Is it an International Contract?

The Definition of International Character and Universal Application in Conflict-of-laws Conventions and in Other International Legal Instruments on Sales Contracts

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Abstract

The starting point for the application of private international law is the perception of the international character of a legal relationship. This is also the case with international conventions and other instruments aimed at unifying conflict of laws. However, it is not easy to determine which factors give rise to an international situation. The legal literature has been wrestling with this question for decades. This paper compares the different documents designating the applicable law for international sales and contracts from this perspective. This comparative analysis stretches from the 1955 Hague Convention to the 2015 Hague Principles to demonstrate the different approaches. The second part of the study focuses on the partly related problem of universal application. The author concludes that the diverging solutions of domestic conflict of laws infiltrate the norms of uniform conflict of laws instruments in the first area under examination. However, the need for universal application is generally accepted in relation to conflict of laws instruments.

Keywords: Hague Conventions, private international law, Rome Convention, Rome I Regulation, unification of conflict of laws

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1. Introduction – International Character

The definition of the international nature of a private law fact situation and its precise description have long been the subject of conflict of laws literature.[1] After all, it is only in the event of an international background that the laws of different states are in competition and conflict, therefore the need for a solution based on private international law (PIL)[2] arises. This is the set of circumstances when there is a doubt about the substantive law applicable to a contract.[3] A particularly important consequence of the international nature of contracts is that it opens the way to the parties' choice of law as well.[4] The different instruments of PIL offer diverging solutions in this respect. An interesting question is whether the conventions and other legal instruments aimed at the unification of private international law have managed to find a common denominator in the definition of international character. This paper is mainly devoted to this subject, comparing the different documents having the aim of creating a uniform set of conflict of laws rules.

The definition of international character understandably arises in the context of the unification of conflict of laws, including in the documents (typically conventions) concerning international sales, as a prerequisite for their application. The situation is complicated by the fact that a contract can be linked to another state at several points, so the foreign element can manifest itself in many ways. For example, in addition to the place of habitual residence or places of business of the parties, it may be their nationality or the place where the contract is negotiated, concluded, or performed, the subject of the contract (goods) abroad or even the place of

1 Georges R. Delaume, 'What is an International Contract? An American and a Gallic Dilemma', *International & Comparative Law Quarterly,* Vol. 28, Issue 2, 1979, pp. 258–279; Giesela Rühr, 'Private international law: Foundations' *in* Jürgen Basedow *et al.* (eds.), *Encyclopedia of Private International Law*, Edward Elgar, Cheltenham, 2017, pp. 1380–1390, especially p. 1380; Kurt Siehr, *Das Internationale Privatrecht der Schweiz*, Schulthess, Zürich, 2002, p. 5. *See also* Franco Ferrari (ed.), *Rome I Regulation. Pocket Commentary,* Sellier, Munich, 2015, p. 47; Robert Magnus, 'Der grenzüberschreitende Bezug als Anwendungsvoraussetzung im europäischen Zuständigkeits- und Kollisionsrecht', *Zeitschrift für Europaisches Privatrecht,* 2018/3, p. 507.

2 The terms conflict of laws and private international law (PIL) are used in this paper interchangeably.

3 Ulrich Magnus & Peter Mankowski (eds.), *Rome I Regulation, Commentary, European Commentaries on Private International Law*, *ECPIL, Vol. II,* Sellier, Otto Schmidt, Cologne-Munich, 2017, p. 72.

4 Id. p. 76.

payment. A separate question is whether the choice of law of the parties as a subjective factor can internationalize an otherwise domestic relationship, this way triggering the application of PIL.

1.1. The 1955 Hague Convention

In terms of its material scope, the 1955 Hague Convention[5] applies to the international sale of movable property.[6] *'La présente Convention est applicable aux ventes à caractère international d'objets mobiliers corporels.*' From the general wording, and the absence of specific provisions, the Convention also covers consumer transactions.[7] However, Article 1 of the Convention, cited above, does not specify the international character, although, as it was reported, this was already the subject of considerable discussion, especially in relation to party autonomy, at the 1928 Hague Conference that prepared the future Convention.[8] The 1955 Hague Convention only indicates that it is not sufficient for the parties to agree on the applicable law or the identity of the judge or arbitrator.[9] Nor did it define the notion of contract or contract of sale, leaving the question of definition essentially to the law of each Contracting State, and above all to the law of the forum adjudicating the dispute. Although the sale of goods is an age-old transaction with a traditional content, in certain mixed transactions, such as those involving the future production of goods, it may be appropriate to clarify the nature of a contract from the point of view of the applicability of the 1955 Hague Convention.[10]

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5 Convention of 15 June 1955 on the law applicable to international sales of goods. The Convention was ratified by Denmark, Finland, France, Italy, Niger, Norway, Sweden and Switzerland.

