Documents

The Benelux Uniform Law on Private International Law

Comment

by Kurt H. Nadelmann

On July 3, 1969, a treaty was signed in Brussels by the governments of Belgium, Luxembourg, and the Netherlands, entitled, "Benelux Treaty Concerning a Uniform Law on Private International Law."[1] The Treaty contains in appendix a Uniform Law on Private International Law, which the Parties undertake to enact as part of their domestic law.[2] The Uniform Law's provisions become law of general application; that is, they will not be restricted in their application to Benelux relations.[3] Thus the outer world has a direct interest in the Treaty which becomes effective six months after it has been ratified by all three States.[4] Treaty and Uniform Law are in Dutch and French; an English translation prepared by the present writer appears at the end of this paper.

This Comment is designed to give background information on the venture but also makes some general remarks concerning the desirability of the codification of rules of conflicts. The three governments involved have published a supporting Joint Memorandum with comments on the articles of the Treaty and the Uniform Law. While Treaty and Uniform Law stand on their own, the official comments must be consulted for questions of construction. They will be referred to where proper.

I. Origins

The project which has resulted in the Treaty of July 3, 1969 has a long and interesting history.[5] The Treaty takes the place of an earlier Treaty relating to Private International Law which the three governments signed on

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[1] Treaty and Uniform Law with Supporting Joint Memorandum have been brought out in a pamphlet edition (66 double pages) by the General Secretariat of the Benelux Economic Union (39 Rue de la Régence, Brussels 1). The French version of the Uniform Law (without Treaty) has appeared in 96 *Journal du Droit International* (hereafter: *Journal*) 358 (1969).

[2] See art. 1 of the Treaty.

[3] Emphasized in the Preamble to the Treaty.

[4] See art. 9 of the Treaty.

[5] The history is recalled in the preface to the pamphlet edition, supra note 1.

May 11, 1951[6]—that is, some eighteen years ago. Luxembourg ratified that Treaty in 1954,[7] but parliamentary sanction by the two other States was impeded by problems which had arisen with respect to some provisions in the Uniform Law. These problems will be noted, but first a few words will be said on the history of the Treaty of 1951.

Close economic cooperation among all three Benelux States, it will be recalled, began after the Second World War. In 1948, the governments established a permanent committee of experts to prepare drafts with uniform rules on matters of private and penal law. Though not the subject of codification in either of the three States, private international law was one of the first topics to which consideration was given. The initiative came from Eduard Maurits Meijers, the noted Dutch jurist who, in 1947, had been appointed by his government to revise the Dutch Civil Code.[8] Private international law was among Meijers' special fields.[9]

In France, it should be added, the De Gaulle provisional government had in 1947 appointed a Commission for the Revision of the French Civil Code, the Code Napoleon of 1804, one of the sources of the Dutch Code.[10] The Code Napoleon has only a few articles dealing with conflicts questions. Around 1950, the French Code Revision Commission produced a draft of a law on private international law of more than one hundred articles.[11] J. P. Niboyet, the well-known conflicts specialist, was the member of the Commission primarily responsible for the draft.[12] Codification of conflicts rules thus was "in the air" at the time on the European Continent.

The Benelux Committee of Experts of which Meijers was a member took as starting point a draft provided by Meijers which he had made originally for the new Dutch Civil Code.[13] Work on the draft progressed quickly. A Treaty with a Uniform Law appended was signed by the three governments on May 11, 1951. The instrument was accompanied by a supporting Joint Memorandum.

The Treaty and Uniform Law of 1951 produced a reasonable amount of

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[6] The Treaty with the Uniform Law appended appeared in [1951] *Tractatenblad* No. 125 (Netherlands). The French version, without the Treaty but with the supporting Memorandum, appeared in 40 *Revue critique de droit international privé* (hereafter: *Revue critique*) 710 (1951), 41 *Id.* 165, 177 (1952). English translations appeared in 1 *Int'l & Comp. L. Q.* 426 (1952) and in R.H. Kollewijn, *American-Dutch Private International Law* 99 (2d ed. 1961). French and English text in 3 *Unification of Law Year-Book* 690 (Unidroit 1954). For an authoritative Comment see Meijers, "The Benelux Convention on Private International Law," 2 *Am. J. Comp. L.* 1 (1953).

[7] April 9, 1954. See Law of Jan. 26, 1954, 28 *Pasinomie Luxembourgeoise* 31 (*Mémorial No. 5* of Febr. 5, 1954, p. 78.).

[8] See Dainow, "Civil Code Revision in the Netherlands," 5 *Am. J. Comp. L.* 595 (1957); Dainow, "Civil Code Revision in the Netherlands," 17 *La. L. Rev.* 273 (1957).

[9] Cf. Offerhaus, "Eduard Maurits Meijers," 3 *Am. J. Comp. L.* 625, 626 (1954).

[10] See Julliot de La Morandière, "Reform of the French Civil Code," 97 *U. Pa. L. Rev.* 1 (1948).

[11] See Nadelmann and von Mehren, "Codification of French Conflicts Law," 1 *Am. J. Comp. L.* 404 (1952).

[12] At 409; and see "Preface" (Julliot de La Morandière) at 404, 406.

[13] See J. Offerhaus, *Eenvormige Wet betreffende het Internationaal Privaatrecht* 5, 6 (1957).

literature,[14] some critical. With the death of Meijers in 1954, the project lost its spiritual father. In the Netherlands, objections centered on a provision in the Uniform Law on the recognition of foreign corporations. To overcome the difficulty, a protocol was drafted by the three governments removing the provision from the Uniform Law and, at the same time, making a few other changes.[15] The next major hurdle came from legislation passed in Belgium in 1960 on assumption of divorce jurisdiction.[16] The other governments no longer considered the Uniform Law's provision on divorce acceptable. A second protocol was drafted to remove the provisions on divorce and legal separation.[17] A problem of larger proportions had been building up, however, as a result of the activity of the Hague Conference on Private International Law of which the Benelux States are active members. A series of new conventions had been produced[18] whose contents clashed with provisions in the Uniform Law.

On May 28, 1962, the Ministers of Justice of the three Benelux States set up a Special Commission to reconsider the Treaty and Uniform Law in the light of developments since 1951. In the Commission's Report of September 24, 1965, a number of changes were recommended in the text of 1951. By that time interest had developed in the idea of unifying rules of conflicts for the European Economic Community. The Report was returned to the Commission in October to reconsider the text of the Uniform Law with due regard also to the conflicts rules of France, West Germany, and Italy. Further changes were suggested in a Supplementary Report of March 17, 1966. A finding was included in the Report that the Uniform Law would not hinder negotiations within the European Economic Community.

