RULE OF CHOICE OF LAW IN REGARD TO CITIZENSHIP

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ABSTRACT

The terms 'conflict of law' and 'choice of law' are often used interchangeably in cases where a dispute spans over two different jurisdictions. Western legal systems first recognized a core underpinning of conflict of laws—namely, that "foreign law, in appropriate instances, should be applied to foreign cases"—in the twelfth century. Prior to that, the prevailing system was that of personal law, in which the laws applicable to each individual were dictated by the groupto which he or she belonged. Later, in the seventeenth century, several Dutch legal scholars, including Christian Rodenburg, Paulus Voet, Johannes Voet, and Ulrik Huber, further expounded the jurisprudence of conflict of laws. Alongside domestic developments relating to conflict of laws, the nineteenth century also saw the beginnings of substantial international collaboration in the field.

This paper examines from a viewpoint of global governance how conflict of laws should deal with cross-border family relations. It analyses possible solutions grounded on the effectivity of rules, rather than abstract territorial proximity to the legal relationship, seeking a balance between state regulation and individual freedom. While the hegemony of sovereign states is gradually decreasing in globalization in general, state governance has not lost its primordial importance in cross-border family relations in terms of upholding social order and protecting vulnerable parties through mandatory rules. Against this background, the paper first sheds light on contemporary discussions on the appropriateness of the principle of nationality or the principle of habitual residence in determining personal law. The study particularly contemplates how best to ascertain the law governing international family relations from the perspective of individual identity. Second, in view of cultural diversity and the multiplication of legal sources, the interactions between state law and non-state law and their possible accommodation in conflict of laws will be expounded on the basis of several examples.

RESEARCH METHODOLOGY

1. RESEARCH QUESTION

Q. Analyzing the rule of choice of Law available to citizens in case of conflict?

2. OBJECTIVES

The Primary objective behind undertaking this research proposal was to show the evolution the concept of choice of law has undergone and understand the basic principles dictating it.

3. PURPOSE OF THE STUDY

The Purpose of the study is to understand how does the choice of law works in case of conflict in the international arena and how the gradual development in the same has been brought about.

4. RESEARCH METHODOLOGY USED

Though the research methodology primarily made use of qualitative means, in the sense of usage of a multitude of research papers, journal articles, newspaper articles, online blogs and books, pre-existing legislations, et cetera alongside analysing the general perspective in academic spaces.

5. LIMITATIONS

The lack of existing opinionated literature on the topic at hand created issues during the initial conceptualization phase, which was overcame later on by taking up a multi-disciplinary approach to theoretical research. The time limit also hindered the progression of the paper as there wasn't enough time to conduct first-hand, sample-based research work i.e., interviews of the personalities and academicians well acquainted with topic at hand, paucity of time to examine theoretical research papers and journals already available.

1. INTRODUCTION

Choice of law is a procedural stage in the litigation of a case involving the conflict of laws when it is necessary to reconcile the differences between the laws of different legal jurisdictions, such as sovereign states, federated states (as in the US), or provinces. The outcome of this process is potentially to require the courts of one jurisdiction to apply the law of a different jurisdiction in lawsuits arising from, say, family law, tort, or contract. The law which is applied is sometimes referred to as the "proper law."

Private International Law or Conflict of Laws is that branch of law, private in some states, public in others, regulating all lawsuits involving a foreign law element where a difference in result will occur depending on which laws are applied as the *lex causae*. Firstly, it is concerned with determining whether the proposed forum has jurisdiction to adjudicate and is the appropriate venue for dealing with the dispute, and, secondly, with determining which of the competing state's laws are to be applied to resolve the dispute. It also deals with the enforcement of foreign judgments.

