A COMMITMENT TO PRIVATE INTERNATIONAL LAW

UN ENGAGEMENT AU SERVICE DU DROIT INTERNATIONAL PRIVÉ
A COMMITMENT TO PRIVATE INTERNATIONAL LAW

Essays in honour of Hans van Loon

UN ENGAGEMENT AU SERVICE DU DROIT INTERNATIONAL PRIVÉ

Mélanges en l’honneur de Hans van Loon

The Permanent Bureau of the Hague Conference on Private International Law

Le Bureau Permanent de la Conférence de La Haye de droit international privé

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Un engagement au service du droit international privé – Mélanges en l’honneur de Hans van Loon.

The Permanent Bureau of the Hague Conference on Private International Law
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Hans van Loon has been at the forefront of private international law for well over a quarter of a century. Since joining the Hague Conference on Private International Law in 1978, he has presided over remarkable growth of the Organisation and significant changes to how it operates. He has been involved in the development of nine Hague Conventions, two of which are fast approaching 100 Contracting States, as well as the revision of the Statute of the Hague Conference. In his time as Secretary General, he has seen the Organisation’s membership grow from 44 to 72 Members (with more than 60 non-Member States now party to at least one Hague Convention), which has turned the Hague Conference into a veritable world organisation. The continued relevance of the Hague Conference in the 21st century owes much to the commitment of Hans van Loon to private international law and his awareness of its role in a broader social context.

This Liber Amicorum is a collection of contributions from friends and colleagues who have shared the negotiating table with Hans van Loon at various diplomatic sessions, collaborated with him on seminars and academic pursuits around the globe, and worked alongside him at the Permanent Bureau. Its pages are testament to a long and respected career, as well as to the meaningful relationships that Hans van Loon has developed along the way with academics, judges, practitioners and government officials from various legal backgrounds.

The members of the Permanent Bureau, both past and present, all of whom have been privileged to work closely with Hans van Loon and experience his energy and passion, wish to thank him for all that he has done for the Hague Conference in these changing times. We wish him all the best for his retirement and future endeavours.

Members of the Permanent Bureau
PRÉFACE

Hans van Loon a passé bien plus d’un quart de siècle aux avant-postes du droit international privé. Depuis qu’il a rejoint la Conférence de La Haye de droit international privé en 1978, l’Organisation a connu une croissance remarquable, et son fonctionnement a été marqué par d’importants changements. Hans van Loon a pris part à l’élaboration et au développement de neuf Conventions de La Haye, dont deux frôlent de près les 100 États contractants, ainsi qu’à la révision du Statut de la Conférence de La Haye. Entre sa nomination au poste de Secrétaire général et aujourd’hui, le nombre de Membres de l’Organisation est passé de 44 à 72 (et plus de 60 États non membres sont désormais Parties à l’une au moins des Conventions de La Haye), faisant de la Conférence de La Haye une organisation véritablement mondiale. Le fait que la Conférence de La Haye reste d’actualité au 21e siècle tient en grande partie à l’engagement de Hans van Loon au service du droit international privé et à sa volonté d’inscrire le rôle de la Conférence dans un contexte social plus vaste.

Ces Mélanges sont un recueil de contributions d’amis et de collègues qui ont côtoyé Hans van Loon à la table des négociations lors de différentes sessions diplomatiques, ont collaboré avec lui lors de séminaires ou aux fins de travaux universitaires à travers le monde et ont travaillé à ses côtés au sein du Bureau Permanent. Cet ouvrage retrace l’histoire d’une carrière longue et reconnue, et atteste des liens significatifs que Hans van Loon a tissés tout au long de son parcours avec des universitaires, des juges, des praticiens et des employés gouvernementaux de différentes cultures juridiques.

Les anciens membres et membres actuels du Bureau Permanent, qui ont tous eu la chance de travailler en étroite collaboration avec Hans van Loon et ont été les témoins privilégiés de sa formidable énergie et de sa passion pour son métier, souhaitent le remercier chaleureusement de tout ce qu’il a fait pour la Conférence de La Haye en cette période de changements. Nous lui adressons nos meilleurs vœux pour sa retraite et ses projets futurs.

