

## NOTES

1. Especially B. Currie, "The Verdict of Quiescent Years: Mr. Hill and the Conflict of Laws", *University of Chicago Law Review*, Vol. 28, 1961, pp. 258-295. Currie has repeatedly stated: "we would be better off without choice-of-law rules".

2. There are few real "specialists" dedicated to the general part of private international law. One such specialist is Paul Heinrich Neuhaus, author of *Die Grundbegriffe des Internationalen Privatrechts*, 2nd ed., J. C. B. Mohr (Paul Siebeck), Tübingen 1976. This book is an excellent model of "specialization" with respect to the general part. Other specialists are Gerhard Kegel, author of *Internationales Privatrecht*, 4th ed., Verlag C. H. Beck, Munich, 1977 and Werner Niederer, whose work *Einführung in die allgemeinen Lehren des internationalen Privatrechts*, Polygraphischer Verlag A.G., Zürich, 1956, unfortunately has not been updated. Kegel refers to Melchior, Maury and Neuhaus as true specialists in the general part of private international law; G. Kegel, *ibid.*, p. 93. In the Americas, specialists include Werner Goldschmidt and Haroldo Valladao.

3. The Inter-American Convention on General Rules of Private International Law was signed at Montevideo, Uruguay, on 8 May 1979, during the Second Inter-American Specialized Conference on Private International Law (CIDIP-II), by Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Panama, Paraguay, Peru, Uruguay and Venezuela. El Salvador and Mexico signed it at a later date. As of 1 January 1983 it had been ratified by Colombia, Ecuador, Peru and Uruguay.

4. See the commentaries on the drafts of Argentina, Brazil, Peru and Venezuela, in Chap. III, Sec. 1, c. In relation to other drafts, especially European, see Chap. III.

5. P. H. Neuhaus, *Die Grundbegriffe . . .*, *op. cit.*, pp. 449-450. See also from this author: "Las convenciones interamericanas sobre derecho internacional privado vistas por un europeo", *Anuario Jurídico Interamericano*, 1981, General Secretariat, OAS, Washington, D.C., 1982, pp. 165 *et seq.*

6. Quoted by E. Vitta, in "International Conventions and National Conflict System", *Recueil des cours*, 1969-I, p. 127, note 7.

7. M. Aguilar Navarro, *Derecho Internacional Privado*, Vol. I, t. I, Universidad de Madrid, Facultad de Derecho, Sección de Publicaciones, Madrid, 1976, p. 470.

8. *Idem*. The co-ordination of the legal systems would be hampered by the different weight accorded to the internal sources of private international law (law, jurisprudence, doctrine or custom); by the application of concepts and categories which are exclusive to the pertinent national system, both at the stage of drafting the law and at the stage of its application and interpretation by the national judges; and by the exaggerated effect given to the concept of public policy, the application of which allows national courts to arrive at different solutions even though there are identical conflict rules in the States involved in the international private relations.

9. H. Batiffol, *Droit international privé*, 5<sup>e</sup> éd., Vol. I, Librairie générale de droit et de jurisprudence, Paris, 1970, pp. 24-25.

10. F. C. von Savigny, *System des heutigen römischen Rechts*, Vol. VIII, Herman Gentner Verlag, Bad Homburg, 1961, pp. 27-28.

11. E. Vitta, *International Conventions . . .*, *op. cit.*, p. 127.

12. See the comments by P. H. Neuhaus, "Empfehlte sich eine Kodifizierung des internationalen Privatrechts", *RebelsZ*, 37, 1973, pp. 442 *et seq.* See also

by the same author, *Die Grundbegriffe . . .*, *op. cit.*, pp. 443 *et seq.*, especially 443-446.

13. D. Cavers, "A Critique of the Choice of Law Problem", *Harvard Law Review*, Vol. 47, 1933, pp. 173 *et seq.* See also A. A. Ehrenzweig, *Treatise on the Conflict of Laws*, St. Paul, Minn., West Publishing Co., 1962, pp. 347-362.

14. Y. Loussouarn, "Cours général de droit international privé", *Recueil des cours*, 1973-II, p. 347.

15. *Ibid.*, p. 348.

16. Illustrations of this shortcoming in the Americas are some of the rules of the Bustamante Code — especially Article 7 — due to which its effective force and significance as an instrument of unification have been limited. See Chap. II, 1 *d.* See also J. Samtleben, *Internationales Privatrecht in Lateinamerika*, J. C. B. Mohr (Paul Siebeck), Tübingen 1979, especially pp. 75 *et seq.*

17. P. H. Neuhaus and J. Kropholler, "Rechtsvereinheitlichung Rechtsverbesserung?", *RabelsZ*, 45, 1981, pp. 73 *et seq.*, especially pp. 80-81.

18. Art. 27 EGBGB.

19. P. H. Neuhaus, *Die Grundbegriffe . . .*, *op. cit.*, p. 81.

20. E. Bodenheimer, "Is Codification an Outmoded Form of Legislation?", *American Journal of Comparative Law*, Vol. 30, 1982, Supplement, pp. 15 *et seq.*

21. The problem of scattered provisions, which reduces certainty and predictability and fosters an outgrowth of technical problems, has been felt in a particularly sharp manner within the area of private law of the common law system. This has led some jurists and legal practitioners to suggest again the need for resorting to the codification method. With respect to the United States, see E. Bodenheimer, "Is Codification . . .", *op. cit.*, pp. 19-20. In regard to England, see P. M. North, "Problems of Codification in a Common Law System", *RabelsZ*, 46, 1982, pp. 490-508, especially 500 and 501.

22. M. H. van Hoogstraten, "La codification par traités en droit international privé dans le cadre de la Conférence de La Haye", *Recueil des cours*, 1967-III, p. 354.

23. With respect to international trade see T. B. de Maekelt, "Fuentes del derecho internacional privado: La costumbre internacional y la nueva *lex mercatoria*", *Séptimo Curso de Derecho Internacional*, Secretaría General de la Organización de los Estados Americanos, Washington, D.C., 1980, pp. 439 *et seq.*

24. On the influence of the process of integration on private international law see M. Vieira, "El Derecho Internacional Privado frente al proceso de integración latinoamericano", *Revista de Derecho de Integración*, No 12, Buenos Aires, 1973, pp. 85 *et seq.* See also, H. Valladão, "Le droit international privé des Etats américains", *Recueil des cours*, 1952-II, pp. 1-115.

25. Art. 29 (1), United Nations Convention on Contracts for the International Sale of Goods. The provision contemplates the modification of the contract by the sole consent of the parties. P. H. Neuhaus and J. Kropholler, *Rechtsvereinheitlichung . . .*, *op. cit.*, p. 75.

26. Similarly, as an illustration, the influence of the inter-American codification process will be felt in the amendment of the commercial code of Venezuela, which provides in its present Article 482 for the application of "nationality" as a connecting factor. In this case, the amendment must take into account the formulas contained in the recent inter-American conventions, especially the Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes and Invoices.

27. The improvement over previous inter-American instruments with respect to the adoption of formulas permitting an approximation between the civil law and the common law systems may be noted in the conventions drafted by CIDIP-I and II — especially the Convention on General Rules.

28. B. Nolde, "La codification du droit international privé", *Recueil des cours*, 1936-I, p. 307.

29. M. Aguilar Navarro, *Derecho Internacional Privado . . .*, *op. cit.*, Vol. I, p. 476.

30. P. Lalive, "Tendances et méthodes en droit international privé", *Recueil des cours*, 1977-II, p. 89.

31. In so far as Europe is concerned, examples of these are the Nordic Council, which brought together the Scandinavian countries in the last century, the activities carried out by the Benelux countries, by the Council of Europe, by the European Economic Community, etc. Concerning the Americas, see Chap. II.

32. P. H. Neuhaus, "Las convenciones interamericanas sobre derecho internacional privado vistas por un europeo", *op. cit.*, p. 165.

33. For instance, see the agreements entered into between Argentina and Uruguay on Equality of Procedural Treatment and Letters Rogatory and on the Application of Foreign Law. Both Conventions were signed in 1980 and were ratified by both countries in 1981. These agreements are inspired by the Inter-American Conventions on Letters Rogatory (Panama, 1975) and by the Inter-American Convention on Proof of and Information on Foreign Law (Montevideo, 1979), respectively.

34. See M. Aguilar Navarro, *Derecho Internacional Privado . . .*, *op. cit.*, p. 505.

35. J. Kropholler, *Internationales Einheitsrecht*, J. C. B. Mohr (Paul Siebeck), Tübingen, 1975, p. 345.

36. *Ibid.*, pp. 254-258.

37. In the more recent Inter-American Specialized Conferences on Private International Law, a proper balance was achieved among governmental representatives as delegates to the conference, observers from international organizations, and experts invited in their personal capacity. This balance had a positive impact on the content of the approved conventions. The trend will apparently be followed in the future.

38. The "Projet d'un code européen de droit international privé" of Frankenstein never came into force.

39. Batiffol points out that the method of incorporating substantive rules "est préconisée par beaucoup comme plus adaptée à la spécificité des relations internationales que la désignation d'une loi nationale conçue pour des relations internes". He further states that the application of substantive rules of a conventional origin has barely developed and is usually limited to the regulation of very specific issues. In addition, they create an assortment of problems not only in their drafting but in their application as well, because they are superimposed on the internal substantive rules. See H. Batiffol, "L'avenir du droit international privé", *Choix d'articles*, LGDJ, Paris, 1976, pp. 320-321.

40. J. Kropholler, *Internationales Einheitsrecht . . .*, *op. cit.*, pp. 320-321.

41. Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

42. J. Kropholler, *Internationales Einheitsrecht*, *op. cit.*, p. 242. A good example of this is the Uniform Commercial Code of the United States, sections 1-102. This method of including interpretative clauses is also used in the Inter-American Convention on Execution of Preventive Measures.

43. M. H. van Hoogstraten, "La Codification par traités . . .", *op. cit.*, pp. 348-349.

44. P. H. Neuhaus, *Die Grundbegriffe . . .*, *op. cit.*, pp. 49 *et seq.*

45. A. E. von Overbeck, "L'application par le juge interne des conventions de droit international privé", *Recueil des cours*, 1971-I, p. 40.

46. The history of private international law is closely linked with that of comparative law. The first to offer a comparative approach to private international law was Foelix. Foelix was the last, but by no means the least eminent statistician, who by his treatise became the precursor of the comparative method in the field of conflict of laws. Jean Jacques-Gaspard Foelix, *Traité de droit*

*international privé ou du conflit des lois de différentes nations en matière de droit privé*, 1843.

Later, Franz Kahn, like Bartin, brought to light the problem of characterization and underscored the importance of comparative law in the field of conflict of laws in his proposal to the renowned International Congress on Comparative Law held in Paris in 1900. In agreement were a host of European and American writers, among them: F. Kahn, "Bedeutung der Rechtsvergleichung mit Bezug auf das internationale Privatrecht", *Abhandlungen zum internationalen Privatrecht*, I, Munich and Leipzig, 1928; E. Frankenstein, *Internationales Privatrecht*, I-IV, Berlin, 1926-1935; H. Lévy-Ullmann, "Rapport du droit international privé avec le droit comparé", *Bulletin mensuel de la Société de législation comparée*, 1932; A. Nussbaum, *Deutsches internationales Privatrecht*. Unter besonderer Berücksichtigung des österreichischen und schweizerischen Rechts, Tübingen, 1932; H. C. Gutteridge, "Comparative Law and the Conflict of Laws", in *Transactions of the Grotius Society*, Vol. 29, 1944; A. N. Makarov, "Internationales Privatrecht und Rechtsvergleichung", in M. Rotondi, *Inchieste di Diritto Comparato*, N. 2, Paclava, New York, 1973; but the seminal work is without doubt *The Conflict of Laws: a Comparative Study* by Ernst Rabel, father of autonomous characterization, whose legacy to the legal profession is his extraordinary work on comparative private international law, in which he underscores the absurdity of applying the conflict rule, which traverses the international ambit, on the basis of internal standards. See E. Rabel, *The Conflict of Laws: a Comparative Study*, Ann Arbor, Mich. I, 2nd ed., 1958; II, 2nd ed., 1960; III, 1950; IV, 1958.

47. M. Aguilar Navarro, *Derecho Internacional Privado*, *op. cit.*, p. 68.

48. T. B. de Maekelt, "Reflexiones sobre Derecho Comparado", *Libro Homenaje a la Memoria de Joaquín Sánchez Covisa*, Facultad de Derecho U.C.V., Caracas, 1975, pp. 217 *et seq.* See from the same author, "El método comparado y el derecho internacional privado venezolano", *Ponencias Venezolanas al X Congreso Internacional de Derecho Comparado*, Caracas, 1978, pp. 92 *et seq.*

49. T. B. de Maekelt, "Reflexiones sobre Derecho Comparado", *op. cit.*, pp. 236 *et seq.*; J. Kropholler, *Internationales Einheitsrecht*, *op. cit.*, pp. 328 *et seq.*

50. J. Kropholler, *Internationales Einheitsrecht*, *op. cit.*, p. 257. These statements refer to some Latin America countries, since in others the documentation has been compiled and systematized, along with updated doctrinal commentaries on the subject.

51. Quoted by P. Lalive, "Tendances et méthodes . . .", *op. cit.*, p. 73.

52. A. Ehrenzweig, *Treatise . . .*, *op. cit.*, pp. 3 and 4.

53. The case of the islands of the Caribbean is more complex from a legislative point of view, since in some countries, such as St. Lucia, the Napoleonic code is partly in force due to the French occupation of the island.

54. P. H. Neuhaus, "Die Zukunft des Internationalen Privatrechts", *Archiv für die civilistische Praxis* 160-1962, pp. 494 *et seq.*, especially p. 497.

55. G. Kegel, "The Crisis of Conflict of Laws", *Recueil des cours*, 1964-II. Kegel feels that one may speak of a "crisis" in the face of the serious criticisms levelled against some basic principles of the classical theory, although he observes that the old fundamentals are still unshaken and that "they are solid enough to support the house of conflict of laws" (p. 95). Aguilar Navarro also asserts that rather than "crisis" it is a matter of evolution of private international law. See, *Derecho Internacional Privado*, *op. cit.*, pp. 3 *et seq.*

56. We refer only to the elements of the general part that lend themselves to codification.

57. P. H. Neuhaus, "Entwicklungen im Allgemeinen Teil des Internationalen Privatrechts", *Festschrift für Gerhard Kegel*, Alfred Metzner Verlag GmbH, Frankfurt/Main, 1977, pp. 23 and 24.

58. F. C. von Savigny, *System . . .*, *op. cit.*, pp. 27 and 28. P. H. Neuhaus, "Savigny und die Rechtsfindung aus der Natur der Sache", *RabelsZ*, 15, 1949, pp. 364 *et seq.*, especially 380. H. Coing, "Rechtsverhältnis und Rechtsinstitution im allgemeinen und internationalen Privatrecht bei Savigny", *Erastian in Honorem Georgiis Maridakis*, Vol. 3, Athens, 1964, pp. 19 *et seq.*

59. For an analysis of the mechanisms and institutions, see Chap. III, 2.

60. W. Goldschmidt, "Normas Generales de la CIDIP-II. Hacia una teoría general del Derecho Internacional Privado Interamericano", *Anuario Jurídico Interamericano 1979*, General Secretariat of the Organization of American States, Washington, D.C., 1979, p. 154.

61. K. Kropholler, *Internationales Einheitsrecht*, *op. cit.*, pp. 244-246.

62. E. Vitta, "International Conventions and National Conflict Systems", . . . , *op. cit.*, p. 129.

63. For a detailed presentation of the process of codification of private international law in the Americas, see, *inter alia*, G. Parra Aranguren, "Recent Developments on Conflict of Laws Conventions in Latin America", *Recueil des cours*, 1979-III, pp. 55-170; H. Valladão, *Direito internacional privado: em base histórica e comparativa, positiva e doutrinária, especialmente dos Estados americanos*, Vol. I, Introdução e Parte Geral, 5a. ed. Rio de Janeiro, Freitas Bastos, 1980; M. A. Vieira, "Le droit international privé dans le développement de l'intégration latino-américaine", *Recueil des cours*, 1970-H, pp. 353-453; L. Perezniето Castro, "Posibilidad de Ratificación de las Convenciones de las Conferencias Especializadas Interamericanas sobre Derecho Internacional Privado I y II desde una perspectiva latinoamericana", *Anuario Jurídico Interamericano 1981*, OAS, General Secretariat, Washington, D.C., 1982, pp. 183 *et seq.* With respect to the Inter-American Specialized Conferences on Private International Law, see J. Samtleben, "Die interamerikanischen Spezial Konferenzen für internationales Privatrecht", *RabelsZ*, 44-180, pp. 257 *et seq.*

64. The meeting took place in Lima on 9 December 1877, with representatives of Argentina, Bolivia, Chile, Cuba, Ecuador and Peru attending. Representatives of Costa Rica, Honduras, Uruguay and Venezuela were present at later sessions.

65. Congresos Americanos de Lima, Recopilación de documentos con prólogo de Alberto Ulloa, Tomo II, *Archivo Diplomático del Perú*, Lima, 1938.

66. Representatives were delegated by the Governments of Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay. The Republics of Colombia, Ecuador and Venezuela were not represented.

67. Roque Sáenz Peña so stated in the meeting of 1 December: "We have not come to standardize legislation, as has erroneously been said in commenting on the invitation of the governments of the Plata for the organization of this Congress . . . we come to discuss, in keeping with the principles of philosophy and law, not internal laws . . . but rather the law applicable to conflicts due to multiple jurisdictions." Likewise, the Uruguayan jurist, Gonzalo Ramírez, remarked in the meeting of 1 February 1889, that "we are not meeting for the purpose of unifying legislation . . . rather we are concerned only with indicating the common rules intended to decide [the conflicts]". V. Romero del Prado, *Manual de Derecho Internacional Privado*, t. I., Buenos Aires, 1944, pp. 604 and 606.