On November 3, 1966, the three Ministers of Justice agreed on a new text based on the Reports.[19] The text was submitted in June 1967 for advice to the Benelux Consultative Inter-Parliamentary Council which since 1958 has played an important role in the system of Benelux cooperation. Furthermore, on September 8, 1967, the text was communicated by the Ministers to the President of the Commission of the European Economic Community with the suggestion that the Commission consider the possibility of a codification of the rules of conflicts by the six member States.[20]

On November 29, 1968, the Benelux Inter-Parliamentary Council gave its approval in principle to the new text of the Treaty and Uniform Law, suggesting a few changes, however; and the Council recommended that the new

[14] The literature is listed in Offerhaus, supra note 13, at 8, 9.

[15] *Deuxième Rapport commun des trois Gouvernements,* April 24, 1959, Conseil Interparlementaire Consultatif Benelux, *Document (Doc.) No. 13-3, app. IV;* and see *Council Recommendation* of Oct. 31, 1959, Doc. No. 13-b.

[16] See G. van Hecke, *American-Belgian Private International Law* 56 (1968).

[17] *Cinquième Rapport,* April 27, 1961, Doc. No. 30-1, p. 2, and see *Report,* Doc. No. 30-2, p. 4.

[18] On the Conference's post-war work see Nadelmann, "The United States Joins the Hague Conference on Private International Law," 30 *Law & Contemp. Probl.* 291, 315-318 (1965).

[19] *Doc. No. 81-1.* French text in 59 *Revue critique* 812 (1968). Engl. transl. in van Hecke, supra note 16, at 85.

[20] See "Preface," pamphlet edition supra note 1, at 3.

treaty be signed without delay.[21] The governments accepted the recommendation. A final text was prepared. At the Benelux Intergovernmental Conference held at The Hague on April 28 and 29, 1969, it was agreed to sign the treaty shortly.[22] The signing took place on July 3, 1969.

The revised version of 1966 had produced some critical comments.[23] Literature on the final version is still sparse.[24] Prospects for ratification will be influenced by the reception given to the new text. And, of course, the question of correlation of the Benelux project with plans of the European Economic Community still remains.

The Charter of the European Economic Community, the Treaty of Rome of 1957,[25] does not prescribe wholesale unification of the rules of private international law. On a few specified questions action has to be taken;[26] furthermore, problems of needed assimilation of the laws can arise.[27] But, of course, the six governments can go beyond what the Charter requires.

As a result of the suggestion which came from the Benelux group,[28] the governing body of the Communities, the Commission, took up the question of possible preparation of uniform rules on private international law. In 1968 the decision was reached to enter into an exchange of views with experts from the member governments. A first meeting took place in the spring of 1969, and it was agreed to continue the discussion.[29] Judging from the published report (which says little), wholesale codification is not contemplated, at least at this stage. The fields of obligations, secured transactions, and securities are identified as requiring particular attention. Even though the provisions of the Benelux Law have the support of three out of six governments, full and independent restudy of all questions can be expected.

II. Content of the Uniform Law

An expert analysis of the Uniform Law of 1951 has appeared in this

[21] *Doc. No. 81-3.* See *Report, Doc. No. 81-2.*

[22] *Decisions of the Conference,* ch. III, D.

[23] See de Winter, "La nouvelle version du projet Benelux de loi uniforme de droit international privé," 57 *Revue critique* 577 (1968) (transl. from [1968] *Weekblad voor Privaatrecht, Notarisambt en Registratie* Nos. 4989 and 4990); Kollewijn, [1968] *Nederlands Juristenblad* 698 (*"caveant consules"*); Ferid, "Zum Entwurf eines einheitlichen Gesetzes über das IPR in den Benelux-Staaten," 22 *Standesamt* 241 (1969).

[24] See Rigaux, "Le nouveau projet de loi uniforme Benelux relative au droit international privé," 96 *Journal* 334 (1969).

[25] Treaty of March 25, 1957, 298 *UNTS* 87, 51 *Am. J. Int'l L.* 930 (1957).

[26] Art. 220 deals, among others, with problems in the field of corporation law and in the matter of recognition of judgments.

[27] See Stein, "Assimilation of National Laws as a Function of European Integration," 58 *Am. J. Int'l L.* 1 (1964).

[28] Earlier, codification for the Community had been suggested in Zweigert, "Einige Auswirkungen des Gemeinsamen Marktes auf das Internationale Privatrecht der Mitgliedstaaten," in *Probleme des Europäischen Rechts-Festschrift für Walter Hallstein* 555, 562, 566 (1966). Cf. Drobnig, "Conflict of Laws and the European Economic Community," 15 *Am. J. Comp. L.* 204, 206 (1967).

[29] See *Bulletin of the European Communities,* June 1969, at 36. Cf. Mochi Onory, "L'unificazione del diritto internazionale privato nella Comunità Economica Europea," 23 *Diritto Internazionale* I 404 (1969). A second meeting was held in October 1969. See Note, 5 *Rivista di diritto internazionale privato e processuale* 1103 (1969).

Journal.[30] The present introduction to the 1969 version of the Treaty and Uniform Law will be limited to identification of the major changes made.

As was to be anticipated from the "protocols," coverage of some topics has been dropped entirely, either because the disagreement on substance continues or because the topic has since been covered by other drafts. Thus the provision on recognition of the existence of foreign corporations has gone. Available on the subject are the Hague Convention of June 1, 1956,[31] which Belgium and the Netherlands but not Luxembourg have ratified (it is not in force), and the Common Market Convention of February 29, 1968, on Mutual Recognition of Legal Persons,[32] signed but not yet ratified by the six governments of the European Economic Communities.

The provisions on divorce and separation have been eliminated likewise. A Convention on Recognition of Divorces and Legal Separations was prepared by the Hague Conference at its Eleventh (October 1968) Session.[33] The topic is, furthermore, covered by the Convention of September 8, 1967, on the Recognition of Decisions involving Marital Relations[34] prepared under the auspices of the (European) International Commission on Civil Status of which all three Benelux States are members.[35]

Adoption has been added to the topics (listed in article 23) to which the Uniform Law does not apply. Adoption is the subject of the Hague Convention of November 15, 1965,[36] so far signed by the United Kingdom and Switzerland and ratified by Austria.

Provisions have been amended or rewritten in light of the contents of other Hague Conference conventions prepared since 1951. This is the case for the provision on the relations between parents and children (article 5). The Hague Convention of October 24, 1956 on the Law Applicable to Obligations of Support Toward Minor Children[37] was taken into account. The Netherlands and Luxembourg are among the countries which have ratified the Convention.[38] The provision on Guardianship—article 6—was amended to take into account the Hague Convention of October 5, 1961,[39] which Luxembourg and two other countries have ratified.[40]

Some improvements have been made in the provisions dealing with marital

[30] Meijers, supra note 6.

[31] Engl. transl. in 1 *Am. J. Comp. L.* 277 (1952). See "Table," 15 Id. at 828 (1967), for status of ratifications.

