6. The current Proposal is inspired in part by the successful creation, operation, and expansion of the Special Programme in Latin America which began in 2005. The Latin American Regional Office provides for services and assistance, including training programmes, promotion, advice, and co-ordination of, and participation in, relevant regional events and meetings. There is a broad consensus that these services have been immensely beneficial to the Region and to the Membership of the Hague Conference as a whole. The goal of the attached Proposal is to establish a similar physical presence in the Asia Pacific in order to provide the same added value and support now offered by the Latin American Regional Office in a new Region of the world. In the course of developing the attached Proposal, the experiences and successes of the Regional Office in Latin America have provided invaluable guidance.

7. The Proposal acknowledges that there are several significant factors which require a somewhat different approach to establishing a Hague Conference Asia Pacific Regional Office than that which was taken for the Regional Office in Latin America. The Asia Pacific consists of States with a varied composition of legal systems, cultures, languages and economies to a much greater extent than Latin America. Also, whereas all Latin American States appear on the Organisation for Economic Co-operation and Development's Official Development Assistance Recipient State list for 2011-2013,[2] *i.e.*, they are considered by the OECD to be either developing economies or economies in transition, this is not the case in the Asia Pacific. Nevertheless, a new Office in the Asia Pacific Region can capitalise on many of the strategies that enable the Latin American Regional Office to thrive.

8. Realisation of the Proposal will be a vital step in ensuring the Organisation's continued progress in line with the first Strategic Direction set forth in the Organisation's Strategic Plan whose main objectives were supported by the Nineteenth Session.[3] The Plan notes that one of the Organisation's long term goals includes "continu[ing] to increase the global coverage of the Conference by enlarging its Membership and the number of States Parties to Hague Conventions" including by "explor[ing] the possibility to establish some form of physical presence of the Conference in other regions."[4] As demonstrated by the Latin American Regional Office, the establishment of a Regional Office in the Asia Pacific will ensure that the Organisation continues to meet its evolving mandate by increasing the Organisation's visibility throughout the Region, encourages new Members to join the Conference, and provides customised regional support. The overwhelmingly positive responses by Member States in the Region to a questionnaire jointly prepared by Australia, China and the Philippines (issued in August 2011) clearly demonstrate that there is broad support in the Region for this initiative.

9. In order to demonstrate its strong support and commitment for the establishment of an Asia Pacific Office, China (including Hong Kong SAR and Macao SAR) has undertaken to contribute no less than 460,000 Euros over the course of the first three years. In particular, the Government of the Hong Kong Special Administrative Region, with the approval and support of the Central Government of the People's Republic of China, has very generously agreed to provide the resources necessary to secure office and conference space for the Asia Pacific Regional Office, including computing and telephone equipment, plus essential staffing funding. Moreover Australia has undertaken to contribute AUD$ 50,000 (approximately 40,000 Euros) for the first year. In addition,

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[2] See the OECD DAC List of ODA Recipient States for 2011-2013, available at < http://www.oecd.org/dataoecd/9/50/48858205.pdf >.

[3] See *Proceedings of the Nineteenth Session*, Tome I, *Miscellaneous matters*, pp. 165 *et seq.*; available on the Hague Conference website at < http://www.hcch.net/upload/wop/stratplan_e.pdf >.

[4] See note 3, *supra*.

universities, scholars, legal professionals and government officials throughout the Region have already expressed an interest in providing in-kind expertise to the Asia Pacific Regional Office, were it to be established. In short, the Regional Office will during its provisional first three years be able to operate without any additional need for funding from the Hague Conference Regular or Supplementary Budgets.

10. The establishment of the Asia Pacific Regional Office is also particularly timely given the commitment of Mr Justice Michael Hartmann, a highly respected judge from Hong Kong, to serve as the first Representative of the Asia Pacific Regional Office (his brief CV is attached as an Annex to the Proposal). Mr Hartmann's over 20 years of judicial experience include over 10 years as a Judge of the High Court in Hong Kong, paired with his long-standing extensive relationship with the Hague Conference and its work (actively participating in several Special Commissions, participating in the International Hague Network of Judges for many years, and speaking at Hague Conference seminars and events, among others), make him an ideal candidate to lead the Regional Office for the duration of the provisional three years of operation.

11. The Proposal provides details regarding the organisation of the Regional Office and its operation, under the direction of the Permanent Bureau, which, in turn, will report and be accountable to the Council on General Affairs and Policy. As regards the remarks on operation (paras 11-16 of the Proposal), these are based on careful initial consultations within the Region, in particular via the 2011 questionnaire prepared by Australia, China and the Philippines. Clearly, these are tentative thoughts, and Council may wish to discuss them more fully and propose alternatives. In any event, since the Council generally meets once per year, it will be able to periodically review the operation of the Asia Pacific Office. In addition, after the Regional Office's first three years of operation, the Council will have the opportunity to comprehensively evaluate the scale and scope of its work and its future directions (including budgetary considerations). Finally, it should be noted that the Proposal is not exclusive in the sense that it would preclude additional Regional Offices in the Asia Pacific Region in the future, if the need for more Offices were to become apparent at a later stage.

