# Global and Regional Co-operation in the Field of Private International Law : A Challenge for the Hague Conference

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Mr Chairman, Ladies and Gentlemen, *

It is a great honour and pleasure, one we have been looking forward to for many months, to be with you all here today. I wish to extend our gratitude to the Japanese Government for its generous invitation to come over to Japan for this occasion, and to the Private International Law Association to have invited us to celebrate what is indeed a remarkable anniversary: the centennial of the participation of Japan in the Hague Conference.

This celebration offers us a unique opportunity to pay tribute to Japan's involvement in and support of the Hague Conference over the past century, and also to reflect together on the future of the Conference and the future role of Japan in the Conference.

## Introduction: Japan and the Hague Conference 1904-2004

In the spring of 1904, Japan sent a delegate to The Hague for the first time to take part in negotiations at the Fourth Session of the Hague Conference. The success of the three previous Sessions of the Conference - held in 1893, 1894 and 1900 - had not gone unnoticed in Japan. In fact, during that same period, Japan had itself undertaken a major reform of its legislation, including the enact-

ment of a very modern code on private international law, the *Horei*, in 1898, based on the technique of bilateral (or multilateral) conflict rules. This gave Japan a unique position in Asia and nourished the desire to play its role in the exciting multilateral legislative efforts that had started at The Hague.

As I said in my words of welcome at the joint reception with the Japanese Ambassador in the Netherlands on 23 September 2004 at the Peace Palace in The Hague, there are several reasons why from the perspective of the Hague Conference this first participation of Japan in the work or our Organisation was so remarkable and deserves to be commemorated in this anniversary year.

First, by sending a delegation to The Hague, Japan made a truly pioneering step. Until the Fourth Session in 1904, only European States had participated in the Hague negotiations. Indeed, for many years after 1904 Japan was to remain in this unique position. Even in 1955, when the Conference acquired permanent status, Japan was the only non-European State to co-found the new structure for the Organisation. In fact, it was almost 60 years after the 1904 Session before other countries from other continents joined the Conference! This shows remarkable perseverance as well as an outstandingly strong belief in the mission of the Conference and in the importance of a role in that mission for Japan.

The second reason is that Japan's early participation both reinforced and provided justification for the Conference's aspiration to draw up conventions at a universal level. This was stated by Mr Djosaburu Kawamura, Director General of the Civil Affairs Bureau of the Ministry of Justice in Tokyo who represented Japan at the 1904 Session. On behalf of his Government, Mr Kawamura let it be known that Japan felt the work of the Hague Conference was to be regarded as "devoted to drawing up universal principles of private international law". He pointed out that the relations between Western European countries and Japan were intensifying and it was therefore important that the Hague Conventions would also apply to Japan. He emphasised that there were no major obstacles standing in the way of their application (either in Japan or, for that matter, in Europe), despite some particularities of Japanese law.[1]

This brings me to the third reason why Japan's first participation was so remarkable. It is very interesting to see how, in its Memorandum to the Fourth

Session, Japan made a plea for understanding of certain characteristics of its laws, in particular those in the field of family law, which differed from those common in Western Europe. It was emphasised that these differences should not be exaggerated; they should, above all, be seriously studied and compared. Thus, in a very subtle way, the Memorandum made an early call for both the need to respect cultural diversity and for comparative work and dialogue, while striving for universally applicable rules. This has certainly remained a major challenge for the work of the Hague Conference and one where our Organisation has, and will continue to have, a very special role as a builder of bridges between different legal cultures.

It would be quite impossible, and indeed presumptuous of me, to attempt to describe Japan's involvement in the Hague Conference over the past century. The list alone of Japanese experts and delegates who have made the long trip to The Hague, sometimes several times a year, includes many dozens of names, among them some of the most prominent lawyers of Japan. However, I cannot help mentioning one other name in particular, because he was a man of such distinction, who attended Sessions of the Conference for more than 20 years, was many times elected Vice-Chairman of the Diplomatic Conference and who has left such fond memories: Professor Ikehara.[(2)] As the Conference has further expanded, Japan's role has become even more important. Both for our latest Convention - the Hague Securities Convention - and for our current negotiations on a new Convention on Choice of Court Agreements, we are privileged to have Japanese Rapporteurs: Professors Kanda and Dogauchi, and Professor Hayakawa is actively participating in the work on maintenance obligations. The Japanese Government has also made it possible to hold workshops in Japan in order to prepare for the Securities Convention. We have also been fortunate to have with us at the Permanent Bureau a brilliant young professor from Sendai, Yuko Nishitani, who has brought us her many scholarly talents in addition to her charming presence. I should also not forget a special mention of the support offered at all times to the Permanent Bureau by the Japanese Embassy at The Hague.