68. Nine agreements were signed: Treaty on procedural law (11 January 1889). Ratified by Paraguay (3 September 1892), Bolivia (5 November 1903) and Argentina (11 December 1894). Accession by Colombia (12 February 1921). Treaty on literary and artistic property (11 November 1889). Ratified by the same countries as the preceding treaty. Accessions: France (3 March 1896), Spain (30 January 1900), Italy (18 April 1900), Belgium (1 June 1903), Austria (4 December 1923), Germany (5 November 1927), Hungary (23 October 1931). Treaty on patents of invention (6 January 1889). Ratified by Argentina,

Bolivia, Paraguay, Peru and Uruguay. Treaty on trademarks (16 January 1889). Ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay. Treaty on international penal law (23 January 1889). Ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay. Convention on the practice of the learned professions (4 February 1889). Ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay. Accessions: Colombia (19 December 1917) and Ecuador (3 February 1933). Treaty on international civil law (12 February 1889). Ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay. Accession: Colombia (20 March 1934). International Commercial Law (12 February 1889). Additional protocol (13 April 1889). Ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay.

69. Delegates of Argentina, Bolivia, Chile, Paraguay, Peru and Uruguay attended the Congress. The drafts prepared by the Institutes of International Law of Argentina and Uruguay were studied to revise the treaties on penal law and on literary and artistic property.

70. Nine agreements were signed: Political Asylum and Refuge, 4 August 1939; Intellectual Property, 4 August 1939; Practice of the Learned Professions, 4 August 1939; International Commercial Navigation, 19 March 1940; International Procedural Law, 19 March 1940; International Penal Law, 19 March 1940; International Commercial Overland Law, 19 March 1940; International Civil Law, 19 March 1940, and an Additional Protocol, 19 March 1940.

71. The treaties signed were on: commercial, penal, civil and procedural law; literary, artistic and industrial property; and extradition. See also, P. Ramirez, *Pactos Internacionales de El Salvador*, El Salvador, 1910, pp. 145 *et seq.*

72. *Ibid.*, p. 139. The agreements were on: academic degrees, consuls, execution of foreign acts, highways, internal commotion and neutrality, publication of unpublished documents, literary and artistic property, telegraphs, postal matters, extradition, patents of invention and business relations.

73. G. Parra Aranguren, *El Acuerdo Boliviano sobre Ejecución de Actos Extranjeros (1911) a la luz de la Jurisprudencia Venezolana*, Ed. Sucre, Caracas, 1976, pp. 13 and 18 *et seq.*

74. M. A. Vieira, "Nuevas Tendencias Codificadoras del Derecho Internacional", in *Exposiciones, Segundo Seminario sobre Enseñanza del Derecho Internacional*, Secretaría General, Organización de los Estados Americanos, Washington, D.C., 1980, p. 346.

75. *International Conferences of American States, 1889-1928*, Carnegie Endowment for International Peace, Washington, D.C., 1931, p. 14.

76. *International Conferences . . .*, *op. cit.*, pp. 69-70.

77. Resolution LXX, Seventh International Conference of American States, *International Conferences of American States, First Supplement 1933-1940*, *op. cit.*, p. 84.

78. Resolution XVII, Eighth International Conference of American States, *ibid.*, p. 246.

79. See Draft Code in "Documentos de la Organización de Estados Americanos sobre Derecho Internacional Privado", documento OEA/Ser.Q/11.9-CIJ-15, Comité Jurídico Interamericano, Secretaría General de la Organización de los Estados Americanos, Washington, D.C., 1973, pp. 388-415. G. Parra Aranguren, "La Comidad Hispano-Luso-Americana-Filipina y la Convención Interamericana de Normas Generales de Derecho Internacional Privado", Anterproyecto de ponencia. IHLADI. Publicaciones de la Secretaría General, Madrid, 1979, p. 3.

80. "Documentos de la Organización de los Estados Americanos . . .", *op. cit.*, p. 521.

81. See G. Parra Aranguren, "La Primera Conferencia Especializada Interamericana sobre Derecho Internacional Privado" (Panama, 1975), *Libro Homenaje a la Memoria de Joaquín Sánchez Covisa*, Facultad de Derecho de la Universidad Central de Venezuela, Caracas, 1975, pp. 253 *et seq.*; T. B. de Maekelt,

*Conferencia Especializada de Derecho Internacional Privado (CIDIP-I)*, Imprenta Universitaria, Universidad Central de Venezuela, Caracas, 1979.

82. The conventions approved by the First Inter-American Specialized Conference on Private International Law were signed in Panama on 30 January 1975 by 13 member States, namely: Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Uruguay and Venezuela. Subsequently, Paraguay signed all of the conventions, so that the total number of signatory States reached 14. As of January 1983, all the conventions were ratified without reservations by Chile, Costa Rica, Honduras, Panama, Paraguay and Uruguay. Ecuador, Guatemala and Peru ratified all of them except the one on International Commercial Arbitration. The Dominican Republic ratified the Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes, and Invoices and the Convention on the Legal Régime of Powers of Attorney to Be Used Abroad. Mexico ratified all but the one on Legal Régime of Powers of Attorney and the one on Conflict of Laws concerning Checks. The United States has signed the Convention on International Commercial Arbitration and the Convention on Letters Rogatory. Argentina has signed and ratified the Convention on Legal Régime of Powers of Attorney. These conventions have clauses common to all of them. The clauses concerning the spatial application of the conventions are related to the territorial scope of the treaties, as defined in Article 29 of the Vienna Convention on the Law of Treaties, which provides that "[u]nless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory". It is evident that this provision has no relation whatever to the colonial clause.

The diplomatic clauses refer to the terms of the signing and ratification by the member States, and accession by any other State. The conventions enter into force 30 days after deposit of the second instrument of ratification or, for subsequent ratifications, 30 days after the interested State has deposited its instrument of ratification or accession.

The conventions are of indefinite duration and are subject to denunciation. For the denouncing States, validity ceases one year after the deposit of the respective instrument.

The conventions also stipulate that the deposit of the original instrument is to be made in four languages (Spanish, English, Portuguese and French) with the Secretariat of the OAS. The Secretariat will notify the member States of signatures, ratifications and reservations and will furnish any other relevant information.

83. This Convention was superseded by the new Inter-American Convention on Conflicts of Laws concerning Checks, Montevideo, 1979. See Chap. II, Sec. 2, *b*, *i*.

84. The grounds for annulling an arbitral award are specified in Article IX of the European Convention on International Commercial Arbitration, opened for signature on 21 April 1961. See the text in *Revue critique de droit international privé*, Book I, Year 1961, Paris, pp. 430 *et seq.*

85. See Chap. II, Sec. 2, *b*, *ii*.

86. Inter-American Conventions on: Letters Rogatory (Art. 15); Taking of Evidence Abroad (Art. 14); and Legal Régime of Powers of Attorney to Be Used Abroad (Art. 10).

87. These topics are treated in specific conventions of CIDIP-II. See Chap. II, Sec. 2, *b*, *ii*.

88. Article 4 of this Convention provides for the States parties to designate a central authority entrusted to receive and distribute letters rogatory. For this purpose, Uruguay designated the Ministry of Justice; El Salvador designated its Supreme Court; and Mexico its Secretariat of Foreign Affairs.

89. Bustamante Code, Article 401; Montevideo Treaties on International Procedural Law, 1889-1940, Article 2.

90. Article 11 of this Convention also provides that the States parties designate a central authority. The countries that have complied with this requirement are those mentioned in note 88.

91. Protocol on Uniformity of Powers of Attorney which Are to Be Utilized Abroad, 17 February 1940. Signatory countries: Bolivia, Brazil, Colombia, El Salvador, Mexico, Nicaragua, Panama, United States and Venezuela. Ratified by Colombia, El Salvador, Mexico, the United States and Venezuela.

92. *Actas y Documentos de la Conferencia Especializada Interamericana sobre Derecho Internacional Privado (CIDIP)*, doc. OEA/Ser.K/XXI.1, CIDIP/64, Secretaría General de la OEA, Washington, D.C., 1975, Vol. II, p. 451.

93. Convention on Bills of Exchange, Promissory Notes and Invoices (Art. 11); the Convention on Checks refers to the provisions of the Convention on Bills of Exchange; Convention on Letters Rogatory (Art. 17); Convention on the Taking of Evidence Abroad (Art. 16); and Convention on the Legal Régime of Powers of Attorney (Art. 12). The Convention on International Commercial Arbitration, in its Article 5 (2) (b) does not include the term "manifestly", thus giving the exception more latitude.

94. Delegations from the following countries participated in CIDIP-II: Argentina, Brazil, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, the United States, Uruguay and Venezuela.

95. The conventions approved by CIDIP-II were signed in Montevideo, Uruguay, on 8 May 1979. All the conventions and the Additional Protocol to the Convention on Letters Rogatory were signed by Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Panama, Paraguay, Peru, Uruguay and Venezuela. Brazil signed all of them except the Convention on Execution of Preventive Measures. Chile did not sign the Additional Protocol to the Convention on Letters Rogatory. The United States signed only this Additional Protocol. As of January 1983, Peru and Uruguay had ratified all the conventions, while Colombia had ratified the conventions on Extraterritorial Validity of Foreign Judgments and Arbitral Awards and General Rules, as well as the Additional Protocol to the Convention on Letters Rogatory. Ecuador ratified all the conventions and the Additional Protocol, except the Convention on Commercial Companies.

The clauses relative to the spatial application of these conventions are identical to those included in the conventions of CIDIP-I (see note 82). The same may be said of the diplomatic clauses, to which was added in CIDIP-II the following clause referring to the reservations that each State may make at the time of signature, ratification, or accession: "provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of this Convention". This clause was included in order to avoid reservations of a general nature which in practice would negate the application of the conventions, as in the case of the Bustamante Code. See Convention on Conflict of Laws concerning Checks (Art. 13); on Execution of Preventive Measures (Art. 22); on Domicile of Natural Persons (Art. 10); on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Art. 10); on Commercial Companies (Art. 11); on General Rules (Art. 13); and on Proof of and Information on Foreign Law (Art. 14).

96. In compliance with Article 9 of this Convention, Uruguay reported the Ministry of Justice as its central authority, and Peru reported its Supreme Court of Justice.

97. Article 13 of this Convention provides for each State party to designate a central authority entrusted with discharging the relevant procedures. Uruguay designated its Ministry of Justice.

98. In compliance with Article 2 of this Additional Protocol, Uruguay reported the Ministry of Justice as its central authority.

99. The new impulse given to the codification process, with the characteristics it acquired as a result of the specialized conferences, has its next phase in the holding of CIDIP-III, which was convoked by the General Assembly of the Organization of American States. The Conference, which should take place during 1984, is presently in the preparatory stage, which involves preparation of documents that will serve as a basis for the discussions.

CIDIP-III will take up those topics that still have not been dealt with by the previous specialized conferences and will cover new topics that may be proposed by the governments. Among the former are the following: international maritime and overland transportation of goods and persons, with respect to which consideration should be given to the solution of conflict of laws and of jurisdiction, as well as to the unification of substantive rules; personality and capacity of natural and juridical persons, each to be treated separately; additional protocol to the Inter-American Convention on the Taking of Evidence Abroad, proposed by the United States, with respect to which a draft was prepared in the First Meeting of Experts on Private International Law (Washington, D.C., 1980), which has been considered by the Inter-American Juridical Committee; basis of international jurisdiction for the extraterritorial validity of foreign judgments, considered of importance to complement conventions of a procedural nature approved in the two previous specialized conferences and with respect to which a working document was prepared at the above-mentioned Meeting of Experts, which was also considered by the Inter-American Juridical Committee.

As of this writing the only new topic which has been added for consideration in CIDIP-III is the adoption of minors. The inclusion of this new topic was entrusted by the General Assembly of the Organization of American States, in view of the problems now faced in this area, and the notable increase in the adoption of children within and outside of the hemisphere. It is to be hoped that the governments will continue to add new topics to be considered in CIDIP-III.

100. P. H. Neuhaus, *Die Grundbegriffe* . . . , *op. cit.*, p. 95.

101. In this connection, Werner Goldschmidt lessened the legislative link between private international law and civil law by stating that "their union was not an indissoluble marriage", *Estudios Iusprivatistas Internacionales*, Biblioteca de Ciencia Política y Relaciones Internacionales, Rosario, 1969, p. 38.

102. Concerning the concept of justice in private international law, see P. H. Neuhaus, *Die Grundbegriffe*, *op. cit.*, pp. 41-49, particularly p. 43. Also p. 96.

103. H. Valladao, *Derecho Internacional Privado*, *op. cit.*, pp. 173 *et seq.*; W. Goldschmidt, *Sistema y filosofía del DIP*, Depalma, 2ª Edic., Bs.As. 1955, pp. 129 *et seq.*; J. Samtleben, *Internacionales Privatrechts*, *op. cit.*, pp. 244-253.

104. We shall consider the United States of America separately because its interstate and international conflicts law is largely uncodified and the principal sources of law are court decisions.

105. The civil codes of Venezuela have been influenced by the Napoleonic code, the Italian civil code of 1965, and in matters of private international law, it has been influenced by the Italian statist school.

106. A new civil code for the District and the federal territories entered into force in 1932. This code followed a strict territorialist approach, thus rejecting all the characteristics pertaining to the personal statute. This model has been adopted by several Mexican states. The Mexican code, which remained in force until 1932, influenced the formulation of the private international law rules contained in the codes of Guatemala (1878), Costa Rica (1887) and Panama (1916). See C. Arellano García, *Derecho Internacional Privado*, Editorial Porrúa, Mexico, 1980, pp. 622 *et seq.*; J. L. Siqueiros, *Síntesis del DIP*, Universidad Nacional Autónoma de México, 2nd ed. (1971), p. 65; L. Pereznieta

Castro, *Derecho Internacional Privado*, Universidad Nacional Autónoma de México, Mexico, 1977, pp. 21 *et seq.*; E. Muñoz *et al.*, *Derecho Internacional Privado*, Ministerio de Educación Pública, Guatemala, 1953.

107. M. Aguilar Navarro, *Derecho Internacional Privado*, *op. cit.*, t. 1, Vol. 1, p. 246.

Mancini promoted international treaties for the unification of private international law. See, E. Mancini, *Diritto Internazionale*, 1959, pp. 367 *et seq.*

108. See Story's vote in *Swift v. Tyson*, 16 Pet (41 US) 1 (1842). See also, among others, Articles 121, 132, 237, 7289 of the *Restatement of Conflict of Laws* (1934), American Law Institute [hereinafter cited as Restatement].

109. J. Story, *Commentaries on the Conflict of Laws*, Boston, Hilliard, Gray, 1834.

110. H. Valladão, *Direito . . .*, *op. cit.*, pp. 119 *et seq.*

111. Story's influence may be seen in the Brazilian Law of Matrimony of 1890. H. Valladão, "Joseph Story Jurista y comparatista de las Américas", *Homenaje a J. Story*, Secretaría General de la Organización de los Estados Americanos, Washington, D.C., 1979. See also another work by the same author, "The Influence of Joseph Story on Latin American Rules of Conflict of Laws", *The American Journal of Comparative Law*, Vol. 3, No. 1, 1954, pp. 27 *et seq.*

112. H. Valladão, "Andrés Bello y la vigencia de sus soluciones de derecho internacional privado", *Foro Internacional sobre la Obra Jurídica de Don Andrés Bello*, Fundación la Casa de Bello, Caracas, 1982, pp. 51-54; A. Echeverry O., *American Chilean Private International Law*, Oceana Publications, N.Y., 1960, pp. 10 *et seq.*

113. A. Teixeira de Freitas, *Código Civil, Esboço*, 1860/1865. Partially reproduced in H. Valladão, *Material de Clase de Direito Internacional Privado*, 11 edición, Biblioteca Jurídica Freitas Bastos, 1980, pp. 245-246.

114. In this connection see H. Valladão, *Direito . . .*, *op. cit.*, p. 146.

115. *Idem.*

116. W. Goldschmidt, *Suma del Derecho Internacional Privado*, 2ª edición, Buenos Aires, Ed. Abeledo Perrot, 1961, p. 25.

117. Law 2393, Arts. 2 to 7.

118. Law 19550, Arts. 118 to 124.

119. Law 19551, Art. 4.

120. Law 11723, Arts. 13 to 15, 23 and 57.

121. Law 2975, Art. 41.

122. Arts. 7 to 18.

123. See Arts. 8, 9, 10, 11 and 26.

124. Art. 8.

125. Arts. 88 *et seq.*

126. Art. 116.

127. Arts. 354 to 358.

128. The ordinances of the Kingdom adopted the principle *locus regit actum* concerning the regulation of contracts as well as the need to plead and prove the foreign applicable law. H. Valladão, *Direito . . .*, *op. cit.*, p. 185.

129. The influence of this school is reflected by Articles 8-21. H. Valladão, *Direito . . .*, *op. cit.*, p. 186.

130. H. Valladao, *Direito . . .*, *op. cit.*, p. 188.

131. Civil Code, Article 8. The laws are binding on nationals as well as on foreigners that are in the country.

Herrera Mendoza refers to the divergence between the consistent rules of private international law contained in Articles 9, 10, 11 and 26 of the civil code, and the provision of Article 8, as a "clashing hybrid" of Venezuelan Law.

See L. Herrera Mendoza, *Estudios sobre Derecho Internacional Privado y temas conexos*, Editorial El Cojo, SA, Caracas, 1960, pp. 140 *et seq.* For a

more detailed presentation of this topic, see L. Herrera Mendoza, "La escuela estatutaria en Venezuela y su evolución hacia la territorialidad", *Estudios sobre Derecho Internacional* . . . , *op. cit.*, pp. 127 *et seq.*

132. The recent amendment of the Venezuelan civil code does not refer to these specific aspects of private international law. See the law of partial amendment of the civil code, 6 July 1982. *Gaceta Oficial*, No. 1990, Extraordinario, 26 July 1982.

133. See Chap. III (2) (a).

134. In 1974 the Ministry of Justice of Argentina appointed a committee to work on a draft law on private international law. The members of the committee were: Werner Goldschmidt, Fernando Diaz Ulloque, Celestino Piotti (h), Carlos Malfussi, and Juan Carlos Smith. They approved the draft which is reproduced in W. Goldschmidt, *Derecho Internacional Privado*, Depalma, Buenos Aires, 1977, pp. 59 *et seq.*

135. In 1964 the Official Gazette of Brazil published a draft prepared by Valladão on the application of legal rules. It was passed by Congress with some minor variations. See text in H. Valladão, *Material de Classe* . . . , *op. cit.*, p. 159. In reference to the draft, Valladão stated that the simplistic criteria of strictly adjusting the categories to the law of domicile or nationality had been abandoned in favour of more equitable, although less logical criteria, such as the law of the habitual residence or the law most favourable to the act. See: Exposición de motivos in H. Valladão, *Material* . . . , *op. cit.*, p. 150.