1.1 TWO-STAGE PROCESS

Courts faced with a choice of law issue have a two-stage process:

I. The court will apply the law of the forum (*lex fori*) to all procedural matters (including, self-evidently, the choice of law rules); and[1]

II. counts the factors that connect or link the legal issues to the laws of potentially relevant states and applies the laws that have the greatest connection, e.g. the law of nationality (*lex patriae*) or domicile (*lex domicilii*) will define legal status and capacity, the law of the state in which land is situated (lex situs) will be applied to determine all questions of title, the law of the place where a transaction physically takes place or of the occurrence that gave rise to the litigation (*lex loci actus*) will often be the controlling

[1] Ehrenzweig, Albert A. "The Lex Fori: Basic Rule in the Conflict of Laws." Michigan Law Review, vol. 58, no. 5, 1960, pp. 637–88. JSTOR, https://doi.org/10.2307/1285822.

law selected when the matter is substantive, but the proper law has become a more common choice.[2]

2. CHOICE OF LAW

Choice of law is a procedural stage in the litigation of a case involving the conflict of laws when it is necessary to reconcile the differences between the laws of different states, and in the United States between individual federated states. [3]The outcome of this process is potentially to require the courts of one jurisdiction to apply the law of a different jurisdiction in lawsuits arising from, say, family law, tort or contract.

2.1 JURISDICTION

The court selected by the plaintiff must decide both whether it has the jurisdiction to hear the case and, if it has, whether it is the most convenient forum (the forum non conveniens issue relates to the problem of forum shopping)[4] for the disposition of the case. Naturally, a plaintiff with appropriate knowledge and finance will always commence proceedings in the court most likely to give a favorable outcome. This is called forum shopping and whether a court will accept such cases is always determined by the local law.

2.2 CHARACTERIZATION

The court then allocates each aspect of the case as pleaded to its appropriate legal classification. Each such classification has it own choice of law rules but distinguishing between procedural and substantive rules requires care.

2.3 RELEVANT CHOICE OF LAW RULES

It should be noted that in a few cases, usually involving Family Law, an incidental question can arise which will complicate this process.

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[2] Ehrenzweig, Albert A. "The Lex Fori: Basic Rule in the Conflict of Laws." Michigan Law Review, vol. 58, no. 5, 1960, pp. 637–88. JSTOR, https://doi.org/10.2307/1285822.

[3] Yntema, Hessel E. "Autonomy" in Choice of Law." The American Journal of Comparative Law, vol. 1, no. 4, 1952, pp. 341–58. JSTOR, https://doi.org/10.2307/837348.

[4] Kramer, Larry. "Rethinking Choice of Law." Columbia Law Review, vol. 90, no. 2, 1990, pp. 277–345. JSTOR, https://doi.org/10.2307/1122775

3. TRADITIONAL APPROACH

The "traditional approach" looks to territorial factors, e.g. the domicile or nationality of the parties, where the components comprising each cause of action occurred, where any relevant assets, whether movable or immovable, are located, etc., and chooses the law or laws that have the greatest connection to the cause(s) of action. Even though this is a very flexible system, there has been some reluctance to apply it and various "escape devices" have developed, which allow courts to apply their local laws (*the lex fori*) even though the disputed events took place in a different jurisdiction. The parties themselves may plead the case either to avoid invoking a foreign law or agree to the choice of law, assuming that the judge will not of his or her own motion go behind the pleadings. Their motive will be pragmatic. Full-scale conflict cases take longer and cost more to litigate. However, the courts in some states are predisposed to prefer the *lex fori* wherever possible. This may reflect the belief that the interests of justice will be better served if the judges apply the law with which they are most familiar, or it may reflect a more general parochialism in systems not accustomed to considering extraterritorial principles of law. One of the most common judicial strategies is to skew the characterization process. By determining that a claim is one involving a contract instead of tort, or a question of family law instead of a testamentary issue, the Court can change the choice of law rules.[5] For example, if an employee is hired by an employer in State A, is injured due to the employer's negligence in State B, and files a lawsuit to recover for the injury in State A, the court in State A might look to the employment contract to see if it contained a clause that governed the employer's duty of care with respect to the employee. If so, the court may be able characterize the claim as a breach of the contract, instead of a tort, and apply the law of the State A either because it was the place where the contract was made *(*the *lex loci contractus*) or, if it were the place where the wage or salary was to be paid, where the contract was intended to be performed (the *lex loci solutionis*).