So it is with immense gratitude that we celebrate this historic mark of a long-standing close relationship.

Looking to the present and to the future, I would like to address four broad themes on this occasion:

- the nature and effect of globalisation, what it means for private international law, and how it calls for a co-ordinated global response;
- the work of the Conference seen in the context of the globalisation process;
- the significance of regional co-operation, in particular in Europe, and finally, in the light of all this:
- the future of the Conference and of Japan's participation in the Conference; a future that calls for leadership.

## I Globalisation and the need for a global response

### a The challenge

"Globalisation" is not easy to define, yet it is difficult to dispense with.[3] It denotes the process of growing interdependence of societies and people worldwide, in practically all areas of life: economy and finance, politics and culture, and of increasing mutual awareness of this interdependence. It goes beyond the mere linking of discrete societies to market the background of traditional private international law and leads to transnational fusion of societies and markets. The process is driven primarily by technological developments in which Japan has played such a prominent role. This development, which has already led to tremendous acceleration and cost-reduction of transport and communication, is bound to continue, and is most probably irreversible. Although government policies may stimulate or regulate or try to slow down certain effects of globalisation, they are not steering the process: globalisation is overwhelmingly a matter of private initiative, expanding markets, growing mobility, and instant sharing of information through the massmedia and the Internet.

While it is difficult to think of any aspects of our societies that are not affected, it is true that some sectors are globalising more rapidly than others. On the one hand, capital markets have become interconnected worldwide, and some of us live by the rhythm of the Nikkei, the daily results of the European stock exchanges, and the Dow and the Nasdaq. On the other hand, people all over the world - including Nikkei and Nasdaq watchers - cherish their cultures, and resist intrusions on their lives, although this does not prevent them from buying for-

eign products, travelling to remote places or even migrating abroad.

At both ends of the spectrum, however, the numbers of situations, transactions and relationships that transcend national boundaries are increasing exponentially. Moreover, the spectrum is, in fact, a continuum: global economic and finance activity impact sooner or later on our private spheres (think, for example, of transfrontier family issues), and conversely, global private movements of people may have transboundary commercial and financial aspects.

At the same time, our world remains largely a patchwork of legal systems operating within some 200 nation States, each hierarchically organised and, in principle, each with its own legislative, judicial and administrative branches. Not only is this scene - a large field of 200 bigger and smaller pyramids - in stark contrast with the image of a shrinking globe, it also reflects a triple vacuum: there is no global legislator, no global judiciary, no global administration - at least none in respect of civil and commercial matters.

The combined effect of the continuing globalisation process, largely uncontrolled by governments, and the prevailing compartmentalised organisation of civil and commercial law, is inevitably that more and more situations, transactions and relationships will fall between two stools, in other words that the law will lose its grip on those situations, *unless* we intensify our efforts to provide and use the legal tools to co-ordinate legal systems and establish transnational co-operation between courts and other authorities.

### b A co-ordinated global response

I believe that the organisations active in the field of private and commercial law are increasingly aware of this, and so are an increasing number of governments. Co-operation among UNCITRAL, Unidroit and the Hague Conference has grown far closer than in the past. In May 1998, the Hague Conference for the first time organised a working group at the Permanent Bureau to assist UNCITRAL in the preparation of rules on applicable law for its *Convention on the Assignment in Receivables Financing*. In December 2003, a delegation of three experts from the Hague Conference helped to draw up conflict rules for the draft legislative guide on insolvency. This guide was adopted by consensus in June 2004. Similarly, we are since August 2004 assisting in the preparation of such rules for the

draft legislative guide on secured transactions. With Unidroit, close co-operation has developed in the field of securities held with an intermediary, where Unidroit has assisted in the drawing up of the Hague Securities Convention and in its promotion, and the Hague Conference participates in the ongoing work on the substantive harmonisation in that field. The co-operation is not limited to legislative work. We also take an active part in each other's scientific colloquia - both UNCITRAL and Unidroit will send speakers to the International Conference on the Legal Aspects of an E-commerce Transaction, which the Hague Conference co-organises with the European Presidency and the ICC and which will take place from 26-27 October 2004 in The Hague.(4)

