CURRENT DEVELOPMENTS

PRIVATE INTERNATIONAL LAW

Edited by Peter McEleavy

I. THE LIBERALIZATION OF THE FRENCH LAW OF FOREIGN JUDGMENTS

In a year the French highest court for private matters (the *Cour de cassation*) has significantly liberalized the French law of foreign judgments. In *Prieur*, it overruled a century-old precedent which had interpreted Article 15 of the Civil Code as preventing the recognition of foreign judgments when the defendant was a French citizen. In *Avianca*, it partly overruled a 45-year-old precedent which prohibited the recognition of foreign judgments which had not applied the law applicable pursuant to the French choice-of-law rule. This note will present this evolution. It will first sketch the development of the modern law of foreign judgments in France, and then assess what *Prieur* and *Avianca* have brought.

Prior to this, it is probably useful to underline two important features of the French law-making process. First, although France is a civil law country, case law can be an important source of the law, and can sometimes even be the only one in a given field. Historically, this has been the case for the conflict of laws, which was almost entirely judge-made for two centuries. The only significant exceptions were three provisions in the Civil Code, which were given quite different meanings to what they actually provided. This is the reason why this note will primarily discuss cases and judicial interpretations and that these cases will be called precedents, which they almost are in practice, if not in French legal theory. Secondly, and most importantly, pursuant to Article 55 of the 1958 Constitution treaties and international conventions trump acts of parliament and indeed all other sources of the law except the Constitution itself and rules of constitutional value.[1] It follows that when France has concluded an international convention with one or several foreign countries on foreign judgments, the convention applies irrespective of French statutes and precedents. France has concluded the most important of these international instruments with its European partners. The Brussels I Regulation and the 1988 Lugano Convention, when applicable, both trump the French 'common' law of foreign judgments. But France also has

[1] Clearly, European authorities would object to that, as they rule that European Union law is superior to the constitution of the Member States. But French highest courts have ruled in recent years that they still consider the French constitution to be the highest norm in the French legal system. See *Fraisse* [2001] Recueil Dalloz 1636 (*Cour de cassation* (Ass)); *Sarran v Levacher* [2000] Recueil Dalloz 152 (Conseil d'Etat).

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concluded many bilateral treaties on judicial cooperation, in particular with former colonies, which govern most or all issues relating to foreign judgments between the contracting parties. Again, when such treaties apply, the French common law on foreign judgments does not.

A. The Origin of the Modern French Common Law of Foreign Judgments: Munzer

The origin of the modern French law on the recognition and enforcement of judgments is the 1964 *Munzer* decision. In *Munzer v Munzer*,[2] the *Cour de cassation* abandoned the 150-year-old judicial practice of *révision au fond*. The *révision au fond* was the power of French courts to recognize foreign judgments on condition that such judgments were right on the merits. In other words, French courts could verify whether the foreign court had properly assessed the facts and properly applied the law. In *Munzer*, the *Cour de cassation* held that *révision au fond* was prohibited. French courts could not anymore assess whether foreign judgments were right in order to declare them enforceable in France. Instead, they would have to verify whether they met a number of newly laid-down conditions. The French law of judgments was moving into a new era. In theory at least, it was accepted that it was no longer a condition that foreign judgments be the same as French judgments to be recognized in France. Foreign judgments would be truly recognized as such, ie judgments made by a foreign court, and thus potentially different.

Since *Munzer*, the *Cour de cassation* and French commentators have been discussing what the conditions of the recognition of foreign judgments should be. In *Munzer*, the *Cour de cassation* held that the newly laid-down conditions would suffice to 'ensure the protection of the French legal order and interests'. This is the tension of the modern law of judgments: being open to foreign legal and judicial cultures, but only to the extent that the French legal order is not hurt.

The *Cour de cassation* initially laid down five conditions. First, the foreign court ought to have jurisdiction to hear the dispute. Secondly, the foreign court ought to have properly applied its rules of procedure. Thirdly, the foreign court ought to have applied the law that the French choice-of-law rule would have designated. Fourthly, the foreign judgment should not be contrary to public policy. Fifthly, the foreign judgment should not have been obtained for the sole purpose of avoiding the application of the applicable law (*fraude à la loi*). These conditions were soon reduced to four. Three years after *Munzer*, in *Bachir v Bachir*,[3] the *Cour de cassation* dropped the second condition. It held that the procedure followed by the foreign court could only be appreciated through the condition of public policy. If the initial idea had been that the forum could generally verify that the foreign court had properly applied its own rules of procedure, it quickly became clear that such a condition did not make sense. In practice, this was giving the power to French courts to criticize the application made by foreign judges of their own law. In theory, this was allowing them to revise the foreign judgment. This was not exactly *révision au fond*, since the revision would have been conducted in the

[2] *Munzer v Munzer* [1964] Rev Crit DIP 344; [1964] Clunet / J Dr Int 302 (Civ 1ère). The decision can also be found in B Ancel and Y Lequette, *Les grands arrêts de la jurisprudence française de droit international privé* (5th edn, Dalloz, Paris, 2006) 357.

