

JUSTITIA ET PACE  
INSTITUT DE DROIT INTERNATIONAL

**Session of Cairo - 1987**

## **The Duality of the Nationality Principle and the Domicile Principle in Private International Law**

*(Fifteenth Commission, Rapporteur : Mr Yvon Loussouarn)*

*(The French text is authoritative. The English text is a translation.)*

*The Institute of International Law,*

*Whereas* the duality of the nationality principle and the domicile principle remains an important problem of private international law ;

*Whereas* each of these criteria has its advantages and disadvantages, which makes it inappropriate to advocate the adoption of a rule of conflicts of law based exclusively on either of the two criteria ;

*Whereas* it would be useful to formulate principles which could lead to some harmonization of the conflict rules in force in different States ;

*Adopts* the following Resolution :

### **A. Conflicts of Adjudicatory Jurisdiction**

1. It is recommended that States with rules of international jurisdiction based on nationality not treat them as rules of exclusive jurisdiction.

2. It is recommended that States which subject a matter to the law of the nationality and States which subject that matter to the law of the domicile, and which in either case recognise foreign decisions only when they were made by reference to the law designated by the rule of conflict of laws of the requested State, should waive this requirement when called upon to recognize a decision made by reference to the law of the nationality or of the domicile.

## **B. Conflicts of Laws**

3. In matters of matrimonial property regimes, it is recommended that States with a rule of conflicts of law based on an objective connecting factor allow spouses to select either the law of the nationality or of the domicile of either of them.

4. In matters of succession, it is recommended that States allow persons to select by will or donation *mortis causa* either the law of their nationality or of their domicile for the distribution of their property.

5. In regard to the effect of marriage on the person, and to divorce and judicial separation, in cases where the State of the nationality is different from the State of the domicile, it is recommended that States allow spouses to select either the law of their nationality or of their domicile when they have a common nationality and a common domicile.

6. In regard to the personal status of refugees and stateless persons, it is recommended that States not parties to the Geneva Convention of 28 July 1951 on the Status of Refugees or the New York Convention of 28 September 1954 on the Status of Stateless Persons adopt the solutions contained in Article 12 of each Convention.

It is desirable that States extend those solutions to certain categories of persons who are in a similar situation but are unable to claim the status of refugee or stateless person as defined in those Conventions.

7. In cases of conflict between personal laws, it is recommended that :

a) States whose rules of conflicts of law give effect to the law of the nationality should apply the law of the common domicile when the persons involved in the legal relationship in question are of different nationalities, and there is no good reason to prefer the law of one or other nationality ;

b) States whose rules of conflicts of law give effect to the law of the domicile should apply the law of the common nationality when the persons involved in the legal relationship in question do not have a common domicile, and there is no good reason to prefer the law of one or other domicile.

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(19 September 1987)