And there is more to come. The Secretaries General of the three organisations are now meeting at least once a year to co-ordinate the activities of the three organisations and to discuss new ideas. One such new idea concerns that of organising, at regular intervals, common seminars or workshops in different regions of the world where we would present our work. We have also started to intensify our co-operation with the WTO and with the World Bank. With J. Sekolec and H. Kronke, I paid a visit in June 2004 to the WTO / UNCTAD International Trade Center, and we will seek together to promote the modernisation of commercial laws for developing countries. Training and technical assistance and promoting uniform interpretation will increasingly be topics of common concern. In other fields, for example in the family law areas, where UNCITRAL and Unidroit are not active, we co-ordinate with the UN and its specialised agencies (UNCHR, UNICEF), as well as with regional organisations, worldwide, for example, the OAS in Washington and the Commonwealth Secretariat in London. It is interesting to note that in 1977 Commonwealth Ministers decided they would work with the Hague Conference instead of developing their own competence in inter-Commonwealth private law. Other groups of States might follow this example.

## II Work of the Conference viewed in the context of the globalisation process

### a Broadening of the Membership of the Conference - the role of Japan

In order for the Hague Conference to be a truly global forum, it is important that it involves, not necessarily all, but a significant number of "players" on the world

scene. Starting in 1999, with the support of our Member States we planned a considerable increase in our membership. The result has been a growth of more than a third (from 47 in early 2001 to 64 at present), including States from Latin America (notably Brazil) Eastern Europe (notably the Russian Federation), Sri Lanka, Malaysia and New Zealand. We are still missing some important States, in particular in Asia and Africa, and continue to work, for example, with India. Japan is no longer almost alone in the Conference as a legal system from the (Far) East. Far from diminishing its role, this change has already led to a leadership role in recent current work. I already mentioned the prominent role of Professors Kanda and Dogauchi as Rapporteurs for the Securities Convention and the new Convention on Choice of Court Agreements, both instruments badly needed in a globalising world economy. However, as I have indicated, globalisation affects practically all aspects of our societies and certainly all of the work of the Hague Conference, including that in the field of civil litigation and of family law and protection of the most vulnerable: children and older and handicapped people. And here, in an area which is of increasing importance to Japan and of strategic importance for the Hague Conference, Japan's role has been certainly supportive, although not as pro-active as it could. Japan is not a Party to the 1961 Convention on Protection of Minors, or to the 1980 Child Abduction Convention, or to the 1993 Adoption Convention, nor has it signed the 1996 Convention on Protection of Children or the 2000 Convention on Protection of Adults. Yet, Japan is increasingly affected by demographic, migration and other changes, which make these instruments more and more necessary. As Professor Nishitani illustrates in a recent article, the number of foreign residents in Japan has increased drastically in the last decade, not only with nationals of neighbouring countries, but also with more than 250,000 Brazilians and 50,000 Peruvians and almost as many Americans.[5] Increasingly, older Japanese citizens spend their old age in sunny places like Malaysia. The Hague Conventions in this field are basics for the maintenance of smooth international relations, as well as for protection of foreigners in Japan and of Japanese citizens abroad. The need to consider these Conventions for ratification follows, moreover, from other international Conventions to which Japan is a Party, in particular the *United Nations Convention on the Rights of the Child* (Articles 11, 21). It is our firm hope, in particu-

lar, that Japan will decide in the near future to join the Hague Child Abduction Convention, which provides a basic remedy to an international tort and supports the child's fundamental right to maintain contact with both parents.(6)

### b Convention and other instruments

Although the Conference's "products" and working methods have long been tested and have found wide approval, it remains important to continue to re-evaluate them in particular in the light of globalisation. It is worth discussing the pros and cons of the multilateral treaty-making technique, and those of alternative methods. The Hague Conference has a long tradition of drawing up binding international Conventions, but the secretariat has always been open to the wish of some Member States to draw up non-binding instruments. In fact, we have recently seen some new developments in this field. In addition to the recommendations resulting from meetings on the practical operation of Hague Conventions, we have produced good practice guides and, in March of this year at the close of a judges' conference in Malta with judges and experts from States both south and north of the Mediterranean, a Declaration of Principles was adopted.(7)