[32] Text in Supplement to *Bull. Eur. Communities,* No. 2, of 1969; transl. 2 *CCH, Comm. Mkt. Rep.* § 6083 (1969). Cf. Goldman, "La reconnaissance mutelle des sociétés dans la CEE," in *Mélanges Julliot de La Morandière* 175 (1964); Goldman, "The Convention between the Members of the European Economic Community on the Mutual Recognition of Companies and Legal Persons," 6 *Common Market L. Rev.* 104 (1968).

[33] Text in 16 *Am. J. Comp. L.* 580 (1968), 8 *Int'l Legal Materials* 31 (1969).

[34] Text in International Institute for the Unification of Private Law, [1967-1968] *Year-Book Unification of Law* 310 (1969).

[35] The other members are Austria, Germany, Greece, Switzerland, and Turkey.

[36] Text in "Documents," 13 *Am. J. Comp. L.* 615 (1964).

[37] Engl. transl. in 5 *Am. J. Comp. L.* 656 (1956).

[38] See "Table," 15 Id. at 828 (1967), for status of ratifications.

[39] Engl. transl. in 9 Id. 708 (1960).

[40] The others are Portugal and Switzerland. The Convention has been signed by Austria, France, Germany, Italy, the Netherlands, and Yugoslavia.

relations (articles 3 and 4).[41] The range of control of the national law of the husband has been reduced. Inequality of treatment remains.

In non-status matters, the provision on the law applicable to contracts has been revised. Article 13 now takes as point of departure the freedom of the parties to choose the applicable law. A limitation is set: When a contract is "clearly localized in one country," the parties may not disregard provisions in the local law which exclude the application of any other law. In the absence of a choice of law, the law of the country with which the contract has the "closest relations" shall apply. For the case where such a country cannot be determined, recourse is had to a black-letter rule. The law of the place of making shall govern; for contracts created by correspondence the place of making is defined as the one wherefrom the offer originated.[42]

Contrary to what was done for contracts, the provision on torts—now article 14—was left standing. In 1951, the provision created a sensation, for an exception was made to the principle that the law of the place of the wrong shall govern. If the consequences of a wrongful act "belong to the legal sphere" of a country other than the one where the act took place, the obligations resulting from the act shall be determined by the law of that particular country.[43]

When do the consequences of an act "belong to the legal sphere of another country"? The text does not say. The "belonging" was imported from the provision on contracts which, in 1951, in part read: "When a contract is so closely connected with a given country that it must be considered as *primarily belonging to the legal sphere of that country, . . .*".[44]

Light on what the draftsmen had in mind comes from the Comment on the torts provision in the Memorandum of 1951 which is repeated without change in the 1969 Memorandum:[45]

> . . . In modern international relations, it often happens that the consequences of a wrongful act have no link with the country where it took place. One may think especially of traffic accidents when author and victims all are nationals of one country and domiciled in a country other than that where the accident took place. And, in some countries, compulsory insurance to cover liability towards third parties already influences the extent of liability and the determination of persons liable.
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> In what cases the consequences of a fact may be considered as belonging to the legal sphere of a country other than that where the fact took place, depends entirely upon the circumstances; account will be taken, for example, of the nationality and domicile of author and victims, of the place where the damaging consequences appeared first, and also of na-

[41] These topics are on the tentative agenda of the Hague Conference for future work. See 16 *Am. J. Comp. L.* 580, 603-604 (1968).

[42] For a critical analysis of the new version see de Winter, supra note 23, at 594. On the earlier version see Offerhaus, "International Contracts under the Benelux Treaty on Private International Law," in *Liber Amicorum Algot Bagge* 160, 167 (1956).

[43] For a discussion of the text see Meijers, supra note 6, at 9, and literature listed in Offerhaus, supra note 14.

[44] ". . . , it is subject to the law of this country, unless the parties have submitted it, entirely or in part, to another law."

[45] Pamphlet edition, supra note 1, at 55.

tionality and domicile of the owner of the means of transportation which caused the accident.

What to many seemed revolutionary in 1951, today has been accepted as a sound approach in many countries, including the United States, where the breakthrough came with the New York Court of Appeals decision of 1962 in *Babcock v. Jackson*.[46] And the exception to the "place of the tort" rule was accepted by the recent House of Lords decision in *Boys v. Chaplin*.[47] Within Benelux, only the courts in the Netherlands have followed the trend.[48] In France, the Court of Cassation declined to follow suit as recently as 1967 in *Kieger v. Amigues*.[49]

As written, the text of the Comment on the torts provision is bound to create difficulties for the courts of the Benelux States. Among the "data" meriting consideration, the place of registration of the car is not listed. Yet in the Convention on the Law Applicable to Traffic Accidents prepared by the Hague Conference at its Eleventh (October 1968) Session,[50] the place of registration is made the focal point for the exception to the rule. Of course, the Comment is no more than a comment and the term used in the Uniform Law—"belonging to the legal sphere of another country"—can be given any and every reading—an "achievement" in legislative draftsmanship.

For the regulation of personal status matters, the Uniform Law of 1951 was based on the national law test.[51] The system has not been changed. A few instances have been added to the cases in which the law of the domicile is resorted to as an exception.[52] The provision with the general exceptions to the national law rule has been left unchanged. Under article 11 the law of the domicile takes over in two renvoi situations and when a person has no nationality or where the national law applicable cannot be determined with certainty.

Yet lack of nationality is only one of the situations in which the national law test proves unworkable. One of the two other instances is double nation-

[46] 191 *N.E. 2d* 279 (1963) (New York common law and not Ontario guest statute applied in action between New York guest and host for negligent injury in Ontario on short motor trip from New York and back). And see Dym v. Gordon, 209 *N.E. 2d* 792 (1965); Tooker v. Lopez, 249 *N.E. 2d* 394 (1969). Cf. D.F. Cavers, *The Choice-of-Law Process* 293 (1965); R.A. Leflar, *American Conflict of Laws* 221 (1968). *Restatement Second, Conflict of Laws* §§ 145, 146, 171 (Proposed Official Draft 1968).

[47] Boys v. Chaplin, [1969] 3 *W.L.R.* 322, [1969] 2 *All E.R.* 1085 (H.L.E.). For a comment on this case cf., W.L.M. Reese, 18 *Am. J. Comp. L.* 189 (1970).

[48] See Drion, "The lex loci delicti in Retreat," in *Festschrift für Otto Riese* 225, 229 (1964); W.L.G. Lemaire, *Nederlands Internationaal Privaatrecht* 276 (1968). Appeal Court The Hague, June 16, 1955, de Beer v. de Houdt, [1955] *Nederlandse Jurisprudentie* No. 615, 86 *Journal* 507 (1959).

[49] Cass. civ., 1st Ch., May 30, 1967, [1968] *Juris-Classeur Périodique* II 15.456, 56 *Revue critique* 728 (1967), 94 *Journal* 622 (1967). See Bourel, "Responsabilité Civile," in 2 *Répertoire de Droit International* 770, 779 (1969). Cf. G. van Hecke, *American-Belgian Private International Law* 71 (1968); F. Rigaux, *Droit International Privé* 489-497 (1968).