Les Membres du Bureau Permanent
FOREWORD

Hans van Loon, when he joined the Permanent Bureau in 1978, brought the breath of law practice, as well as youth, into the building at Number 2c Javastraat, The Hague, in which Special Commissions met – only a long block from the Peace Palace, where the Plenary Sessions of the Hague Conference on Private International Law took place. He came from four years of practice with the distinguished Hague law firm of Blackstone, Rueb and van Boeschoten, but he had behind him already internships at Strasbourg with the Directorate of Legal Affairs of the Council of Europe and the Secretariat of the European Commission of Human Rights, as well as law studies at the Universities of Utrecht and Leiden and at the Graduate Institute of International Studies in Geneva.

Hans became the junior member of the Permanent Bureau of four statutory members, replacing Matthijs H. van Hoogstraten, who had practiced law in Deventer during the World War II occupation of the Netherlands, revived the Hague Conferences in 1951 from his post as a lawyer at the Netherlands Foreign Ministry, and in 1955 had become the first appointed Secretary General of this new intergovernmental organization [IGO].

The mission of the Hague Conference is “to work for the progressive unification of the rules of private international law”. The vehicles of this work are multilateral treaties.

Hans brought with him from among his commitments as a lawyer a case in which he acted for the applicant before the European Commission and Court of Human Rights, Winterwerp v. the Netherlands, 6301/73 (1979) ECHR 4; (1981) ECHR 7. Thus, for some time after his arrival at the Permanent Bureau, the breath of practical law practice under an international treaty [the European Convention for the Protection of Human Rights and Fundamental Freedoms] followed him through the front door of the offices at Javastraat 2c – and at times even settled on the couch in the entry foyer.

The retirement of van Hoogstraten and the elevation of Georges Droz to the post of Secretary General brought on a reordering of tasks for the upcoming
14th Plenary Session in October of 1980, and Hans – assigned to replace Droz for the third leg of piecemeal revision of the Hague Convention of March 1, 1954 on Civil Procedure – quickly showed his skills as a lawyer and diplomat. He steered to a successful conclusion the work of negotiation and drafting of the Hague Convention on International Access to Justice, which was adopted on October 25, 1980 [concurrently with the Convention on the Civil Aspects of International Child Abduction, which was under the responsibility of this author] and then was immediately signed by several countries.

The Access to Justice Convention would include chapters dealing with (1) legal aid, (2) security for costs and enforcement of orders for costs, (3) copies of entries and decisions, and (4) physical detention and safe-conduct and – because it was a revision of parts of the 1954 Convention – might have an impact on countries which were Parties to the 1954 Convention but were not Member States of the Hague Conference. Thus, the Second Commission of the 14th Session was made up not only of delegations from 25 Member States of the Hague Conference, but also of delegations, attending by invitation, from four countries which were not Member States: Hungary, Morocco, the Holy See and the Union of Soviet Socialist Republics.1 This 1980 Convention as of now has entered into force for 26 States Parties, the most recent being Brazil on February 1, 2012.

While none of the foregoing invited countries has ratified the 1980 Convention on International Access to Justice, Hungary, Morocco and the Russian Federation are now Members of the Hague Conference. This experience not merely initiated Hans to the idea that participation by non-Members could end up by bringing new Member States into the Hague Conference. It gave him experience in shepherding a multilateral treaty to adoption by a group which included ad hoc Members, Parties to a treaty under revision, who were exercising the rights of Member States of the IGO for this process only.

Ten years later – after having worked successfully from beginning to result on the elaboration of Hague Conventions on trusts2 and on succession to the estates of deceased persons – Hans dreamed up and made a process a reality that led

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2 On a personal note, this author was in close collaboration with Hans van Loo for the preparation of the initial report on the Trusts project, which was a joint report in order to reflect one author’s training and experience in a common-law legal system [Texas] which has trusts in its law and the other author’s training and experience in a jurisdiction [the Netherlands] which does not have trusts, but has legal devices employed for fiduciary purposes which do not have...
to invitations to a broad range of interested countries to participate ad hoc in drawing up a brand new treaty, with full rights to speak, write proposals and vote as though they were Member States. Hans worked out the details of creating a fund to assist a number of countries with the costs of participation at The Hague, which for many was a new and unfamiliar venue. In so doing he demonstrated a talent for obtaining voluntary contributions for the financing of useful projects which had previously been unknown to the more tradition-bound members of the Permanent Bureau, including the author of this foreword. The result was the Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, which now has 89 States Parties and – like the Child Abduction Convention – keeps on growing.