Should we go further in this direction? I would say that it all depends on the result that one seeks to achieve. It is true that the Convention instrument is not always an easy one: it often requires intense negotiations, then governmental and parliamentary approval, and often implementing legislation. Sometimes it is easier, in particular in the field of applicable law, to take some or all of the substantive treaty provisions and incorporate them in an Act. Japan did so in the 1989 Amendments to the *Horei,* for example, with regard to some articles of the Marriage Convention, the Matrimonial Property Convention and the 1965 Adoption Convention. But where reciprocity is important, in particular in the field of recognition and enforcement of decisions, or where permanent channels of judicial and administrative co-operation are needed, or even where broad respect for party autonomy - choice of law or choice of court - is the aim, the treaty vehicle cannot easily be dispensed with. It may be that, after completion of the Convention on Choice of Court Agreements, work on the global Jurisdiction and Enforcement Convention could continue with a view to drawing up a model law.

### c Working methods

There has always been a strong empirical element in the Conference's working methods: comparative law research, increasingly combined with "market research" by the Permanent Bureau, input from professionals and interested groups during negotiations, study of the Convention's operation once it is in force and, where necessary, review or even revision of the Convention. That aspect of our work has not changed, despite important other changes in the Conference's environment, in particular increasing regional co-operation in the European Union. It is true that this had an effect upon our working methods, in that voting has given way to operating by consensus. However, after a somewhat difficult transition period, it is probably fair to say that the consensus method, while slower, may increase the acceptability of the end result. The Securities Convention was adopted without one vote being taken, but also with a great deal of input from the "financial industry". The Convention responds to the needs of the *global* market. The work on choice of court and maintenance obligations is also aimed at ensuring, already during the negotiations, broad acceptability of the end product that is the Convention to be adopted.

More broadly ratified Conventions mean more post-Convention work. This is carried out by the Permanent Bureau in particular in the fields of judicial and administrative co-operation and child protection. Practical handbooks and good practice guides, electronic databanks of case law, the establishment of liaison judges and a global network of judges and judges' conferences, in addition to the holding of Special Commission meetings on the practical operation of Hague Conventions, are examples. All of these activities provide feedback which can be used to improve the life of the Conventions and thereby the lives of our citizens.

### d The impact of globalisation on the content of conventions

Globalisation also has an impact on the content of conventions, and may even affect the content of existing conventions. This is very clear with regard to Internet and e-commerce.

In October 2003, we organised a Special Commission and even an expert workshop to examine the many possibilities and advantages of using modern technologies in the context of the Service, Evidence and *Apostille* (Legalisation)

Conventions - all three having come into force long before electronic technology was widely used. The Special Commission noted, for example, the positive effect on the cost side of delivering *apostilles* and on the efficiency of the creation and registration of *apostilles* as a result of the use of such techniques. The discussion continues on the use of electronic signatures or even electronic *apostilles*. More generally, it is clear that there are enormous possibilities to facilitate communication and transmission of data in respect of all Hague Conventions on judicial and administrative co-operation. The method of "functional equivalence" developed by UNCITRAL will be our guide in this respect, so that this technology need not lead to a revision of the texts of existing Conventions.

Much more controversial, however, is the question of jurisdiction of the courts over disputes in Internet and e-commerce cases. This is because jurisdictional issues depend heavily on the location of acts that give rise to a dispute. A website in Brazil is accessible with equal ease from Sao Paulo as it is from Tokyo, so if it deceptively describes a product sold in Japan or defames a person in Japan, should the operator of the website be sued in Sao Paulo or in Tokyo, or can he be sued in both courts? And with regard to the deceptive product description, should it make a difference whether the buyer is a consumer or not? If the jurisdictional issue is resolved, the further question arises of the recognition and enforcement abroad of any decision.

The experience of the negotiations on a worldwide Convention on jurisdiction and enforcement of judgments has shown that consensus is still a long way off. This is why it was decided, for the time being, to limit the scope of the project to choice of court agreements and the recognition and enforcement of the resulting judgment in a business-to-business context. Thus we avoid both controversial online issues and issues concerning the protection of consumers. But we will continue finding solutions for other aspects as well, and the e-commerce conference in two weeks' time at The Hague will look into some of these interesting manifestations of globalisation.