[50] Text in Documents, 16 *Am. J. Comp. L.* 588 (1969).

[51] On the national law test see 1 E. Rabel, *Conflict of Laws: A Comparative Study* 120 (2d ed. 1958); Nadelmann, "Mancini's Nationality Rule and Non-Unified Legal Systems," 17 *Am. J. Comp. L.* 418 (1969).

[52] The comment to article 2 refers to articles 6, 7, 11, and 21.

ality. Only the Comment notes the problem.[53] Reference is made to the solution given by the Hague Convention of April 12, 1930, Concerning Questions Relating to the Conflict of Nationality Laws,[54] ratified by Belgium and the Netherlands, but not Luxembourg.[55] Under the Convention, a person having two or more nationalities may be considered by each of the States of which he has the nationality as its citizen. Third countries must consider such a person as possessing one nationality only, preference going either to the nationality of the country where he has his habitual or principal residence, or to the nationality of the country to which he appears to be attached most in fact according to the circumstances. These rules are characterized by the Comment as so manifestly founded on common sense that they ought to be applied also where the Convention is not in force.

The other situation not covered by the Uniform Law is the case where the national law refers to the law of a nation on whose territory two or more private law systems are in force, as in the United States and the United Kingdom. For this case the Comment says that the law of the nation referred to shall determine which of the systems applies to citizens living abroad. Disregarded is the fact, well-known at least since *O'Keefe*,[56] that the national law may have no rule on the question, as happens to be the case for both "American" and "British" law. The subject thus is of immediate interest to federal systems. As a matter of common sense, in such situations the reference should be to the law of the domicile (habitual residence). Mancini, father of the nationality law doctrine, thought so.[57] Courts in nationality states have found it difficult, if not impossible, however, to reach the result in the absence of a statutory provision. A Uniform Law without a provision on the subject cannot claim to be up-to-date.[58]

Most of the Uniform Law of 1951 reappears unchanged, and this is true also for the comments. Among seemingly minor changes is one which merits notation. The text of 1951 had in article 26 an *ordre public* reservation. This reservation reappears in improved language in article 22. Article 22 has received an addition, however. The addition says that the rules of the Uniform Law shall also not apply in the case of "fraud upon the law."

Fraud upon the law[59] has the well-earned reputation of being one of the concepts most abused in the field of private international law. The introduction to the Comment on the Uniform Law of 1951 gave "fraud upon the law" (together with characterization) as examples of concepts not ready for

[53] Pamphlet edition, supra note 1, at 33.

[54] 179 *L.N.T.S.* 89, 5 M. Hudson, *International Legislation* 359 (1936).

[55] Ratified by Belgium, Brazil, Great Britain, Canada, Australia, India, China, Monaco, Netherlands, Norway, Poland, Sweden, and Pakistan. Not ratified by U.S. See 8 M.M. Whiteman, *Digest of International Law* 81 (1967).

[56] [1940] *Ch.* 124, 62-72 *Journal* 138 (1940-1945). Cf. Beuzekamp v. Hajec, Leeuwarden App. Ct., March 3, 1954, [1954] *Nederlandse Jurisprudentie* No. 328, 2 *Nederlands Tijdschrift voor Internationaal Recht* 104 (1955), 84 *Journal* 467 (1957).

[57] Discussed in Nadelmann, supra note 51, at 424.

[58] The exception is made in the Portuguese Civil Code of 1967, art. 20, 57 *Revue critique* 369 (1968), cf. Nadelmann, supra note 51, at 445.

[59] See A. A. Ehrenzweig, *Private International Law* 166 (1967); Francescakis, "Fraude à la loi," in 2 *Répertoire de Droit International* 54 (1969).

codification.[60] The draftsmen of the 1969 version have thought differently.[61] The concept must have "matured" since. According to the Comment on the new text, inclusion of this exception into the law had become necessary "because of references made to the concept in comments on other provisions of the Uniform Law."[62] More informative would have been a reference to the fact that use of the "fraud upon the law" concept was hotly debated in the contemporaneous work of the Hague Conference on recognition of foreign divorces.[63] The Comment urges the courts not to extend the concept beyond the range given it by the decisions in each of the three countries (cumulatively, that is). No such limitation is, however, in the text of the Uniform Law.

III. Uniform Interpretation

The draftsmen of the Uniform Law of 1951 were conscious of the problems which the Uniform Law will create once it has been enacted. One such problem is uniform interpretation. The likelihood of different readings exists. In the view of the draftsmen, their job could not be considered completed without a common court securing uniform interpretation.[64] The plea for such a court, made also in other drafts prepared by the Benelux Commission on Uniform Legislation,[65] was not left unheeded. On March 31, 1965, a Convention on Creation of a Benelux Court of Justice was signed by the three governments.[66] The Treaty of July 3, 1969, gives to the Benelux Court jurisdiction for the interpretation of the provisions of both the Treaty and the Uniform Law.

The Benelux Court has still to be established. The few provisions in the Treaty on the Court are an insufficient basis for the evaluation of the possibilities of such a court.[67] Precedents in point are lacking. The Court of the European Economic Communities[68] has no assignment comparable to interpretation of the provisions of a law on private international law.

In many federal systems, of course, a federal supreme court is available for

[60] See "Rapport de la Commission, Considérations Générales," 40 *Revue critique* 714, 717 (1951). Cf. van Hoogstraten, "La Codification par Traités en droit international privé dans le cadre de la Conférence de La Haye," *Recueil des Cours de La Haye* 337, 415 (1967).

[61] The addition was suggested by the government experts at the Oct. 4, 1968 meeting, *Doc.* 81-2, 13.

[62] Pamphlet edition, supra note 1, at 65. The Comments to articles 2 and 9 have such references.

[63] Cf. Nadelmann, "Habitual Residence and Nationality as Tests at The Hague: The 1968 Convention on Recognition of Divorces," 47 *Tex. L. Rev.* 766, 773 (1969).

[64] See "Rapport de la Commission," 40 *Revue critique* 714, 717 (1956).

[65] On the Commission's work see van der Gucht, "Vingt ans de collaboration entre les pays de Benelux en matière d'unification du droit," 83 *Journal des Tribunaux* 89 (Belgium 1968).

[66] [1965] *Tractatenblad* No. 71 (Netherlands); [1966] Id. No. 243.

[67] The court will be composed of nine judges, three from each of the three highest courts. See Ganshof van der Meersch, "Le juge belge à l'heure du droit international et du droit communautaire," 84 *Journal des Tribunaux* 537, 548-551 (Belgium 1969).