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[5] McDougal, Luther L. "Private International Law: Ius Gentium versus Choice of Law Rules or Approaches." The American Journal of Comparative Law, vol. 38, no. 3, 1990, pp. 521–37. JSTOR, https://doi.org/10.2307/840311.

In this context, since the 1960s, the courts in the United States began developing a number of new approaches, as well as new escape devices. This reflects the number of different laws that might be relevant in any given case before an American court. [6]There is significant interstate trade and social mobility, and with the laws of each state of the Union representing a possible opportunity for conflict, it was necessary to produce a coherent system that could be applied in the courts of all fifty states.

4. CONCEPT OF NATIONALITY

The term "nationality" has many legal connotations as well as historical and political overtones. For the purposes of this discussion, the term "nationality" is used as defined, rather successfully, by *Maridakis*[7] Nationality is a public law bond between an individual and a country or state, pursuant to which that individual belongs to the people of that country or state. As mentioned, nationality is important in several areas of public law. Here, we discuss nationality as a connecting factor designating the applicable law to the personal status of an individual (natural person). The concept of origin (*origo*) can be traced back to Greco-Roman times, although the concepts adopted in the ancient laws and customs of Greece and Rome do not correspond to the modern terms of national (citizen) or foreigner (non-citizen). Be that as it may, the identity of a person as a "citizen" of a Greek city-state or of the Roman Empire meant that the private laws of that person's homeland would apply to issues of personal status.[8] The same concept of origo resurfaced later, during the 5th and 7th centuries A.D., when the scope of application of the medieval laws of the Frankish and Germanic tribes (*leges barbarorum*) depended on a person's tribal origin. [9]

The concept of nationality as we know it today appeared when the modern States were created. From the 1800s, nationality played an important role not only for the cultivation of a "national conscience" and "state identity", but also for reasons of migration policy. As people were on

[6] FARQUHARSON, INGRID M. "Choice of Forum Clauses — A Brief Survey of Anglo-American Law." The International Lawyer, vol. 8, no. 1, 1974, pp. 83–102. JSTOR, http://www.jstor.org/stable/40704855.
[7] Maridakis, Private International Law, Vol. II, 248 et seq. (2nd edition, 1968) [in Greek].
[8] McDougal, Luther L. "'Private' International Law: Ius Gentium versus Choice of Law Rules or Approaches." The American Journal of Comparative Law, vol. 38, no. 3, 1990, pp. 521–37. JSTOR, https://doi.org/10.2307/840311.
[9] Reimitz, *History, Frankish Identity, and the Framing of Western Ethnicity,* 233 et seq. (2015)

the move across continents and oceans in search for a better life, some countries, such as the United States and the United Kingdom, became countries of influx of population whereas other countries, such as Germany and Greece, were countries of outflow of population. Choosing nationality as a connecting factor became an important policy decision for the latter countries of outflow, as it maintained that person's bond with the motherland. Thus, a Greek immigrant to the United States would take Greek law with her. In the "eyes of Greece," Greek law would still apply as the personal law of Greeks residing abroad. The application of the national Greek law was considered to be part of that immigrant's heritage. That heritage would also be passed on to that person's posterity.

Hence, the system of jus sanguinis prevailed as to the acquisition of Greek nationality. A person born to Greek parents anywhere in the world would automatically acquire Greek nationality.[10]

As a connecting factor, nationality dominated the scene in the private international law of Continental Europe. Virtually all choice-of- law rules concerning marriage, incidents of marriage, divorce, children, and succession pointed to the national law (*lex patriae*), while the law of domicile retained a subsidiary role as applicable only in cases of stateless persons or in the rare cases of absence of the spouses' common domicile.