6 1955 Hague Convention, Article 1: "This Convention shall apply to international sales of goods."

7 Magnus & Mankowski (eds.) 2017, p. 489.

8 Conférence de la Haye de Droit International Privé, Actes de la Sixième Session Tenue du 5 Au 28 Janvier 1928 (Imprimerie Nationale 1928), p. 295.

9 1955 Hague Convention, Article 1(4). Ole Lando, 'The 1955 and 1985 Hague Conventions on the Law Applicable to the International Sale of Goods', *The Rabel Journal of Comparative and International Private Law,* Vol. 57, Issue 1–2,1993, p. 162.

10 This issue, in substantive law unification, is dealt with in Article 3 of the UN Convention on Contracts for the International Sale of Goods (Vienna Sales Convention, CISG). But the CISG does not define the concept of sale either, although it can be deduced from the regulation of the rights and obligations of the seller and the buyer.

1.2. Rome Convention

Continuing the analysis of the different PIL Conventions, the Rome Convention of 1980 created under the aegis of the European Community,[11] which applies to contractual obligations, not just sales, does not specify the concept of contractual obligations either. As far as the criterion of international character is concerned, Article 1(1) of the Convention states that it "shall apply to contractual obligations in any situation involving a choice between the laws of different countries." A certain ambiguity may arise from the terms of the official English version of the Rome Convention,[12] since, in English legal language, the expression "choice between the laws" can refer to both classical conflict of laws rules and to the choice of law in a narrow sense: a possibility for the parties to the contract to select the applicable law. The German wording of the Convention, on the other hand, already makes it clear that it applies to factual situations that contain a foreign element and are thus connected with the legal systems of different States.[13] A similar view is provided by the Giuliano/Lagarde report,[14] which can be considered as the official commentary of the Rome Convention. It refers to a "conflict between two or more legal systems" in the analysis of Article 1 of the Convention. Nevertheless, it is a fact that a part of the legal literature regrets the imprecision of the final (English) text of the Rome Convention, saying that this wording could raise the question of the application of the Convention, even if two Italian parties agree to purchase an Italian product but insert a clause on the choice of English law in their contract.[15] In a broad interpretation, the situation of "choice between the laws of different countries" described in Article 1 may in fact arise in such a case. Even more so because the Rome Convention does not contain the limitation of the 1955 Hague Convention, already indicated above, that it is not sufficient

11 At present, the Rome Convention is applied only by Denmark, since it was replaced by the Rome I Regulation.

12 Rome Convention, Article 1.1: "The rules of this Convention shall apply to contractual obligations in an any situation involving a choice between the laws of different countries."

13 *"Sachverhalten, die eine Verbindung zum Recht verschiedener Staaten aufweisen."*

14 Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor University of Paris I, Official Journal, C282, 31 October 1980, pp. 1–50. (Giuliano – Lagarde Report).

15 Richard Plender, *The European Contracts Convention, The Rome Convention on the Choice of Law for Contracts,* Sweet and Maxwell, London, 1991, pp. 47–48.

for the parties to agree on the applicable law or the person of the judge or arbitrator to make a fact situation international.

1.3. The 1986 Hague Convention

The 1986 Hague Convention,[16] which has not entered into force, has already gone further than its predecessor and, in line with the Vienna Sales Convention,[17] therefore with a view to the unification of substantive law, it would have been applied primarily where the contract of sale was concluded between parties having their places of business in different States.[18] This was supplemented – probably in the wake of the quoted provision of the Rome Convention – by a further possibility, according to which the 1986 Convention would apply "in all other cases involving a choice between the laws of different States",[19] with the proviso that here it is not sufficient for the international element to be manufactured by an agreement on the governing law or forum alone.[20] Even so, there may be some uncertainty as to what intensity of international strand or connection is actually required. Might it be sufficient to come under the umbrella of the 1986 Hague Convention, as Lando suggests, that a contract between French parties uses an English standard form, which of course points towards English law?[21] Most probably not. If the direct choice of the governing law of the parties cannot trigger the application of the Convention, then the selection of a standard form is not sufficient to achieve this result either.

