

Malta

Date: 16. January 2006

Location: University of Malta

Organised by: University of Malta by Professor Ian Refalo

1. Experts present

His Excellency, President Emeritus Dr. Ugo Mifsud Bonnici

Mr. Justice Joseph D. Camilleri

Dr. Patrick Galea

Mr. Knudsen

Magistrate Silvio Meli

Magistrate Lawrence Quintano

Professor Ian Refalo

Dr. Alex Sciberras Trigona

Professor Lino Sacca

Dr. Michael Xuereb

Professor Peter Xuereb

Present on behalf of the project was: Dr. Simons

2. Report on the meeting

Professor Ian Refalo, opened the meeting with a brief introduction to Dr. Simons, a description of the experts meeting and of the aims of the meeting. Dr. Simons then proceeded to describe the aims and tasks of the Study on the European Research Network, highlighting various issues. He then left the session for the discussions of the floor.

2.1. The language issue

It was stated that such a network is indispensable, a European Common Market, and European integration, cannot work without such a network. Furthermore the network should use English for communication, because failure to do so would create a number of problems. However he asked who should contribute to the discussion, should it be university professors and academics? Should it be practitioners?

Some of the participants were a bit wary of the English language, pointing out that Maltese Law developed from a different language to English, and English is not a language of the continent. English is not a legal Lingua Franca. Many legal concepts are

translated with difficulty into English. Therefore, French and German still retain a certain importance when it comes to legal language. A participant accepted this argument but pointed out that expecting people to know three languages in order to be able to contribute to discussions was problematic.

It was however reiterated that different words and concepts from the English are found in all areas of law; at times when an English word was applied, the concept would be changed unless care was taken. One must adapt the words before using them, and not simply translate them. It was stated that, rather than ban English, we must be cautious of using the English language as the sole language in such a network

Another participant agreed and related to his personal experiences working in an association having French and English as the official languages. He stated that from a practical point of view we need a Lingua Franca. However, it is surely true that English can lead to errors. Therefore, he concluded that we should maybe consider including the issue of discussing “terms and phrases” in private international law, in other words a legal lexicon. Possibly a legal lexical could be developed on the internet.

Two other issues were raised: (1) English as a Lingua Franca, for communication purposes, which does not create any problems; and (2) English as a Legal Language, where translations can pose difficulties unless care is taken.

Moreover, it was stated that although English is a well developed language, it is a language for business, it is well developed in business concepts and not so much so in legal concepts.

2.2. The common legal code issue

Some of the participants wondered if by talking of one community, one market and emphasising networks, the possibility of a common legal code instead of the current Babylonian system of each country having its own system should be discussed. It was pointed out that there are a number of projects, and directives being discussed that try to equalize a number of issues. However a common code is still very far off in the future, although the concept of a European Legislator has arisen in the area of Justice and Home Affairs and here a number of areas are being worked upon. Nonetheless, even by comparing the wordings of different translations, for example in the Brussels I Regulation, it is clear that there is still a huge difference between the countries. It was also noted that there have been many developments in contract law.

It was pointed out that in Malta although the Rome Convention was signed on 14, April last year, it still hasn't been ratified or promulgated yet. The question is whether the different speeds in the harmonization of Civil, Commercial, and private international law will create a limp system?

It was stated that while one can develop a common Private International Law system without unifying civil law, however if one unifies civil law then one can almost do away with Private International Law. A classic example is the Brussels II Regulation that unifies marriages.

Some participants pointed out that different rules in each country will create uncertainty and make unification difficult as well as giving rise to forum shopping

It was added that the Brussels regulations aim at creating a “good faith and credit” clause

One of the participants provided an example from his legal experience working with Italian/German Agency Cases, originally, at the time of the Brussels Convention no ‘indemnity for termination’ rule existed in Italy, while one existed in Germany. It was therefore fertile ground for forum shopping. The situation has changed: the first step was for the Rome Convention to close the gap by requiring the same PIL rules to be applied. The second step was for the agency directive to harmonise the rules across all the states. Things go step by step.

2.3. Advantages of the Feasibility Study and the creation of a Network

It was noted that one of the advantages of the study is that practitioners, judges and academics can identify the problem areas in the local context. This allows a pragmatic perspective. It is also relevant in the case of problems during the transitional period with lawyers and judges taking the bull by its horns initially.

It can be possible that there are similar interests in the network where the information can be shared. For example one difference between member states is that some, like Germany, have a well developed literature on Private international law at hand, while in Italy there is no such system. Also, the network can be used to create literature/instruments.

2.4. The creation of an internet portal

It was stated that the internet portal is a good idea – the internet is becoming an essential tool, it is extremely useful, and it is important to have good portals to facilitate the access to information.

It was advised that a database is useless when it is not sufficiently focused, because in these cases it gives too much information.

One of the participants mentioned the codices and said that the Venice Commission has a good one on the internet on constitutional law.

3. Cooperation with the European Commission

It was questioned whether the Commission would ask for a pre-green paper. Or whether one could prepare, for the Commission, a list of pre-green papers and then on the basis of

authorization or funding given by the Commission, the Network could work on a pre-green paper.

4. The structure of the Network

It was stated that having a simple forum where everyone (academics, etc) participates can produce lively discussions however the real problems are found in practice. The aim is to develop a structure that takes into account all the various interests.

At the moment consideration is being given to an association opened to all practitioners which then selects people to attend the conferences, or else to divide the Network into various subgroups, and here issues arise such as whether legal institutes should be allowed, or whether a subgroup of legal researches should be formed. There are also issues as to funding, which might not be equally available.

Subgroups are effective at creating focused discussions. It was argued that this is a delicate issue for the judiciary because if it becomes too focused then judges might come in too close contact with the people they will have to judge. This might lead to a conflict of interest problem. It was stated that this should not be a problem, because the issue will be examined solely from an academic point of view, and ultimately lawyers also face a similar issue: where they might have to defend a different point of view. Also, it was added that although there, the problem didn't exist in a structured conference, it *did* in a structured network, which is more focused. This problem has already been seen in other conferences.

The question was whether a solution could be found? An example from competition law was given, where judges have formed their own association and are even asking for EU funding to work separately (rather than to be grouped "with other sharks"). It was also pointed out that a big part of British legal tradition is to keep the judiciary apart. This is true, however from an academic point of view, everyone contributes freely.

Some of the participants also asked when the study was expected to be completed since it had been going on for some time and Dr. Simons replied by the end of March.:

Dr Simons closed the discussion, and after thanking the participants informed them that they should feel free to reach him should they have any other ideas after the discussion.

Malta, 16 december 2005

Prof. Refalo