

**Session of Berlin - 1999**

**Taking Foreign Private International Law to Account**

*(Fourth Commission, Rapporteur : Mr Kurt Lipstein)*

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

*The Institute of International Law,*

*Considering* that the task of private international law is the search for the legal rules most appropriate to be applied in the individual case ;

*Considering* that the legal rules most appropriate to be applied in the individual case are those which promote justice, legal certainty, effectiveness, uniformity or compliance with the common intention or justified expectations of the parties ;

*Considering* that legal certainty may be advanced by reliance on the same law in respect of situations created and transactions concluded ;

*Considering* that effectiveness may be advanced by paying special regard to the law which exercises factual control ;

*Considering* that uniformity of decision is only achieved if the relevant choice of law rules of the countries concerned either contain identical choice of law rules interpreted uniformly or if one of different connecting factors is accorded precedence ;

*Considering* that even if total uniformity of decision cannot be achieved, a degree of uniformity may be achieved in the individual case if the referring court takes foreign private international law into consideration ;

*Considering* that the interest of justice may be advanced by taking foreign private international law into account ;

*Considering* that these aims can be furthered best if in some situations not only foreign domestic law but also foreign private international law is taken into account ;

*Adopts* the following Resolution :

Taking foreign private international law to account

1. Should not be excluded altogether, irrespective of whether it involves a reference back or on ;
2. Should not be restricted to situations where uniformity is desired ;
3. Should be considered :
  - (a) if the validity or the effectiveness of an act or a transaction is regarded as desirable and assured thereby ; or
  - (b) if a uniform treatment of an act or a transaction is desirable and can be achieved ; or
  - (c) if the parties enjoy a choice of law, have exercised it, and have included private international law ; or
  - (d) if the validity of an act or transaction concluded according to the choice of law rules of the law applicable at the time when the act or transaction was concluded is questioned in later proceedings ; and or
  - (e) if, when deciding an incidental question, the validity of an act would be ensured either by application of the conflict rules of the law governing the main question or of the conflict rules of the law governing the incidental question ;
4. Ought not to be considered :
  - (a) if the law of the forum contains alternative choice of law rules operating on an equal footing ;
  - (b) if the parties enjoy a choice of law, have exercised it, and have not included private international law.

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(23rd August 1999)