international litigation and dispute resolution. Our panelists will discuss developments in these areas with an eye towards our theme of divergence and harmonization.

**SOME OBSERVATIONS FROM THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW**

*By Christophe Bernasconi*

The Hague Conference on Private International Law has undergone significant changes over the past ten years. These changes have altered the work of the Conference, whose mandate is to work towards the harmonization of private international law at the global level. In perspective, these developments provide some insight into the new directions the field of private international law is taking.

It states the obvious, of course, to point out that we live in an increasingly globalized world where political, economic, cultural, and social systems and events become more and more interdependent, and where the notion of time is shrinking. Globalization is overwhelmingly a matter of private initiative, characterized by expanding markets, growing mobility, and instant sharing of information through the mass media and the Internet. People are engaging in more cross-border relationships, and companies are more and more easily doing business across borders and even on a global scale. One of the effects of this phenomenon is an increase of issues relevant to the principles and instruments of private international law.

Obviously, an endless range of questions may arise with regard to such cross-border situations. One way to overcome cross-border issues and divergences in legal systems is through harmonization of the substantive law. Harmonization of substantive black-letter law at the global level, however, has its limits—both technical and cultural. There will always remain differences in legal systems which must be bridged through the more traditional means of private international law. Until recently, it seemed evident that most private international law questions could be dealt with at the domestic level through national law making, but in the face of current explosion of cross-border issues, this no longer seems to be the case.

What is needed, therefore, is increased cooperation at the international level to provide a uniform normative framework for these private international law issues. The primary task of the Hague Conference on Private International Law is to develop and service such multilateral legal instruments (Hague Conventions). Despite the differences between legal systems, these Conventions are designed to provide legal clarity and to allow individuals and companies to enjoy a high degree of legal certainty and predictability in their transborder transactions.

**PARTICIPATION IN THE HAGUE CONFERENCE AND ITS CONVENTIONS**

The continued importance of the Hague Conference’s work is reflected by its impressive membership growth in recent years. Originally founded in 1893 by thirteen states (Austria-Hungary, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, Portugal, Romania, Russia, Spain, and Switzerland), the Conference became a permanent organization in the 1950s. By 1960, its membership had expanded to eighteen but it remained essentially a “European club.” Subsequently, the United States and Canada joined and, in the 1980s, a number of Latin American States and China. During the last six years alone, the number of new member states has increased by 40% to reach sixty-five states.

* Of the Hague Conference on Private International Law.
In April 2007 the European Community itself became a member (as a “regional economic integration organization”). We believe that this is a positive development, reflecting the reality that the EC has become an important actor for its twenty-seven member states and more than 490 million people. Will EC membership change the operation of the Conference significantly? Personally, I do not think so. At the end of the day, the European Council—and thus the member states—will decide whether or not the Community should become a party to a given Hague Convention. Other states, such as the United States, will continue to have an interest in continuing to negotiate (also) with the member states, not just with the “Brussels” organs. One of the challenges, naturally, will be to ensure that the regional activities of the European Union do not pose an impediment to the effective operation of the Conference’s global instruments. EC membership should actually help in this respect as the European Community will be even more closely linked to the strategic future and success of the Conference than before.

The growth in formal membership is not the only—or even the most important—indicator of the strength of the Conference. Adherence to Hague Conventions is another. More than 120 states from all continents are now parties to at least one of the 36 Hague Conventions. For example, ninety-two states have adhered to the Legalization (or Apostille) Convention, making it the most widely ratified of all Hague Conventions. The Service Convention has fifty-six contracting states, the Child Abduction Convention seventy-seven, and the Adoption Convention seventy-one.

It is interesting to note that, so far, the most successful Hague conventions are those which do not establish traditional private international law rules but rather establish mechanisms of cross-border cooperation (such as the four conventions just mentioned).

Another important result of globalization is that more and more developing nations (especially those with little or no previous experience in the field of private international law) are increasingly exposed to cross-border issues and thus must learn about the particular mechanisms of private international law. As more developing nations become member states, the Hague Conference has a vitally important contribution to make in helping them address this lack of experience. We have taken two concrete steps. First, with generous contributions from the government of the Netherlands, we are proceeding to establish a new Hague Conference International Training Programme so that we can coordinate our various training activities more effectively, and with specific emphasis on the needs of developing countries. Second, we are increasing our regional presence, in recognition of the need to be more visible and accessible on each continent. Our first regional liaison officer is now established in Latin America, and we hope to establish comparable presence over time in other parts of the world.

**Evolution in Topics and Issues**

While the substantive work of the Hague Conference has in the past often involved what appear to be somewhat academic discussions about conflicts of law or jurisdiction, or issues of domicile, its attention has focused more recently on a number of very practical, well-identified problems faced by private parties for which there is a “market” seeking clear, easy-to-apply solutions to “real-world” problems.