12. The Council on General Affairs and Policy is therefore invited to endorse the Proposal at its April 2012 Meeting, so that the Regional Office could become operational within a few months. The Council's endorsement will allow Mr Justice Hartmann to begin the requisite exploratory discussions and consultations that would facilitate the gradual development of the Asia Pacific Regional Office. It is understood that this endorsement would be given without additional financial consequences to the budget of the Organisation.

Proposal to establish an Asia Pacific Regional Office of the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China

I. Background

1. With the approval and support of the Central Government of the People's Republic of China, the Government of the Hong Kong Special Administrative Region ("the HKSAR") has offered to facilitate the establishment of a regional office of the Hague Conference on Private International Law ("the Conference") in the HKSAR ("Regional Office"). Under the principle of one country two systems, the HKSAR enjoys a high degree of autonomy including executive, legislative and judicial powers. Under this system, Hong Kong retains its common law and has a number of attractive qualities, including the facts that it is a legal service centre in the Asia Pacific Region and that it is conveniently located, allowing for easy access to various places in the Region and worldwide.

2. The Permanent Bureau has consulted with Member States in the Asia-Pacific Region on the proposed establishment of an Asia Pacific Regional Office in Hong Kong ("the Proposal"). The initial reaction was in general very positive. A short questionnaire concerning the Proposal, jointly prepared by Australia, China and the Philippines, was issued on 4 August 2011 to Member States in the Asia-Pacific Region ("the Questionnaire"). Responses to the Questionnaire indicated overwhelming support, as well as preference on the work priority, targeted countries and major activities of the Regional Office. Many Member States also offered to make various kinds of contribution to the Regional Office.[1]

II. Objectives and Advantages

3. A key objective of the Regional Office is to promote the Conference and its Conventions by increasing awareness of the value of the Membership of the Conference and the usefulness of Hague Conventions to the Region, with a view to attracting more States in the Region to become Members of the Conference and States Parties to Hague Conventions. The Regional Office will also bring benefits in terms of assisting States with implementation of the Conventions.

4. Although the States in the Asia Pacific Region are geographically close, they represent a wide variety of cultures and legal traditions. Hague Conventions, which are intended to bridge different cultures and legal traditions, are therefore very useful in providing a framework for co-operation both for the States in the Region, and between those States and those located outside the Region.

5. The increased Membership base in the Region will bring wider representation of a diverse range of legal traditions to the Conference and help the Conference to develop new instruments better adapted to meet the needs of the Region. It will also assist in raising revenues, help to reduce expenses for the services already provided to States Parties in the Region which are not yet Members of the Conference and facilitate ratifications or accessions to Hague Conventions by States in the Region.

6. The value of a Convention as well as its value to individual States Parties will generally increase in proportion to the number of States Parties to the Convention. Increasing the number of States Parties to Hague Conventions in the Region will provide additional opportunity for enhancing certainty and predictability of cross-border private, commercial and financial transactions and relationships; promoting judicial and

[1] For the text of the questionnaire and the responses, see
< http://www.doj.gov.hk/eng/about/pdf/DOJ_HCCH_Booklet_web.pdf.>

administrative co-operation; and reinforcing protection of children and other vulnerable persons in trans-border cases covered by Hague Conventions. Benefits will accrue within the Region, and also between States in and outside the Region.

7. An important function of the Regional Office will also be that of involving the States in the Region more actively in the development of new Hague Conventions and other instruments, and more generally in the work of the Conference. Another key objective of the Regional Office, in co-operation with the Permanent Bureau's International Centre for Judicial Studies and Technical Assistance ("the Centre")[2], is to develop a deeper understanding of Hague Conventions for States in the Region.

8. By deepening their understanding of Hague Conventions, States formerly unfamiliar with Hague Conventions may become more prepared to become States Parties. The better understanding of Hague Conventions by States Parties in the Region will also facilitate the development of good practice and consistent interpretation, which will in turn contribute to the successful operation of Hague Conventions to the benefit of all States Parties.