[68] See Lagrange, "The Court of Justice as a Factor in European Integration," 15 *Am. J. Comp. L.* 709 (1967); cf. Hay, "Supremacy of Community Law in National Courts," 16 Id. 524 (1968).

adjudication of conflicts questions to the extent that jurisdiction arises from the Constitution or federal legislation. The American lawyer is reminded of the short period during which the United States Supreme Court undertook to rule on choice of law problems under the Full Faith and Credit clause of the Constitution.[69] The episode is not considered a success.[70] It is true that the Court had no statutory provisions for guidance. In the United States, the development of the law of conflicts has profited from the efforts made in a variety of jurisdictions to meet the problems as they arise. Benelux Court adjudications may freeze the law, a risk augmented by the fact that, in all likelihood, following the "secrecy" rule applied in all three States,[71] publication of dissenting opinions will not be permitted.

The draftsmen of the Uniform Law of 1951 cannot be accused of having considered their product faultless. Considerable thought was given to possible need for changes in provisions of the Uniform Law. The part in the Treaty covering this aspect is of great interest. The basic approach was already in the 1951 version. According to article 10, the Treaty will run for two years before it can be denounced, but an unusual clause allows immediate denunciation "in the case of urgent necessity."[72] Denunciations take effect after six months, and this rule seems to apply also to denunciations in the case of urgent necessity.

Modifications of one or more articles are possible without the need for denunciation of the entire treaty. As stated in article 4, a State may submit its desire to change the articles to the two other States; if they do not agree to the change within six months, the State is free to change its law as proposed. The same procedure is available under article 5 when a State wishes to become party to an international convention on private international law conflicting with provisions in the Uniform Law. The State can go ahead after six months.

The system comes close to passing uniform legislation without a binding commitment. When, in 1956 and 1960, the American Observer delegates to the Hague Conference suggested the use of uniform legislation as an alternative to international conventions, the reaction was unfavorable,[73] notwithstanding the fact that T.M.C. Asser, the Conference's first president, and others[74] had had the same thought. Benelux has seen the problem more

[69] See H.F. Goodrich, *Conflict of Laws* 21-23 (4th ed. by Scoles 1964).

[70] See Cavers, supra note 45, at 246.

[71] See Nadelmann, "The Judicial Dissent-Publication versus Secrecy," 8 *Am. J. Comp. L.* 415 (1959), 86 *Archiv des öffentlichen Rechts* 39 (1961) (transl.). Literature in Zweigert, "Empfiehlt es sich, die Bekanntgabe der abweichenden Meinung des überstimmten Richters (Dissenting Opinion) in den deutschen Verfahrensordnungen zuzulassen?," in *Verhandlungen des 47. Deutschen Juristentages Nürnberg 1968, Gutachten* D 53-59 (1968).

[72] Such a clause was first used in the Geneva Convention of 1930 and 1931 on Bills of Exchange and Checks. References collected in Nadelmann, "Uniform Legislation Versus International Conventions Revisited," 16 *Am. J. Comp. L.* 28, 43, n. 104 (1968), also in 1967-1968 II *Year-Book Unification of Law* 173, 188, n. 104 (Unidroit ed. 1969).

[73] See Nadelmann and Reese, "The American Proposal at the Hague Conference on Private International Law to Use the Method of Uniform Laws," 7 *Am. J. Comp. L.* 239 (1958).

[74] 1 *Actes de la Conférence de La Haye chargée de réglementer diverses matières de droit international privé* 26-27 (1893). See d'Oliveira, "Universalisme et régionalisme de

realistically. Still, under the Benelux Treaty, six months must pass before remedial action can be taken unilaterally. The question is whether making changes difficult is sound policy in a field like conflict of laws, long known as an "unruly horse" and incapable of changing its character. Even the proposed codification with binding effect of the substantive law of international sales of goods has created nothing but hesitation.[75]

IV. The Pro's and Con's of Codification

The Benelux Uniform Law once again raises the question of the need for and advisability of wholesale codification of the law of private international law. If in the late forties the trend on the Continent was for codification, Niboyet and Meijers leading the move, does this trend still exist?

In France, the "Niboyet Draft" which was completed around 1951 was withdrawn after Niboyet's death. The French Committee on Private International Law, the courts, and the law faculties had given the draft a bad reception.[76] Thereafter, a short substitute draft was prepared by three members of the Code Revision Commission. It was never published and is known only from a speech made in 1964 by one of the draftsmen.[77] In 1966, a new Minister of Justice—a "codifier"—appointed a Committee on codification of private international law.[78] The part covering choice of law was completed in 1967,[79] but the text was not released and nothing has been heard of the project since the Minister left the government.

The practitioners in France were opposed to wholesale codification from the outset.[80] They have on their side a well-known former member of the Court of Cassation, Judge Holleaux, equally respected as a scholar and a judge, who at a meeting chaired by him of the French Committee on Private International Law made the oft-quoted statement: "Fortunately, in France, there are no written texts, which is an immense advantage, for the courts can work toward that which seems to be equitable and reasonable."[81] And he pointed to the plight of the courts in countries with extensive legislation on private international law.

The European nations which have had extensive legislation since the last century are Italy and Germany and, also, Switzerland. This was Mancini's

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la Conférence de La Haye," 53 *Revue critique* 347, 363 (1966). Cf. Jitta, "L'accession de la Grande Bretagne, des Etats-Unis de l'Amérique du Nord et, en général, des Etats non Européens aux Traités de la Haye concernant le Droit International Privé," in *International Law Association, Report of the 27th Conference,* Paris, 1912, 322, 327 (1912).

[75] See Nadelmann, supra note 72, at 34 and 179, respectively.

[76] See M. Simon-Depitre, *Droit International Privé* 44 (1964).

[77] Batiffol, "Das IPR im Entwurf eines neuen Code Civil," 6 *Zeitschrift für Rechtsvergleichung* 11 (1965).

[78] [1966] *Recueil Dalloz Sirey, Vie Juridique,* 22e Cahier.

[79] [1967] Id., *Vie Juridique,* 8e Cahier.

[80] See Loussouarn, "French Draft on Private International Law and the French Conference on Codification of Private International Law," 30 *Tulane L. Rev.* 523, 538 (1956).

[81] Holleaux, in Comité Français de Droit International Privé, [1962-1964] *Travaux* 251, 280 (1965) (March 13, 1964 meeting). Cf. Vischer, "Die Kritik an der herkömmlichen Methode des internationalen Privatrechts," in *Rechtsfindung—Festschrift für Oscar Adolf Germann* 287, 307 (P. Noll, ed., Berne 1969).

idea and he was the spiritual author of the provisions in the Italian Civil Code of 1865. This parentage seems to have made reform more difficult.[82] Yet no student of Mancini's can argue in good faith that Mancini would favor maintenance of rules proposed under different conditions. Mancini was a reformer with a practical mind.[83]

In Germany, the basic approach used for the legislation of 1900—the "unilateral" rule[84]—was early acknowledged as undesirable. Yet, except for details, the legislation has been left standing. Major revisions were prepared by an expert group within the last decade.[85] They still await action. In Switzerland, legislation prepared primarily for intercantonal purposes has made life for the courts difficult.[86] What was said at the meeting of the French Committee on Private International Law by Judge Holleaux is no exaggeration.