136. The Ministry of Justice created a Committee comprised of jurists and scholars. Its president was Felipe Osterling Parodi. The draft is reproduced in *Revista Peruana de Derecho Internacional*, No 77, diciembre de 1980. See Exposición de Motivos del Proyecto en *Revista Peruana de Derecho Internacional*, *op. cit.*, pp. 19-25.

137. In 1963 the Venezuelan Ministry of Justice appointed a committee comprised of Roberto Goldschmidt, Gonzalo Parra Aranguren and Joaquín Sánchez Covisa. The text of the draft is reproduced in T. B. de Maekelt, *Material de Clase para Derecho Internacional Privado*, Universidad Central de Venezuela, Caracas, 1979, pp. 138 *et seq.* The draft has not been approved as yet.

138. See Exposición de Motivos de R. Goldschmidt, G. Parra Aranguren y J. Sánchez Covisa with respect to the Venezuelan draft law, in T. B. de Maekelt, *Material* . . . , *op. cit.*, pp. 138 *et seq.*; "Reflexiones sobre Derecho Comparado", *op. cit.*, pp. 232 *et seq.*

139. See F. von Schwind, "Disposiciones generales del proyecto venezolano", *Libro Homenaje a la Memoria de Roberto Goldschmidt*, Universidad Central de Venezuela, Caracas, 1967, p. 699; W. Goldschmidt, "Avances de la Extraterritorialidad de la Ley en el Pensamiento Jurídico Iberoamericano", *Revista Española de Derecho Internacional*, Vol. 18, No 3, 1964, pp. 336, 343, particularly p. 340.

140. *Ibid.*, p. 701.

141. For a description of the work of the American Law Institute and the process of producing a Restatement, see W. Reese, "Discussion of Major Areas of Choice of Law", *Recueil des cours*, 1964-I, and "The Restatement of Conflict of Laws, Second", *Anuario Jurídico Interamericano*, 1979, Secretaría General de la Organización de los Estados Americanos, Washington, D.C., 1980.

142. W. Reese, "American Trends in Private International Law: Academic and Judicial Manipulation of Choice of Law Rules in Tort Cases", *Vanderbilt Law Review*, Vol. 33, 1980, pp. 717 *et seq.*

143. *Restatement Second of Conflict of Laws* (1971), American Law Institute [hereinafter cited as Restatement Second], Introduction, pp. VII and VIII.

144. *Restatement Second*, *op. cit.*, sec. 6.

145. A. Ehrenzweig, *Private International Law*, Vol. I, Oceana, N.Y., 1974, p. 20.

146. *Restatement Second, op. cit.*, sec. 10. The comments to this section give examples of such differences, including: the variety of political, social and legal institutions; the lack of due process safeguards in international conflicts cases which may call for different treatment; and constitutional provisions such as the full faith and credit clause, equal protection clause, commerce clause, and the privileges and immunities clause, which may not apply to international conflicts cases.

147. For "Principles of Preference" as stated by Cavers, see D. Cavers, *The Choice of Law Process*, University of Michigan Press, Ann Arbor, Mich., 1965.

148. Cited in A. Ehrenzweig, *Private International Law, op. cit.*, p. 68.

149. W. Reese, "The Restatement . . .", *op. cit.*, p. 202.

150. Similar terms are contained in Article 2370 of the civil code of Honduras, Article 7 of the civil code of Nicaragua and Article 3 of the civil code of Guatemala. Likewise, the laws of Ecuador, Paraguay, Costa Rica and El Salvador require that the parties plead and prove the foreign rule to be applied.

151. See Articles 1 and 2 of both additional protocols.

152. R. Rey, "La Aplicación de la Ley Extranjera en Nuestro Código Civil", *Revista de la Facultad de Derecho y Ciencias Sociales de Buenos Aires*, Vol. V, No 16, pp. 889 *et seq.*

153. Note to Article 13 of the civil code of Argentina: "Foreign law is a fact that must be proven. National law is a question of law which requires pleading, but no proof."

154. See V. Romero del Prado, *Manual de Derecho Internacional Privado*, Editorial La Ley, Buenos Aires, 1944, Vol. I, p. 643.

155. C. A. Lezcano, *Derecho Internacional Privado*, La Plata, 1965, pp. 134 *et seq.*

156. W. Goldschmidt, *Derecho Internacional Privado . . .*, *op. cit.*, p. 472.

157. Article 5. In the field of labour law, Article 3 of the employment contract law of 1979 limited the scope of Article 13 by providing that "judges may apply *ex officio* foreign laws to the extent that they are more favourable to the worker".

158. *Fallos de la Corte Suprema*, Vol. 56, p. 419.

159. See in *Fallos de la Corte Suprema de Justicia*, cited in *La Ley*, Vol. 72, p. 1; Vol. 68, p. 248; Vol. 91, p. 353. *Revista de Jurisprudencia Argentina*, Vol. 33, p. 178. *Revista de Jurisprudencia Argentina*, Vol. 22, p. 1022. *Revista de Jurisprudencia Argentina*, Vol. 35, p. 1394. *Revista de Jurisprudencia Argentina*, Vol. 22, p. 1022. *El Derecho*, Vol. 36, p. 224.

160. See the judgment published in *Revista de Jurisprudencia Argentina*, Vol. 42, p. 1172. See the judgment published in *La Ley*, Vol. 70, p. 597 and in *Revista de Jurisprudencia Argentina*, Vol. III, p. 357. Likewise, the Civil and Commercial Division of the Federal Court for the capital applied French law *ex officio*, by taking judicial notice of it as a notorious fact, holding that the law was easily accessible. *La Ley*, Vol. 97, p. 25. See the judgment in *Doctrina Jurídica*, Vol. III, No 136.

161. Art. 6, Esbozo Freitas, 1860.

162. See among others, Article 369 of the code of procedure of the state of Rio Grande do Sul; Article 687 of the Santa Catarina code of procedure; Article 1 of the Espiritu Santo code of procedure.

163. The code of civil procedure, Article 337; Article 14 of the introductory law to the Brazilian civil code.

164. H. Valladão, *Direito . . .*, *op. cit.*, p. 465.

165. See Article 408 of the Bustamante Code.

166. See the authors and the jurisprudence indexes cited by H. Valladão in *Direito . . .*, *op. cit.*, p. 474.

167. Art. 17.

168. Similarly, the 1830 and 1978 civil code of Bolivia do not contain provisions concerning the application of foreign law.

169. Cited by F. Albónico Valenzuela, *Manual de Derecho Internacional Privado*, Editorial Jurídica de Uribe, 1950, Vol. I, p. 249.

170. F. Albónico Valenzuela, *Manual . . .*, *op. cit.*, p. 256. See also D. Guzmán-M. Millán, *Curso de Derecho Internacional Privado*, Editorial Jurídica de Chile, 1973, pp. 561 *et seq.*

171. Cited by D. Guzmán-M. Millán in *Curso . . .*, *op. cit.*, p. 574.

172. Likewise, Colombian legislation follows the traditional doctrine in the Treaty on Private International Law that has been in effect with Ecuador since 1907. Article 54 of the Treaty provides that the party invoking the application of foreign law bears the burden of proving such law.

See also, J. Larrea, *Derecho Internacional Privado*, 2da. edición, Quito, 1976, pp. 155 *et seq.*; J. M. Salinas, *Manual de Derecho Internacional Privado*, 2da. edición, Bolivia, 1948, p. 12.

173. In this connection see Articles 54 and 239 of the code of procedure of El Salvador.

174. C. Arellano García, *Derecho Internacional Privado . . .*, *op. cit.*, p. 724.

175. For a complete view on the jurisprudence of this country see the judgments cited by M. Andrade, in *Código de Procedimientos Civiles para el Distrito y territorios federales*, 8a. edición, Mexico, 1957.

176. See Articles XI and XII of the Peruvian civil code.

177. M. García Calderón, *Repertorio de Derecho Internacional Privado*, Lima, 1961, Vol. I, pp. 207 and 208.

178. See Articles XVI, XVII and XVIII of the Peruvian draft law.

179. Article 2. The trial judge will apply the law *ex officio*, the right of the parties to plead and prove its existence and content notwithstanding.

180. See Quintín Alfonsín, *Teoría del Derecho Internacional Privado*, Montevideo, 1955, pp. 494-495.

181. Q. Alfonsín, *Curso de Derecho Internacional Privado*, Facultad de Derecho y Ciencias Sociales de la Universidad de Montevideo, 1955, p. 543.

182. See G. Parra Aranguren, "El tratamiento procesal del Derecho Extranjero en los países de la América del Sur", offprint of the *Boletín de la Academia de Ciencias Políticas y Sociales de Venezuela*, 1971, Caracas, pp. 24 *et seq.*

See also J. M. Rouvier, *Derecho Internacional Privado, Parte general*, 2a. edición, Universidad de Zulia, Maracaibo, 1977, pp. 507 *et seq.*; D. Guerra Iniguez, *Derecho Internacional Privado*, Grafiunica, Caracas, 1978, pp. 151 *et seq.*

183. J. L. Bonnemaïson, *Temas de Derecho Internacional Privado*, Universidad de Carabobo, Ediciones de la Dirección de Cultura, Caracas, 1976, p. 263; L. Herrera Mendoza, *Estudios . . .*, *op. cit.*, pp. 54 *et seq.*

184. For its part, the Supreme Court of Justice admitted the appeal for annulment on the grounds of error in the interpretation of the foreign law, thus assimilating the foreign law with the domestic law from a procedural perspective. See, G. Parra Aranguren, *El Tratamiento procesal . . .*, *op. cit.*, pp. 30 *et seq.*

185. *Jurisprudencia de los Tribunales de la República*, Vol. XIV, 1966, pp. 128 *et seq.*; Vol. VII, 1960, pp. 667 *et seq.* and *Gaceta Forense*, No 34, 1961, pp. 68 *et seq.*

186. "Such position follows the guidelines of the current trend and has also been supported by the domestic jurisprudence." *Idem.*

187. See generally, J. Beale, *A Treatise on the Conflict of Laws*, Baker, Voorhis and Co., N.Y., 1935, sec. 621.2; A. Dicey-Morris, *Conflict of Laws*, 1958, pp. 1107-1116.

188. *Restatement Second . . .*, *op. cit.*, sec. 136. The reporter notes that this rule enjoys the unanimous support of the authorities.

189. *Mostyn v. Fabrigas* (1774), 1 Cowp. 161, 98 ER 1021.

190. *Church v. Hubbart* (1804), 2 Cranch 187, 6 US 187, 236-237, 2 L. Ed. 249, 261.

191. Mr. Justice Holmes referred to the civil law system as follows:

“When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values, that logic and grammar never could have gotten from the books. *Díaz v. González*, 261 US 102, 105-6, 43 S.Ct. 286, 287.”

192. 252 NY 127, 169 NE 112 (1929). A personal injury case which on appeal included a challenge to the court's having left to the jury the determination of the law of Ontario, including the construction of statutes and court decisions.

193. See 9 *Wigmore on Evidence*, 1940, sec. 2558, “the only sound view, either on principle or on policy, is that it [foreign law] should be proved to the judge, who is decidedly the more appropriate person to determine it”.

194. A. R. Miller, “Federal Rule 44.1 and the ‘Fact’ Approach to Determining Foreign Law: Death-Knell for a Die-Hard Doctrine”, *Michigan Law Review*, Vol. 65, 1967, p. 613.

195. 28 USC, Judiciary and Judicial Procedures, Rule 44.1.

196. *Ibid.* See Notes of Advisory Committee on 1966 Amendments to Rule 292.

197. R. Schlesinger, *Comparative Law*, NY, Foundation Press, 1981, p. 65.

198. S. L. Sass, “Foreign Law in Federal Courts”, *American Journal of Comparative Law*, Vol. 29, 1981, p. 110.

199. 391 F2d 150, 155 (2d Cir. 1967). The case involved an assignment of a copyright negotiated in Germany. For a similar holding see *Commercial Insurance Co. of Newark v. Pacific Peru Construction Corp.*, 555 F2d 948, 952 (9th Cir. 1977).

200. Sass, “Foreign Law . . .”, *op. cit.*, p. 97.

201. *Restatement Second, op. cit.*, p. 377. This is important because the general practice is that the court will require the parties to supply the basic information on the foreign law and then supplement it through its own research with burden of persuasion as to the content of the foreign law resting on the party who claims that the foreign law is different from the local law of the forum. In most states, questions of foreign law are decided by the court and the determination is subject to review on appeal as a ruling on a question of law.

202. Alabama, Alaska, Arizona, Colorado, Delaware, Indiana, Maine, Massachusetts, Minnesota, Montana, New Mexico, North Dakota, Ohio, South Dakota, Vermont and Wyoming have adopted rules similar to Federal Rule 44.1.

In addition, Article 4 of the Uniform Interstate and International Procedure Act is similar to Rule 44.1, however it expressly provides for determination of foreign law issues to be made by the court and not by the jury. The Act has been adopted by Arkansas, Michigan, Oklahoma and Pennsylvania.

203. See, e.g., *Leary v. Gledhill*, 8 NJ 260, 84 A. 2d. 725 (1951).

204. Modern European instruments adopt the *ex officio* application of foreign law. Thus, the Austrian code on conflicts of law provides:

“Article 4. (1) The foreign law shall be ascertained *ex officio*. Permissible aids therefor are, among others, the participation of the persons involved, information from the Federal Ministry of Justice, and expert opinions.

(2) If despite intensive efforts the foreign law cannot be ascertained within a reasonable time, Austrian law shall be applied.”

On the other hand the Swiss federal draft on private international law states:

- “Article 15. (1) Le juge établit d’office le contenu du droit étranger.  
 (2) Il peut inviter les parties à lui apporter leur collaboration. Il apprécie librement les preuves offertes par les parties.  
 (3) Lorsque le contenu du droit étranger ne peut être établi, le juge prend en considération le droit le plus proche et, à défaut, applique le droit suisse.”

This draft provides for the application of similar or analogous rules as an alternative when it is impossible to determine foreign law. *Lex fori* may be applied only in lieu of any other choice.

The Hungarian law on private international law provides:

- “Article 5. [1] The Court or other Authority shall ascertain the unfamiliar foreign law on its own motion, and if necessary, it shall obtain expert testimony and may also consider the proof of foreign law submitted by the parties.  
 [2] The Minister of Justice shall provide information about the foreign law upon the inquiry of a Court or other authority.  
 [3] If the content of the foreign law cannot be ascertained, Hungarian law shall be applied.”

The 1967 French draft law establishes a similar solution:

- Article 2287. Les tribunaux appliquent, même d’office, les règles françaises de conflit de lois.  
 Article 2288. Le contenu de la loi étrangère est établie, au besoin à la diligence du juge, par tous moyens.  
 Article 2289. En cas d’impossibilité d’établir le contenu de la loi étrangère, la loi française est applicable.”

Although this article does not specifically provide for the *ex officio* application of foreign law, it allows the judge to play a more active role in the determination of the content of the foreign law, which brings the formula close to the *ex officio* application rule.

Article 12, section 6, of the Spanish civil code, as amended in 1974, establishes the factual nature of foreign law by providing that:

- “The courts and authorities shall apply *ex officio* the Spanish conflicts rules. The party invoking the application of foreign law has the burden of proving its content and validity by admissible evidence according to the Spanish law. For its application, however, the judge may resort to any method he deems appropriate for the ascertainment of the foreign law.”

205. With respect to the regulation of these institutions by multilateral instruments, particularly by the Montevideo Treaties and the Bustamante Code, an analysis will be made in Chapter IV in connection with the Inter-American Convention on General Rules.

206. E. Bartin, “De l’impossibilité d’arriver à une suppression définitive des conflits de lois”, *Journal de droit international*, 1897, pp. 225 *et seq.*; R. Sapena Pastor, *Derecho Internacional Privado*, Ediciones de la Plaza, Montevideo, 1980, p. 123.

207. F. Kahn, *Gesetzeskollisionen, Ein Beitrag zur Lehre des internationalen Privatrechts*, Jherings Jahrbücher, 1981, pp. 1-23.

208. See E. Rabel, “Das Problem der Qualifikation”, *RabelsZ*, 5, 1931, pp. 241 *et seq.*

209. W. Goldschmidt, *Derecho Internacional Privado, op. cit.*, pp. 80 *et seq.*; J. R. Talice, “Interpretación e Integración en el Derecho Internacional

Privado”, *Revista Uruguaya de Derecho Internacional*, N° 3, 1974, p. 115-159, particularly pp. 126 *et seq.*

210. See notes 215, 221, 225 and 226.

211. See note 209.

212. W. Goldschmidt, *Derecho Internacional Privado*, *op. cit.*, p. 80. In the same work see the synthetic-judicial method, p. 11.

213. A. Boggiano, *Derecho Internacional Privado*, Depalma, Buenos Aires, 1978, p. 119.

214. A. J. Pardo, *Derecho Internacional Privado*, Depalma, Buenos Aires, 1976, p. 291.

215. W. Goldschmidt, *Derecho Internacional Privado*, *op. cit.*, p. 85.

216. H. Valladão, *Material . . .*, *op. cit.*, p. 150.

217. H. Valladão, *Direito . . .*, *op. cit.*, p. 258; I. Strenger, *Curso de Direito Internacional Privado*, Editorial Forense, São Paulo, 1978, p. 480.

218. I. Strenger, *Curso de Direito Internacional Privado*, Forense, Rio de Janeiro, 1978, pp. 480 *et seq.*

219. H. Valladão, *Direito . . .*, *op. cit.*, p. 265.

220. F. Albónico Valenzuela, *Manual . . .*, *op. cit.*, p. 247. D. Guzmán-M. Millán, *Curso . . .*, *op. cit.*, p. 910.

221. Cited by D. Guzmán-M. Millán, *Curso . . .*, *op. cit.*, p. 558.

222. T. B. de Maekelt, “Reflexiones sobre Derecho Comparado”, *op. cit.*, pp. 708 *et seq.*

223. In 1912 Pedro Manuel Arcaya prepared a draft law on private international law.

224. J. L. Bonnemaïson, *Temas . . .*, *op. cit.*, pp. 229 *et seq.*

225. Cited by C. Febres Poveda, *Derecho Internacional Privado, Jurisprudencia Venezolana*, Universidad de los Andes, 1967, pp. 88 and 102.