III. Organisation

9. The Regional Office will initially comprise a Representative, an office manager, legal officer(s) seconded by Member State(s), and intern(s), who will ultimately be selected and appointed by the Secretary General. Mr Michael Hartmann, who has been a member of the International Hague Network of Judges for many years, has indicated a willingness to assume the role as the first Representative of the Asia Pacific Regional Office (his brief CV is attached at Annex). An office manager will be recruited locally to assist in the daily administration. It is envisaged that legal officer(s) will be seconded from Member States in the Region (Australia, China, Korea and Sri Lanka have indicated interest in providing seconded experts). In addition, a Japanese university has committed to sending an intern to the Regional Office within the first year of its establishment. There will be further internship possibilities for the Member States, including China, Korea, Malaysia, the Philippines, and Sri Lanka, which have all expressed interest in sending interns to the Regional Office.

10. As indicated in the attached Introductory Note, the Regional Office will work under the direction of the Permanent Bureau, with the support of its Centre, which will report to the Council of General Affairs and Policy.

IV. Operation

11. Taking into account consultations with Members and responses to the Questionnaire, the Regional Office could initially focus on a select few "priority" Hague Conventions[3] and on the non-Member States which are Parties to Hague Conventions in the Region during its first two years of operation. It could also ensure that general support is available to all Member States in the Region, subject to the availability of resources. As the Office becomes more established, the services and support it offers could expand to more Hague Conventions and target other countries in the Region.

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[2] The International Centre for Judicial Studies and Technical Assistance was created in 2007 within the Permanent Bureau to provide organisational and fundraising support for technical and regional assistance carried out by the Conference.

[3] The "priority" Hague Conventions identified by the Member States include the 1980 Child Abduction Convention, 1993 Inter-country Adoption Convention, the 1961 Apostille Convention, the 1965 Service Convention, the 1970 Evidence Convention, the 2005 Choice of Court Convention and the 2007 Child Support Convention.

12. Apart from the essential role of liaising with the Permanent Bureau, the first year of operation would be focused on arranging visits to the Central Authorities, national organs and other relevant parties such as judges, academic institutions and legal professional bodies in the Region to establish an effective network with the key actors identified in each State.

13. Upon request, it could also provide support and necessary advice to Parties to Hague Conventions in the Region, especially in its second and third years of operation, when an effective network with the key players in the Region has been established. Already, important work is being done under the framework of the ICATAP-programme with regard to the implementation of the 1993 Intercountry Adoption Convention, notably in Cambodia, Nepal and Vietnam. With regard to the 1980 Child Abduction Convention, different forms of assistance and advice have been given to the Philippines, Japan and Thailand. With regard to the anticipated implementation of the 1961 Apostille Convention, assistance has been given to the Philippines, Indonesia and Vietnam. The Regional Office could hence further support, build on, and, in some cases, fully assume the above work. The Regional Office may also help to identify experts (such as academics or officials in the neighbouring States) and resources available in the Region (such as funding from national or foreign aid agencies, universities and other organisations) in response to the requests and to meet the needs of the requesting States.

14. In the third year of its operation, the Regional Office could focus on monitoring more systematically the practical operation of the priority Hague Conventions as well as extension and deepening of the various post-Convention services developed by the Conference, including training of judges, extending the family law-focused International Hague Network of Judges, twinning arrangements between Central Authorities and ICT support for the Hague Conventions. The Regional Office could also encourage and assist in the organisation of the Fifth Asia Pacific Regional Conference.

15. Throughout the period, the Regional Office would develop and maintain good communication and co-operation with regional bodies such as ASEAN and the Asia Pacific Regional Centre of the International Development Law Organisation.

16. A comprehensive evaluation of the work of the Regional Office will be held three years after its establishment to review the scale and scope of work and its future directions (including budgetary considerations).

V. Financial Sustainability

17. The Regional Office will be funded entirely from the Supplementary Budget contributed by the Member States for that particular purpose. So far, Australia has undertaken to contribute AUD$ 50,000 (approximately Euros 40,000) for the first year and China (including the HKSAR and Macao SAR) has undertaken to contribute no less than Euros 460,000 over the course of the first three years. As of today, the total contribution pledged to the Supplementary Budget for the Regional Office is therefore estimated to be at least Euros 500,000 to fully cover the operating expenses for its first three years of operation.

18. In addition to the financial contribution, Member States such as China, New Zealand, the Philippines and Sri Lanka agreed to consider providing venues and necessary facilities for certain events organized by the Regional Office. Australia, China, New Zealand, the Philippines and Sri Lanka also agreed to support the publicity of the Regional Office and promotion of its work through appropriate channels. Moreover, China agreed to provide necessary assistance in the Chinese translation services.

19. Apart from the contributions by the Member States, the Regional Office may be able to obtain appropriate financial contributions from the aid agencies or other organisations in the Region. Certain operating expenses may also be offset through collaboration with academic and professional bodies or organisations in the Region. For instance, a Japanese university has already indicated an interest in organising jointly a course on the 1980 Hague Convention.