In the 1990s, however, a change in the global demographics started to become more apparent. Countries of outflow of population, such as Greece and Italy, suddenly became countries of massive influx of im- migrants from the east. Soon, the countries of the Mediterranean be- came main ports of entry for migrants crossing from Asia into Europe. Immigration and asylum laws in Greece have been amended several times within the last twenty years to cope with the new social reality. A significant change in nationality law was also made, incorporating the *doublejus soli* principle. [11] But, the choice-of-law rules enacted in the Greek Civil Code of 1946, which were based on the nationality principle, remained unchanged. Based on these rules, a Greek judge was therefore instructed to apply the law of the nationality of a migrant,

[10] Papasiopi-Pasia, The Principle of Jus Sanguinis: Ethnicity or Nationalism? Developments and Modern Trends in Greek Nationality Law, Efimerida Dioikitikou Dikaiou, 293 (2012) [in Greek]

[11] Papasiopi-Pasia, *The Principle of Jus Sanguinis: Ethnicity or Nationalism? Developments and Modern Trends in Greek Nationality Law,* Efimerida Dioikitikou Di- kaiou, 293, 300 (2012), *idem, 'The right to nationality under the constitution of Greece'*, 69 Armenopoulos 813 (2009) [in Greek].

as the governing law to issues of personal status. To determine the validity of a marriage or a will, or the existence of a divorce, or the *requi sites* of paternity concerning a migrant in Greece, the Greek judge had to take notice of and apply that migrant's national law. Soon Greek judges had to become versed in Albanian law, Afghan law, Syrian law, Turkish law, or the Sharia law, as the case may be. The need to move away from the strict application of the law of nationality was quickly identified by several commentators in Continental Europe.[12]

5. GLOBALIZATION AND CITIZENSHIP LAWS

As globalisation progresses, cross-border movements of people are becoming frequent, dynamic and multilateral. Immigrants from other regions or continents now render the vast majority of societies on the globe multiethnic and multicultural. [13] The existence of various groups and minority communities with divergent ethnic, cultural or religious backgrounds entails an inherent risk of compromising social cohesion.[14] Especially in Europe, discordant moral concepts and legal institutions aroused by Muslim immigrants result in 'conflicts of cultures' [15] It is, therefore, a crucial question how best to accommodate cultural diversity and pluralism while upholding social order and fundamental values in the recipient society.

The conventional method of conflict of laws, which goes back to *Savigny* in the mid-nineteenth century,[16] consists in pointing to the law that has the closest connection with the legal relationship concerned.[17] This method focused on localising the legal relationship, departing from the territoriality of legal systems grounded in positive state law. However, the drawbacks and limitations of this method are gradually coming to light in view of the contemporary dynamic diversification of societies and cultures. Once individuals acquire a new, alternative

[12] Story, Conflict of Laws, § 41 (8th edition, 1883); see also Restatement (Second) Conflict of Laws, §§ 11, 12 (1971).
[13] Y. Nishitani, 'Cultural Diversity and the Law: State Responses from around the World' (book review), *Zvgl R Wiss* 112, at 153 ff. (2013).
[14] Mills, Alex. "The Private History of International Law." The International and Comparative Law Quarterly, vol. 55, no. 1, 2006, pp. 1–49. JSTOR, http://www.jstor.org/stable/3663311.
[15] R. Ahdar and N. Aroney, 'The Topography of Shari'a in the Western Political Landscape', in Ahdar and Aroney (eds.), *Shari'a in the West* (Oxford/New York 2010).
[16] Peari, Sagi. "SAVIGNY'S THEORY OF CHOICE-OF-LAW AS A PRINCIPLE OF 'VOLUNTARY SUBMISSION.'" The University of Toronto Law Journal, vol. 64, no. 1, 2014, pp. 106–51. JSTOR, http://www.jstor.org/stable/24311926.
[17] *Id.*

affiliation or belonging, the viability of conventional connecting factors needs to be re-examined. Furthermore, the increasing importance of religious or customary norms leads to a query as to whether and how far non-state norms interact with state law and should be considered or respected in regulating cross-border family relations.