226. T. B. de Maekelt, “Reflexiones . . .”, *op. cit.*, pp. 238 *et seq.*

227. *Columbia Law Review*, Vol. 20, 1920, p. 247, in which the author states:

“A problem [arises] even if the rules of conflict of laws of the countries are alike, because of a difference in the meaning of the concepts used. ‘Nationality’ ‘domicile’, ‘the law of the place of contracting’, ‘the law of the place of performance’ and ‘the law of the place where the tort was committed’ are all legal concepts which may be determined in more than one way. The countries differ also in the question of what constitutes immovable and movable property, on the meaning of ‘capacity’, ‘form’, ‘substance’, ‘procedure’, and in their definition of various other terms upon which the application of the foreign law depends. The question thus presenting itself is what law is to determine the meaning of the above terms.”

228. *Idem*, p. 268.

229. *Restatement . . .*, *op. cit.*

230. W. Beckett, “The Question of Classification (Qualification) in Private International Law”, *British Year Book of International Law*, Vol. 15, 1934, p. 46; see A. H. Robertson, *Characterization in the Conflict of Laws*, Cambridge, Harvard Press, 1940, p. 13.

231. J. Morse, “Characterization: Shadow or Substance”, *Columbia Law Review*, Vol. 49, 1949, p. 1030.

232. *Idem*.

233. See generally, L. A. Leflar, *American Conflicts Law*, 1977, p. 175.

234. The *Restatement Second* states in Section 7 that “the classification and interpretation of Conflict of Laws concepts and terms are determined in accordance with the law of the forum”.

235. See *Forsyth v. Cessna Aircraft Co.* 520 F2d 608 (1975) where the law of the forum characterized an action for damages to an aeroplane due to malfunction as one in tort rather than one in contract. Also see *Handy v.*

*Uniroyal Inc.*, 327 F. Supp. 596 (1971) where plaintiffs brought an action in Delaware grounded upon breach of implied warranty against a Pennsylvania tire manufacturer. Plaintiffs alleged that a breach of implied warranty constituted an action in tort. The US District Court held that Delaware conflicts law characterized breach of implied warranty as an action in contract.

236. His view was criticized for being too restrictive since it would have meant that "a judge in a conflicts question would have been unable to make a provision for any rule or institution of foreign law which would not find its counterpart in the internal law of the forum". See A. H. Robertson, *Characterization in the . . .*, *op. cit.*, p. 33.

237. *Restatement Second*, *op. cit.*

238. *Idem*, sec. 7, comment b.

239. *Idem*, sec. 7, comment c.

240. *Idem*, sec. 6.

241. R. J. Weintraub, *Commentary on the Conflict of Laws*, Foundation Press, N.Y., 1980, p. 48.

242. A. H. Robertson, *Characterization in the . . .*, *op. cit.*, pp. 107 and 108.

243. *Idem*, pp. 53 and 133.

244. L. A. Leflar, *American . . .*, *op. cit.*, p. 240.

245. R. A. Sedler, "The Erie Outcome Test as a Guide to Substance and Procedure in the Conflict of Laws", *New York University Law Review*, Vol. 37, 1962, p. 817.

246. E. H. Ailes, "Substance and Procedure in the Conflict of Laws", *Michigan Law Review*, Vol. 39, 1941, p. 392.

247. In practice the line between them does not exist and "the substance shades off by imperceptible degrees into the procedural". See Cook, "Substance and Procedure in the Conflict of Laws", *Yale Law Journal*, Vol. 42, 1933, p. 343.

248. Comment B to the section explains that the terms "substance" and "procedure" are avoided in order to deter the courts from adhering to precedents that classified issues indiscriminately.

249. The *Restatement Second* submits that service of process and notice (sec. 126), pleading (sec. 127), conduct of proceedings in court (sec. 127), mode of trial (sec. 129), and methods of enforcing the orders and judgments of the court (secs. 127-131), are to be governed by the law of the forum. Further, it declares that statutes of limitations relate to matters of procedure (sec. 142). On the other hand, it states that the burden of proof (sec. 133) and burden of going forward with the evidence (sec. 134) fall into a "gray area between issues relating to judicial administration and those concerned primarily with the rights and liabilities of the parties", p. 351.

250. In some of the relevant cases the burden of proof for elements of a tort action was characterized as procedural, *Levy v. Steiger*, 233 Mass. 600, 124 NE 427 (1919); as were a survival statute concerning tort actions, *Grant v. MacAuliffe*, 41 Cal. 2d 859, 265 P. 2d 944 (1953); remedies, *Kilberg v. Northeast Airlines Inc.*, 9 NY 2d 34 (1961) (although this issue has not been uniformly settled); and a statute of limitations which did not extinguish the right sued upon but rather merely barred the remedy, *Bournias v. Atlantic Maritime Co. Ltd.*, 220 F2d 152 (1965).

251. The provisions of some modern bodies of law illustrate this point. Thus, the amended Spanish code provides:

"Article 12, section 1.

Characterization to determine the applicable conflict rule is to be made in accordance with Spanish law."

On the other hand, the Portuguese code states:

"Article 15. La compétence attribuée à une loi ne comprend que les

règles qui, par le contenu et la fonction que leur confère cette loi, relèvent du régime de l'institution visée dans la règle de conflit."

The Hungarian law establishes:

"Article 3. [1] If, in the law suit, the characterization of the facts or of the relationships is disputed, for purposes of determining the applicable law the rules and concepts of Hungarian law must be followed.

[2] If the Hungarian law does not contemplate certain legal institutions, or the Hungarian law recognizes the legal institution in another form or by another name, and it cannot be defined by interpreting the rules of the Hungarian law alone, the rules of the appropriate foreign law governing such legal institution should also be taken into consideration in the legal characterization."

The Quebec draft provides in Article 2 that: "... la qualification est demandée au système juridique du tribunal saisi".

Austrian law does not specifically provide for characterization, but by having adopted a broad conception with regard to the application of foreign law, its Article 3 could suggest that characterization should be made according to the foreign applicable law. In practice, Austrian jurisprudence involves a two-step process of characterization: first, according to the *lex fori*, and once the applicable law is determined, according to such law.

Similarly, the Federal Republic of Germany's draft of 1979 does not contain any express provision on characterization.

252. A. E. Gotlieb, "The Incidental Question Revisited. Theory and Practice in the Conflict of Laws", *International and Comparative Law Quarterly*, Vol. 26, 1977, p. 735.

253. *Idem*, p. 737.

254. A. Dicey and Morris, *The Conflict . . .*, *op. cit.*, p. 45.

255. *Idem*, p. 48.

256. A. E. Gotlieb, "The Incidental . . .", *op. cit.*, p. 737.

257. *Idem*, p. 736.

258. G. C. Cheshire, *Private International Law*, 1974, p. 54.

259. A. E. Gotlieb, "The Incidental . . .", *op. cit.*, p. 736.

260. A. Dicey and Morris, *The Conflict . . .*, *op. cit.*, p. 45.

261. Q. Alfonsín, *Curso . . .*, *op. cit.*, pp. 626 *et seq.*

262. P. Francescakis, *La théorie du renvoi et les conflits de systèmes en droit international privé*, éd. Sirey, 1958, pp. 152 *et seq.*

263. The doctrines of Niederer and Makarov are of particular importance. The former maintained that the connecting factor with the foreign law applied only the principal question and that the incidental question had an independent connecting factor prescribed by the forum's choice-of-law rule. Makarov, on the other hand, basing his doctrine on the universal recognition of validly vested rights, advocated the elimination of the forum's conflicts rules when prompted by principles of equity.

264. See Chapter IV (2) (*g*).

265. W. Goldschmidt, *Derecho Internacional Privado . . .*, *op. cit.*, pp. 94 *et seq.*

266. *Idem*, pp. 55 *et seq.*

267. W. Goldschmidt, *Derecho Internacional Privado . . .*, *op. cit.*, p. 100.

268. W. Goldschmidt, *Derecho Internacional Privado . . .*, *op. cit.*, p. 101.

269. See Article 3 of the Argentine draft code.

270. See Article XX of the Peruvian draft.

271. See, for instance, H. Valladao, *Direito . . .*, *op. cit.*, pp. 257 *et seq.*

272. *Idem*.

273. J. L. Bonnemaïson, "La cuestión incidental en la problemática del

Derecho Internacional Privado”, *Libro Homenaje a la memoria de Joaquín Sánchez-Covisa* . . . , *op. cit.*, p. 51.

274. A. E. Gotlieb, “The Incidental . . .”, *op. cit.*, p. 770.
275. *Ibid.*, p. 735.
276. A. Dicey and Morris, *The Conflict of Laws*, *op. cit.*, p. 45.
277. *Ibid.*, p. 48.
278. See, e.g., *In Re Degaramos Estate*, 33 NYS 502 (1895).
279. A. Dicey and Morris, *The Conflict of Laws*, *op. cit.*, p. 46.
280. Similarly, most recent European drafts do not regulate the incidental question. The approach followed tends to avoid rigid codification on this matter by leaving gaps, in order to ensure the flexibility in unforeseen situations.
281. M. Aguilar Navarro, *Manual* . . . , *op. cit.*, p. 118.
282. Some precedents may be found in Anselmo’s Commentaries and in Froland’s memoirs. Most writers assert that the theory developed from English jurisprudence which set significant precedents since the last part of the 18th century: *Balfour c. Scott* (1973); *Collier c. Rivaz* (1841); *Forgo* (French Cassation 1874).
283. See the arguments on the indivisibility of the legal order in Q. Alfonsín, *Curso* . . . , *op. cit.*, pp. 346 *et seq.*
284. R. Leflar, *American Conflict of Law*, *op. cit.*, 1971. See E. N. Griswold, “Renvoi Revisited”, *Harvard Law Review*, Vol. 51, 1938, p. 1168.
285. H. Battifol, *Droit international privé*, *op. cit.*, p. 359.
286. A. Miaja de la Muela, *Derecho Internacional Privado*, Madrid, 1954, pp. 255 *et seq.*
287. The following writers oppose the acceptance of renvoi: *Argentina*: V. Romero del Prado, *Manual* . . . , *op. cit.*, pp. 668/669; B. Orchansky, *Manual* . . . , *op. cit.*, pp. 122/123; *Colombia*: M. Monroy Cabra, *Tratado* . . . , *op. cit.*, p. 316; *Paraguay*: R. Silva Alonso, *Introducción* . . . , *op. cit.*, p. 173; *Peru*: M. García Calderón, *Derecho Internacional Privado*, *op. cit.*, p. 119; *Uruguay*: Q. Alfonsín, *Curso* . . . , *op. cit.*, p. 346. Other writers accept renvoi, the following among them: *Argentina*: W. Goldschmidt, *Derecho Internacional Privado* . . . , *op. cit.*, pp. 37, 122, 140; *Colombia*: J. J. Caicedo Castilla, *Derecho Internacional Privado*, Bogotá, 1957, p. 307.
288. W. Goldschmidt, *Derecho Internacional Privado* . . . , *op. cit.*, pp. 93 *et seq.*
289. Q. Alfonsín, *Curso* . . . , *op. cit.*, pp. 346 *et seq.* See also “Ensayo sobre la teoría del reenvío en Derecho Internacional Privado”, *Escritos Jurídicos. Doctrina general*, Tomo I, Fundación de Cultura Universitaria, Montevideo, 1975, p. 391, note 90.
290. E. Silva Alonso, *Introducción al Derecho Internacional Privado*, Asunción, 1970, p. 179.
291. M. G. Monroy Cabra, *Tratado de Derecho Internacional Privado*, Temis, Bogotá, 1973, p. 316; Ph. J. Eder, *American Colombian Private International Law*, Oceana Publications, N.Y., 1956, pp. 39 *et seq.*
292. F. Duncker Biggs, *Derecho Internacional Privado*, Santiago, 1950, pp. 409 *et seq.*; D. Guzmán-M. Millán, *Curso* . . . , *op. cit.*, p. 538.
293. F. Duncker Biggs, *Derecho* . . . , *op. cit.*, pp. 538 *et seq.* Opposing this view, Albónico Valenzuela, *Manual* . . . , *op. cit.*, pp. 285 *et seq.*
294. Cited by D. Guzmán-M. Millán in *Curso* . . . , *op. cit.*, p. 540.
295. See Article 16 of the Law of Introduction to Brazil’s civil code.
296. H. Valladão, *Direito* . . . , *op. cit.*, p. 242.
297. See Article 77.
298. I. Strenger, *Curso* . . . , *op. cit.*, pp. 525 *et seq.*; O. Tenorio, *Direito Internacional Privado*, São Paulo, 1976, pp. 317 *et seq.*
299. H. Valladão, *Direito* . . . , *op. cit.*, p. 238.
300. C. Arellano García, *Derecho Internacional Privado* . . . , *op. cit.*, p. 647.

301. On the subject of renvoi in Venezuela, see C. L. Reyna de Roche, *Estudio sobre reenvío en el Derecho Internacional Privado Venezolano*, Studia Juridica Nº 3, Facultad de Derecho, Universidad Central de Venezuela, Caracas, 1973, pp. 145 *et seq.*

302. B. Sansó, "La Función de la interpretación . . .", *op. cit.*, p. 726.

303. See J. Muci Abraham, "Jurisprudencia venezolana en materia de reenvío", *Revista de la Facultad de Derecho de la Universidad Central de Venezuela*, Nº 3, Caracas, 1955, pp. 119 *et seq.*

304. The particulars of the case and the questionable basis for such an assertion, are discussed in: J. Muci Abraham, "Jurisprudencia venezolana en materia de reenvío", *op. cit.*, pp. 119 *et seq.*

305. See judgment rendered by Juzgado Segundo de Primera Instancia en lo Mercantil de la Circunscripción Judicial del Distrito Federal y Estado Miranda (Second Court of Commercial Matters of the Judicial Federal District and State of Miranda), of 29 September 1966, reproduced in *Material de Clase . . .*, *op. cit.*, pp. 551 *et seq.*

306. For comments on this rule, as incorporated in the draft, see F. von Schwind, "Disposiciones generales del proyecto venezolano . . .", *op. cit.*, p. 700.

307. R. Barish, "Renvoi and the Modern Approaches to Choice of Law", *American University Law Review*, Vol. 30, 1981, p. 1063. Nevertheless, the author points out that in addition to the advantages of certainty and predictability, through use of renvoi, the court can avoid the use of other escape devices such as recharacterization of an issue in order to avoid an unfair result or the application of a repugnant foreign law.

308. *Idem.*

309. E. A. Griswold, "Renvoi Revisited . . .", *op. cit.*, p. 1167; R. Barish, "Renvoi . . .", *op. cit.*, p. 1063.

310. See *University of Chicago v. Dater*, 277 Mich. 658, 270 NW 175 (1936), where the legal capacity of a party to a contract was determined by looking to the whole law of the state where the contract was made including its conflicts rules, but see also *House v. Lefebvre*, 303 Mich. 207, 6 NW, where the court did not apply the renvoi doctrine in a similar situation.

311. See *In re Schneider*, 96 NYS 2d 652, which involved probate in New York of a will containing a testamentary disposition pertaining to real property located in Switzerland which was impermissible under Swiss law. The court held that although the law of the situs of the real property controlled the disposition of the proceeds, it was the whole law of the situs, including its conflict of laws rules that must be applied. The result was that the whole Swiss law referred to the law of the domicile which was determined to be the local law and the disposition was found to be valid.

312. Some of the most recent normative instruments differ in the regulation of the institution of renvoi. See Article 12 of the Spanish civil code; Articles 16 and 17 of the Portuguese code; Article 5 of the Austrian law; Article 35 of the Czechoslovakian law; Article 4 of the Polish law; and Article 4 of the Hungarian law.

The German draft prepared by G. Kühne (1980) expressly provides for simple renvoi (Art. 2).

See G. Kühne, IPR-Gesetz-Entwurf, C. F. Müller, J.V. Heidelberg-Karlsruhe, 1980, p. 317.

The 1979 draft of the Federal Republic of Germany regulates renvoi in a most atypical fashion when it provides that:

"In applying foreign law the forum judge must apply it as if he were the foreign judge (this article was drafted in 1974)." See *Vorschläge und Gutachten zur Reform . . .*, *op. cit.*, p. 15.

313. A brief reference will be made to the doctrines of Mancini and Savigny

because they were the most influential with respect to Latin American legislation, doctrine and jurisprudence on public policy.

314. Article 14 of the Paraguayan civil code contains a similar regulation.

315. In agreement: J. A. Pardo, *Derecho Internacional Privado* . . . , *op. cit.*, pp. 327 *et seq.*; W. Goldschmidt, *Derecho Internacional Privado* . . . , *op. cit.*, pp. 140 *et seq.*; B. Orchansky, *Manual de Derecho Internacional Privado*, *op. cit.*, pp. 109 *et seq.*

In the Argentine legal system there are special clauses, other than Article 14, relating to public policy; for instance law 2393 of the civil marriage act regulates family relationships which are an impediment to marriage.

316. See Article 6 of the Argentine draft code.

317. See B. Orchansky, *Manual* . . . , *op. cit.*, p. 150; A. Boggiano, *Derecho Internacional Privado* . . . , *op. cit.*, p. 229; B. Orchansky, *Manual* . . . , *op. cit.*, p. 149.

318. In agreement: H. Valladao, *Direito* . . . , *op. cit.*, pp. 487 *et seq.*; I. Strenger, *Curso* . . . , *op. cit.*, pp. 510 *et seq.*; O. Tenorio, *Direito Internacional Privado*, *op. cit.*, pp. 461 *et seq.*

319. H. Valladao, *Direito* . . . , *op. cit.*, pp. 505 *et seq.*

320. *Idem.*

321. The territorialist principle of the Chilean civil code was adopted in many countries of Latin America. The civil codes of El Salvador, Ecuador, Nicaragua, Colombia and Venezuela were influenced by this principle.