16 Convention on the Law Applicable to Contracts for the International Sale of Goods (Concluded December 22, 1986).
17 CISG, Article 1(1).
18 Compare the wording of 1986 Hague Convention, Article 1(a) and CISG, Article 1(1).
19 The French text is even clearer: *'dans tous les autres cas où la situation donne lieu à un conflit entre les lois de différents Etats, à moins qu'un such conflit ne résulte du seul choix par les parties de la loi applicable, même associé à la désignation d'un juge ou d'un arbitre.'* 1986 Hague Convention, Article 1(b).
20 1986 Hague Convention, Article 1(b).
21 Lando 1993, p. 162.

1.4. The Rome I Regulation

Returning back to the EU, the English version of the text of the Rome I Regulation[22] adopted in 2008 has been refined compared to its predecessor, the Rome Convention, no longer using the ambiguous phrase "choice between the laws of different countries", but instead capturing the international nature of a contractual relationship in its Article 1(1), by referring to "situations involving a conflict of laws, to contractual obligations in civil and commercial matters."[23]

It should be noted that the English version of the Rome I Regulation is not a perfect solution either, and an ideal description probably does not exist at all, because here the broad interpretation of the term 'conflict of laws' may raise questions, since this technical term may refer to jurisdictional issues in Anglo-Saxon legal systems, not only to the rules of designating the applicable law.[24] On the other hand, the Rome I Regulation does in fact apply, even if the contracting parties choose the law of a purely domestic situation, thus internationalising it,[25] although it is true that in this case it is only choice of law in the substantive sense, which cannot replace the application of mandatory rules of the otherwise applicable law.[26] Most authors, interpreting the phrase 'in situations involving a conflict of laws', accept that a question of private international law is involved where there is 'reasonable' doubt as to the applicable state law.[27] However, even this expression is rather flexible, and requires further interpretation in the light of the circumstances. On one hand, if certain connecting factors specifically highlighted in a relevant conflict rule, such as habitual residence of the

22 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation).

23 Article 1(1) in German: *"Diese Verordnung gilt für vertragliche Schuldverhältnisse in Zivil- und Handelssachen, die eine Verbindung zum Recht verschiedener Staaten aufweisen."*

24 Ferrari (ed.) 2015, p. 41.

25 *See* Article 3(3) of the Rome I Regulation; and Ferrari (ed.) 2015, p. 41. *See also* Christoph Reithmann & Dieter Martiny (eds.), *Internationales Vertragsrecht, Das internationale Privatrecht der Schuldverträge, Ninth edition,* Otto Schmidt, Köln, 2022, pp. 35–36.

26 Rome I Regulation, Article 3(3).

27 Magnus & Mankowski (eds.) 2017, p. 72.

parties,[28] occur in different countries, there is obviously an international fact situation under the umbrella of private international law. On the other hand, if only a marginal element of the facts is rooted abroad, (for example, some negotiations were conducted in a foreign country between two local companies concluding a sales contract), there is still an internal situation. However, an accumulation of such elements may already result an international case requiring the designation of the applicable law. Developing the above-described circumstances further, for example, not only the negotiations between two local companies were conducted abroad, but the contract itself was concluded there, and the location of the subject matter of the contract is abroad as well. This could tip the scales towards international character.

1.5. The 1994 Mexico City Convention

The 1994 Mexico City Convention[29] on the law applicable to contracts contains a specific provision on the international nature of contracts. Its Article 1 declares in general terms that the Convention applies to international contracts. It then also defines the international character, according to which a "contract is international if the parties thereto have their habitual residence or establishments in different States Parties or if the contract has objective ties with more than one State Party."[30] It should be stressed that the requirement of an objective connection precludes the possibility that the connection with more than one State is reflected solely in the choice of law of the parties.

28 For example, Article 4(1)(a) of the Rome I Regulation: "a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence."

29 Inter-American Convention on the Law Applicable to International Contracts, signed in Mexico, D.F., Mexico, on 17 March 1994, at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V). Ratified by Mexico and Venezuela.