## III Regional co-operation in the field of private international law

The globalisation process affects all countries, and it in particular permeates con-

tiguous nations. It is therefore understandable that we see regional legislative activity in several parts of the world. In South America, Mercosur - including Argentina, Brazil, Uruguay and Paraguay - has favoured the adoption of uniform law instruments, and in Africa, the Council of Ministers of the Organisation for the Harmonization of Business Law in Africa (OHADA) may adopt uniform law instruments which take effect in all Member States and bypassing the normal ratification requirements. I note in passing that interestingly, Unidroit is at present assisting OHADA in developing a uniform law on contracts.

With the European Union the situation is different. What started under the Treaty of Maastricht as intergovernmental co-operation via the instrument of Conventions, just as in Mercosur, CIDIP, etc, has since the Treaty of Amsterdam become "communitarised": the European Community has acquired legislative competence in respect of "civil matters having cross-border implications and insofar as necessary for the proper functioning of the internal market". This has led to a rather ambitious programme of legislative activity, extending beyond matters related to trade and commerce into the field of persons and family law, and driven by political motives rather than by analysis of needs and of available alternatives.

It is clear that some private international law issues can best be dealt with, at least initially, within a regional framework. The *Brussels Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*[8] is probably a good example. However, even a common market does not operate in a vacuum, but in a wider global market. It is therefore interesting to see that the European Community, after having adopted three directives on financial transactions, is now preparing, alongside the United States and hopefully also Japan, for the common signature of the Hague Securities Convention, which is a global response to a global problem. The European Community will then have to adapt its directives to the regime of the Convention. This is a good example of a rational approach in respect of the question of who should act at what level. As a principle, global problems should be dealt with at the global level, and regional activity should be complementary, refining for the region what could not be further articulated at the global level.

In areas of the law beyond the internal market, such as the law of persons

and families, there is a further element that needs to be taken into consideration. Many countries in Europe have strong historical links outside Europe. Think of the United Kingdom and its bonds with Commonwealth countries, France with strong links in Africa, Spain with Latin America, etc. Flows of people and values connect these countries with countries outside Europe, which in some cases are much stronger than the links with some of their partners in the Community. Legislative community activity in the area of persons and families in a manner similar to internal market transactions may cause tensions.

It was therefore very important that, after long and difficult negotiations, European Union Member States agreed that to the extent that the new Regulation on parental responsibility[9] deals with questions of child abduction, the principle remains that the Hague Child Abduction Convention binds European Union Member States also in intra-Community cases. One may hope that in this way there will continue to be a certain uniformity of approach to issues which are not in any specific way related to the Community. The Regulation makes it possible to limit the restrictions to which the return of a child may be subject, which is in accordance with the provisions of the Convention itself. The Community has chosen for a slightly different approach in respect of the 1996 Convention on international child protection. Here, there is a decision in principle to collectively ratify this Convention, but its main provisions have already been included into the Regulation on parental responsibility, so that the 1996 Convention will deal mainly with extra-community child protection issues. Since the two regimes are in many respects the same, one can live with this result. Similar remarks may be made in respect of the regulations on the service of documents abroad and on taking of evidence abroad, which are essentially based on the Hague Service and Evidence Conventions. As long as the Community regime is in substance identical to the external regime, there is not much ground for concern.

It is interesting to see that the current work at The Hague on a new global instrument on child support and other forms of family maintenance has prompted the Community to take the initiative for a possible European instrument. There is now, more than in the past, consultation between the Permanent Bureau and the European Commission and a common seminar is to be held in

January 2006 to examine what could best be done at the global level, in the Conference, and what at the regional level. The communitarisation of private international law, however, does not only concern the intra-Community relations, it also has an *external* effect. Curiously enough, this does not follow from the Amsterdam Treaty but from case law of the European Community developed in the area of commerce and trade (the so-called ERTA doctrine)[10]. According to this theory, in simple terms, once the Community exercises its internal legislative competence, it automatically acquires external legislative competence for that field, to the exclusion that is of its Member States. For the Hague Conference this means that for certain matters Japan and other non-European States find themselves negotiating with the European Community instead of with its Member States. In the beginning this change has raised concern and has indeed led to some difficulties, in particular during the negotiations on the jurisdiction and enforcement convention. But the new system may also have advantages. While it is true that for some matters the European Union Member States at the negotiation table have to leave the floor to the Commission, they remain involved through co-ordination meetings both at The Hague and in Brussels and the ultimate decision on the ratification of a treaty remains that of the Council. The net effect may well be that more often than in the past many or all European Union Member States will sign and ratify the Convention as adopted at The Hague. Moreover, during the current negotiations on a new maintenance convention, we can see the development of a certain practice whereby Member States continue to contribute even in areas of exclusive external competence.