In the United States, where legislation has been avoided, the experience with the Restatement of Conflict of Laws has been telling. Completed in 1934, the first Restatement was of the black-letter type somewhat resembling legislation. In the course of its revision, completed recently, many of its black-letter rules were found misleading and not followed by the courts. For the new Restatement the rules have been kept more flexible,[87] flexible to a degree where their helpfulness is being questioned. Further evolution can be anticipated.

As regards Benelux itself, no finding has been made of difficulties encountered for individual states or for inter-state relations during the last eighteen years because of failure to enact the Uniform Law of 1951. The draft law with its comments has been praised for the role it has played as a sort of Restatement of the law.[88] Some of the changes made in the 1951 version are indicative of defects in that text. Writers have begun to point at weaknesses in the new version.[89] Recent legislative efforts—some with Benelux participation—propose other solutions.[90] May it be that the signing of the Treaty of

[82] See Vitta, "Il sistema italiano di diritto internazionale privato," in Istituto per la Documentazione e gli Studi Legislativi, *Prospettive del Diritto Internazionale Privato* 3-5 (1968).

[83] See Nadelmann, supra note 51, at 451.

[84] See H. Dölle, *Internationales Privatrecht* 41 (1968); G. Kegel, *Internationales Privatrecht* 86 (2d ed. 1964).

[85] *Vorschläge und Gutachten zur Reform des Deutschen Internationalen Eherechts* (W. Lauterbach, ed., 1962); *Vorschläge und Gutachten zur Reform des Deutschen Internationalen Kindschafts-, Vormundschafts- und Pflegschaftsrechts* (same ed., 1966); *Vorschläge und Gutachten zur Reform des Deutschen Internationalen Erbrechts* (same ed., 1969).

[86] See A. Nussbaum, *American-Swiss Private International Law* 79 (2d ed. 1958); F. Vischer, "Internationales Privatrecht," in 1 *Schweizerisches Privatrecht* 511, 517 (M. Gutzwiller, ed., 1969); Schnitzer, "Entwurf eines Rechtsanwendungsgesetzes," in *IUS ET LEX—Festschrift für Max Gutzwiller* 429 (1959).

[87] See Reese, "Discussion of Major Areas of Choice of Law," 111 *Recueil des Cours de La Haye* 313 (1964).

[88] De Winter, supra note 23, at 616, also referring to Sauveplanne, "De Rechtsvorming in het Internationaal Privaatrecht," in *Vooruitzichten van de Rechtswetenschap* 261, 266-267, 292 (J. M. Polak, ed., 1964). Cf. decision note 48 supra.

[89] See authors supra notes 23 and 24.

[90] Regarding article 16, see the different rule proposed in the draft of a Bankruptcy Convention prepared for the European Economic Community. Noel and Lemontey, "Aperçus sur le projet de convention européenne relative à la faillite, aux concordats et aux procédures analogues," 4 *Revue trimestrielle de droit Européen* 705, 712-714 (1968).

July 3, 1969 has been primarily a strategic move related to the Common Market project of codification of rules of conflict of laws?

The work of the Hague Conference accomplished since the end of the Second World War has taught a number of lessons. Large-scale codification is desirable and feasible in the area of international civil procedure (judicial assistance). While it is too early to say, the same may be true also for recognition of judgments, including decrees in status matters. For choice of law the situation is very different. In matters of personal status, because of the breakdown of the national law test as a useful general reference, a new situation is faced. More sophisticated approaches have been used with apparent success, but the development is far from completed.[91] In other fields, especially torts, technological progress has produced new fact situations for which the traditional black-letter rules prove to be unsuitable. Re-evaluation is necessary, and a general distrust of easy black-letter rules has developed. At the Hague Conference, partly due to the enlarged membership which secures expert views from many parts of the world, a better in-depth study of the topics under investigation has been made possible.

Sometimes a regional or interstate approach is desirable and indicated. Examples of successful regional endeavors are not lacking.[92] The risk of developing confusion is obvious, though. If the regional effort is designed to create law of general application, the lessons taught by the work done at The Hague apply directly. Work on codification must process cautiously and, as was emphasized by the authors of the Benelux Uniform Law of 1951, regional rules must be drafted in such a way that they not disturb possible worldwide codification.[93]

Codification *per se* has no virtue in a field like conflict of laws. This has been stated in classic terms in the Memoranda accompanying the Benelux Laws of 1951[94] and 1969:[95]

> "Passing from the present incomplete regulation to the opposite extreme of trying to regulate all possible cases would be a grave error. Contemplation of such a goal is a dangerous enterprise, less indicated for private international law than for anything else. The adaptation of abstract legal provisions to factual situations in constant evolution is already productive of numerous complications when our law and our society are involved; in the matter of private international law, in order to be able to anticipate the consequences of a general provision of law, knowledge of the legal institutions and factual relations existing in

[91] See De Nova, "Osservazioni alla relazione e al progetto di legge," in Istituto per la Documentazione e gli Studi Legislativi, supra note 82, at 291.

[92] The Bustamante Code on Private International Law and the Scandinavian Conflicts Conventions may be cited. See 1 Rabel, supra note 51, at 36. The (American) Uniform Commercial Code also has conflicts provisions. See Cavers, supra note 46, at 232; cf. Nadelmann, supra note 72, at 46 and 191, respectively. The same is true for the new Uniform Probate Code. See, in particular, sec. 2-506 on the law governing the form of last wills.

[93] 40 *Revue critique* 714, 717 (1951); repeated in 1969 *Memorandum, Pamphlet edition,* supra note 1, at 27, 28.

[94] 40 *Revue critique* 717 (1951). Cf. M. Wolff. *Private International Law* 51 (2d ed. 1950).

[95] *Pamphlet edition,* supra note 1, at 27, 28-29.

foreign countries would be necessary. No legislator, whatever his expertise, can claim such knowledge. Furthermore, in the matter of private international law, certain theories raise problems which, far from resolving them satisfactorily, legal science has not always been able even to formulate with precision."

"For these reasons it appears indicated to limit regulation by legislation to certain matters which are most important for practice, leaving to the national legislator, the courts, and doctrine the task of filling the gaps of the uniform law."

TREATY BETWEEN THE KINGDOM OF BELGIUM, THE GRAND-DUCHY OF LUXEMBOURG, AND THE KINGDOM OF THE NETHERLANDS CONCERNING A UNIFORM LAW ON PRIVATE INTERNATIONAL LAW

Signed in Brussels on July 3, 1969

Translation by Kurt H. Nadelmann. With permission, the translator has consulted and followed in large part the translation of an earlier draft in G. van Hecke, *American-Belgian Private International Law* (Parker School of Foreign and Comparative Law, 1968).

