

**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
(QUATRIÈME 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
(FOURTH FOLLOW-UP NOTE)**

Note submitted by the Permanent Bureau

*Document préliminaire No 7 de février 2010 à l'intention
du Conseil d'avril 2010 sur les affaires générales et la politique de la Conférence*

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of the Council of April 2010 on General Affairs and Policy of the Conference*

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1. At its meeting of 31 March to 2 April 2009, the Council on General Affairs and Policy invited the Permanent Bureau of the Hague Conference on Private International Law to continue to explore, in consultation with interested Members and relevant international organisations, the potential value of using certain private international law techniques in the context of international migration.^{1*}

2. This research 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 themselves to *incremental* and *progressive* application to a *limited* number of *specific* issues that arise in the context of international migration.²

3. Examples of possible forms of international co-operation that might benefit from the Conference's 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 such 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 First Follow-up Note presented to the Council in 2007 confirmed that these areas, in particular points A and D, were among those that needed to be urgently addressed in accordance with the views expressed at various meetings held at the global, regional and bilateral levels in 2006, and the documents adopted during those meetings. The 2007 Note also referred to a number of bilateral agreements that could be a source of inspiration for a multilateral approach.³

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). The Note also pointed to new developments in the European Union (EU) aimed at strengthening international co-operation with non-EU countries of origin and transit, including the acknowledgement of the importance of circular migration and the introduction of the concept of "mobility partnerships". 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 management of international migration,

* The Permanent Bureau acknowledges the assistance provided by Ms Lisa Tousek, temporary research assistant at the Permanent Bureau.

¹ Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (31 March - 2 April 2009). This document and all Preliminary Documents cited herein are available on the website of the Hague Conference at the address < www.hcch.net >, under "Work in Progress" then "General Affairs".

² "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.

³ "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.

support global dialogue, and broaden regional initiatives on circular migration and remittances.⁴

6. The Third Follow-up Note presented to the Council in 2009⁵ reported on a number of events concerning migration that had taken place the previous year. One example was the second meeting of the Global Forum on Migration and Development (Manila, 27-30 October 2008). The Secretary General of the Hague Conference also met the UN Special Representative for Migration and Development, Mr Peter Sullivan, who confirmed that there may well come a time when the Global Forum may lose momentum if it does not lead to more permanent legal frameworks for effective international co-operation.⁶ The Note also reported on the developments concerning migration within the Organisation for Economic Co-operation and Development (OECD)⁷ and the EU. The latter organisation continued its efforts in the context of its comprehensive (“global”) approach to migration and of partnerships with countries of origin and transit.⁸ The conclusion of the Note was that 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 – might be a concrete step towards managing the international movement of migrants at the global level, not least in the interest of future generations.

7. In the course of 2009 at least three of the issues initially proposed by the Permanent Bureau moved to the centre of policy attention, *i.e.*:

- A) Co-operation in the implementation of temporary or *circular migration programmes*;
- C) Co-operation in establishing and monitoring a system of licensing and *regulation of intermediaries facilitating migration (i.e., to open up legal possibilities, to fight trafficking and smuggling)*;
- D) Co-operation in facilitating *the easy and cheap transfer of remittances*.

8. For instance, in a resolution on international migration and development, the General Assembly of the United Nations acknowledges the need to analyse the impact of certain forms of temporary migration, circular migration and return migration on the development of countries of origin, transit and destination, and reaffirms that there is a need to address and promote conditions for cheaper, faster and safer transfers of remittances.⁹

9. On 29 and 30 June 2009, the OECD held its First High-Level Policy Forum on Migration. While the Forum noted that the economic crisis had led many OECD countries to adjust their migration policies, there was agreement that a long-term perspective was needed and that it was essential to better manage labour migration to support economic growth in the host countries. There was also agreement that such growth should be

⁴ “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.

⁵ “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)”, Prel. Doc. No 8 of March 2009 drawn up for the attention of the Council of March / April 2009 on General Affairs and Policy of the Conference.

⁶ *Ibidem*, para. 6.

⁷ International Migration Outlook: SOPEMI 2008, p. 28.

⁸ 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 18 February 2010).