30 Mexico City Convention, Article 1.

1.6. The 2015 Hague Principles

The 2015 Hague Principles on Choice of Law,[31] while always bearing in mind that it is a non-binding instrument, unlike a convention, also provides a definition of international character, offering a new approach to the issue. Article 1(2) of the Hague Principles essentially considers all contracts to be international "unless each party has its establishment in the same State and the relationship of the parties and all other relevant elements, regardless of the chosen law, are connected only with that State."[32] This definition, which is the reverse of the solutions described so far, excludes only purely domestic situations, giving the broadest possible interpretation of the term 'international'. The solution is admittedly inspired by the 2005 Hague Convention on Choice of Court Agreements.[33] A double test follows from this approach. A contract is international if the parties are established in different States. However, if this condition is not fulfilled, the contract may be still international if not all the relevant elements, such as the conclusion or performance of the contract, are linked to a single State.[34] Of course, it is a question of assessing the elements 'relevant' to the international nature of a contract, so the Commentary on the Principles states that the mere fact that the place of pre-contractual negotiation took place abroad or that the contract was written in a particular language does not change the domestic character of the contract.[35]

It is worth noting that the definition of international fact situation is also faced by domestic private international law. For example, the new Hungarian PIL Code[36] defines the applicable law in "private law relationships with

31 Principles on Choice of Law in International Commercial Contracts, Hague Conference on Private International Law, 2015.

32 Hague Principles, Article 1(2).

33 The Convention of 30 June 2005 on Choice of Court Agreements Article 1(2): "For the purposes of Chapter II, a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State." *See also* the Hague Principles Commentary, paras. 1.13 – 1.15, at www.hcch.net/en/instruments/conventions/full-text/?cid=135.

34 Id. paras. 1.16 – 1.20.

35 Id. para. 1.19.

36 Hungarian Act XXVIII of 2017 on Private International Law, Section 1. *See* Tamás Szabados, 'The New Hungarian Private International Law Act: New Rules, New Questions', *The Rabel Journal of Comparative and International Private Law,* Vol. 82, 2018, pp. 972–1003.

a foreign element", without further specifying the nature of this 'foreign element'. The 2011 Polish Private International Law Act[37] takes a slightly different approach, defining the applicable law "for private law relationships connected with more than one State" in its Article 1. Similarly, the PIL Code of Uruguay passed in 2020, probably following the approach of the Mexico City Convention, refers to a factual background connected with several national legal systems.[38] The Austrian PIL Code refers to matters involving foreign countries,[39] the Swiss Code simply addresses 'international matters'.[40] The well-known questions of interpretation, for example as to the strength of the presumed connection, may arise here too. Even so, the Italian,[41] Japanese[42] or Dutch Acts,[43] for example, are silent on this very question.[44]

2. The Question of Universal Application

The next logical question, following the detection of international character of a sales contract, whether the relevant international convention (or other instrument) will be applied only to fact situations which relate to the Contracting States or, regardless of this limit, to all international fact situations and disputes which are within its material scope. The answer to

37 Act on Private International Law Dated 4 February 2011. Basedow *et al.* (eds.) 2017, pp. 3621–3633.

38 General Law of Private International Law of 27 November 2020, Article 1. The German translation is available: *The Rabel Journal of Comparative and International Private Law,* Vol. 85, 2021, pp. 907–925.

39 Bundesgesetz vom 15. Juni 1978 über das internationale Privatrecht (IPR-Gesetz), Section 1(1): "*Sachverhalte mit Auslandsberührung sind in privatrechtlicher Hinsicht nach der Rechtsordnung zu beurteilen, zu der die stärkste Beziehung besteht.*" (From a private law point of view, matters involving foreign countries are to be assessed according to the legal system with which there is the strongest relationship.)

40 Bundesgesetz über das Internationale Privatrecht (IPRG) vom 18. Dezember 1987 Article 1: "*1 Dieses Gesetz regelt im internationalen Verhältnis: […]*"

41 Reform of the Italian System of Private International Law, Law of 31 May 1995, No 18. Basedow *et al.* (eds.) 2017, pp. 3329–3343.

42 Act on the General Rules of Application of Laws, Act No 78 of 2006. Basedow *et al.* (eds.) 2017, pp. 3344–3357.

43 Dutch Civil Code, Book 10 on the Conflict of Laws, 2011. Basedow *et al.* (eds.) 2017, pp. 3553–3584.

44 Lajos Vékás, 'A külföldi elem a nemzetközi magánjogi tényállásban', *Jogtudományi Közlöny,* Vol. 74, Issue 10, 2019, pp. 377–386.

this question has an obvious impact on the range of application of PIL instruments.