The fact that the European Community is building up external competence in the field of private international law does not fit well with its status as an observer within the Hague Conference. It is therefore understandable that the European Community has made a request to become a Member of the Conference. Since the Statute of the Conference only refers to Member States, however, this requires, in the view of most Member States, a modification of the Statute which we are currently preparing. Japan takes part in the informal group which is preparing the necessary changes.

All in all, the legislative competence of the European Community with its internal and external effects is a complex matter.

There is a certain risk, since Community law, according to its own terms, has precedence over national law (including the international commitments of Member States), that conflicts arise with international Conventions. The English High Court, for example, found that the EC Regulation on air carrier liability in the event of accidents was in conflict with the Warsaw Convention but nevertheless upheld the validity of the Regulation.[11] Such situations should obviously be avoided and the best approach would be for the Community to support and affirm policies expressed in international Conventions - which it generally does. There is the further more speculative question of what the impact of European Community legislative competence will be on the character and technique of private international law itself. The principle of the free circulation of persons and goods has favoured the principle of mutual recognition, *i.e.*, that the legal situation created in one Member State should be recognised in all other Member States irrespective of the law applied. Examples include the recognition of companies within Europe but also the *Brussels Regulation on jurisdiction and recognition and enforcement of judgments in civil and commercial matters*. Paul Lagarde, in a recent article, points out that this is a technique already used in several Hague Conventions, including the Marriage Convention and the Adoption Convention.[12] But I do not think this technique will, even in intra-Community cases, supplant the conflict of laws. What I expect is rather a larger role for party autonomy and habitual residence as a connecting factor; in other words, the development as we have seen it in various Hague Conventions, such as those on matrimonial property regimes, successions, trusts and others. Far from losing their relevance, these Conventions will therefore continue to respond to global needs.

## IV The future

Jürgen Basedow has suggested that the future of worldwide harmonisation of private law will be that of inter-regionalism.[13] Since regional harmonisation would grow faster than global harmonisation, we will see "inter-regional conflicts sooner or later which can be accommodated by inter-regionalism harmonisation". It is certainly true, as we have already seen, that there are important regional developments, not just in Europe, but also that what is going on in Europe

is rather unique, and has certain characteristics of the formation of a federal nation. It is not at all certain that other parts of the world will tend to follow this example to the same degree. In the meantime, globalisation goes on changing our society, worldwide, by affecting the traditional close and pyramidal structures and making them more "horizontal", as Lawrence Friedman has put it.(14) Moreover, new regional entities, even of a federal character, cannot be closed, and what I see and hope for as a future development in the Hague Conference is rather an increasingly global orientation and a larger role for the non-European players. At the Hague Conference we recognise that this also means that the Conference has to become more visible and indeed more present in Asia, Africa and the Americas. In the years to come we hope to continue to co-operate with Japan and other Hague Conference Member States in Asia to make this possible.

In the absence of a global legislator, judiciary and administration in the field of private international law, our efforts should be aimed at finding at least substitutes for those functions. Hence the importance of the creation of databases which make case law from all over the world easily accessible and which help in ensuring uniform interpretation. We will continue to stimulate international judicial co-operation. The Convention on Choice of Court Agreements may offer us an opportunity to think again about the creation of an advisory interpretation body and at some point we should discuss, for certain Conventions, whether the International Court of Justice should not have the power to give rulings on the interpretation of the Convention.

Globalisation is not uni-dimensional and does not equal "Westernisation". Patrick Glenn, in his book, "Legal Traditions of the World", has emphasised that there are in fact a number of concurrent globalisation processes: "It is not just the spread of western technology, open markets and human rights. There is also, for example, globalisation in the form of Islamisation ... There is also a process of Easternisation, said in management circles to be replacing an exhaustive process of Westernisation, as western techniques of management and organisation are replaced by those of Asia."(15) Here I return to what I said earlier with regard to the memorandum submitted by the Japanese delegation in 1904: the Hague Conference has a long tradition in building bridges between legal cultures and hopes to continue to play a useful role in this dialogue. The judicial conference in Malta

on cross-Mediterranean family relations, in which judges from several Islamic countries participated should be continued and intensified. Japan could play a very significant role in the process of building bridges across legal cultures.