322. The Bustamante Code has filled a legal gap that existed in the Chilean internal legislation with respect to private international law. F. Albónico Valenzuela, *Manual* . . . , *op. cit.*, pp. 116 *et seq.*

323. D. Guzmán-M. Millán, *Curso* . . . , *op. cit.*, pp. 667 *et seq.*

324. "Article 12: The Mexican laws including those referring to status and capacity, apply to all the inhabitants of the Republic regardless of their nationality and domicile."

325. Law of Navigation and Maritime Commerce, Art. 3, sec. 5.

326. Federal civil code, Art. 19.

327. In agreement, C. Arellano García, *Curso* . . . , *op. cit.*, p. 739.

328. C. Arellano García, *Curso* . . . , *op. cit.*, p. 727.

329. Cited by M. García Calderón in *Manual* . . . , *op. cit.*, Vol. I, p. 168.

330. See Article 6 of the Venezuelan civil code.

A. Chacín cited by G. Parra Aranguren, *El Código Bustamante, su vigencia en América y su posible ratificación por España*, Editorial Caracas, 1975, p. 251.

331. These codes provide that the following laws are mandatory and binding on all the inhabitants: penal laws; laws concerning the police and public security; prohibitive law regarding individuals, their acts or assets. Laws relating to public policy and good customs will be enforced regardless of the provisions of other laws, judgments, directives or conventions entered into in a foreign country.

332. L. Herrera Mendoza, "La Escuela Estatutaria en Venezuela", in *Estudios* . . . , *op. cit.*, pp. 30 *et seq.*

333. Joaquín Sánchez Covisa is of the opinion that even though there is support for this view, it is not in keeping with the history, terms or meaning of Article 8.

J. Sánchez Covisa, "Orden Público Internacional y divorcio vincular", *Obra Jurídica de Joaquín Sánchez Covisa*, Ediciones de la Contraloría General de la República, Caracas, 1976, p. 485, note 84.

334. B. Sansó, "La Función . . .". *op. cit.*, pp. 729 *et seq.*

335. In his book *Extraterritorialidad de Leyes y Sentencias*, Herrera Mendoza devotes one chapter to Venezuelan public policy rules in which he refers to provisions of the civil code and the commercial code. *Estudios* . . . , *op. cit.*, pp. 50 *et seq.*

336. J. Sánchez Covisa, "Orden público internacional . . .", *op. cit.*, pp. 441 *et seq.*

337. Among other judgments the following are relevant: 19 May 1965 (*Gaceta Forense*, N° 48, 2a. etapa, p. 147); 8 December 1965 (*Gaceta Forense*, N° 50, 2a. etapa, p. 245); 19 December 1966 (*Gaceta Oficial*, N° 1082, 24 January 1967); 27 November 1968 (*Gaceta Oficial*, N° 28.808, 20 December 1968); etc.

338. See notes 319 and 320.

D. Guerra Iñiguez, *Derecho . . .*, *op. cit.*, pp. 182 *et seq.*

339. F. Díaz Méndez de Valero, "Consideraciones sobre el sistema de derecho internacional privado en Venezuela. Su evolución histórica", *Revista del Colegio de Abogados del Distrito Federal*, N°s 67-72, Enero-diciembre 1951, p. 63.

340. von Schwind, Fritz, "Disposiciones generales del proyecto venezolano y recientes sentencias del derecho internacional privado", *Libro Homenaje a Roberto Goldschmidt . . .*, *op. cit.*, p. 701.

341. *American Jurisprudence 2d*, Vol. 16, sec. 16, 1968, p. 38.

342. Leflar points out that the standards for substantial dissimilarity were never very clear and that some states based their holdings that the forum could not entertain a suit on almost any difference in the size, distribution of the claim or even the procedure for its enforcement.

Leflar, *American . . .*, *op. cit.*, p. 90.

343. *Loucks v. Standard Oil Co.*, 224 NY 99 at 11, 120 NE 198 at 201 (1918). In this case a Massachusetts wrongful death statute was applied in a New York action even though it provided for a different recovery limit from the comparable New York statute.

344. R. J. Weintraub, *Commentary on the Conflict of Laws*, *op. cit.*, p. 60.

345. See *Loucks*, note 343. Other justices joined Cardozo in the universalist tradition in accordance with the vested rights theory of the first *Restatement*. See H. F. Goodrich, "Foreign Facts and Local Fancies", *Virginia Law Review*, Vol. 25, 1938, pp. 33-34 and J. H. Beach, "Uniform Interstate Enforcement of Vested Rights", *Yale Law Journal*, Vol. 27, 1918, pp. 656 and 662.

346. A. Nussbaum, "Public Policy and the Political Crisis in the Conflict of Laws", *Yale Law Journal*, Vol. 49, 1940, pp. 1048-1049. In his article "The Public Policy Doctrine in Choice of Law: A Reconsideration of Older Themes" in *Washington Law Quarterly*, 1974, p. 392, Simson suggests that the then existing Fascist threat had an impact on Nussbaum's position.

347. *Mertz v. Mertz*, 271 NY 466, 3 NE 2d 597 (1936), where the marital immunity rule barred an action by a wife against her husband for negligence which had occurred in Connecticut.

348. *Idem*, p. 472, 3 NE 2d, p. 599.

349. See R. J. Weintraub, *Commentary . . .*, *op. cit.*, p. 83.

350. 15 NY 2d 9, 254 NYS 2d 527, 203 NE 2d 210 (1964). The case involved an action in New York on a gambling debt a New York resident had incurred while playing at a gambling casino in Puerto Rico. The debts were valid under Puerto Rican law; however, they were not valid in New York, although even in New York certain types of gambling contracts were valid. The court pointed out that the trend in New York was to recognize licensed gambling transactions and recovery was allowed.

351. *Idem*, p. 13, 203 NE 2d p. 212, 254 NYS 2d, p. 529.

352. R. A. Leflar, *American . . .*, *op. cit.*, p. 90.

353. *Restatement Second*, *op. cit.*, sec. 90. In addition, section 117 of the *Restatement* refers to recognition and enforcement of a foreign judgment on a cause of action that is contrary to the public policy of the state of the forum.

354. See D. Currie, R. Cramton, H. Kay, *Conflicts of Law: Cases and Comments*, West, St. Paul, Minn., 1975, p. 138.

355. See K. Murphy, "The Traditional View of Public Policy and Ordre

Public in Private International Law", *Georgia Journal of International and Comparative Law*, Vol. 2, 1981, p. 591.

356. "In so far as our courts have discarded the shackles of hard-and-fast 'ordinary' choice-of-law rules, they no longer need a separate corrective or safety valve . . .", R. Schlesinger, *Comparative Law*, *op. cit.*, pp. 798-799.

Lorenzen is also in agreement, viewing the doctrine of public policy in the conflict of laws as "a warning that there was something the matter with the reasoning upon which the rules to which it is the exception were supposed to be based". He suggested an approach which would replace resort to public policy as an exception from generalized rules of choice of law by a reformulation of these rules. Lorenzen, "Territoriality, Public Policy and the Conflict of Laws", *Yale Law Journal*, Vol. 33, 1924, pp. 736 and 744.

357. Paulsen and Sovern, "Public Policy in the Conflict of Laws", *Columbia Law Review*, Vol. 56, 1956, p. 969.

358. *Idem*.

359. *Idem*, p. 1016.

360. In general, recent non-inter-American instruments provide for the restrictive application of the exception of public policy because it concerns the effects of the foreign law over the forum's public policy principles. For examples, see Article 6 of the Austrian code and Article 6 of the Polish law. On the other hand, Hungary and Spain follow a more traditional formula. The formula is phrased in terms of the application of the foreign law, therefore, it eliminates the *a priori* use of the exception. See Article 7 of the Hungarian law and Article 12.3 of the Spanish civil code.

361. Dumoulin, for instance, opposed the theory supported by Saliceto and Alejandro, according to which the law of the last marital domicile governed the repayment of dowry, since the husband could benefit by fraudulently changing such domicile. Pothier refers to a fraudulent change of domicile in order to ensure a son's inheritance rights to personalty, while Froland refers to Normandy's custom of not accepting marital community property; for this reason it was common for individuals getting married to acquire temporary domicile in Paris and then return to Normandy.

362. A. Miaja de la Muela, *Derecho Internacional Privado . . .*, *op. cit.*, p. 320.

363. H. Batiffol, *Droit international privé . . .*, *op. cit.*, Vol. I, p. 439.

364. See Articles 2 and 9 of the Argentine civil code.

365. J. A. Pardo, *Derecho Internacional Privado . . .*, *op. cit.*, p. 354.

366. See Article 7 of the civil marriage law of the Argentine civil code.

367. See Article 1207 and Article 1208 of the civil code.

368. Article 286 was repealed by law 19550, which substitutes the connecting factor by two alternative factors, namely the place of business operations or the company's executive offices.

369. W. Goldschmidt, *Derecho Internacional Privado . . .*, *op. cit.*, p. 102.

A. J. Pardo stated that fraud allows a party to select any location which does not correspond to the *ratio legis*, *Derecho Internacional Privado . . .*, *op. cit.*, p. 346.

370. Article 4. This view is generally adopted by the Portuguese civil code (Art. 21) and the Hungarian law on private international law (Art. 8)

"Article 21. Dans l'application des règles de conflit, il n'y a pas lieu de tenir compte des situations de fait ou de droit créées dans l'intention frauduleuse d'éviter l'applicabilité de la loi qui, dans d'autres circonstances, aurait été compétente.

Article 8. [1] Where the foreign element is established artificially or fraudulently by the parties, the foreign law shall not be applied.

[2] In the event of fraud (fraude à la loi), that law shall be applied which would otherwise control."

371. See the jurisprudence cited by W. Goldschmidt in *Derecho Internacional Privado* . . . , *op. cit.*, pp. 272 and 273.

372. H. Valladão, *Direito* . . . , *op. cit.*, p. 514.

373. *Ibid.*, p. 516.

374. *Ibid.*, p. 518.

375. *Idem.*

376. On the other hand, Goldschmidt is of the opinion that the distinction between the two concepts is the moral element that is part of the abuse of law. This element is defined as the exercise of a legal right for the purpose of injuring another. *Derecho Internacional Privado* . . . , *op. cit.*, p. 108.

377. See Article II of the Peruvian civil code.

378. See Article XV of the Peruvian civil code. Article 12, section 4, of the Spanish civil code is drafted in similar terms.

379. See D. Guzmán-M. Millán, *Curso* . . . , *op. cit.*, p. 669.

380. F. Albónico Valenzuela, *Manual* . . . , *op. cit.*, pp. 293/4.

381. See the jurisprudence cited by D. Guzmán-M. Millán, *Curso* . . . , *op. cit.*, p. 707.

382. See Article 3, section 6, of the Mexican law on navigation.

383. R. Silva Alonso, *Introducción* . . . , *op. cit.*, p. 187.

384. *Ibid.*, p. 188.

385. Q. Alfonsín, *Curso* . . . , *op. cit.*, p. 596.

386. See Articles 2403 and 2399 of the Uruguayan civil code.

387. Article 11.4 of the Venezuelan naturalization law states that a naturalized Venezuelan will lose his citizenship if it was acquired for the purpose of avoiding another law. J. L. Bonnemaison, *Temas* . . . , *op. cit.*, p. 132; D. Guerra Iñiguez, *Derecho* . . . , *op. cit.*, pp. 200 *et seq.*

388. This paragraph refers to fraud with respect to the requirements for obtaining naturalization but not in connection with fabrication of the connecting factors.

389. J. Sánchez Covisa, "Orden Público Internacional y Divorcio Vincular", *op. cit.*, p. 494. See also by the same author "La eficacia de las sentencias extranjeras de divorcio", *Obra Jurídica de Joaquín Sánchez Covisa*, Ediciones de la Contraloría General de la República, Caracas, 1976, pp. 367 *et seq.*

390. A. Ehrenzweig, *Treatise on the Conflict of Laws*, *op. cit.*, p. 246.

391. *Bullen v. Wisconsin*, 240 US 625, 630 (1916), cited in A. Ehrenzweig, *Private International Law* . . . , *op. cit.*, p. 167.

392. A. Nussbaum, *Principles of Private International Law*, 1943, p. 130.

393. A. Ehrenzweig, *Private International Law* . . . , *op. cit.*, p. 168. But see, *Seeman v. Philadelphia Warehouse*, 274 US 403, 1927, where the court upheld a transaction for a commercial loan challenged for being usurious on the basis of whether it was good under the law of either the place of making or of the place of performance under the theory of upholding a contract made in good faith. The holding was qualified; the result would have been different had there been a planned "evasion or avoidance" of the usury laws through "entering into the contract or stipulating for its performance at a place which has no normal relation to the transaction".

394. A. Ehrenzweig, *Treatise* . . . , *op. cit.*, p. 346.

395. W. Reese, "American Trends in Private International Law: Academic and Judicial Manipulation of Choice of Law Rules in Tort Cases", *Vanderbilt Law Review*, Vol. 33, 1980, p. 739.

396. But see *International Shoe Co. v. State of Washington*, 326 US 310 (1945) where a plan devised by a Delaware corporation to have contracts made and performed outside of Washington to avoid subjection to the state's laws, particularly that requiring contribution to the state unemployment compensation fund covering its salesmen in that state, was held to be ineffective. Cited in Cheatham, "Conflict of Laws: Some Developments and some Questions", *Arkansas Law Review*, Vol. 25, 1971, pp. 9 and 15.

397. A. Ehrenzweig, *Treatise . . .*, *op. cit.*, p. 346.
398. See *Williams v. North Carolina*, 325 US 226, 65 S. Ct. 1092, 89 Ed. 1577 (1945).
399. See *In Re Ommang's Estate*, 183 Minn. 92, 235 NW 529 (1931). Also see the Uniform Marriage and Divorce Act, sec. 210: "All marriages contracted . . . outside this State, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties, are valid in this State." (This Act has been adopted in several states.)
400. *Restatement Second, op. cit.*, sec. 283 provides that:
- "The validity of a marriage will be determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the marriage under the principles stated in Section 6.
- (2) A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage."
401. The Uniform Marriage Evasion Act drafted by the National Conference of Commissioners on Uniform State Laws, designed to deny recognition of a foreign marriage entered into by evading the laws of the domicile, although adopted in five states, has been ineffective and has been withdrawn by the Commissioners from the list of Uniform Acts recommended for adoption by the states.
402. See *Wilkins v. Zelichowsky*, 26 NJ 370, 140 A.2d 65 (1958), where a marriage valid under the law of Indiana was annulled by a court in New Jersey because the parties had eloped to Indiana for the ceremony to avoid the restriction against marriage of a 16 year old in New Jersey. See also *In Re May's Estate*, 305 NY 486, 114 NE 2d 4 (1953), where the court upheld the marriage between an uncle and a niece because the law of the state where the marriage was celebrated was different but not unacceptably offensive. See also *Lanham v. Lanham*, 136 Wis. 360, 117 NW 787 (1908), involving a statutory rule against remarriage within one year of divorce.
403. See notes 370 and 378.
404. M. Wolff, *Private International Law*, Oxford 1945, pp. 173 and 174.
405. A. Miaja de la Muela, *Derecho Internacional Privado . . .*, *op. cit.*, pp. 332 *et seq.*
406. H. Lewald, "Règles générales des conflits de lois", *Recueil des cours*, 1939-II, pp. 136 to 145; L. Raape, "Les rapports juridiques entre parents et enfants comme point de départ d'une explication pratique d'anciens et de nouveaux problèmes fondamentaux du droit international privé", *Recueil des cours*, 1934, pp. 477 *et seq.*
407. W. Goldschmidt, *Sistema y Filosofía del Derecho Internacional Privado*, Ed. Jurídicas Europa-America, Madrid, 1952, pp. 40, 52, 328 *et seq.*
408. L. Balogh, "Le rôle du droit comparé dans le droit international privé", *Recueil des cours*, 1936-III, pp. 662 *et seq.*
409. The discussion of the unknown institution, which is a negative factor of private international law because it denies the application of the competent law determined by the conflict rule, has been included in this section, because by not being actually regulated by the various legal systems, it becomes one of the value related principles a judge may resort to in deciding private international law cases. See Hungarian law, Article 2.
410. A. Miaja de la Muela, *Derecho Internacional Privado . . .*, *op. cit.*, p. 305.
411. Argentine draft code on private international law, Article 6.