This paper examines from a viewpoint of global governance how conflict of laws should deal with cross-border family relations. It analyses possible solutions grounded on the effectivity of rules, rather than abstract territorial proximity to the legal relationship, seeking a balance between state regulation and individual freedom. While the hegemony of sovereign states is gradually decreasing in globalization in general, state governance has not lost its primordial importance in cross-border family relations in terms of upholding social order and protecting vulnerable parties through mandatory rules. Against this background, the paper first sheds light on contemporary discussions on the appropriateness of the principle of nationality or the principle of habitual residence in determining personal law. The study particularly contemplates how best to ascertain the law governing international family relations from the perspective of individual identity. Second, in view of cultural diversity and the multiplication of legal sources, the interactions between state law and non-state law and their possible accommodation in conflict of laws will be expounded on the basis of several examples.

6. INTERACTION BETWEEN STATE LAW AND NON-STATE LAW

Viewing the relativity and multiplicity of individual belonging and affiliation, the relevant legal institutions and norms within minorities, religious communities or any collectivities other than the state may be controlling upon individuals. Indeed, family law has particularly become a crucial platform for religious minorities in secular states to define their memberships and demarcate their non-territorial communities. By prescribing marriage, divorce and lineage of their members, religious minorities seek to uphold and unify the group and maintain its values, practices and distinct ways of life. For individuals belonging to such a community and living in its social environment, civil marriage, divorce or paternity authorized by the state may solely have limited meaning.[18] In view of the current challenges of cultural diversity and plurality of

[18] Tribunal de grande instance de Lille, 1 er avril 2008, Droit de la famille 2008-2009, n o 111.91; JCP 2008, II-10122.

legal norms, due regard should be given to interactions between state law and non-state law. In 2008, the District Court of Lille in France rendered a decision that widely attracted attention.[19] In this case, two French Muslims of Moroccan origin celebrated marriage in France. The husband sought to annul the union after he discovered that his wife was not a virgin, contrary to the tenets of the Islam, and had lied to him on this matter. The judge acceded to his claim and acknowledged serious mistake about the *fundamental qualities* of his wife (Art. 180 (2) Civil Code), on the grounds that she consented to the claim and knew that her virginity was a decisive factor for her husband to enter marriage. According to leading authors, however, the wife's virginity is not a *fundamental quality* of the spouse under the present French law, as it does not render marital life impossible or unbearable, unlike impotency or mental disorder. Obligating only the wife retroactively to chastity and fidelity would also run counter to gender equality and dignity of individuals. At the end of the day, the husband's claim was dismissed by the Court of Appeal of Douai.

In the underlying case, both spouses were French nationals, so the conditions of marriage were governed by French law (Art. 3 (3) Civil Code).[20] The question was whether and how far Islamic moral concept should be taken into account in interpreting French law. Although the judge at first instance was inclined to take Islamic morality into account, the Court of Appeal ruled that it was not feasible to sublime religious norms into the construction and application of state law. As *Malaurie* argues, the interpretation of the positive French law was held to depend not on the spouses' intent or the social environment where they live but on the general conscience of the nation.[21]

This interplay of state law and non-state law indicates that the phenomena of conflict of laws may well shift from territory-bound cross-border cases to domestic cases, in light of the multiplying sources of legal norms. In fact, the number of third-state immigrants who hold the nationality of the host state is rapidly increasing in Europe. Even if there is *no conflict of laws* due to a lack of internationality of the case in the traditional sense, there could still be a conflict

[19] Yuko Nishitani Ph.D., *Global Citizens and Family Relations,* Erasmus Law Review http://www.erasmuslawreview.nl/tijdschrift/ELR/2014/3/ELR_2210-2671_2014_007_003_004.pdf
[20] Atlas, France Civil Code Art. 3(3) https://www.euro-family.eu/atlas_scheda-fr
[21] *Supra* Note 1

of norms between state law and non-state religious, cultural or customary norms. Similarly, while *lex fori* will regularly be applicable in the capacity of the law of habitual residence under the Hague Conventions and EU Regulations, a conflict of norms may yet occur in relation to non-state norms. It is arguably expedient to carefully contemplate methods of accommodating the plurality of legal sources to respect cultural diversity and individual identities[22]