The more developing countries and countries in transition that join the Hague Conventions, the more awesome becomes the task of providing support, assistance and training for the implementation of these Conventions. We are convinced that we need to work towards the creation of a training institute for professionals from these countries. This is a form of education which could take place mainly on the spot or for a certain region and it should be done under the auspices of the Hague Conference, because it would provide us with invaluable information on the practical aspects of the implementation of Hague Conventions. Here, again, we see a special role for Japan, which has been extremely generous in providing funding for development in many parts of the world, and we would hope that with the support of Japan we will be able to satisfy what we see as a very urgent need.

As you see, we envisage great opportunities for a continued close and intense co-operation with Japan in the years to come, building on the excellent co-operation that has been developing over the past century. For my colleagues at the Permanent Bureau and myself it is a great comfort to know that Japan is such an extraordinary, faithful supporter of the Hague Conference. Our hope is that the Hague Conference and its Conventions will in the next century be even more useful to Japan and its citizens.

* This paper is based upon the presentation given at the meeting of the Private International Law Association of Japan held in Tokyo on 11 October 2004.

(1) See *Conférence de La Haye de droit international privé, Actes, Quatorzième session* 1904, *Mémoire de la Délégation japonaise*, pp. 139-143.

(2) For the full list of Japanese experts and delegates during the first centennial of the Hague Conference, see Hague Conference on Private International Law, *Proceedings of the Seventeenth Session*, Tome I, *Centenary*, p. 86.

(3) For a helpful discussion of the various connotations of the term, see M.F. Guillén, "Is globalisation civilizing, destructive or feeble? A critique of five key debates in the social science literature", in *Annual Review of Sociology*, Vol. 27 (2001), pp. 1-41.

(4) See the website of the Hague Conference <www.hcch.net> under "Work in Progress"-> E-commerce, for the introduction, programme, abstract and powerpoint presentations. A publication is foreseen for late 2005.

(5) See Y. Nishitani, *Mancini and the Principle of Nationality in Japanese Private International Law*, in *Festschrift für Erik Jayme*, Band I, München (2004), pp. 627-641 (at p. 637).

(6) Hans van Loon, *The Implementation and Enforcement of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction in Comparative Perspective: It's Japan's Move!*, Gender Law and Policy Annual Review (The Tohoku University 21st Century COE Program), Vol. 2, (2004) p. 189-209; Japanese version: ハンス・ファン・ローン（西谷祐子訳）「国際的な子の奪取の民事面に関する1980年10月25日ハーグ条約の実施及び執行についての比較法的考察——日本も動くべき時が来た！——」東北大学21世紀COEプログラム【男女共同参画社会の法と政策——ジェンダー法・政策研究センター——】研究年報2－I号（2004年）123-137頁.

(7) See Hague Conference on Private International Law website <www.hcch.net> Child abduction homepage, Judicial seminars on the international protection of children, Judicial conference, 14-17 March 2004. See also M. Thorpe, "The Malta Judicial Conference: 14-17 March 2004", [2004] *IFL*, pp. 60-62.

(8) Council Regulation (EC) No 44/2001 of 22 December 2000 [on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters], published in the *Official Journal of the European Communities* L 12 of 16 January 2001, p. 1.

(9) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, published in the *Official Journal of the European Communities* L 338 of 23 December 2003, p. 1.

(10) Judgment of the Court of Justice of the European Communities of 31 March 1971, in Case 22/70 *Commission of the European Communities v Council of the European Communities* [1971] European Court reports p. 263 (also available at the Court of Justice' website: www.curia.eu.int) result in external ones (paragraph 19).

(11) Queen v. Secretary of State for Environment Transport and Regions, *EX parte* International Air Transport Association [1999] EWHC Admin 333.

(12) See P. Lagarde, "*Développements futures du droit international privé dans une Europe en voie d'unification: quelques conjectures*", *RabelsZ*, 68 (2004) pp. 225-243.

(13) See J. Basedow, "Worldwide Harmonisation of Private Law and Regional Economic Integration-General Report" in *Uniform Law Review* (2003)- 1 / 2 pp. 31-49.

(14) L.M. Friedman, *The Horizontal Society*, New Haven, 1999.

(15) See H. P. Glenn, *Legal traditions of the world, sustainable diversity in Law*, Oxford 2000, pp. 47-50.