⁹ United Nations General Assembly, Resolution 63/225, “International migration and development”, adopted during its 72nd plenary meeting, 19 December 2008, published 10 March 2009, A/RES/63/225, paras 8 and 10.

linked to development in the countries of origin of workers, *e.g.*, by “lower[ing] the cost of transferring remittances, reduc[ing] obstacles to return, and shar[ing] the cost of training between the host country and the origin country”. The following two recommendations of the Forum are particularly relevant: “[s]trengthen international cooperation at the regional *and global level* for the management of migration; it is important to go *beyond bilateral frameworks*”; and: “[c]ontinue to analyse the links between migration, remittances and development, and evaluate the impact of the brain drain on the development of the origin countries”.¹⁰

10. From 4 to 5 November 2009, the third meeting of the Global Forum on Migration and Development took place in Athens. One of the recommendations from the roundtables was that governments should reform visa regimes for multi-entry visas, and another was that analyses of remittances and their impact should be more robust.¹¹

11. The Global Agenda Council Meeting of the World Economic Forum (WEF) held in Dubai, also in November 2009, noted that a “window of opportunity exists during this economic downturn to reform migration policies and institute new approaches before the demand for migrant labour resumes”, poignantly emphasising that “[a]t the global level, no regime for the movement of people, similar to those that govern the movement of capital or trade in goods and services exists”. According to one of the Recommendations, “policies on temporary workers should encourage the safe and orderly return and reintegration of migrants”.¹²

12. Within the EU the Stockholm Programme, adopted by the Council of the EU in December 2009,¹³ underlines that well-managed migration can be beneficial to all stakeholders and proposes that further work should be done within the EU to:

- A) explore the concept of circular migration and study ways to facilitate orderly circulation of migrants inside or outside projects or programmes;
- C) create ad hoc agreements with specific non-EU countries to fight trafficking and smuggling;
- D) ensure sufficient, secure, low-cost remittance transfers; and create a common EU portal on remittances.¹⁴

The EU proposals are very much in line with the Permanent Bureau proposal, but the Hague model would have the additional advantages of establishing direct co-operation between the government bodies in the countries of origin and destination on the three issues mentioned above, and of doing so at the global level.

13. During the year 2009, the United Nations Development Programme (UNDP) also came up with proposals, in particular on two of the three topics (A and C) mentioned above. In the UNDP’s Human Development Report 2009,¹⁵ the organisation proposes to governments and other policymakers to:

¹⁰ See the High-Level Policy Forum on Migration (OECD, 29 – 30 June 2009), Conclusions of the Chair, Eric Besson, at <http://www.oecd.org/dataoecd/50/50/43222094.pdf> (last consulted 18 February 2010), emphasis added by the Permanent Bureau.

¹¹ Global Forum on Migration & Development, “Report on the Civil Society Days of the Global Forum on Migration & Development, Integrating Migration Policies into Development Strategies for the Benefit of All”, Athens, 3 November 2009, pp. 5 and 7.

¹² See World Economic Forum, “Global Agenda Council Reports 2010”, pp. 252-253, < <http://www.weforum.org/pdf/globalagenda2010.pdf> > (last consulted 18 February 2010).

¹³ Council of the European Union, “The Stockholm Programme – An open and secure Europe serving and protecting the citizens”, 17024/09, Brussels, 2 December 2009, p. 59.

¹⁴ Council of the European Union, *ibidem*, pp. 61-67. The letters A, C and D refer to the Permanent Bureau proposal, see *supra*, para. 3.

¹⁵ United Nations Human Development Report 2009, “Overcoming barriers: Human mobility and development”, pp. 96-98, 103.

- A) expand schemes for truly seasonal work - the key elements being consultations with source country governments, unions and employers;
- C) improve intermediation services to reduce abuse and fraud and reduce trafficking;
- restrain the work of sub-agents working under legitimate recruiters, which reduces accountability and increases costs;
 - create migrant networks or information centres to reduce the need for recruiters;
 - regulate recruiters, for instance treat them as co-employers liable for failure of contract, or let industry associations collect and disseminate information on high-risk agencies and best practices, or organise direct administration by public agencies such as the International Organization for Migration (IOM).

The detailed proposals of the UNDP concerning circular migration and the regulation of recruiters and other intermediaries facilitating migration are both concrete and practical. However, as is the case with the EU proposals, they lack the element of mutual co-operation that the Hague-model would incorporate.

14. Within the Organization of American States (OAS), the abovementioned topics also remain on the agenda. During the year 2009, work was done to survey migration trends, *e.g.*, information about the existing temporary work programmes in which migrant workers from Latin America and the Caribbean participate has been compiled and classified. The information includes descriptions of the terms and characteristics of the programmes and processes for recruitment (via bilateral agreements or through independent contractors).¹⁶

15. In Asia the United Nations Economic and Social Commission for Asia and the Pacific organised a Policy Dialogue on the Impact of the Global Financial Crisis on International Migration (Bangkok, 27 – 28 May 2009). In the future, the organisation will also undertake a regional study on international migration challenges in the Asia-Pacific region, focusing *inter alia* on two of the issues mentioned in the proposal from the Permanent Bureau, *i.e.*, the effects of remittances on both origin and destination countries, as well as temporary labour migration including circular migration¹⁷.

