

United Kingdom (excluding Scotland)

Date: 20 February 2006
Location: Clifford Chance LLP, Coleman Street, London
Jurisdiction: UK (excluding Scotland)

Organised by: Andrew Dickinson, national correspondent, England and Wales

1. Number of experts present:

Michiel de Rooij, TMC Asser Instituut
Andrew Dickinson, solicitor advocate, national correspondent, England and Wales
Prof. Gerrit Betlem
Prof. David McClean
Dr. Adeline Chong
Norah Gallagher
Martin George
Kate Gibbons
Simon James
Prof. Jonathan Harris
David Hodson
Simon Jones
Look Chan Ho
Roger Masefield
Philip Mead
Alexander P. Lütgendorf
Alex Mills
Dr. Emmanuel Opoku Awuku
Dr. Joanna Perkins
Tolek Petch
Fergus Randolph
Dr. Pippa Rogerson
Gerard Rotschild
Dr. Veronica Ruiz Abou-Nigm
Graham Smith
Charles Spragge
Michael Stock
Prof. Peter Stone
Dr. Ioanna Thoma
Ann Thomas
Prof. Gillian Triggs
Prof. Pascal Vareilles de Sommieres
Richard Plender QC
Monique Sasson
Carolynn Usher
Hugo Warner
Matthew Weiniger

Prof. Philip Wood

2. Agenda

- a) Objectives of the study
- b) Organization of the project
- c) The function of the expert meetings
- d) Current expectations of national experts
- e) Aims and objectives of a future network
- f) Models for a future network
- g) Work programme of a future network
- h) Membership of a future network
- i) Activities and 'products' of a future network
- j) Relation between a future network and EU Commission
- k) Relation between a future network and its members

The overall reaction of the attendees to the proposed network was mixed.

3. Report on the meeting

Information based network

On the one hand, several speakers welcomed the possibility of the creation of an information based network enabling practising and academic lawyers working in the field of private international law:

- To identify and contact other lawyers with similar interests, particularly those working on identical issues.
- To keep apace with new proposals and other developments in private international law in the EC or the Member States.
- To access (via a website) up-to-date information concerning the status of EC instruments and proposals in the field.
- To exchange ideas and views, and to draw attention to practical difficulties caused by EC legislation and proposals, or Member State practice.

A number of speakers commented on the difficulties in obtaining up-to-date information on the status of Commission proposals in the area, although it was suggested in response that that access to information would improve when the LexAlert service became publicly available.

One speaker questioned, however, whether even these limited activities were necessary in view of the activities of GEDIP (Groupe européen de droit international privé). In response, it was suggested that GEDIP had a civil law focus and did not sufficiently represent the common law viewpoint. Nor, in one speaker's opinion, did it promote the expression of a broad range of views, tending to favour common positions. The

importance of diversity, both in legal tradition and in giving expression to the views of individual lawyers (rather than a composite, committee view), was emphasised by other speakers.

Another speaker asked for clarification of the relationship between the proposed network and the activities of the European Judicial Network.

Role of proposed network in consultation and research projects

On the other hand, a majority of speakers opposed giving any network, or its members, any special status in terms of participation in consultations or research projects. It was suggested by one speaker that the network might, with appropriate assurances from the Commission, provide an effective means of ensuring that the concerns of those specialising in private international law were heard by the Commission, particularly at the early stages of development of proposals. Other speakers expressed frustration at the lack of early consultation, resulting in difficulties in changing the direction of proposals at a later stage. Most speakers felt strongly, however, that the proposed network and its members should not become (as one speaker put it) the "sounding board of choice" for the Commission in consulting on proposals in the area of private international law, to the exclusion of non-members. In particular, they objected vehemently to the idea of a committee of "wise men/wise people" from whom the Commission would seek guidance. In the view of these speakers, it was vital that the Commission should not see any "network" (however constituted) as an alternative to a wide and effective consultation with all interest groups – as one speaker put it, the network should be a "way through" to the Commission for interested parties, not a "way of cutting off" links. Several speakers challenged the idea of experts being chosen by the Commission from among the network's membership, or being submitted by the network itself. One speaker questioned whether, if the network were to operate on an open membership basis (see below), it would be cost effective for the Commission to consult with all members on all issues.