412. Brazilian draft, Article 8.
413. Article 11, Peruvian draft. Article 2, Venezuelan draft.
414. G. S. Alexander, "Application and Avoidance of Foreign Law in the Law of Conflicts: Variations on a Theme of Alexander Nekom", *Northwestern University Law Review*, Vol. 70, 1975, p. 602. For a case on adaptation see *Wood and Selick v. Compagnie Générale Transatlantique*, 43 F. 2d. 941 (1930), which involved the question of whether bills of lading issued in France were sufficient to incorporate the French law of prescription, in that the bills provided that questions arising out of interpretation or execution were to be determined according to French law. The court inquired as to whether the substance-procedure distinction of US law, which allows a limitation barring a remedy to be characterized as procedural and one barring a right as substantive, was a part of the French law. Finding that it was not, the court, applying and interpreting French law, attempted to adapt the foreign law to the domestic law of limitation in the manner most closely approximating the purpose and intent of the foreign rule.
415. See W. Reese, "Dépeçage: A Common Phenomenon in Choice of Law", *Columbia Law Review*, Vol. 73, 1973, p. 58.
416. R. J. Weintraub, *Commentary . . .*, *op. cit.*, p. 81.
417. See A. von Mehren, "Special Substantive Rules for Multistate Problems: Their Role and Significance in Contemporary Choice of Law Methodology", *Harvard Law Review*, Vol. 88, 1974, p. 347.
418. A. von Mehren cites as examples Rule 4 (i) of the Federal Rules of Civil Procedure, which provides special methods for notice abroad of the initiation of litigation in the federal courts of the United States and Rule 28 (b) concerning persons before whom depositions may be taken and requirements for testimony under a letter rogatory.
419. *Restatement Second*, *op. cit.*, sec. 85.
420. *Ibidem*, sec. 10, Comment d (4).
421. A. Robertson, *Characterization in the . . .*, *op. cit.*, p. 33.
422. For examples, see Argentina's civil code (Art. 8); Brazil's law of introduction (Art. 17); Costa Rica's civil code (Art. 9); Chile's civil code (Art. 16) and Peru's civil code (Art. 7).
423. H. Batiffol, *Droit international privé . . .*, *op. cit.*, Vol. I., pp. 326-328.
424. A. Bello, *Principio de Derecho de Gentes*, Ed. V. Espinal, Caracas, 1837, p. 43.
425. In agreement: Goldschmidt, Valladão, García Calderón, Duncker Biggs, Guzmán-Millán, Pardo, among others.
426. Brazilian draft, Article 79; Peruvian draft, Articles XIV and XV and Venezuelan draft, Article 5.
427. J. Chitty, *Common Law*, Vol. I, Chap. 4.
428. A. von Mehren, "Continental Lawyer Looks at Contemporary Choice-of-Law Principles: Comments", *The American Journal of Comparative Law*, Vol. 27, 1979, p. 607.
429. As described by Cook: "The forum, when confronted by a case involving foreign elements, always applies its own law to the case, but in doing so adopts and enforces as its own law a rule of decision identical, or at least highly similar, though not identical, in scope with a rule of decision found in the system of law in force in another state with which some or all of the foreign elements are connected . . . The rule thus 'incorporated' into the law of the forum . . . the forum . . . enforces not a foreign right but a right created by its own law." Cook, *The Logical and Legal Basis of the Conflict of Laws* (1942), at pp. 20-21, as cited in Lipstein, "General Principles of Private International Law", *Recueil des cours*, 1972-I, p. 141.
430. R. A. Leflar, *American Conflicts Law*, *op. cit.*, p. 4.
431. See *Restatement Second*, *op. cit.*, section 6.
432. Federacion Interamericana de Abogados, XIX Conferencia, "Re-

soluciones, Recomendaciones y Declaraciones”, Cartagena, Colombia, 1975.

433. Comité Jurídico Interamericano, *Recomendaciones e Informes 1974-1977*, Vol. XI, Secretaría General de la Organización de los Estados Americanos, Washington, D.C., 1981, pp. 385, 574 and 620-631.

434. Secretaría General de la Organización de los Estados Americanos, *Las normas generales del derecho internacional privado*, doc. OEA/Ser.K/XXI.2, CIDIP-II/10, Washington, D.C., 1977.

435. *Actas y Documentos. Segunda Conferencia Especializada Interamericana sobre Derecho Internacional Privado (CIDIP-II)*, Secretaría General de la Organización de los Estados Americanos, Washington, D.C., 1980, Vol. III, pp. 219 and 220.

436. W. Goldschmidt, “Normas Generales de la CIDIP-II . . .”, *op. cit.*, p. 151.

437. G. Parra Aranguren, “La Convención Interamericana sobre Normas Generales de Derecho Internacional Privado (Montevideo, 1979)”, *Anuario Jurídico Interamericano*, 1979, *op. cit.*, p. 171.

438. Chap. III (2) (a).

439. *Idem.*

440. *Actas y Documentos . . .*, *op. cit.*, Vol. I, p. 287. See also *Actas y Documentos . . .*, *op. cit.*, Vol. II, p. 126.

441. J. Samtleben, *Die Interamerikanischen Spezialkonferenzen*, *op. cit.*, p. 286. See note 204 in relation to the modern European instruments.

442. P. H. Neuhaus, “Las convenciones interamericanas sobre derecho internacional privado vistas por un europeo”, *op. cit.*, p. 171.

443. The text of the reservation is as follows: “Mexico interprets Article 2 to mean that it creates an obligation only when the existence of the foreign law has been proved before the judge or authority or its provisions are made known to them in some other way.”

444. Chap. III (2) (a).

445. This formula concerning the application of foreign law is similar to the one adopted in Article 3 of the Austrian code (see note 204). The civil code of Portugal embodies a similar principle.

W. Goldschmidt considers that the Convention’s formula encompasses the theory of the legal usage, according to which it may be applied to renvoi when such substitution is implied by the foreign law for the determination of the facts. W. Goldschmidt, “Normas Generales de la CIDIP-II . . .”, *op. cit.*, p. 151.

446. A similar solution is adopted by some European instruments. See note 205 relating to Article 4 (1) of the Austrian code; Article 15 (2) of the Swiss draft; Article 5 (1) of the Hungarian law and Article 2288 of the French draft.

447. I. Zajtay, “The Application of Foreign Law”, *International Encyclopedia of Comparative Law*, Vol. III, Chap. 14, Oceana Publications, Inc., New York, pp. 24-25.

The author states that “where foreign law is concerned, there does not exist, in fact, a burden of proof which is incumbent upon one of the parties together with all its consequences, but rather a duty of the parties to collaborate with the court in the task of ascertaining the applicable foreign law”.

448. See Chap. III (2) (a).

449. In light of the close relationship between Article 2 of the Convention on General Rules and the Inter-American Convention on Proof of an Information in Foreign Law, also adopted at CIDIP-II, a brief analysis of the latter Convention follows. This Convention ensures international co-operation for the acquisition of proof of an information “on the text, validity, meaning and legal scope . . .” of the foreign law (Art. 2). Likewise, this Convention, which has a clear procedural nature, expedites and standardizes the methods that have been used, by substituting the request for reports through diplomatic

channels by the direct requests to a central authority which in each state is to provide the information needed by the judge.

The Convention on Proof of and Information on Foreign Law refers in general terms to "the authorities", both of the State of origin and the State of destination, rather than to the "judicial authorities" as was the case in the Montevideo Treaties and the Bustamante Code. Therefore, a State may admit a request from administrative authorities.

The general principle that governs the Convention on Proof of and Information on Foreign Law is to admit any means of proof which is admissible by the State of origin and the State of destination (Art. 3). It specifically identifies documentary proof – with express reference to judicial precedents of the common law system – to expert testimony and reports.

The proof consisting of reports is the most effective means for the foreign authority to learn about the content and scope of a rule; for this reason, Article 4 of the Convention defines the pertinent procedures. The Convention also states that the information provided has no binding force, because the opinion on the meaning and the scope of the rule is not mandatory for the requesting State (Art. 6).

The close connection between Article 2 of the Convention on General Rules and the Convention on Proof of and Information on Foreign Law makes them a harmonious whole, covering both substantive and procedural aspects. For their proper practical application, these Conventions should be complemented by strictly technical measures which permit a ready access to the foreign law. In so far as the legal texts of the American countries are concerned, the Secretariat for Legal Affairs of the Organization of American States is in the process of creating a data bank containing the relevant information, which will be accessible to all countries of the hemisphere and to any other country outside of the region.

450. *Actas y documentos . . .*, *op. cit.*, Vol. I, p. 288.

451. *Ibid.*, Vol. III, p. 226.

452. *Ibid.*, Vol. III, p. 227.

453. G. Parra Aranguren, "La Convención Interamericana sobre Normas Generales . . .", *op. cit.*, p. 177.

454. I. Zajtay, "The Application of Foreign Law . . .", *op. cit.*, p. 30.

455. *Ibid.*, note 165.

456. See Chap. III (2) (a).

457. Chap. III (2) (g).

458. Q. Alfonsín, *Teoría del Derecho Privado Internacional*, Montevideo, Uruguay, 1955, p. 603.

459. Chap. III (2) (g). Similarly, the modern European instruments do not provide for the unknown institution. For instance, the Hungarian law refers to it in connection with characterization:

"[2] If the Hungarian law does not contemplate certain legal institutions, or the Hungarian law recognizes the legal institution in another form or by another name, and it cannot be defined by interpreting the rules of the Hungarian law alone, the rules of the appropriate foreign law governing such legal institution should also be taken into consideration in the legal characterization."

460. Chap. III (2) (e).

461. See Chap. II (1) (d).

462. See Article 6 of the Inter-American Juridical Committee draft contained in *Recomendaciones e Informes . . .*, *op. cit.*

463. Inter-American Conventions on: Letters Rogatory, Art. 17; the Legal Régime of Powers of Attorney to Be Used Abroad, Art. 12; the Taking of Evidence Abroad, Art. 16; and Conflicts of Law concerning Bills of Exchange, Promissory Notes and Invoices, Art. 11. The exception is the Inter-American

Convention on International Commercial Arbitration, Art. 5, Sec. 2 (b), which refers to "... contrary to the public policy (*ordre public*)".

The conventions approved by CIDIP-II contain the same formula concerning public policy as that used at CIDIP-I. However, the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards refers to "... the principles and laws of the public policy (*ordre public*)". Article 10 of the Convention on Proof of and Information on Foreign Law states:

"A State Party shall not be required to reply to a request from another State Party when its interests would be impaired by the question that gave rise to the request for information or when the reply could impair its security or sovereignty."

This article uses imprecise terms (the interest of a State Party; security or sovereignty) which are not related to the public policy concept in the technical sense in which it is used in private international law.

The formula in most of the conventions adopted by CIDIP-I ("... manifestly contrary to its public policy") is identical to that adopted by the following Hague conventions since 1961:

Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions, Art. 7; Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions, Art. 15; Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Art. 5; Convention on the Recognition of Divorces and Legal Separations, Art. 10; Convention on the Law Applicable to Traffic Accidents, Art. 10; Convention concerning the International Administration of the Estates of Deceased Persons, Art. 17; Convention on the Law Applicable to Products Liability, Art. 10; Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, Art. 5; Convention on the Law Applicable to Maintenance Obligations, Art. 11; Convention on the Law Applicable to Matrimonial Property Régimes, Art. 14; Convention on the Celebration and Recognition of the Validity of Marriages, Art. 5. A similar formula is employed in Article 16 of the Convention on the Law Applicable to Contractual Obligations, of the Council of the European Communities.

464. W. Goldschmidt, "Normas Generales de la CIDIP-II . . .", *op. cit.*, p. 152; D. Operti Badán, "La Función del Orden Público Internacional", *VII Curso de Derecho Internacional, Secretaria General de la OEA, 1980*, pp. 448 *et seq.*

465. *Actas y Documentos de la Conferencia Especializada Interamericana sobre Derecho Internacional Privado (CIDIP)*, *op. cit.*, Vol. II, pp. 160-167. See also G. Parra Aranguren, "La Convención Interamericana sobre Normas Generales . . .", *op. cit.*, pp. 177-180.

466. The text of the declaration made by Uruguay is as follows:

"The scope of public order:

Uruguay wishes to state that it expressly ratifies the line of thought enunciated in Panama at CIDIP-I, reaffirming its genuine Pan American spirit and its clear and positive decision to contribute with its ideas and endorsement to the successful development of the legal community.

This line of thinking and conduct has been evidenced in unquestionable form by the unreserved ratification by Uruguay of all the Conventions of Panama, approved by law number 14,534 in 1976.

In keeping with the foregoing, Uruguay gives its affirmative vote to the formula regarding public order. Nevertheless, Uruguay wishes to state expressly and clearly that, in accordance with the position it maintained in Panama, its interpretation of the aforementioned exception refers to international public order as an individual juridical institution, not necessarily identifiable with the internal public order of each state.

Therefore, in the opinion of Uruguay, the approved formula conveys an exceptional authorization to the various States Parties to declare in a non-discretionary and well-founded manner that the precepts of foreign law are inapplicable whenever these concretely and in a serious and open manner offend the standards and principles essential to the international public order on which each individual State bases its legal individuality.”

467. With respect to the Argentine code on private international law see Article 6.

468. Chap. III (2) (*e*).

469. Chap. III (1) (*c*).

470. On the solution adopted by the European instruments see note 360.

471. Chap. III (2) (*f*).

472. In the draft treaty on civil law presented by Chile before the Montevideo Conference of 1889, fraud was expressly regulated. Acts performed abroad by the citizens of the signatory States were considered null and void when entered into with the intent of evading the law of the State of nationality. See Guzmán-Millán, *Curso . . .*, *op. cit.*, p. 706.

473. *Actas y Documentos . . .*, *op. cit.*, Vol. I, pp. 229-232.

474. P. H. Neuhaus, “Las convenciones interamericanas . . .”, *op. cit.*, p. 172.

475. The text of the reservation is as follows:

“The Government of the Republic of Uruguay makes a reservation with respect to Article 6 of the Inter-American Convention on General Rules of Private International Law by understanding:

First: that its admissibility would signify introducing a new exception to the standard application of the regularly competent foreign law according to the rule of conflict.

Second: that the exception would function only when the application of the law itself has been affected.

Third: that it introduces a subjective element which is hardly perceptible, by opening the door to presumptions of doubtful validity in the face of the clear text of the conflict rule.

Fourth: in many cases it would go against the principle of the autonomy of the parties and considering the clearly objective nature of many connecting factors, such as domicile, it would be eliminating the texts approved in the Conference on connecting factors such as that contained in Article 2 of the Convention on Domicile of Natural Persons.

Fifth: Uruguay will acknowledge that fraud has been committed on the law in cases that may be prejudicial to the interests of the country but not in the case of strictly private relations.

Sixth: the fraudulent establishment of the connecting factor would actually not be fraud on the law but rather fraud and consequently the connecting factor would not have been properly established.”

476. With reference to European formulas see notes 370 and 378.

477. Chap. III (2) (*h*).

478. With respect to capacity of individuals see: Treaty on International Civil Law (1889 and 1940), Art. 2. In reference to realty, see Treaty on International Civil Law of 1889, Arts. 30 and 31; International Civil Law Treaty of 1940, Arts. 34 and 35.

479. Art. 8.

480. *Actas y Documentos . . .*, *op. cit.*, Vol. I, pp. 233 and 234.

481. See notes 433 (Art. 7) and 434 (Art. 3).

482. G. Parra Aranguren, “La Convención Interamericana sobre Normas Generales . . .”, *op. cit.*, p. 182.

483. *Actas y Documentos . . .*, *op. cit.*, Vol. I, p. 235.

484. W. Goldschmidt, "Normas Generales de la CIDIP-II", *op. cit.*, p. 153.
485. *Actas y Documentos . . .*, *op. cit.*, Vol. I, p. 235.
486. G. Parra Aranguren, "La Convención Interamericana sobre Normas Generales . . .", *op. cit.*, p. 183.
487. P. H. Neuhaus, "Las Convenciones Interamericanas . . .", *op. cit.*, p. 172.
488. However, with respect to treaties, Article 28 of the draft treaty on civil law espoused by the minority and presented by Chile before the Montevideo Conference expressly provided that the preliminary question would be governed by the laws of the country governing the principal question.
489. See G. Parra Aranguren, "La Convención Interamericana sobre Normas Generales . . .", *op. cit.*, p. 183.
490. *Actas y Documentos . . .*, *op. cit.*, p. 242.
491. W. Goldschmidt, "Normas Generales de la CIDIP-II . . .", *op. cit.*, p. 153.
492. P. H. Neuhaus, "Las Convenciones Interamericanas . . .", *op. cit.*, p. 173.
493. P. Lalive, "Tendances et méthodes en droit international privé", *op. cit.*, p. 283: ". . . le problème de la «question incidente», . . . qui n'est pas — il faut le souligner fortement — celui de la loi applicable à cette question, mais celui du droit international privé dont les règles vont déterminer ce droit applicable."
494. G. Parra Aranguren, "La Convención Interamericana sobre Normas Generales . . .", *op. cit.*, p. 184.
495. G. Kegel, *Internationales Privatrecht . . .*, *op. cit.*, pp. 148-149.
496. See, among others, D. Cavers, "A Critique of the Choice of Law Problems", *Harvard Law Review*, Vol. 47, 1933, p. 173.
497. G. van Hecke, "Principes et méthodes de solution des conflits de lois", *Recueil des cours*, 1969-I, p. 511, "dans les cas internationaux dont la solution repose sur l'application simultanée de dispositions empruntées à des ordres juridiques différents, la combinaison de ces diverses dispositions doit se réaliser avec le même souci de justice et d'adaptation réciproque que celui qui inspire le législateur et le juge dans la solution des cas purement nationaux."
498. G. Parra Aranguren, "La Convención Interamericana sobre Normas Generales . . .", *op. cit.*, p. 184.
499. The modern European instruments do not contain any provisions strictly equivalent to Article 9.
500. Chap. III (2) (b) and (d).
501. W. Goldschmidt, "Normas Generales de la CIDIP-II . . .", *op. cit.*, p. 154.
502. P. H. Neuhaus, "Las Convenciones Interamericanas . . .", *op. cit.*, p. 180.
503. See note 251 in reference to the solutions adopted by the European instruments.
504. The 1972 German draft regulates renvoi stating that when foreign law is applicable the issues must be decided exactly as the foreign judge would have decided them.
505. W. Goldschmidt, "Normas Generales de la CIDIP-II . . .", *op. cit.*, pp. 151 and 153.
506. P. H. Neuhaus, "Las Convenciones Interamericanas . . .", *op. cit.*, p. 171.
507. See note 312 on European solutions. The Convention on the Law Applicable to Contractual Obligations drafted by the Council of the EEC rejects renvoi in Article 15.
508. These provisions are part of the diplomatic clauses contained in all the conventions adopted by CIDIP-II. See notes 82 and 95 on this subject.
509. See note 204.
510. See I. Zajtay, "The Application of Foreign Law", *op. cit.*, pp. 30 et seq.