2.1. The 1955 Hague Convention

The Hague Convention of 1955, as was described above, gave uniform conflict of laws rules applicable to all international sales. It also follows that it does not only determine the law applicable to disputes that are linked in some way to the Contracting States, for example by the habitual residence of the seller or buyer.[45] So, if a dispute between an English seller and a Hungarian buyer is brought before, say, a Swedish ordinary court, it will apply the 1955 Hague Convention to determine the governing law, since Sweden has ratified the Convention, even though the United Kingdom and Hungary are not Contracting States. In addition, two of the countries, Sweden and Hungary, are also members of the European Union, the judicial fora of which would otherwise apply the Rome I Regulation. In reality, the different conflict of laws routes could often lead to the law of the seller's country in both cases, because the above-mentioned PIL instruments would apply the law of the seller's habitual residence or place of business, as a rule.

This solution also presupposes that Article 25 of the Rome I Regulation regulates its relationship with existing international conventions, along the lines of its predecessor, the Rome Convention, but worded differently. It establishes the primacy only of international conventions concluded previously and containing only conflict of laws rules, and only if not, exclusively Member States are parties to them. The Regulation therefore does not affect the application of international conventions to which one or more Member States are parties at the date of adopting the Regulation, *i.e.* on 17 June 2008, and which lays down conflict of laws rules in respect of contractual obligations. However, as a Regulation between Member States, it takes precedence over conventions concluded exclusively between two or more Member States as regards the matters covered by the Regulation.[46] The

45 On universal application in respect of the Rome Convention: Ferrari (ed.) 2015, pp. 70–71.

46 Rome I Regulation, Article 26, List of Conventions. The list was published by the Commission in 2010. The list typically includes treaties on legal aid and judicial cooperation with third countries.

Rome I Regulation would therefore allow the application of the 1955 Hague Convention on the law applicable to international sales, taking into account that three non-EU States[47] have acceded to it, but would no longer allow the application within the Union of the 1986 Hague Convention or a similar instrument that may enter into force at a later date. This solution is both logical from the point of view of protecting European integration as a single legal space and represents a kind of checks and balances system providing equilibrium between EU and global unification in this area, giving rules for their potential collision.

Further modifying the above-described fact situation, if a transaction were concluded between a seller with a place of business in Germany and a buyer with a place of business in Hungary, they would already be leaving the world of conflict of laws and the Swedish forum would have to apply the Vienna Sales Convention, the flagship of global substantive law unification, unless the parties to the sales contract excluded it.

2.2. The Rome Convention

In theory, the justification for universal application, or even its questionability, could be raised even more strongly in the case of the conflict of laws instruments of the EU, since they are not international conventions open to all states, but laws of a regional integration. At one time Lord Wilberforce argued before the House of Lords, albeit in a non-judicial capacity, that the Rome Convention should apply only to contracts that were in some way connected with the European Communities. Theoretical arguments could be found in support of this position, since it was probably not decisive for the establishment of the Common Market and the free movement of goods that the law applicable to transactions not at all connected with the Communities should be determined by the same rules of private international law.[48]

Nevertheless, it is clear from the text of the norm that the Rome Convention is not limited to designating the law applicable to contractual relations having their origin in the Union, Article 1 of which provides that the "Convention shall apply to contractual obligations in any situation involving a choice between the laws of different countries." This is supplemented by

47 Niger, Norway, and Switzerland.
48 Plender 1991, pp. 53–54.

Article 2, on the application of the law of non-contracting States, which states that any law specified under this Convention shall apply, even if that law is the law of a non-contracting State. As early as 1980, the Commission of the European Communities explained that the Convention applies very broadly, not only where there is a choice between the laws of different Member States, but also where there is a conflict between the laws of two non-member States in contractual relations.[49] The need for universal application was also made clear by the Giuliano/Lagarde Report in its commentary to Article 2.[50] The obvious advantage of this solution is that it is not necessary for EU Member States to maintain and apply two different sets of conflict of laws – one for intra-EU cross-border transactions and another for international contractual relations.