Constitution, funding and activities of the proposed network

As to the constitution, funding and activities of the proposed network:

- There was a consensus that the membership of any network should be self-selecting and not exclusive. Two speakers referred to the work of the Commission in connection with the Common Frame of Reference project, as illustrating the risks of consultation with a selected group of academic experts (in terms both of public perception and of the work product), and of proceeding with a project such as the present without a clear idea as to what it was intended to achieve (see below).
- Speakers from different backgrounds emphasised the importance of balanced participation of both practising and academic lawyers in consultations. One speaker suggested that academic lawyers needed to be encouraged to participate in consultations, and that this should be one of the purposes of the proposed network. Another speaker suggested that the willingness of those holding academic positions to participate in the day-to-day work of the proposed network was closely linked to the question of funding. Contrastingly, some speakers emphasised the importance of

working with practitioners to identify and resolve the practical problems which they faced in their daily work. One speaker referred, for example, to the difficulties for financial institutions resulting from the Court of Justice decision in the *Gasser* case. Others responded, however, that practising lawyers were already sufficiently responsive to consultations, and did not need the medium of a network to encourage their involvement.

- Different views were expressed as to whether the proposed network should have a formal or informal structure. One speaker suggested that there was much to be said for the building of institutional networks, particularly to facilitate the carrying on of research projects and consultations. Other speakers indicated a preference for informality, consistently with the perceived role of the network as a vehicle for exchanging information and views (see above).
- One speaker referred to the International Law Association as a possible model of an organisation established along regional lines and funded by member's subscriptions and conference fees. In response, another speaker suggested that adopting the ILA model might produce different results in different Member States, both in terms of output and in terms of full participation of members.
- In response to the suggestion that a structure comparable to that of the Hague Conference on Private International Law (with a secretariat, or 'Permanent Bureau' with a representation in each or most member states) might provide a suitable model, one speaker pointed out that deliberations of the Hague Conference's expert groupings took place over a number of years, whereas the Commission expected responses to consultations within a much more expedited (and sometimes unrealistic) timeframe.
- A few speakers thought that the proposed network would need to be funded by the Commission, but others doubted whether this would be an effective use of public funds.
- The idea of a directory of practising and academic lawyers working in the area (as a source of information for members) was broadly welcomed, as was the possibility of a website describing new developments and providing links to up-to-date versions of EC legislation and proposals. There was, however, no support for the suggestion that the network be involved in preparing and publishing a "handbook" of annotated legislation. Speakers felt that the needs of practitioners and academics (at least in the UK) were already met by commercial publishers, and that there was a risk that the coverage of the handbook would be "patchy" and that some Member State courts might be tempted to give it a quasi-legislative status.
- Several speakers indicated that they found it difficult responding to specific questions as to the constitution, funding and activities of the proposed network, in the absence of more detailed information as to why the Commission thought that a network was necessary or desirable, and what functions it saw the network as fulfilling. One speaker described the current proposal as "fluffy" and suggested that, until potential participants had a clearer idea as to what was required of them, it was difficult to be

prescriptive as to structural issues. He felt that the Commission was asking individuals to validate themselves as "experts" without defining how that expertise would be used.

- One speaker asked about "ownership" of the network within the Commission. He expressed concern that it would be used to bolster the arguments of DG JHA in its debate with other DGs (notably Internal Market) about the direction of reform. He suggested (and another speaker agreed) that one useful function of a network might be to encourage the Commission DGs to communicate and co-operate more effectively with each other.
- One speaker emphasised the need for input from non-EU residents. He pointed to discrimination against such persons (e.g. in the area of privilege) and difficulties caused by measures in other areas (e.g. the Prospectus and Transparency Directives).
- There was opposition to the suggestion that academic research would be "co-ordinated" by the proposed network or the Commission, if that meant that either would control activities of academic institutions. There was also opposition to the idea of promoting "excellence", otherwise than by encouraging practising and academic lawyers to become fully involved in debate and discussion of EC activities in the area of private international law.

The meeting concluded at 6:45pm.

Andrew Dickinson