The King of Belgium, the Grand-Duchess of Luxembourg, and the Queen of the Netherlands,

Animated by the desire to renovate their legislation and achieve uniformity of the principles of the law and conformity in the legal solutions in their countries in line with the spirit on which the Protocol creating the Benelux Research Commission for the Unification of Law, signed in Brussels on April 17, 1948, is based,

Considering that the law of private international law lends itself particularly to revision in their countries and that it is desirable to proceed to such revision through the adoption of a uniform law,

Considering, on the other hand, that common rules of private international law will in a large measure promote the uniform application of the law in the three countries and prove that collaboration can be achieved in this way,

Recognizing, finally, that the regulation of the law of private international law must be adapted to the life of an international society and, therefore, cannot make a distinction between provisions valid for nationals and those prescribed for foreigners or be applicable solely to legal relations arising between the three countries,

Noting the advice given on November 29, 1968 by the Consultative Inter-Parliamentary Council of Benelux,

Have to this end decided to conclude a treaty concerning the introduction in Belgium, Luxembourg, and the Netherlands of a uniform law on private international law and have designated as their plenipotentiaries . . . . who after exchange of their instruments of representation found to be in proper form have agreed on the following provisions:

Article 1

(1) The High Contracting Parties agree to introduce into their legislation on the date of entry into force of the present Treaty, either in one of the original texts, or in the two texts, the uniform law relating to private international law annexed to the Treaty.

(2) In the uniform law, the terms "in the Netherlands / Belgium / Luxembourg" or "Dutch / Belgian / Luxembourg" must be understood as meaning, for the Netherlands: "in the Netherlands" or "Dutch," for Belgium: "in Belgium" or "Belgian," and for Luxembourg: "in Luxembourg" or "Luxembourg."

Article 2

The High Contracting Parties have the right in their legislation to complete the uniform law by provisions designed to regulate questions for which solutions have not been provided, on condition that these provisions shall not be incompatible with the Treaty and the said law.

Article 3

The Netherlands may, upon ratification of the present Treaty, formulate a reservation to Article 19 of the uniform law with respect to the formal validity of wills executed abroad by Dutchmen

domiciled or habitually resident in the Netherlands.

Article 4

(1) If a High Contracting Party desires to modify one or more articles of the present Treaty or of the uniform law, it shall communicate its intentions to the two other Contracting Parties through the Secretary General of the Benelux Economic Union as intermediary.
(2) The High Contracting Parties shall make efforts to arrive at an agreement. If six months after the date of the communication to the other two High Contracting Parties no agreement has been reached, the Contracting Party who has made the proposal may modify its law in the manner proposed. The modification shall be brought to the attention of the other two Contracting Parties in the same manner as the proposal. In this case, each of the two other Contracting Parties is no longer bound by the provision which was the subject of the proposal of modification.

Article 5

If after the date of entry into force of the present Treaty one of the High Contracting Parties desires to become party to a Convention which has as its principal object a regulation of conflicts of laws and contains provisions not in accord with the uniform law, Article 4 shall apply.

Article 6

In execution of Article 1, paragraph 2, of the Treaty relating to the institution and the statute of a Benelux Court of Justice, the provisions of the present Treaty and the uniform law are designated as common rules of law for the application of Chapters III, IV, and V of the said Treaty.

Article 7

The present Treaty shall not interfere with the application of the treaties or conventions which have entered into force prior thereto and which contain provisions contrary to those of the uniform law.

Article 8

(1) With respect to the Netherlands, the present Treaty shall apply only to the territory situated in Europe.
(2) The Kingdom of the Netherlands may extend the application of the present Treaty to Surinam and the Netherlands Antilles by a declaration addressed to the Secretary General of the Benelux Economic Union who shall immediately inform the other High Contracting Parties. This declaration shall be effective the first day of the sixth month following the date of its receipt by the Secretary General of the Benelux Economic Union.

Article 9

(1) The present Treaty shall be ratified. The Instruments of ratification shall be deposited with the Secretary General of the Benelux Economic Union who shall inform the High Contracting Parties of the deposit of these instruments.
(2) It shall enter into force the first day of the sixth month following the date of deposit of the third instrument of ratification.

Article 10

(1) The present Treaty may be denounced after consultation among the High Contracting Parties.
(2) Except in the event of urgent necessity, the present Treaty may not be denounced before the expiration of a period of two years commencing with the date of its entry into force.
(3) The denunciation shall be made by a notification addressed to the Secretary General of the Benelux Economic Union who shall advise the other two High Contracting Parties thereof. It shall be effective the first day of the

sixth month following the date of receipt of the denunciation by the Secretary General.

(4) In the case of denunciation by a High Contracting Party, the present Treaty shall terminate with respect to all Contracting Parties.

(5) The denunciation may be limited to the territories mentioned in Article 8, paragraph 2, or to some of them.

Done in Brussels on July 3, 1969, in three copies in the Dutch and French languages, both texts being equally authentic.

APPENDIX

UNIFORM LAW RELATING TO PRIVATE INTERNATIONAL LAW

Article 1

In the absence of provisions to the contrary, in the following articles the law of a country shall mean the rules of law in force in that country exclusive of the rules of private international law.

In applying the articles, the domicile of a person shall be determined without taking into account conditions which a State may prescribe for the acquisition within its territory of a domicile by aliens.

Article 2

The status and capacity of physical persons shall be determined by their national law.

However, a person declared incapable by his national law may not invoke his incapacity against one who, in a legal act, has in good faith and in conformity with the law of the place of the act considered him to be capable.

Article 3

The respective rights and duties of spouses shall be determined by the common national law or, in case of change of nationality during the marriage, by the last national law common to them. If the spouses have never had a common nationality during the marriage, these rights and duties shall be determined by what was the last national law of the husband while they lived together. However, if that law declares a woman to be totally or partially incapable, this provision shall apply only to the extent that the national law of the wife is in agreement therewith.

Article 4

The national law of the husband at the time of the celebration of the marriage shall determine the matrimonial regime, including the possibility of derogating from the legal matrimonial regime by marriage contract, as well as the effects of the marriage contract.

This law shall also regulate the possibility of concluding or modifying a marriage contract during marriage, as well as the effects of such contract or such modification. However, if the husband changes nationality during the marriage, these questions are regulated by the new national law.

The modifications thus made in the matrimonial regime shall not produce any retroactive effect to the prejudice of third parties.

Article 5

Relations between parents and legitimate children shall be governed by the national law of the father. This law shall also govern the relations between the father and his natural child.

The relations between the mother and her natural child shall be governed by the national law of the mother.

An action which merely seeks an award of support for a minor child whose affiliation has not been legally established with respect to the child's debtor shall be subject to the law of the habitual residence of the child. However, this action shall be subject to the national law of the debtor in case the

law of the habitual residence of the child refuses him any right of support.