By way of example, the new Choice of Court Agreements Convention, which was adopted at a diplomatic conference in June 2005, is addressed to the particular needs of private parties to transnational business-to-business contracts who want to resolve their disputes in specified national courts. The Convention provides that states parties will recognize and enforce the
parties' exclusive choice-of-court agreements as well as the resulting judicial judgments. The overall intent, of course, is to promote international trade and investment through enhanced judicial cooperation.

One also needs to mention the Hague Securities Convention (the formal title is the Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary), a new international multilateral treaty intended to remove, at a global scale, legal uncertainties for cross-border securities transactions. Adopted in December 2002, the Convention aims to provide legal certainty and predictability as to the law governing practically important aspects of the holding, transferring and pledging of securities held through intermediaries. The importance of this convention is illustrated by the simple fact that the total value of these intermediated securities is estimated at some 50 trillion U.S. dollars. The Convention has been signed by the United States and Switzerland, and it is hoped they will both act to ratify in the relatively near future.

These two new treaties also highlight the important fact that evolutionary changes have taken place in the way negotiations are conducted. In both cases, the negotiations necessarily involved "market" representatives and practitioners (in addition to academics and government representatives), often meeting as part of smaller groups active between formal sessions of the diplomatic conferences. In addition, debates and conclusions tended to be governed by a practice of consensus as opposed to more traditional voting by representatives of member states.

**Monitoring**

Negotiating new agreements is no longer a sufficient function for the Hague Conference or any other international organization involved in private international law. Greater attention must be paid to implementation of already concluded treaties. Contradictory interpretations of complicated multilateral treaties can do a lot of harm, even to the point where an instrument may become ineffective or useless. Hague conventions, however, do not have the benefit of centralized systems of enforcement or interpretation. There is no supranational court ensuring uniform interpretation of the conventions. This work, therefore, falls to others.

The Permanent Bureau of the Hague Conference now spends approximately seventy percent of its time with providing what might be termed post-convention services. This work includes, among other things, offering advice to states on the implementation of a convention, carrying out research concerning the operation of a convention, and organizing periodic meetings at the Hague at which the practical operation of the conventions is reviewed. We also take other steps to encourage consistent practices and uniform interpretation of a convention by contracting states, for example by establishing databases or by publishing guides to good practices. In this connection, I want to mention in particular the new Practical Handbook on the Hague Service Convention, first issued in 2006 and now translated into Russian, with Spanish, Portuguese, Chinese, and Ukrainian versions in preparation.

**Impact of New Technologies**

In trying to keep the operation of existing Hague Conventions as relevant and practical as possible, the Permanent Bureau also works to adapt and integrate new technologies to ongoing private international law efforts. A prime example is the electronic Apostille Pilot Program (e-APP) jointly developed and promoted by the Hague Conference on Private International Law and the National Notary Association of the United States (NNA). Working together with any interested state (or any of its internal jurisdictions), the NNA and the
Conference are working to implement low-cost, operational, and secure software technology for the issuance of and use of electronic Apostilles (e-Apostilles) and the creation and operation of electronic Registers of Apostilles (e-Registers). The e-APP is intended to extend the reach of the Apostille Convention into the electronic medium and to strengthen its important benefits by making its operation more effective and secure.¹

**CONCLUSION**

The Hague Conference will continue to grow from strength to strength if we (i) manage to keep the current level of quality of the scientific work we are conducting; (ii) continue to select new topics carefully—focusing on real, practical needs with experts from the relevant "market" who later will have to work with the instrument (as opposed to merely developing conventions for the sake of developing conventions); (iii) continue the highly important and successful monitoring of existing conventions; (iv) continue cooperation with other law-making bodies, in particular UNCITRAL and UNIDROIT (their work often has PIL implications); (vi) establish an effective training platform to help and assist states that do not have sophisticated PIL systems in place, to work effectively with our instruments; and (vii) manage to increase our regional visibility and presence.

**THE HAGUE CONVENTION ON CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE: DIVERGENT PRIVATE INTERNATIONAL LAW RULES AND THE LIMITS OF HARMONIZATION**

*By Robert G. Spector*

**INTRODUCTION**

In April 1999, the Hague Conference on Private International Law's Special Commission on Maintenance Obligations voted to begin work on a new convention on maintenance obligations. The negotiations on the maintenance convention have proven to be far more challenging than the 2000 Protection of Incapacitated Adults Convention or the 1996 Convention on the Protection of Minors. All states generally have the same approach to jurisdiction, applicable law and enforcement of judgments in cases concerning children and incapacitated adults. With regard to maintenance, however, there are large differences in the private international rules between common-law countries, particularly the United States, and the civil-law countries of the European Union.

**JURISDICTION**

Direct Rules of Jurisdiction

In 1978 the Supreme Court in *Kulko v. California* applied the rules of personal jurisdiction to child support.¹ The parents lived in New York and divorced in Haiti. The mother moved to California and the father returned to New York. The children ultimately came to live with their mother. The mother sued the father for maintenance in California. The father resisted, arguing that California did not have personal jurisdiction over him.

¹ For more details, see <http://www.e-APP.info>.
² Professor of Law, University of Oklahoma Law Center.
³ 436 U.S. 84 (1978).