6.1 DATA THEORY

While the primacy of state law over religious norms was retained in the above-mentioned virginity case in France, referring to non-state religious, cultural or customary norms within the framework of the applicable state law may well make sense and even be desirable in other cases. This method is called the data theory. It has, in particular, been advocated by Jayme to deal with contemporary challenges of conflict of cultures. A good example was provided by Hoekema and van Rossum based on their empirical study in *Hamid's case*.[23] Hamid and his wife, both of Turkish origin, were living in the Netherlands with their two children. When the wife became depressed, left the marital home and disappeared for some 18 months, the children were raised by Hamid's sister and parents in Turkey. On her return, however, his wife successfully obtained sole custody rights for their children subsequent to their divorce, in accordance with the criteria of the best interests of the child under Dutch law. The Dutch Child Protection Board and the judge gave priority to the mother who showed affectionate behavior and could provide living arrangements to personally take care of the children, despite having abandoned them and disappeared for a period.[24]

The authors indicate that children frequently grow up in an extended family and are looked after by an aunt or grandmother, while the father earns a living in Turkish custom and tradition. Had the Dutch authority and the judge properly considered such Turkish cultural background in assessing the best interests of Hamid's children, the outcome of the case could have been different. The best interests of the child are an abstract notion that is subject to further interpretation and supplementation of meaning in concrete cases. It could have served in the

[22] *Supra* Note 19.

underlying case as a gateway for cultural or customary norms to be taken into account in applying the governing state law. The same reasoning could also apply to other general notions in family law, such as the irretrievable breakdown of marriage as a ground for divorce. Arguably, the data-theory permits moderate and reasonable interactions between the applicable state law and non-state norms within the framework of the traditional conflict of laws system.

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7. GLOBAL CITIZEN

The idea of global citizenship goes back a long way, but in its current iteration it played its most significant role in the process that began with the creation of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights in 1948[25], continuing with the adoption of the Sustainable Development Goals and the Paris Agreement in 2015. This has been a period during which lessons were learned, tragedies were experienced and progress was made and during which the idea and the institutions promoting an inherent and universal dignity of the human person gradually matured.

In this way, both the Charter of the United Nations and the preamble of the Universal Declaration represent the beginning of the *"... recognition of the inherent dignity and of the*

[25] The Universal Declaration of Human Rights, United Nations https://www.un.org/en/about-us/universal-declaration-of-human-rights

equal and inalienable rights of all members of the human family"[26], which are today our minimum standards in the international arena, and which is the foundation for today's global citizenship.

Throughout this period of over seventy years, the United Nations has played a key role in enabling the concept to mature and adapt to the reality of globalization in its various aspects. It is now understood as a type of citizenship that transcends what is purely national, is unrelated to a specific identity and/or territory, and embraces a constantly evolving global ethic. Global citizenship exists at various levels, in numerous contexts and at different times, with no single identifiable institutional framework. In the new world order, it seeks to expand its scope and democratize a decision-making process that can radically affect basic aspects of our societies, especially in people's lives, particularly those of minorities and the disadvantaged. Global citizens act without limits or geographical distinctions and they do so outside the traditional spheres of power. Their goal is to defend human dignity and to promote social accountability and international solidarity, in which tolerance, inclusion and recognition of diversity occupy pride of place in word and deed, reflecting the multiplicity of actors involved in the actions of global citizenship.

These actions are producing real results. In its 2016 report, the Global Citizenship Commission[27] describes the development of the rights associated with universal dignity as those that constitute human rights. Although progress has sometimes been uneven and there have been serious setbacks, they have won general acceptance. They have come to be protected by other concepts and institutions seeking to preserve and consolidate their legacy by broadening their scope, depth and coverage.