This kind of vision of the Hague Conference’s mission led naturally to the elevation of Hans van Loon to the post of Secretary General in 1996, when Georges Droz retired. Hans has continued to carry forward this vision with tenacity and skill as a lawyer and diplomat – serving the interests of children and families by promoting the spread and the effective implementation of family-law treaties, while promoting the benefits to commercial organizations or individuals that come from reducing the obstacles to international trade and migration.

The kind of flexibility that allowed countries to act in the capacity of ad hoc Members is one of the advantages that can arise from being a small organization, but it also requires personal flexibility and adherence to a vision on the part of the individuals carrying out the organization’s work. Hans van Loon has had both of these traits, from the time when he first galloped up three flights of steep stairs at the Permanent Bureau’s offices in 1978 – bursting with vigor and enthusiasm – to now when he approaches retirement while still travelling all over the world, having most recently opened the Conference’s Asia Pacific Regional Office in the Hong Kong Special Administrative Region of the People’s Republic of China. This follows his earlier establishment of a regional presence of the Hague Conference in Buenos Aires, Argentina, to serve Latin American States. During his tenure as Secretary General, the Conference has grown from 41 to 71 Member States, while revising its Statute to update its governance structure and to allow the European Union to become its first Member Organisation, which happened in 2007. Its current headquarters building at Scheveningseweg 6 – within eyeshot of the Peace Palace – is bursting at the seams with useful activity in all areas of private international law.

the all-encompassing scope of the English trust. Hans was a remarkably patient collaborator, while this author dithered over nuances of this historic structure.
Lecturing all across the world, including the Hague Academy of International Law and the Organization of American States’ *Curso de Derecho Internacional* at Rio de Janeiro, Hans van Loon is Doctor *honoris causa* at the University of Osnabrück, Germany, *Officier de l’Ordre National du Mérite* in France, Officer in the Order of Orange Nassau in the Netherlands, and has received an award for his work from the US Congressional Coalition on Adoption.

Hans van Loon has done all of this while he and his supportive wife, Carola, were raising a family of three children, who have diverse interests. Being himself the son of a medical doctor, and having found his own life’s work in the law, he has offered his children much freedom to pursue their natural bents.

While one wants to express the hope that retirement from the responsibilities of serving as Secretary General will give him more time to spend with his family, it is not possible to avoid harboring the hope that his multiple talents will continue to find useful avenues of expression – given his continuing mental and physical vigor. This book is testimony by his friends of their admiration of his accomplishments and at the same time an outline of some of the ideals which have inspired Hans during his career at the Permanent Bureau. Work always remains to be done – particularly in the vineyard of international legal and administrative cooperation – and Hans van Loon has set out many beacons to steer our successors in their efforts to improve the lot of the human community.

Adair Dyer

Former Deputy Secretary General,
now Attorney at Law in private practice, Austin, Texas, USA

January 2013
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BIOGRAPHY HANS VAN LOON

Hans van Loon has been the Hague Conference’s Secretary General since 30 June 1996 and steered the Organisation during a time of global expansion and transformation.

He studied law and sociology at the University of Utrecht, and international law and international relations at the University of Leiden and at the Graduate Institute of International Studies, Geneva (1966–1973). Following a traineeship with the Council of Europe (European Commission of Human Rights), he was admitted to the Bar in The Hague and practiced law with the Supreme Court of the Netherlands, acting also before the European Court of Human Rights (case of Winterwerp v. The Netherlands, 1979, 1981). He was an Honorary Secretary of the Executive Board of the Netherlands Branch of the International Law Association (1977–1986).