[3] *Bachir v Bachir* [1968] Rev Crit DIP 98; [1969] Clunet 102 (Civ 1ère). See also Ancel and Lequette (n 2) 402.

light of the foreign law, but it was arguably much worse. It was not consistent with the liberal turn of the French law of judgments.

The new paradigm is best illustrated by the condition of public policy. In principle, French law now accepts that foreign judgments can be recognized irrespective of whether a French court would have reached the same solution if it had decided the dispute. French courts will not verify whether the foreign court assessed the facts properly. They will not verify either whether they applied the law properly, be it its rules of procedure or the *lex causae*. It is accepted that the foreign judgment can be different, as it is the product of a different legal culture. Yet, there is a limit to the acceptance of the differences of foreign legal cultures. If a foreign solution or practice is not only different but shocking to a French lawyer, it will be held as contrary to French public policy. In 40 years, the *Cour de cassation* has shown a remarkable openness to foreign legal cultures. The public policy condition has been interpreted narrowly. It is mainly used in family law to deny recognition to North African Islamic divorces, which are held to be contrary to the principle of equality between men and women.[4] It is also sometimes used in civil procedure.[5] But in other fields such as commercial law, it is simply never used. It is easy to understand why. One can imagine how a foreign legal order could have different rules of commercial law, but not really truly shocking ones, except in the most extreme instances.

After some hesitation, the condition of the jurisdiction of the foreign court was interpreted along the same lines. For years, there was much debate as to what the condition actually meant. It was wondered whether the jurisdiction of the foreign court should be appreciated pursuant to the law of jurisdiction of the forum or of the foreign court. The first solution seemed too conservative, as it did not accept that foreign courts could retain jurisdiction on different grounds than those used by French courts. The second solution seemed too liberal as it allowed the recognition of judgments made by courts retaining jurisdiction on any ground as long as the foreign law allowed. In 1985, the *Cour de cassation* chose a third way. In *Simitch v Fairhusrt*,[6] the court held that foreign courts would be regarded as having jurisdiction for the purpose of the recognition of foreign judgments if French enforcing courts could be satisfied that there was 'an actual connection between the dispute and the country of the foreign court'.[7] This flexible text would enable French courts to allow the recognition of foreign judgments made by courts retaining jurisdiction on grounds unknown to French jurisdiction rules, as long as these grounds could be regarded as serious. But it would also allow French courts to deny recognition when the jurisdiction of the foreign court would not be founded on a serious or acceptable connection to the dispute. When the jurisdiction of the foreign court would be exorbitant, it would fail the test. The test seemed to reveal an enlightened judiciary which did not fear the world and was open to cultural differences. This, however, was only part of the judicial discourse of the court. There was also the dark side of the French law of judgments. But this is fortunately what the *Cour de cassation* has chosen to remedy in the last few months.

[4] See, eg, Civ 1ère, 1 June 1994 [1995] Rev Crit DIP 103; Civ 1ère, 17 Feb 2004 [2004] Rev Crit DIP 424.

[5] See, eg, *Pordea v Times Newspaper Ltd* [2000] Rev Crit DIP 223 (Civ 1ère) (ruling that a security for costs was a breach of the right to a fair trial because it jeopardized access to justice).

[6] *Simitch v Fairhusrt* [1985] Rev Crit DIP 369; [1985] Clunet 460 (Civ 1ère). See also Ancel and Lequette (n 2) 624.

[7] 'si le litige se rattache de manière caractérisé au pays dont le juge a été saisi'.

B. Article 15 of the Civil Code and Prieur

When the *Cour de cassation* defined the condition of the jurisdiction of the foreign court in *Simitch*, it made clear that there would be a major exception to the rule. Foreign courts would be regarded as having jurisdiction not only if they satisfied the above-mentioned test, but also if French courts did not have exclusive jurisdiction over the dispute. The very idea of French courts having exclusive jurisdiction over any dispute was hard to reconcile with the new paradigm of liberalism and openness. Yet, in a few instances it was probably understandable. It is a view shared in many jurisdictions that disputes relating to real property or enforcement ought to be decided by local courts only. It could also be easily understood how a court designated by a jurisdiction clause could regard foreign courts retaining jurisdiction as lacking it. There is not much case law on these hypotheses in France but French writers[8] readily agree that French courts have exclusive jurisdiction in the meaning of *Simitch* over such disputes.

