

The German Council for Private International Law^{*}

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The German Council for Private International Law came into existence in 1953 when 16 high ranked persons in the field of German private international law, partly academics, partly practitioners, joined together to found this council as an autonomous organization. The German Council defined itself as an advisory body supporting the German Government, in particular the Ministry of Justice, to develop and improve the German legislation in the field of private international law and international law of civil procedure and to advise the Government with regard to the negotiation and ratification of international Conventions in these fields. The names of the first members of the German Council read like a "who is who" of the German private international law after world war II; members were, among others, such famous representatives of our discipline as professors Beitzke, Dölle, Ferid, Kegel, Raape, Rabel and Zweigert.

During the last fifty years, the collaboration between the German Ministry of Justice and the German Council for Private International Law has been very close. There has been practically no piece of legislation in private international law and no proposal for ratification of an international convention on conflicts of law by the Ministry to the German Bundestag without a prior hearing of the German Council.

In the beginning, the German Council consisted of four commissions: 1) Principle of nationality or principle of domicile in family and inheritance law matters; 2) international marriage law; 3) international maintenance law; and 4) international sales law. Particularly intensive preparatory work has been done by the German Council for the German Act on Private International Law of 25 July 1986 which replaced the old rules in the Introduction Law to the German Civil Code of 1896 which to a great extent were not reconcilable with the new German constitution, especially the principle of equality of men and women. The same is true for the complementary German Act of 21 May 1999 on the private international law of non-contractual obligations and property. Both acts are based on proposals and expert opinions of the German Council. Its members were also involved into the development of new conflict of law rules in the field of parent-child relations in 1998 and for registered homosexual couples in 2001.

Furthermore, the German Ministry of Justice profited from the expert opinion concentrated in the German Council when negotiating international conventions on private international law, especially within the frame of the Hague Conference. Mostly prominent members of the German Council were nominated as chiefs of the German delegations for the negotiations, and thus strengthened the German position within these negotiations. The results achieved in such negotiations

were scrutinized thoroughly by the German Council who, after intensive discussions, took resolutions as to the ratification of each convention. These recommendations have been followed, with very few exceptions, by the German Government.

Today, the German Council consists of two commissions, one for the law of obligations, and another for family and inheritance law. Moreover, the Ministry of Justice from time to time asks for the formation of specialized under-commissions consisting only of a few members of the German Council working in the respective field, like insolvency law, labour law or company law.

Characteristic for the work of the German Council is the fact that there is no political influence on its work. The Ministry of Justice has no right to appoint or even propose its members. It is the Council itself who decides from time to time to co-opt new members among the younger academics or practitioners of private international law in Germany, Austria and Switzerland. The members of the German Council do the work asked of them by the Ministry of Justice without any financial or other support provided by the Ministry on a strict voluntary basis. All expert opinions or proposals elaborated by members of the German Council are published and are thus under control of the German public.

The continuity of the work of the German Council is guaranteed by its presidents. In more than fifty years, the German Council had only four presidents, namely Prof. Dölle (from 1953 to 1961), Prof. Kegel (from 1961 to 1987), Prof. Stoll (from 1987 to 1997) and Prof. Henrich (from 1997 until today).

After the coming into force of the Treaty of Amsterdam and the shift of competence for private international law legislation to the European Commission, the activity of the German Council also concentrates on projects of the European Community. For example, the German Council has intensively discussed the draft of a proposal for a Regulation on the law applicable to non-contractual obligations ("Rome II"), and the results of these discussions are reflected to a certain degree in the revised proposal made by the European Commission. The same is true with regard to the "Green paper" of the commission with regard to the transformation of the Rome Convention of 1980 on the law applicable to contractual obligations into a regulation ("Rome I"). Furthermore, the German Council has already adopted a proposal on the law applicable to divorce matters ("Rome III"). In this proposal, the nationality principle, which is still the basis of the German conflict of law rules in matrimonial matters, has been abandoned in favour of the habitual residence principle as primary connecting factor.

With regard to the feasibility study on the creation of a European research network commissioned by the European Commission, it may be worthwhile to think over the feasibility

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ity of creating an advisory body of the type represented by the German Council on a European level. If future proposals for regulations in the field of private international law will not only be prepared by the competent departments of the European Commission, but are accompanied and guided from the very beginning by a “European Council of Private International Law” consisting of prominent experts of all member states, the quality of legislation in this field may be improved substantially.