We know that there is still a legal backlog and that much remains to be done to achieve gender equity and women's economic empowerment, and to eradicate abuse and violence against women and girls. However, cooperation within the multilateral system and global citizenship

[26] Preamble, The Universal Declaration of Human Rights, United Nations https://www.un.org/en/about-us/universal-declaration-of-human-rights

[27] *2016 Global Citizenship Summary*, Global Public Affairs, Citigroup https://www.citigroup.com/rcs/citigpa/akpublic/storage/public/citi-2016-global-citizenship-summary.pdf

have created a culture in which it has become socially acceptable for women to occupy leadership and decision-making posts. This is especially evident in the United Nations, where Secretary-General António Guterres has made a commitment to gender parity.

This recent history proves the existence of a paradigm shift in the international order. It is based on the reconfiguration of citizenship and power, and has even challenged the traditional notion of security, with the emergence of the concept of human security. Accordingly, the focus of security should be the individual and not the State. This is also the source of the concept known as the responsibility to protect. It was adopted by all Member States of the United Nations in 2005 at the World Summit[28] and is understood as the collective international ethical responsibility to act in cases of mass atrocities and to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. These developments, as well as the historical pattern of constant impetus and change, resulted in the adoption of the 2030 Agenda for Sustainable Development[29] and the 2015 Paris Agreement.

In view of this history, we can be optimistic about further progress. Admittedly, much remains to be done but we have a new and vital force—global citizenship. This is why it is crucial for society and decision-makers to work together. This partnership will help us to create a global ethic, based on the accountability and universal solidarity of active global citizens. The cooperation must be inclusive, benefiting from regional differences and universal experiences. Only then will we be able to deal with issues of a global nature requiring global solutions. Concerted human action, innovation and democratic education of future generations will enable us to successfully face challenges that are not responsive to national solutions and that threaten the survival of the entire human race.

8. CONCLUSION

In the contemporary world, the global governance of family relations needs to presuppose the diversity and multiplicity of a person's belonging and affiliation, as well as the plurality of

[28] The Millennium Development Goals: Five years later, *World Summit, 14-16 September 2005, New York*, Conferences | Environment and Sustainable Development, United Nations https://www.un.org/en/conferences/environment/newyork2005

[29] *Transforming our world: the 2030 Agenda for Sustainable Development*, Department of Economic and Social Affairs, Sustainable Development, United Nations https://sdgs.un.org/2030agenda

legal norms. Even the meaning of nationality, which used to indicate an individual's unique membership and allegiance to a nation state, is gradually changing due to the increasing number of dual nationals and frequent cross-border movement of persons in the time of globalisation. These current conditions of cultural diversity and law fragmentation challenge the conventional conflict of laws methods for determining the law governing family relations. This also leads to the question of whether and how far the interrelations between state law and non-state law should be taken into consideration in dealing with conflict of laws issues.

In order to reflect a person's belonging and affiliation when determining the applicable law, this paper analyses the viability of relying on objective connecting factors, *i.e.*, nationality and habitual residence. In light of the contingency of justice in relying on one of these objective connecting factors, this paper suggests transcending this dichotomy by enabling the parties to designate the applicable law themselves. At the end of the day, this study indicates that, when reflecting on appropriate conflicts rules for cross-border family relations, an all-encompassing notion of *personal law*, as employed by *Savigny*, is no longer feasible. Rather, a distinct, separate determination of applicable law is necessary, tailored to the characteristics of each category of legal relationship and appropriately adjusted by the parties' choice of law. With regard to the interplay of state law and non-state law, this paper expounds several examples to delineate the way these alternate normative systems interact and analyses the possible impact on the functioning of conflict of laws. This study suggests relativizing the conventional notion of the conflict of state laws and including religious, cultural or customary non-state norms in its scrutiny. While this study limits itself to addressing these core issues, it points out that adopting a plurality of methods when dealing with the conflict of cultures is an inevitable consequence of the contemporary multiplication of legal sources and law fragmentation. From a viewpoint of global governance, it should further be examined where the limitations of the current conflict of law system lie, and whether and to what extent alternative methods are viable to consider the interrelations of state law and non-state law. It remains to be seen whether a certain confluence of solutions can be sought around the world when dealing with this challenging task.

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