There was, however, one last instance of exclusive jurisdiction of French courts, which was both more significant practically and much less understandable. French courts had exclusive jurisdiction over disputes involving French citizens. It was enough that any of the parties to the foreign proceedings be a French citizen for French courts to consider that they had exclusive jurisdiction over the dispute, and thus to deny recognition to the foreign judgment. The subject-matter of the dispute was almost irrelevant. In any contractual, tort or family dispute involving a French citizen, French courts considered that no other court could claim jurisdiction. The rule was formally grounded in to Articles 14 and 15 of the Civil Code. These provisions, which date back to the Napoleonic era, gave jurisdiction to French courts over disputes relating to the law of obligations if the plaintiff was a French citizen (Article 14) or if the defendant was a French citizen (Article 15). They were thus heads of jurisdiction for French courts; they did not deal with the issue of recognition of foreign judgments. However, at the beginning of the 19th century, the *Chambre des Requêtes* (now *Cour de cassation*) extended their scope to the law of foreign judgments. French citizens had a right to be judged by a French court, which was the natural judge of the French. Quite remarkably, the doctrine survived when the law of judgments shifted in paradigm in 1964. The scope of these provisions had also been gradually widened with regard to the subject-matter of the dispute. Articles 14 and 15 now apply in all disputes involving a French citizen, except those over real property and enforcement.[9]

This was not a small exception to *Simitch*. In practice, when the enforcement of a foreign judgment is sought in France, it usually involves a French citizen. In theory, it casts a very different light on the liberalism and the sophistication of the French law of judgments. However liberal the other conditions for the recognition of foreign judgments could be, this one was so stringent that it basically cancelled any other. Unsurprisingly, French academics were very critical. Some writers pointed out the lack of consistency between the new paradigm of the law of judgments and this condition.[10] Others stressed that if other jurisdictions had the same rule, it would be the end of the

[8] See, eg, Ancel and Lequette (n 2) 633; B Audit, *Droit international privé* (4th edn, Economica, Paris, 2006) 380.

[9] *Weiss v AMACO* 27 May 1970 [1971] Rev Crit DIP 113 (Civ 1ère). See also Ancel and Lequette (n 2) 445.

[10] See, eg, Ancel and Lequette (n 2) 761; Audit (n 8) 380.

recognition of foreign judgments.[11] But it was no mystery that senior members of the French judiciary supported it, and that they would not allow any evolution as long as they were on the court. It seems that their reasons were practical. One was once revealed in a conference.[12] Articles 14 and 15 were most useful in the negotiation of bilateral treaties on foreign judgments, which were often conducted by judges temporarily serving in the administration. They were incentives for the other party to waive its own restrictive rules. There was perhaps another reason, which was never—and perhaps could not be—clearly expressed. Despite the official discourse of liberalism and openness, many were aware of the fact that quite a few foreign judiciaries were not to be trusted. It was perhaps not wise to build a theory which allowed the recognition of foreign judgments which were just fine to all appearances, but which were not primarily based on the operation of the law. In other words, judgments obtained by corruption could be almost undistinguishable from other judgments, and would then most probably satisfy any liberal test. Furthermore, a French court ruling that a foreign judgment was obtained by corruption could be embarrassing for the French diplomatic service. The judiciary perhaps felt that it was easier by all means to use Article 15 of the Civil Code when needs be, and to let the Government determine the scope of the rule. Indeed, the Government had indirectly the power to exclude the application of Articles 14 and 15 of the Civil Code by concluding bilateral treaties trumping these domestic provisions with countries of its choice. It was then for the Government to decide which foreign country should be trusted, and which should not.[13]

Even when no treaty had been concluded, French courts still had some discretion in the application of the rule. The official discourse of the *Cour de cassation* was that there was no such discretion. But it was admitted that the beneficiaries of Articles 14 and 15 could waive their privilege, and lower courts had significant discretion to determine whether a waiver had actually taken place. Subscribing to a jurisdiction clause was a clear example of such a waiver. But French lower courts had a wide discretion to appreciate whether the conduct of French defendants in foreign proceedings, in particular when they had failed to challenge the jurisdiction of the foreign court, amounted to the same. Some courts would rule that the French litigant had waived his privilege, some that he had not.[14] All in all, it seemed that French courts would decide on a case-by-case basis, and their perception of the fairness of foreign justice was probably not irrelevant.