511. See note 370.
512. See notes 370 and 378 concerning the provisions of the Spanish civil code and the Hungarian law.
513. P. H. Neuhaus, "Las Convenciones Interamericanas . . .", *op. cit.*, p. 182.
514. This section is based on T. B. de Maekelt, "Tribunales especiales en materia del derecho internacional privado", *Perspectivas del derecho internacional contemporáneo*, Instituto de Estudios Internacionales, Universidad de Chile, Santiago de Chile, 1981, pp. 156-166.
515. See Chap. II.
516. See note 449 on the project of the Secretariat for Legal Affairs of the OAS concerning the creation of a data bank with all the relevant legal material of the American countries.
517. P. H. Neuhaus, "Las Convenciones Interamericanas . . .", *op. cit.*, p. 181.
518. See note 45 on the criteria used for interpreting conventions.
519. See *The Inter-American System, Treaties, Conventions and Other Documents*, Secretariat for Legal Affairs, General Secretariat of the Organization of American States, Vol. I, Part II, p. 206, Oceana Publications, Inc., New York, 1982. With respect to other precedents see A. Boggiano, *Del viejo al nuevo derecho internacional privado*, Buenos Aires 1981, p. 146.
520. See Comments in J. Samtleben, *Internationales Privatrecht in Latin-Amerika*, *op. cit.*, p. 126. See also, Sexta Conferencia Internacional Americana, *Diario 1928*, p. 412.
521. Cour internationale de Justice, *Annuaire 1958-1959*, pp. 83 *et seq.*  
Cour internationale de Justice, *Recueil des arrêts*, Arrêt du 28 novembre 1958, 1958.
522. Cour de justice des Communautés européennes, *Recueil de textes*, Deuxième édition révisée, Curia, Luxembourg, 1967, pp. 173 *et seq.*
523. J. Kropholler, Anmerkung, *Juristenzeitung*, 1980, pp. 139 *et seq.*
524. See Chap. II (2) (a) (ii).
525. See A. Boggiano, *Del viejo al nuevo derecho internacional privado*, *op. cit.*, p. 106.
526. P. H. Neuhaus, *Die Grundbegriffe des internationalen Privatrechts*, *op. cit.*, pp. 327-328.
527. A. Pierantoni, *Della prueva delle leggi straniere nei giudizi civili*, *Filangieri* 8 (1883), I, 433 (453).
528. See Article 1 of the Argentine draft law.
529. Materialien, "Vorschläge zur Reform des deutschen Internationalen Privatrechts", *RebelsZ*, 44, 1980, p. 342. J. H. Kropholler, *Anmerkung . . .*, *op. cit.*, p. 532.
530. P. H. Neuhaus-Kropholler, "Das Elend mit dem Internationalen Privatrecht", *FamRZ* 1980, p. 753. K. Siehr, "Special Courts for Conflicts Cases: a German Experience", *The American Journal of Comparative Law*, Vol. 25, 1977, pp. 663 *et seq.*
531. J. Samtleben, "La aplicación de la ley extranjera en América Latina y en la República Federal de Alemania", *Primer Seminario Nacional de Derecho Internacional Privado*, Universidad Nacional Autónoma de México, México, 1979, pp. 239, 240 and 241.
532. T. B. de Maekelt, "Tribunales especiales en materia . . .", *op. cit.*, p. 165.
533. *Ibid.*, p. 166.

## BIBLIOGRAPHY

*Books and Journals*

- Aguilar Navarro, M., *Derecho Internacional Privado*, Universidad de Madrid, Facultad de Derecho, Sección de Publicaciones, Madrid, 1976.
- Ailes, E. H., "Substance and Procedure in the Conflict of Laws", *Michigan Law Review*, Vol. 39, 1941, pp. 392 *et seq.*
- Albónico Valenzuela, F., *Manual de Derecho Internacional Privado*, Editorial Jurídica de Uribe, t. I, 1950.
- Alexander, G., "Application and Avoidance of Foreign Law in the Law of Conflicts", *Northwestern University Law Review*, Vol. 70, 1975, pp. 602 *et seq.*
- Alfonsín, Q., *Curso de Derecho Internacional Privado*, Facultad de Derecho y Ciencias Sociales de la Universidad de Montevideo, 1955.
- , *Ensayo sobre la teoría del reenvío en Derecho Internacional Privado*, Escritos Jurídicos. Doctrina general, t. I, Fundación de Cultura Universitaria, Montevideo, 1975.
- Andrade, M., *Código de Procedimientos Civiles para el Distrito y Territorios Federales*, 8a. Edición, Mexico, 1957.
- Arellano García, C., *Derecho Internacional Privado*, Edic. Porrúa, Mexico, 1980.
- Balogh, L., "Le rôle du droit comparé dans le droit international privé", *Recueil des cours*, 1936-III, pp. 602 *et seq.*
- Barish, R., "Renvoi and the Modern Approaches to Choice of Law", *American University Law Review*, Vol. 30, 1981, pp. 1063 *et seq.*
- Bartin E., "De l'impossibilité d'arriver à une suppression définitive des conflits des lois", *Journal de droit international*, 1897, pp. 225 *et seq.*
- Batiffol, H., "Les tendances doctrinelles actuelles en droit international privé", *Recueil des cours*, 1948-I, pp. 1 *et seq.*
- , *Droit international privé*, Tomo I, Pichon, R. Durand Anzias, R., 5a. ed., 1970.
- , "L'avenir du droit international privé", *Choix d'articles LGDJ*, Paris, 1976, pp. 315 *et seq.*
- Beach, J. K., "Uniform Interstate Enforcement of Vested Rights", *Yale Law Journal*, Vol. 27, 1918, pp. 656 *et seq.*
- Beale, J., *A Treatise on the Conflict of Laws*, Baker, Voorhis and Co., NY, 1935.
- Beckett, W., "The Question of Classification (Qualification) in Private International Law", *British Year Book of International Law*, Vol. 15, 1934, pp. 46 *et seq.*
- Bello, A., *Principios del Derecho de Gentes*, Edic. V. Espinal, Caracas, 1837, pp. 43 *et seq.*
- Bodenheimer, E., "Is Codification an Outmoded Form of Legislation?", *American Journal of Comparative Law*, Vol. 30, 1982, Supplement, pp. 15 *et seq.*
- Boggiano, A., *Derecho Internacional Privado*, Edic. Depalma, Buenos Aires, 1978.
- , *Del viejo al nuevo derecho internacional privado*, Edic. Depalma, Buenos Aires, 1981.
- Bonnemaïson, J. L., "La cuestión incidental en la problemática del Derecho Internacional privado", *Libro-Homenaje a la memoria de Joaquín Sánchez-Covisa*, Universidad Central de Venezuela, Facultad de Derecho, Caracas, 1975, pp. 33 *et seq.*

- , *Temas de Derecho Internacional Privado*, Universidad de Carabobo, Edic. de la Dirección de Cultura, Caracas, 1976.
- Caicedo Castilla, J. J., *Derecho Internacional Privado*, Bogotá, 1967.
- Cavers, D., "A Critique of the Choice-of-Law Problem", *Harvard Law Review*, Vol. 47, 1933, pp. 173 *et seq.*
- , *The Choice-of-Law Process*, University of Michigan Press, Ann Arbor, 1965.
- Cheatham, "Conflict of Laws: Some Developments and Some Questions", *Arkansas Law Review*, Vol. 25, 1971, pp. 9 *et seq.*
- Cheshire, G. C., *Private International Law*, Butterworths, London, 1974.
- Coing, H., "Rechtsverhältnis und Rechtsinstitution im allgemeinen und internationalen Privatrecht bei Savigny", *Erantion in Honorem Georgii Maridakis*, Vol. 3, Athens, 1964, pp. 19 *et seq.*
- Cook, W., "Substance and Procedure in the Conflict of Laws", *Yale Law Journal*, Vol. 42, 1933, pp. 333 *et seq.*
- , *The Logical and Legal Basis of the Conflict of Laws*, 1942.
- Currie, B., "The Verdict of Quiescent Years: Mr. Hill and the Conflict of Laws", *University of Chicago Law Review*, Vol. 28, 1961, pp. 258 *et seq.*
- Currie, D., Cramton, R., Kay, H., *Conflict of Laws: Cases and Comments*, West Publishing Co., 1975.
- Díaz Méndez de Valero, F., "Consideraciones sobre del sistema de Derecho internacional privado en Venezuela. Su evolución histórica", *Revista del Colegio de Abogados del Distrito Federal*, Nos. 67-72, Enero-diciembre 1951, Caracas.
- Dicey, A.-Morris, *Conflict of Laws*, 10th ed., Stevens and Sons, London, 1980.
- Duncker Biggs, F., *Derecho Internacional Privado*, Santiago, 1950.
- Eder, Ph. J., *American-Colombian Private International Law*, Oceana Publications, NY, 1956.
- Ehrenzweig, A. A., *Treatise on the Conflict of Laws*, St. Paul, Minn., West Publishing Co., 1962.
- , "Specific Principles of Private Transnational Law", *Recueil de cours*, 1968-II, pp. 254 *et seq.*
- , *Private International Law*, Vol. 1, Oceana Publications, NY, 1974.
- Étcheverry, O. A., *American-Chilean Private International Law*, Oceana Publications, NY, 1960.
- Fabres Pobeda, C., *Derecho Internacional Privado*, *Jurisprudencia Venezolana*, Universidad de los Andes, 1967.
- Foelix, J. J. G., *Traité de droit international privé ou du conflict des lois de différents nations en matière de droit privé*, 1843.
- Francescakis, P., *La théorie du renvoi et les conflicts de systèmes en droit international privé*, Ed. Sirey, 1958.
- Frankenstein, E., *Internationales Privatrecht*, I-IV, Berlin, 1926-1935.
- García Calderón, M., *Repertorio de Derecho Internacional Privado*, Vol. I, Lima, Imprenta de la Universidad Nacional Mayor de San Marcos, 1961.
- Goldschmidt, W., *Sistema y filosofía del DIP*, Depalma, 2a Edic., Buenos Aires, 1955.
- , *Suma del Derecho Internacional Privado*, Edic. Abeledo Perrot, 2a edición, Buenos Aires, 1961.
- , "Avances de la Extraterritorialidad de la Ley en el Pensamiento Jurídico Ibero-Americano", *Revista Española de Derecho Internacional*, N° 3, 1964.
- , *Estudios Iusprivatistas Internacionales*, Biblioteca de Ciencia Política y Relaciones Internacionales, Rosario, República Argentina, 1969.
- , *Derecho Internacional Privado*, Edic. Depalma, Buenos Aires, 1977.
- , "Normas Generales de la CIDIP-II. Hacia una teoría general del Derecho Internacional Privado Interamericano", *Anuario Jurídico Interamericano 1979*, Secretaría General de la Organización de los Estados Americanos, Washington, DC, 1980, pp. 141 *et seq.*

- Goodrich, H. F., "Foreign Facts and Local Fancies", *Virginia Law Review*, Vol. 25, 1938, pp. 26 *et seq.*
- Gotlieb, A. E., "The Incidental Question Revisited. Theory and Practice in the Conflict of Laws", *International and Comparative Law Quarterly*, Vol. 26, 1977, pp. 735 *et seq.*
- Griswold, E. N., "Renvoi Revisited", *Harvard Law Review*, Vol. 51, 1938, pp. 1165 *et seq.*
- Guerra Iníguez, D., *Derecho Internacional Privado*, Edic. Grafiunica, Caracas, 1978.
- Gutteridge, H. C., "Comparative Law and the Conflict of Laws", *Transactions of the Grotius Society*, Vol. 29, 1944, pp. 119 *et seq.*
- Guzmán, D. y Millán M., *Curso de Derecho Internacional Privado*, Editorial Jurídica de Chile, 1973.
- Hecke, G. van, "Principes et méthodes de solution des conflits de lois", *Recueil des cours*, 1961-I, pp. 511 *et seq.*
- Herrera Mendoza, L., *Estudios sobre Derecho Internacional Privado y temas conexos*, Edic. "El Cojo, S.A.", Caracas, 1960.
- Hoogstraten, M. H. van, "La codificación par traités en droit international privé dans le cadre de la Conférence de La Haye", *Recueil des cours*, 1967-III, pp. 337 *et seq.*
- Kahn, F., "Bedeutung der Rechtsvergleichung mit Bezug auf das internationale Privatrecht", *Abhandlungen zum internationalen Privatrecht*, I, Munich and Leipzig, 1928.
- , "Gesetzeskollisionen, ein Beitrag zur Lehre des internationalen Privatrechts", *Jherings Jahrbücher*, 1981, pp. 1 *et seq.*
- Kegel, G., "The Crisis of Conflict of Laws", *Recueil des cours*, 1964-II, pp. 93 *et seq.*
- , *Internationales Privatrecht*, 4th Ed., Verlag C. H. Beck, Munich, 1977.
- Kropholler, J., *Internationales Einheitsrecht*, J. C. B. Mohr (Paul Siebeck), Tübingen, 1975.
- , Anmerkung. *Juristenzeitung*, 1980.
- Kühne, G., *IPR-Gesetz-Entwurf*, C. F. Müller, J. V. Heidelberg-Karlsruhe, 1980.
- Lalive, P., "Tendances et méthodes en droit international privé", *Recueil des cours*, 1977-II, pp. 1 *et seq.*
- Larrea, J., *Derecho Internacional Privado*, 2ª Edición, Quito, 1976.
- Leflar, R. A., *American Conflicts Law*, 3rd Ed., The Bobbs-Merrill Co. Inc., NY, 1977.
- Lévy-Ullmann, H., "Rapport du droit international privé avec le droit comparé", *Bulletin mensuel de la Société de législation comparée*, 1932.
- Lewald, H., "Règles générales des conflits de lois", *Recueil des cours*, 1939-II, pp. 136 *et seq.*
- Lezcano, C. A., *Derecho Internacional Privado*, La Plata, 1965.
- Lipstein, "General Principles of Private International Law", *Recueil des cours*, 1972-I, pp. 97 *et seq.*
- Lorenzen, E., "The Theory of Qualification and the Conflict of Laws", *Columbia Law Review*, Vol. 20, 1920, pp. 247 *et seq.*
- , "Territoriality, Public Policy and the Conflict of Laws", *Yale Law Journal*, Vol. 33, 1924, pp. 736 *et seq.*
- Loussouarn, Y., "Cours général de droit international privé", *Recueil des cours*, 1973-II, pp. 271 *et seq.*
- Maekelt, T. B. de, "Reflexiones sobre Derecho Comparado", *Libro-Homenaje a La Memoria de Joaquín Sánchez Covisa*, Facultad de Derecho, Universidad Central de Venezuela, Caracas, 1975, pp. 217 *et seq.*
- , "El método comparado y el derecho internacional privado venezolano", *Ponencias Venezolanas al X Congreso Internacional de Derecho Comparado*, Universidad Central de Venezuela, Caracas, 1978, pp. 92 *et seq.*

- , *Conferencia Especializada de Derecho Internacional Privado (CIDIP-I)*, Universidad Central de Venezuela, Caracas, 1979.
- , *Material de Clase para Derecho Internacional Privado*, Universidad Central de Venezuela, Caracas, 1979.
- , “Fuentes del derecho internacional privado: La costumbre internacional y la nueva *lex mercatoria*”, *Séptimo Curso de Derecho Internacional*, Secretaría General de la Organización de los Estados Americanos, Washington, DC, 1980, pp. 439 *et seq.*
- , “Tribunales especiales en materia del derecho internacional privado”, *Perspectivas del Derecho Internacional Contemporáneo*, Instituto de Estudios Internacionales, Universidad de Chile, Santiago, Chile, 1981, pp. 156 *et seq.*
- Makarov, A. N., *Internationales Privatrecht und Rechtsvergleichung*, M. Rondoni, *Inchieste di Diritto Comparato*, N.2 Paclava, New York, 1973.
- Mancini, E., *Diritto internazionale*, 1959.
- Miaja de la Muela, A., *Derecho Internacional Privado*, Madrid, 1954.
- Miller, A. R., “Federal Rule 44.1 and the ‘Fact’ Approach to Determining Foreign Law: Death-Knell for a Die-Hard Doctrine”, *Michigan Law Review*, Vol. 65, 1967, pp. 613 *et seq.*
- Monroy Cabra, M. G., *Tratado de Derecho Internacional Privado*, Edic. Temis, Bogotá, 1973.
- Morse, J., “Characterization: Shadow or Substance”, *Columbia Law Review*, Vol. 49, 1949, pp. 1030 *et seq.*
- Muci Abraham, J. M., “Jurisprudencia venezolana en materia de reenvío”, *Revista de la Facultad de Derecho de la Universidad Central de Venezuela*, N° 3, Caracas, 1955, pp. 119 *et seq.*
- Muñoz, E., y otros, *Derechos Internacional Privado*, Ministerio de Educación Pública, Guatemala, 1953.
- Murphy, K., “The Traditional View of Public Policy and Ordre Public in Private International Law”, *Georgia Journal of International and Comparative Law*, Vol. II, 1981, pp. 591 *et seq.*
- Neuhaus, P. H., “Savigny und die Rechtsfindung aus der Natur der Sache”, *RabelsZ*, Vol. 15, 1949, pp. 364 *et seq.*
- , “Die Zukunft des Internationalen Privatrechts”, *Archiv für die civilistische Praxis*, 160-1962, pp. 494 *et seq.*
- Neuhaus, P. H., “Empfehlungen sich eine Kodifizierung des internationalen Privatrechts”, *RabelsZ*, Vol. 37, 1973, pp. 442 *et seq.*
- , *Die Grundbegriffe des Internationalen Privatrechts*, 2nd ed., J. C. B. Mohr (Paul Siebeck), Tübingen, 1976.
- , “Entwicklungen im Allgemeinen Teil des internationalen Privatrechts”, *Festschrift für Gerhard Kegel*, Alfred Metzner Verlag GmbH, Frankfurt/Main, 1977, pp. 23 *et seq.*
- , “Las convenciones interamericanas sobre Derecho Internacional Privado vistas por un europeo”, *Anuario Jurídico Interamericano 1981*, Secretaría General de la Organización de los Estados Americanos, Washington, DC, 1982, pp. 165 *et seq.*
- Neuhaus, P. H. and Kropholler, J., “Das Elend mit dem Internationalen Privatrecht”, *FamRZ*, 1980, pp. 753 *et seq.*
- , “Rechtsvereinfachung Rechtsverbesserung?”, *RabelsZ*, Vol. 45, 1981, pp. 73 *et seq.*
- Niederer, W., *Einführung in die allgemeinen Lehren des internationalen Privatrechts*, Polygraphischer Verlag A.G., Zürich, 1956.
- Nolde, B., “La codification du droit international privé”, *Recueil des cours*, 1936-I, pp. 307 *et seq.*
- North, P. M., “Problems of Codification in a Common Law System”, *RabelsZ*, Vol. 46, 1982, pp. 490 *et seq.*
- Nussbaum, A., *Deutsches internationales Privatrecht. Unter besonderer Be-*