He joined the Permanent Bureau of the Hague Conference on 15 September 1978, combining his international functions until 1996 with those of Executive Secretary of the Netherlands Standing Government Committee on Private International Law, where he initiated, and was responsible for, the scientific organisation of the Committee’s work on the codification of private international law in the Netherlands (which would ultimately lead to Book 10 Civil Code). He also was a Substitute Judge in the Hague District Court (1984–1996).

He contributed to the development of the following international Conventions within the Hague Conference:

Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition
Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons;
Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (which he initiated)
Biography Hans van Loon

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;
Convention of 13 January 2000 on the International Protection of Adults;
Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary;
Revision of the Statute of the Hague Conference (effective 1 January 2007);
Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance;
Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

He taught at the Hague Academy of International Law (Summer 1993, Seminar for Advanced Studies 2012), at its external programs in San José (Costa Rica, 1995) and Abu Dhabi (UAE, 2010), the XXXIIth Session of the OAS Course on International Law (Rio de Janeiro, 2005), and at the University of Florida (Fall 1988). He lectured on the Hague Conference and its work at universities and academic institutions worldwide, and (co-) organised numerous international symposia concerning subject matters of (private) international law with other intergovernmental organisations, governments, and academic institutions, including on subjects such as the outlook for private international law after the fall of the Berlin Wall, damage to the environment, human rights, Islamic law, transfrontier family relations across the Mediterranean and beyond, registered partnerships, Internet and E-commerce.

He has widely published on numerous topics of private international law. He is a doctor honoris causa of the University of Osnabrück (Germany, 2001).

He was an expert consultant to the Governments of Costa Rica, Romania, Albania, Guatemala and Cambodia, as well as to the Senate of Paraguay, and to other international organisations (UNICEF, UNHCR), concerning international legal co-operation, in particular concerning Hague Conventions.

He was elected an Associate Member of the Institut de Droit International (2009). He has been a Member of the European Group of Private International Law since its inception (1991), and is an honorary Member of the Asociación Americana de Derecho Internacional Privado (ASADIP, 2007).
PUBLICATIONS BY / PAR HANS VAN LOON

ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS


STUDIES IN PREPARATION OF INTERNATIONAL CONVENTIONS / ETUDES PRÉPARATOIRES POUR DES CONVENTIONS INTERNATIONALES

STUDIES WRITTEN FOR THE INTERNATIONAL LAW ASSOCIATION / ÉTUDES ÉCRITES POUR LA INTERNATIONAL LAW ASSOCIATION


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- « Conférence de La Haye de droit international privé », in Répertoire international Dalloz, 2011
- « Vers un nouveau modèle de gouvernance multilatérale de la migration internationale – réflexions à partir de certaines techniques de coopération développées au sein de la
Publications by / par Hans van Loon


- “Inleiding”, in Frohn, E.N., Hennis, E., eds., Staatscommissie IPR, Geselecteerde Adviezen – naar een afgewogen IPR, (Den Haag: T.M.C. Asser Instituut, 1995), pp. IX–XVI. Also drafted various consultation papers included in this Collection for the Government of the Netherlands on private international law, e.g. on / A également rédigé de nombreux avis, inclus dans ce Recueil, destinés au Gouvernement néerlandais, notamment sur :
  - The application of imprisonment for debt of foreigners/La contrainte par corps contre les étrangers (1980), pp. 311–315;
  - The law applicable to maritime and inland navigation issues/ La Loi applicable aux questions de droit maritime et de navigation intérieure (1981), pp. 284–301;
  - Declaratory judgments concerning the validity of foreign legal relationships/ Jugements déclaratifs concernant la validité de relations juridiques établies à l’étranger (1982), pp. 15–19;
  - The law applicable to family names and first names/La loi applicable aux noms et aux prénoms (1985), pp. 19–27;
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• Legislative jurisdiction on the Dutch part of the continental shelf outside the territorial sea / La compétence législative sur la partie néerlandaise du plateau continental en dehors de la mer territoriale (1990), pp. 245–252;
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– “Naar een wereldwijd verdrag over adoptie van kinderen uit het buitenland”, in Interlandelijke adoptie (Preadvies Thijmenootschap), (Zwolle: W.E.J. Tjeenk Willink, 1990), pp. 57–68


Publications by / par Hans van Loon


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