On 23 May 2006, the *Cour de cassation* held in *Prieur v de Montenach*[15] that Article 15 of the Civil Code could no longer be used to determine whether the foreign court lacked jurisdiction from the French perspective. Prieur was a French (and actually also a Canadian) citizen who was born in Switzerland and had married there Ms de Montenach, a Swiss citizen who was also born there. The spouses lived in Geneva. In 1996, a Swiss court annulled the marriage and Ms de Montenach sought a declaration of enforceability of the judgment in France. Prieur challenged the jurisdiction of the Swiss court in the French enforcement proceedings on the sole ground of his citizenship.

[11] P Mayer and V Heuzé, *Droit international privé* (Domat-Montchrestien, Paris, 2004) 272.

[12] A Ponsard, 'Le contrôle de la compétence des juridictions étrangères' [1985–6] Travaux Comité Fr Dr Int Pr 53; J Lemontey, 65.

[13] Mayer and Heuzé (n 11) 272.

[14] See Audit (n 8) 379 and the cases cited.

[15] *Prieur v de Montenach* [2006] Rev Crit DIP 871; [2006] Clunet 1365 (Civ 1ère). See also Ancel and Lequette (n 2) 755.

The *Cour de cassation* held that the citizenship of the parties was irrelevant, and that the jurisdiction of the foreign court ought to be appreciated through the *Simitch* test. As both parties were born in Switzerland, had married there, lived there, and had chosen Swiss law as the law governing their marriage contract, the court held that there was a serious link between the dispute and the foreign court and that Swiss courts had jurisdiction from the French perspective. The Swiss judgment was thus declared enforceable in France.

French cases never discuss the motivation of the rules that they adopt. The *Prieur* judgment thus does not tell why the *Cour de cassation* has decided to change the law. It is no mystery in French circles, however, that the evolution owes much to a recent modification of the composition of the Court. It has also been submitted that some predicted that Article 15 could be found contrary to Article 6 of the European Convention of Human Rights.[16]

Prieur has been welcomed by the vast majority of French commentators.[17] In their opinion, the former rule was sending the world an embarrassing signal of distrust. The rule was also unnecessary, as the *Munzer* test is sufficient to deny recognition to those foreign judgments which were made in unacceptable conditions. French courts will only lose the option of using Article 15 instead of identifying precisely the defect of the foreign judgment. And anyway, these authors concluded that the scope of the rule had been shrinking dramatically as the number of treaties on foreign judgments was increasing. Yet, it is submitted that there is one defect that no test is ever likely to capture: corruption. Unfortunately, corruption is rampant in many parts of the world, and ignoring it will not make it go away. After *Prieur*, when a corrupt foreign court is clever enough to make a judgment which will show no sign of the actual (financial) reasons on which it was based, the judgment will pass the *Munzer* test. It will no longer be an option to neglect the foreign proceedings under the assumption that they would produce an effect abroad only. French defendants will now have to win abroad, and thus to play by (all) the local rules. In the past, it could have been regarded as yet another local peculiarity that firms conducting business abroad had to take into consideration. Today, the legal environment is different. It is a French criminal offence to bribe foreign officials.[18]

C. The Law Applied by the Foreign Court and Avianca

In addition to the jurisdiction of the foreign court and the compatibility with public policy, the *Munzer–Bachir* line of authorities had laid down two final conditions which related to the law applied by the foreign court.

The first remaining condition is *fraude à la loi*. It is quite different from the common law concept of fraud. It sanctions a specific strategic behaviour. The foreign judgment should not have been obtained with the sole purpose of avoiding the application of the law that a French court would have applied. *Fraude* is a general doctrine of French private law. In all fields, it purports to sanction any strategic behaviour resulting in the avoidance of the application of rules which would have otherwise

[16] B Audit, 'La fin attendue d'une anomalie jurisprudentielle : retour a la lettre de l'Article 15 du code civil' [2006] Recueil Dalloz 1846, 1849.

[17] See eg Audit (n 16); Ancel and Lequette (n 2) 755; H Gaudemet Tallon [2006] Rev Crit DIP 871.