2.3. The 1986 Hague Convention

The 1986 Hague Convention, while specifying the scope of the Convention and the international character of the sale – referring to the fact that the seller and the buyer have their places of business in different States or to all other cases involving a choice between the laws of different States – is not restrictive, so that, if it were to enter into force, it would not limit itself to the legal relations of the Contracting States; in other words, it would be universally applied.[51]

2.4. Rome I Regulation

The Rome I Regulation also follows its predecessor in this respect, essentially reproducing the text of the Rome Convention in its Article 2. If possible, the wording is even clearer, because the former title 'application of law of non-contracting States' has been changed to 'universal application'. This makes it clear that the Regulation applies to all international situations, so that it is not possible to retain a parallel conflict of laws

49 Id. p. 54.
50 Giuliano – Lagarde Report, pp. 8, and 13.
51 The 1986 Hague Convention, Article 1.

for situations outside the European Union.[52] The Rome I Regulation also applies to situations involving purely third States; in other words, where there is no connection with the Member States at all.[53] However, it should be noted that the Rome I Regulation was adopted at a time when Article 65 of the former EC Treaty only gave the European Community the power to lay down rules of private international law, with reference to the need to ensure the proper functioning of the internal market, which would not necessarily imply that it would be universally applicable. This restriction was not, however, recognized by the CJEU in its opinion on the Lugano Convention,[54] where it stressed the need for the uniformity of private international law, including in matters involving non-member States,[55] and interpreted this question of legal basis in a generous, pro-integration way.[56] It can also be argued that the application of the Brussels I Regulation and the free movement of judgments in commercial and civil matters within the Union will be facilitated if the applicable law is designated on the basis of uniform conflict of laws rules, irrespective of the forum.[57]

52 Ferrari (ed.) 2015, p. 71; Similarly, Pippa Rogerson, *Colliers's Conflict of Laws*, *Fourth edition,* Cambridge University Press, Cambridge, 2013, p. 293; Martiny (eds.) 2022, p. 29.

53 Christian Von Bar & Peter Mankowski, *Private International Law*, *Volume II, Special Part, 2nd edition,* C.H. Beck, München, 2019, p. 3.

54 Opinion of 7 February 2006, *Opinion No 1/03 pursuant to Article 300(6) EC:* "Community competence to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters." ECLI:EU:C:2006:81.

55 Ferrari (ed.) 2015, p. 73.

56 '131. Finally, the legal basis for Community rules, and in particular the requirement of the proper functioning of the internal market laid down in Article 65 EC, is not in itself relevant in assessing whether an international agreement is detrimental to Community rules. Indeed, the legal basis of an internal rule is determined by its main component, whereas the rule, the effects of which are to be examined, may be an ancillary component of that rule. The Community's exclusive competence is intended, inter alia, to ensure the effective application of Community law and the proper functioning of the system established by Community rules, irrespective of any limits laid down by the Treaty provision on which the institutions have relied in order to adopt- those rules.'

57 Ferrari (ed.) 2015, p. 73.

2.5. Mexico City Convention

Unlike the Rome Convention, for example, the Mexico City Convention is not intended to be universally applicable. It therefore applies only "if the parties thereto have their habitual residence or establishments in different States Parties or if the contract has objective ties with more than one State Party."[58] The fact situation should be connected to State Parties.

The above cited provision also means that the parties' choice of law, in other words their subjective decision, is not a sufficiently close link to make this Convention applicable, as has already been said. At the same time, the law designated by the Convention applies, under Article 2, even if it is not the law of a Contracting State.[59]

The next step in sequence could be to examine the universal application of the 2015 Hague Principles, but given that it is a non-binding document, with no ratifying and acceding states, this question is not open to interpretation or consideration.

3. Conclusions

To sum up, it seems that there is no generally accepted method for defining the international character of fact situations, even at the level of conflict of laws conventions. The various legal instruments try to achieve the same objective by different means, namely, to distinguish between purely domestic and international situations and to decide which foreign elements are relevant. The diverging solutions of domestic conflict of laws thus infiltrate the norms of uniform conflict of laws instruments.

The need for universal application is fairly general in relation to conflict of laws instruments,[60] at least as regards conventions of PIL. One of the incentives for this claim of widespread application is certainly the desire for predictability for the international harmony of decisions; in other words, to designate the substantive law for as many international situations as possible based on the same conflict of laws rules.

58 Mexico City Convention, Article 1.

59 Mexico City Convention, Article 2: "The law designated by the Convention shall be applied even if said law is that of a State that is not a party."

60 With the above introduced exception of the Mexico City Convention.