16. The World Bank also carried out work on remittances during the year. According to the Bank, the financial crisis has highlighted the importance of migration and remittances. The Bank notes that the development community can further leverage these flows for development by making them cheaper, safer and more productive for both the sending and the receiving countries.¹⁸

17. The Multilateral Investment Fund (MIF), which is a private sector grant facility of the Inter-American Development Bank, has been very active in advocating the reduction of the costs of remittance services in 2009. Together with other actors, MIF has launched

¹⁶ Organization of American States, "Current and planned activities 2009-2010", Report to the UN Eighth Coordination Meeting on International Migration, 18 December 2009, UN/POP/MIG-8CM/2009/23, p. 3.

¹⁷ United Nations Economic and Social Commission for Asia and the Pacific, "Impact of the Global Financial Crisis on International Migration – one year later", Report to the UN Eighth Coordination Meeting on International Migration, 18 December 2009, UN/POP/MIG-8CM/2009/05, pp. 5-6.

¹⁸ World Bank, Migration and Remittance Team Development Prospect Group, "Migration and Development Brief 11", 3 November 2009, p. 12.

a financing facility for remittances to promote innovative remittance systems and investment channels for migrants.¹⁹

18. In Africa, the International Fund for Agricultural Development (IFAD) commissioned a study to explore the remittance market. The report, "Sending Money Home to Africa", was presented at the Global Forum on Remittances 2009, organised by IFAD and the African Development Bank (Tunis, 22 – 23 October 2009). The report shows that while transfer costs have declined significantly in other parts of the world, sending money home to Africa is still expensive.²⁰

19. The model of direct co-operation between government bodies proposed by the Permanent Bureau could also be useful for achieving the overall purpose of making remittances easier, cheaper and safer. The designated responsible government bodies could for instance:

- provide information on the options available in host countries for transferring money as well as on the options available in home countries for paying out the amount (available banks, other non-bank financial institutions, post offices, new technologies such as mobile-phone networks,²¹ prepaid cards,²² etc.);
- take steps to ensure transparency of the financial market by requiring banks and other remitting institutions to clearly state all remittance charges (including the transactions fee charged up front, the foreign exchange rate, the commission applied as well as the transactions fee at the beneficiary's end),²³ their guaranteed execution time for the transaction and the documents they require from the remitter and the recipient;²⁴
- have regular review meetings under the multilateral framework envisaged with the participation of international organisations, representatives of the financial sector, micro-finance organisations, migrant associations, etc., which could lead to an exchange of valuable information on current practices, the promotion of better procedures, the stimulation of new initiatives, etc.

20. As the various developments show, three of the issues initially proposed by the Permanent Bureau keep reappearing on the international agenda (A: circular migration programmes; C: regulation of intermediaries facilitating migration; and D: the easy and cheap transfer of remittances). Together they support the cause for a permanent global

¹⁹ Inter-American Development Bank, "Report on Activities and Programmes on Migration, Development and Remittances", Report to the UN Eighth Coordination Meeting on International Migration, 18 December 2009, UN/POP/MIG-8CM/2009/15, p. 3.

²⁰ There is also a project about Migration, Remittances and Development in Africa, co-financed by IFAD but initiated by the World Bank, which will lead to a report jointly published by the World Bank and the African Development Bank in 2010. See: International Fund for Agricultural Development, "Report on Migration, Remittances and Rural development", Report to the UN Eighth Coordination Meeting on International Migration, 18 December 2009, UN/POP/MIG-8CM/2009/14, p. 3.

²¹ This is one of the cheapest and quickest options to send money, but significant regulatory challenges related to anti-money laundering and countering the financing of terrorism remain, see World Bank (*op. cit.* note 18), p. 11.

²² An international money transfer card has for instance been introduced by La Caixa, the largest savings bank in Spain, for transferring remittances; see World Bank, "Remittances Development Impact and Future Prospects", edited by Samuel Munzele Maimbo and Dilip Ratha, 2005, pp. 202, 206.

²³ For instance, since 2006 the Bangko Sentral ng Philipinas in the Philippines has successfully required banks and non-bank financial institutions to clearly state the remittance charges and available options for sending money; see World Bank, Migration and Remittance Team Development Prospect Group, "Migration and Development Brief 6", 11 August 2008, p. 3.

²⁴ The abovementioned information supplied by the designated governmental bodies will lead to increased competition among remittance providers that will lower remittance costs. It is hoped that competition and the requirement for the remittance institutions to specify the documents which are needed will also lead to undocumented recipients eventually accessing formal financial channels.

multilateral framework for cross-border administrative and judicial co-operation regarding circular / temporary migration,

- to implement temporary or circular migration programmes agreed between States of origin and receiving countries;
- to establish and monitor a system to regulate, license and monitor intermediaries involved in facilitating international migration;
- to facilitate the easy, safe and cheap transfer of remittances sent home by international migrants; and
- to provide the multilateral framework with a mechanism of regular review meetings to monitor its operation.