- rücksichtigung des österreichischen und schweizerischen Rechts, Tübingen, 1932.
- , "Public Policy and the Political Crisis in the Conflict of Laws", *Yale Law Journal*, Vol. 49, 1940, pp. 1027 *et seq.*
- , *Principles of Private International Law*, 1943.
- Opertti Badán, D., "La función del orden público internacional", *VII Curso de Derecho Internacional*, Secretaría General de la OEA, 1980, pp. 448 *et seq.*
- Orchansky, B., *Manual de Derecho Internacional Privado*, Edic. Plus Ultra, Buenos Aires, 1976.
- Overbeck, A. E. von, "L'application par le juge interne des conventions de droit international privé", *Recueil des cours*, 1971-I, pp. 1 *et seq.*
- Pardo, A. J., *Derecho Internacional Privado*, Edic. Depalma, Buenos Aires, 1976.
- Parra Aranguren, G., "El tratamiento procesal del Derecho Extranjero en los países de la América del Sur", *Separata del Boletín de la Academia de Ciencias Políticas y Sociales de Venezuela*, Caracas, 1971.
- , *El Código Bustamante, su vigencia en América y su posible ratificación por España*, Editorial Caracas, 1975.
- , "La primera conferencia especializada interamericana sobre Derecho Internacional Privado" (Panama 1975), *Libro-Homenaje a la Memoria de Joaquín Sánchez Covisa*, Facultad de Derecho de la Universidad Central de Venezuela, Caracas, 1975.
- , *El Acuerdo Boliviano sobre Ejecución de Actos Extranjeros (1911) a la luz de la Jurisprudencia Venezolana*, Edic. Sucre, Caracas, 1976.
- , *La Comunidad Hispano-Luso-Americano-Filipina y la Convención Interamericana de Normas Generales de Derecho Internacional Privado*, Secretaría General del Instituto Hispano-Luso-Americano de Derecho Internacional, Madrid, 1979.
- , "La Convención Interamericana sobre Normas Generales de Derecho Internacional Privado (Montevideo, 1979)", *Anuario Jurídico Interamericano 1979*, Secretaría General de la OEA, Washington, DC, 1980, pp. 159 *et seq.*
- , "Recent Developments on Conflict of Laws Conventions in Latin America", *Recueil des cours*, 1979-III, pp. 55 *et seq.*
- Paulsen and Sovern, "Public Policy and the Conflict of Laws", *Columbia Law Review*, Vol. 56, 1956, pp. 969 *et seq.*
- Péreznieto Castro, L., *Derecho Internacional Privado*, Universidad Nacional Autónoma de México, 1977.
- , "Posibilidades de ratificación de las convenciones de las conferencias interamericanas sobre derecho internacional privado I y II, desde una perspectiva latinoamericana", *Anuario Jurídico Interamericano 1981*, Secretaría General de la OEA, Washington, DC, 1982, pp. 183 *et seq.*
- Pierantoni, A., *Della prueva delle leggi straniere nei giudizi civili*, Filangieri 8, 1882, I.
- Raape, L., "Les rapports juridiques entre parents et enfants comme point de départ d'une explication pratique d'anciens et de nouveaux problèmes fondamentaux du droit international privé", *Recueil des cours*, 1934, pp. 477 *et seq.*
- Rabel, E., *The Conflict of Laws: a Comparative Study*, Ann Arbor, Mich.: I, 2 ed., 1958; II 2 ed., 1960; III 1950; IV 1958.
- Ramirez, P., *Pactos Internacionales de El Salvador*, El Salvador, 1910.
- Reese, W., "Discussion of Major Areas of Choice of Law", *Recueil des cours*, 1964-I, pp. 311 *et seq.*
- , "Dépeçage: a Common Phenomenon in Choice of Law", *Columbia Law Review*, Vol. 73, 1973, pp. 58 *et seq.*
- , "The Restatement of Conflict of Laws, Second", *Anuario Jurídico Inter-*

- americano 1979, Secretaría General de la Organización de los Estados Americanos, Washington, DC, 1980, pp. 187 *et seq.*
- , “American Trends in Private International Law: Academic and Judicial Manipulation of Choice of Law Rules in Tort Cases”, *Vanderbilt Law Review*, Vol. 33, 1980, pp. 717 *et seq.*
- Restatement, Conflict of Laws*, St. Paul, Minn., American Law Institute, 1934.
- Restatement (Second), Conflict of Laws*, St. Paul, Minn., American Law Institute, 1971.
- Rey, R., “La aplicación del derecho extranjero y nuestro Código Civil”, *Revista de la Facultad de Derecho y Ciencias Sociales de Buenos Aires*, t. V, No 16, pp. 889 *et seq.*
- Reyna de Roche, C. L., *Estudio sobre reenvío en del Derecho Internacional privado Venezolano*, Studia Juridica No 3, Facultad de Derecho, Universidad Central de Venezuela, Caracas, 1973, pp. 145 *et seq.*
- Robertson, A. H., *Characterization in the Conflict of Laws*, Cambridge, Harvard Press, 1940.
- Romero del Prado, V., *Manual de Derecho Internacional Privado*, t. I, Edic. La Ley, Buenos Aires, 1944.
- Rouvier, J. M., *Derecho Internacional Privado, Parte General*, 2a. Edición, Universidad del Zulia, Maracaibo, 1977.
- Salinas, J. M., *Manual de Derecho Internacional Privado*, 2a. Edición, Bolivia, 1948.
- Samtleben, J., *Internationales Privatrecht in Lateinamerika*, J. C. B. Mohr (Paul Siebeck), Tübingen, 1979.
- , “La aplicación de la ley extranjera en América Latina y en la República Federal de Alemania”, *Primer Seminario nacional de Derecho Internacional Privado*, Universidad Nacional Autónoma de México, Mexico, 1979, pp. 171 *et seq.*
- , “Die interamerikanischen Spezialkonferenzen für Internationales Privatrechts”, *RabelsZ*, Vol. 44, 1980, pp. 257 *et seq.*
- Sánchez Covisa, J., “Orden Público Internacional y divorcio vincular”, *Obra Jurídica de Joaquín Sánchez Covisa*, Ediciones de la Contraloría General de la República, Caracas, 1976, pp. 441 *et seq.*
- Sansó, B., “La fonción de la interpretación en la búsqueda y adaptación de la ley extranjera aplicable”, *Libro-Homenaje a la memoria de Roberto Goldschmidt*, Universidad Central de Venezuela, Facultad de Derecho, Caracas, 1967, pp. 708 *et seq.*
- Sapena Pastor, R., *Derecho Internacional Privado*, Edic. de la Plaza, Montevideo, 1980.
- Sass, S. L., “Foreign Law in Federal Courts”, *American Journal of Comparative Law*, Vol. 29, 1981, pp. 97 *et seq.*
- Savigny, F. C. von, *System des heutigen römischen Rechts*, Vol. VIII, Herman Gentner Verlag, Bad Homburg, 1961.
- Schlesinger, R., *Comparative Law*, 4th ed., Foundation Press, NY, 1981.
- Schwind, F. von, “Disposiciones generales del proyecto venezolano”, *Libro-Homenaje a la Memoria de Roberto Goldschmidt*, Universidad Central de Venezuela, Caracas, 1967, pp. 699 *et seq.*
- Sedler, R. A., “The Erie Outcome Test as Guide to Substance and Procedure in the Conflict of Laws”, *New York University Law Review*, Vol. 37, 1962, pp. 817 *et seq.*
- Siehr, K., “Special Courts for Conflicts Cases: a German Experience”, *The American Journal of Comparative Law*, Vol. 25, 1977, pp. 663 *et seq.*
- Silva, Alonso R., *Introducción al Derecho Internacional Privado*, Asunción, 1970.
- Simson, G., “The Policy Doctrine in Choice of Law: a Reconsideration of Older Themes”, *Washington Law Quarterly*, 1974, pp. 392 *et seq.*
- Siqueiros, J. L., *Síntesis del Derecho Internacional Privado*, 2a. Edición, Universidad Nacional Autónoma de México, Mexico, 1971.

- Story, J., *Commentaries on the Conflict of Laws*, Boston, Hilliard, Gray, 1834.
- Strenger, I., *Curso de Direito Internacional Privado*, Edic. Forence, Rio de Janeiro, 1978.
- Talice, J. R., "Interpretación e Integración en el Derecho Internacional Privado", *Revista Uruguaya de Derecho Internacional*, Vol. 3, 1964, pp. 115 *et seq.*
- Tenorio, O., *Direito Internacional Privado*, Edic. Freitas Bastos, São Paulo, 1976.
- Torre de la, M. G., *Comentarios y Observaciones a los Proyectos de Convención elaborados por el Comité Jurídico Interamericano para la CIDIP-II*, Universidad Central del Ecuador, Quito, 1979.
- Ulloa, A., *Congresos Americanos de Lima*, Recopilación de documentos, t. II, Archivo Diplomático del Perú, Lima, 1938.
- Valladao, H., "Le droit international privé des Etats américains", *Recueil des cours*, 1952-II, pp. 1 *et seq.*
- , "The Influence of Joseph Story on Latin American Rules of Conflict of Laws", *The American Journal of Comparative Law*, Vol. 3, No. 1, 1954, pp. 27 *et seq.*
- , "Joseph Story, Jurista y comparatista de las Américas" en *Homenaje a J. Story*, Secretaría General, Organización de los Estados Americanos, Washington, DC, 1979, pp. 1 *et seq.*
- , *Direito internacional privado: em base historica e comparativa, positiva e doutrinaria, especialmente dos Estados americanos*, Vol. I, Intradução e Parte Geral, 5a. ed., Rio de Janeiro, Edic. Freitas Bastos, 1980.
- , *Material de Classe de Direito Internacional Privado*, Edic. Freitas Bastos, Ed. 11, Rio de Janeiro, 1980.
- , "Andrés Bello y la Virgencia de sus soluciones de derecho internacional privado", *Foro Internacional sobre la obra Jurídica de Don Andrés Bello*, Fundación la Casa de Bello, Caracas, 1982, pp. 47 *et seq.*
- Vieira, M. A., "Le droit international privé dans le développement de l'intégration latino-américaine", *Recueil des cours*, 1970-II, pp. 353 *et seq.*
- , "El Derecho Internacional Privado frente al proceso de integración latinoamericano", *Revista de Derecho de Integración*, N° 12, Buenos Aires, 1973.
- , "Nuevas tendencias codificadoras del Derecho Internacional", *Exposiciones, Segundo Seminario sobre Enseñanza del Derecho Internacional*, Secretaría General, Organización de los Estados Americanos, Washington, DC, 1980, pp. 333 *et seq.*
- Vitta, E., "International Conventions and National Conflict Systems", *Recueil des cours*, 1969-I, pp. 111 *et seq.*
- von Mehren, A., "Special Substantive Rules for Multistate Problems: Their Role and Significance in Contemporary Choice of Law Methodology", *Harvard Law Review*, Vol. 88, 1974, pp. 347 *et seq.*
- , "Continental Lawyer Looks at Contemporary American Choice of Law Principles: Comments", *The American Journal of Comparative Law*, Vol. 27, 1979, pp. 605 *et seq.*
- Weintraub, R. J., *Commentary on the Conflict of Laws*, Foundation Press, NY, 1980.
- Wolff, M., *Private International Law*, Oxford University Press, 1945.
- Zajtay, I., "The Application of Foreign Law", *International Encyclopedia of Comparative Law*, Vol. III, Oceana Publications, Inc., New York.

*Special Laws and Draft Laws on Private International Law*

- Argentina*: Draft Code on Private International Law, *Gaceta del Notariado*, Rosario, No. 65, 1975.
- Austria*: Federal law of 15 June 1978, *The American Journal of Comparative Law*, 1980, pp. 222 *et seq.*

- Brazil*: Draft Code on Applicability of Legal Rules, H. Valladão, *Material de Classe*, Rio de Janeiro, 1980.
- Czechoslovakia*: Law of 4 December 1963, *Revue critique de droit international privé*, 1965, pp. 614 *et seq.*
- Democratic Republic of Germany*: Law of 5 December 1975, *The American Journal of Comparative Law*, 1977, pp. 354 *et seq.*
- Federal Republic of Germany*: *Vorschläge und Gutachten zur Reform des deutschen internationalen Personen-Familien-und Erbrechts*, J. C. B. Mohr (P. Siebeck), Tübingen, 1981. Allgemeiner Teil des Internationalen Privatrechts, pp. 15-16. I.P.R.-Gesetz-Entwurf (G. Kühne), C. F. Müller, J. V. Heidelberg, Karlsruhe, 1980, pp. 3 *et seq.*
- France*: Draft Law of 1967, *Revue critique de droit international privé*, pp. 841 *et seq.*
- Hungary*: Decree Law No. 13 of 31 May 1979, *Revue critique de droit international privé*, 1981, pp. 161 *et seq.*
- Peru*: Draft law on the amendment of the Civil Code, *Revista Peruana de Derecho Internacional*, No. 77, December 1980.
- Poland*: Law of 12 December 1965, *Revue critique de droit international privé*, 1966, pp. 323 *et seq.*
- Portugal*: Civil Code of 25 November 1966, *Revue critique de droit international privé*, 1968, pp. 369 *et seq.*
- Canada (Québec)*: Draft Law of 1977, Office de révision du Code civil. Rapport sur le Code civil du Québec, Vol. 1, pp. 595 *et seq.*
- Spain*: Civil Code preliminary title of May 31, 1974, *RabelsZ*, 1975, pp. 724 *et seq.*
- Switzerland*: Draft law of 1982, 82.072, Message concernant une loi fédérale sur le droit international privé (loi de DIP) du 10 novembre 1982, pp. 203 *et seq.*
- Venezuela*: Draft law on private international law rules, Tatiana B. de Maekelt, *Material de Clase para Derecho Internacional Privado*, Universidad Central de Venezuela, Caracas, 1979, pp. 130 *et seq.*

- *Treaties and Conventions on Private International Law*

- Montevideo Treaties 1889-1940, CIDIP-I, OEA/Ser.K, 2 February 1977, General Secretariat, Organization of American States, Washington, DC, 1977.
- Bustamante Code, *The Inter-American System*, Vol. 1, Part I, pp. 397 *et seq.*, General Secretariat, Organization of American States, Oceana Publications, 1983.
- The texts of the following Inter-American Conventions are contained in *The Inter-American System*, Vol. 1, Part I, General Secretariat, Organization of American States, Oceana, 1983.
- Inter-American Convention on General Rules of Private International Law, p. 486.
- Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes, and Invoices, p. 439.
- Inter-American Convention on Conflict of Laws concerning Checks, p. 443.
- Inter-American Convention on International Commercial Arbitration, p. 446.
- Inter-American Convention on Letters Rogatory, p. 450.
- Inter-American Convention on the Taking of Evidence Abroad, p. 456.
- Inter-American Convention on the Legal Régime of Powers of Attorney to Be Used Abroad, p. 462.
- Inter-American Convention on Conflicts of Laws concerning Checks, p. 468.
- Inter-American Convention on Conflicts of Laws concerning Commercial Companies, p. 472.
- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, p. 476.

- Inter-American Convention on Execution of Preventive Measures, p. 480.
- Inter-American Convention on General Rules of Private International Law, p. 486.
- Inter-American Convention on Proof of and Information on Foreign Law, p. 491.
- Inter-American Convention on Domicile of Natural Persons in Private International Law, p. 495.
- Additional Protocol to the Inter-American Convention on Letters Rogatory, p. 499.
- Convention on International Commercial Arbitration (1961), *Revue critique de droit international privé*, Vol. I, 1961.
- EEC Convention on the Law Applicable to Contractual Obligations, Rome, 19 June 1980, *Journal officiel des Communautés européennes*, No. L 266, 9 October 1980.
- United Nations Convention on Contracts for the International Sale of Goods, *Official Records*, A/CONF.97/19, United Nations, 1980.
- The texts of the following conventions are contained in *Recueil des conventions* (1951-1977), Conférence de La Haye de droit international privé.
- Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (1961).
- Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions (1965).
- Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965).
- Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971).
- Convention on the Recognition of Divorces and Legal Separations (1970).
- Convention on the Law Applicable to Traffic Accidents (1971).
- Convention Concerning the International Administration of the Estates of Deceased Persons (1973).
- Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (1973).

#### *Documents*

- Actas y Documentos, Conferencia Especializada Interamericana sobre derecho Internacional Privado (CIDIP), Doc. OEA/Ser.K/XXI.1, CIDIP/64, Vols. I and II, Secretaría General de la OEA, Washington, DC, 1975.
- Actas y Documentos, Segunda Conferencia Especializada Interamericana sobre Derecho Internacional Privado (CIDIP-II), Doc. OEA/Ser.K/XXI.2, Vol. III, Secretaría General de la OEA, Washington, DC, 1980.
- Comité Jurídico Interamericano, Recomendaciones e Informes 1974-1977, Vol. XI, Secretaría General de la OEA, Washington, DC, 1981.
- Cour de justice des Communautés européennes, *Recueil de textes*, deuxième édition révisée, Curia, Luxembourg, 1967.
- Documents contained in: *International Conferences of American States* (1889-1928); First Supplement (1933-1940), Carnegie Endowment for International Peace, NY, Oxford University Press, 1931, 1940.
- Documentos de la Organización de los Estados Americanos sobre Derecho Internacional Privado, Doc. OEA/Ser. CJI 15, Comité Jurídico Interamericano, Secretaría General de la OEA, Washington, DC, 1973.
- Federación Interamericana de Abogados, XIX Conferencia, "Resoluciones, Recomendaciones y Declaraciones", Cartagena, Colombia, 1975.
- Las Normas Generales del Derecho Internacional Privado, OEA Ser. K/XXI.2, CIDIP-II/10, Secretaría General de la OEA, Washington, DC, 1977.



L'index qui était habituellement publié à la fin de chaque tome est supprimé. Les délais de publication ne permettaient pas en effet de donner un index suffisamment détaillé et, de ce fait, son utilité était douteuse.

Un index général et complet portant sur les tomes 125 à 151 a paru en août 1980. Le prochain index général couvrira les vingt-cinq tomes suivants et sera annoncé en temps utile.

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The index, which until now has always been included at the end of each volume, will not be continued. Delays in publication do not allow a sufficiently detailed index to be produced and too short an index would be of doubtful value.

A complete general index covering Volumes 125-151 appeared in August 1980. The next general index will cover the 25 following volumes and will be announced in good time.

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