20. The following provides an estimate of the annual expenditure of the Regional Office:

Overhead expenses

a. Furnished Office Accommodation: about Euros 50,000 (including utilities such as air conditioning, electricity, water and telecommunication expenses)

b. Representative – an honorarium up to Euros 50,000

c. Office Manager – about Euros 27,000 (including insurance, retirement benefits, medical benefits as well as other fringe benefits)

d. Legal Officer(s) – to be seconded by Member States on a voluntary basis and that the cost for the secondment (including salary, accommodation allowance and additional allowance) be borne by those Member States

e. Intern(s) – One to two interns, entirely funded by the interns or the university/organisation sending the interns

f. Initial purchase of additional office furniture and equipment including computers – about Euros 3,000 (this heading will be removed after the first year)

Operating expenses

g. Organisational and management expenses for seminars and training programmes – about Euros 7,500 (taking into account free conference venues and facilities that may be provided by some Member States in the Region mentioned in paragraph 18 above)

h. Publication and translation expenses – about Euros 1,500 (taking into account free translation services that may be provided by some Member States in the Region mentioned in paragraph 18 above)

i. Travelling expenses and overseas subsistence allowance[4] – about Euros 20,000 (based on an average of 6 trips in the Region per year and each trip of three to five days' duration as well as two trips to The Hague per year and each trip of one week's duration)

[4] Generally speaking, the average round trip airfare on economy class from the HKSAR to destinations in Asia and Oceania ranges from Euros 100-500. The cost of accommodation varies significantly among places in the Region, on average, about Euros 100 per night. Return business class ticket from the HKSAR to The Hague in the low season is around Euros 2,500 and the accommodation cost in The Hague is around Euros 150.

j. Contingency and sundry expenses – Euros 3,000

21. The discussion in paragraph 20 above shows that the annual expenditure of the Regional Office will be about Euros 159,000 to 162,000 for the first three years. Such expenditure can be fully met by the current contribution to the Supplementary Budget (*i.e.* Euros 500,000) mentioned in paragraph 17 above (even if there is no further contribution from the Member States, or other additional contributions mentioned in para. 19 above).

ANNEXE / ANNEX

Brief Curriculum Vitae
of Mr Michael John Hartmann

1. Personal Background

Mr Hartmann was born in Mumbai, India on July 24, 1944. He is married and has two children.

Nationality: Australia and United Kingdom

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

2. Education

Mr Hartmann was educated in England and Zimbabwe (then Rhodesia). He obtained a Bachelor of Laws degree from the University of London (obtained at the University College of Rhodesia, an external college of London) in 1967.

3. Legal Experience

Mr Hartmann was admitted as an attorney, notary public and conveyancer in Zimbabwe in 1971, practising as a partner in a firm in the capital city. He came to Hong Kong in 1983 and joined the then Legal Department as Crown Counsel. He was promoted to Senior Crown Counsel in 1984 and became a Deputy Principal Crown Counsel in 1989 until he left the Government in 1991.

4. Judicial Experience

Mr Hartmann was appointed as a District Judge in November 1991. He was appointed as a Judge of the Court of First Instance of the High Court in March 1998 and was elevated to Justice of Appeal of the Court of Appeal of the High Court in September 2008. Mr Justice Hartmann has some 18 years of judicial experience including over 10 years as a Judge of the High Court. He is capable of handling both criminal and civil cases. He has rich experience and expertise in a number of specialised areas of the law, namely family and public and constitutional law. Mr Justice Hartmann reached the retirement age of 65 on July 24, 2009 and his service has been extended for three years until July 23, 2012. He has been appointed as a non-permanent Hong Kong judge of the Court of Final Appeal in April 2010.

5. HCCH Experience

Mr Hartmann has participated in the Hague International Network of Judges since the establishment of the Network.

He also participated actively in several Special Commission meetings to review the practical operation of the 1980 and 1996 Hague Conventions, as a member of the Chinese delegation.

He was a prominent speaker at the *Joint EC-HCCH Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks* in 2009 as well as at both the Third and Fourth Asia Pacific Regional Conferences of the Hague Conference on Private International Law.

He also participated actively in other international conferences relevant to the work of the Hague Conference including the *Judicial Seminar on Commercial Litigation* jointly hosted by the Supreme Court of New South Wales, Australia and the Hong Kong Judiciary in Sydney in April 2008 and the *Children and the Law Conference* organized by LAWASIA and the Law Society of Singapore in May 2009.

6. Other Services and Activities related to the Legal Field

1998-2000	Chairman, Insider Dealing Tribunal
1999-Present	Chairman, Steering Committee on Family Mediation
1999-Present	Chairman, Steering Committee on the Pilot Scheme for the Reform of Ancillary Relief Procedures
2000-2004	Member, Working Party on Civil Justice Reform