Article 6

If a minor has his habitual residence in the Netherlands/Belgium/Luxembourg, the Dutch / Belgian / Luxembourg authorities shall be competent to take the measures provided by their law for the protection of the person and the property of minors.

The Dutch / Belgian / Luxembourg authorities may take the measures provided for by their law for the protection of the person and the property of minors who have Dutch/Belgian/Luxembourg nationality and who do not have their habitual residence in the Netherlands/Belgium/Luxembourg.

If a minor is found in the Netherlands / Belgium / Luxembourg or has property there, the Dutch/Belgian/Luxembourg authorities shall take such protective measures as are justified in urgent cases.

The effects of measures taken in conformity with the preceding provisions shall be determined by Dutch/Belgian/Luxembourg law as regards both relations between the minor and persons or institutions which have charge of him, and third parties.

Article 7

The Dutch / Belgian / Luxembourg authorities may take measures provided for by their national law for the protection of the person or the property of those who are of age and have their habitual residence in the Netherlands/Belgium/Luxembourg. The effects of such measures shall be governed by that law.

Article 8

If the existence of a person is uncertain or if he has left his domicile without having settled his affairs sufficiently, an administrator may be designated for him in conformity with the law of the domicile from which he is absent or which he has left.

Pending the designation of an administrator, measures may be taken for the protection of the property of this person in conformity with the law of the situs of the property.

Article 9

Successions insofar as the designation of those entitled to succeed, the order in which they are called, the share which is due them, the reserve and the duty to bring into hotchpot are concerned, shall be subject to the national law of the decedent at the moment of his decease. By "those entitled to succeed" shall be understood the relatives by blood or by marriage of the required degree and the spouse.

This law shall determine the intrinsic validity and the effects of testamentary provisions.

If the law of the nationality of the decedent at the time when he made a donation to his heirs dispensed in whole or in part with the duty to bring into hotchpot, the duty shall be required only to the extent fixed by that law.

The liquidation and division of the succession, including the rules concerning the testamentary executor, the acceptance and renunciation, the charging of debts, as well as the method of accounting for gifts, shall be subject to the law of the last domicile of the decedent.

Article 10

If the application of a rule of private international law in force in the country where property belonging to the succession is located has the effect of excluding in whole or in part one who could have established a right to this property under the preceding article, the real rights acquired by other persons in conformity with such a rule shall be recognized as valid.

However, one who has benefited from the application of such a rule is obliged to indemnify the person excluded to the extent of such benefit.

The property acquired by operation

of the rule of private international law referred to in the first paragraph shall among those succeeding jointly be charged to the share due to each one according to the national law of the decedent.

Article 11

In all cases where the preceding articles refer to the national law of a person, this law shall be replaced by the law of the domicile:
(1) if this person has no nationality or if his nationality or the national law applicable to him cannot be determined with certainty;
(2) if an alien has his domicile in the Netherlands / Belgium / Luxembourg and the rules of private international law of his national law declare the law of the domicile to be applicable;
(3) if an alien has his domicile outside his own country and outside the Netherlands/Belgium/Luxembourg and the rules of private international law of both his national law and the law of his domicile make the latter law applicable.

Article 12

Real rights in corporeal property are governed by the law of the country where this property is found. This law determines the immovable or movable character of such property.

Property transported from one country to another shall during the transportation be subject to the law of the country of destination.

Article 13

Contracts shall be governed by the law chosen by the parties as regards both imperative and suppletive provisions of that law.

If the contract is clearly located in a certain country, provisions of the law of that country whose peculiar nature and object exclude the application of any other law cannot be excluded by the will of the parties.

In the absence of any explicit, or implicit but definite, choice, the contract shall be governed by the law of the country with which it has the closest relations.

If it is impossible to determine this country, the contract shall be governed by the law of the country where it was made. If the contract was made by mail, telegraph, or telephone, the law of the country from which the initial offer was sent shall be applied.

Article 14

The law of the country where an act takes place shall determine whether this act constitutes a wrongful act, as well as the obligations which result therefrom.

However, if the consequences of a wrongful act belong to the legal sphere of a country other than the one where the act took place, the obligations which result therefrom shall be determined by the law of that other country.

Article 15

The law which governs an obligation shall also determine the manner in which it must be performed, the consequences of non-performance, and the conditions of its extinction.

For the delivery of corporeal movable property, the law of the country where the delivery is to be made shall in the absence of agreement to the contrary determine the time-limits and manner of inspection, as well as the measures to be taken concerning this property in case delivery is refused.

Inasmuch as the manner of performance is concerned, regard must always be paid to the imperative rules of the law of the country where performance is to take place.

Article 16

The law of the country where the distribution of proceeds of a forced execution is to take place shall determine the claims which have a priority right as well as the order of priority.

Article 17

The law which governs an obligation shall determine whether and under what conditions it is assignable.

If the assignment takes place without the cooperation of the debtor, the rules prescribed by the law of the domicile of the latter for his benefit or for the benefit of third parties must be complied with.

Article 18

The right to represent a person by virtue of a power of attorney shall with respect to third parties be governed by the law of the country where the representative acts.

This law shall determine to what extent one who acts in his own name on behalf of another may create legal relations between the one for whom he acts and the third party with whom he deals.

Article 19

A legal act is always valid with respect to form if it satisfies the conditions in this respect by the law of the country where the act is done, unless the nature of the act is opposed thereto.

Article 20

Before a Dutch/Belgian/Luxembourg judge proof shall be furnished in conformity with Dutch/Belgian/Luxembourg law, subject to the exceptions hereafter mentioned.

The admissibility and force of legal presumptions as well as the burden of proof shall be governed by the law applicable to the legal relationship.

Testimonial and written proof shall be accepted if these methods are admitted either by the law applicable to the legal relationship, or by the law of the country where the legal act was done, or by Dutch/Belgian/Luxembourg law.

The probative force of a document shall be determined by the law of the country where it was drawn. However, if the document was drawn by or before a competent diplomatic or consular officer, the probative force of the document shall be determined by the law of the country represented by this officer.

Article 21

Rights acquired in conformity with the provisions of the present law shall continue to be recognized, even if the circumstances which had determined the applicable law are subsequently altered.

If a legal relation is born or extinguished outside the Netherlands/Belgium/Luxembourg in conformity with the law applicable according to the private international law of the countries with which this legal relation was at the moment of its birth or extinction significantly connected, this birth or extinction shall be recognized in the Netherlands / Belgium / Luxembourg even in derogation of the law applicable by virtue of the present law.

Article 22

As an exception, the provisions of the present law shall not apply if this application offends the *ordre public,* and in the case of fraud upon the law.

Article 23

The present law shall not be applicable:

(a) to the admissibility of divorce and separation or the determination of the causes of divorce or separation;

(b) to adoption;

(c) to the rights and obligations governed by the laws of ocean, inland or aerial navigation.

Article 24

The present law shall not affect the application of treaties presently in force or laws implementing such treaties.