[18] French criminal code, Art 435-3.

applied. The test for *fraude* is twofold. First, the action of a party must result in the application of one rule instead of another. Secondly, the sole purpose for the action must have been the avoidance of the application of the rule which does not apply as a consequence of the said action. The sanction is that the action is then ignored and the defrauded rule is declared applicable. The most famous application of the doctrine has been in choice of law, when parties would change nationalities in order to have a court apply another law and thus, for instance, to be entitled to divorce.[19] In the context of foreign judgments, French courts want to prevent parties from seeking the application of another law by suing abroad. The doctrine of *fraude*, however, raises an important evidentiary issue. In practice, showing that a party sued abroad for the sole reason of avoiding the application of the law that a French court would have applied, is extremely difficult. The parties could have chosen to litigate abroad for a variety of reasons. And even more so when there is a serious connection between the dispute and the foreign court. For instance, when two Algerian spouses live in France, the husband could be tempted to seek divorce in Algeria for the sole purpose of avoiding the application of French law by a French court. Yet, he is an Algerian citizen, and so is his wife. Furthermore, he typically travels to Algeria each summer. Algerian courts are thus seriously connected to the dispute. They have jurisdiction from the French perspective. The initiation of the Algerian proceedings may be a *fraude*, but the truth of the matter is that, the difference between French and Algerian laws aside, it is almost as reasonable for the husband to sue in Algeria as it is to sue in France. Thus, except when the husband has brought proceedings in Algeria immediately after his wife initiated proceedings in France, it will be hard to prove that a *fraude* actually took place.[20]

Finally, the *Cour de cassation* had ruled in *Munzer* that the foreign court should have applied the law that a French court would have applied. This condition was another limit on the new paradigm of openness and liberalism. The principle was perhaps the recognition of foreign judgments, but only on the condition that foreign courts apply the 'proper' law, that is the law proper by French standards. To remain somewhat consistent with the exclusion of *révision au fond*, the *Cour de cassation* held that the condition only entailed that the foreign court applied the law designated by the French choice-of-law rule, but not that it applied it properly.[21] Yet, it was clearly in contradiction with the new paradigm, as it did not accept that the foreign court could have different choice-of-law rules. Fortunately, the *Cour de cassation* quickly tempered this ground for denial of recognition. It admitted that foreign judgments applying the wrong law could be recognized if the law applied was equivalent in its results to the competent law.[22] The condition was dangerously close to *révision au fond*. Most commentators were critical and predicted that it would soon be abandoned. They recognized that it was a useful tool against strategic behaviour, but that *fraude* was an autonomous ground for denial in such cases.[23]

[19] The leading case is *Bauffremont v Bauffremont* (1878) Clunet 505 (Civ); Ancel and Lequette (n 2) 47, where Princess Bauffremont had sought Saxon nationality in order to avoid the application of French law, which did not allow divorce at the time.

[20] The Algerian decision will then typically be denied recognition on the ground of public policy, because the Islamic divorce violates the principle of equality between men and women as embodied in Art 5 of Protocol 7 to the European Court of Human Rights: see, eg, the cases cited in n 4.

[21] *Loesch* [1966] Rev Crit DIP 289; [1966] Clunet 369 (Civ 1ère).

[22] See, eg, Civ 1ère, 22 Apr 1986 and 6 July 1988 [1989] Rev Crit DIP 89.

[23] See, eg, Audit (n 8) 384; Mayer and Heuzé (n 11) 283.

On 20 February 2007, the *Cour de cassation* held in *Cornelissen v Avianca Inc*[24] that there are only three conditions for the recognition of foreign judgments: the foreign court should have jurisdiction, the foreign judgment should not be contrary to public policy and there should be no *fraude à la loi*. The condition of the application of the right law is thus suppressed. The *Cour de cassation* does not give much detail on the facts of the case. It seems that American companies (North American Air Service and Avianca) and Columbian companies (Avianca, Helicopteros Nacionales de Columbia and Aeronautico de Medellin Consolida) had sued Mr Cornelissen, who was a former director of one of the Columbian companies, before a federal court in Washington DC. On 27 August 1993, the US Court ordered the defendant to pay $3.9 million, plus interest. Cornelissen moved to France, where the plaintiffs sought to enforce the judgment. He argued in the French enforcement proceedings that the recognition should be denied because the US Court had applied US law to the issue of the liability of directors, whereas the French choice-of-law rule provides that the law of the company governs. The *Cour de cassation* ruled that the law applied by the foreign court was irrelevant.

It seems clear that French academics will welcome *Cornelissen v Avianca Inc*, a change that has long been advocated.[25] However, the case raises several questions. The first is whether the process of liberalization of the French law of judgments has reached its final stage. None of the remaining conditions have been challenged in principle. They all appear to be reasonable. It is true that the usefulness of the condition of *fraude* has been doubted; but *fraude* has been presented as the condition which made the verification of the law applied by the foreign court unnecessary. It is also a general theory of French private law, and the French are reluctant to create exceptions to general theories when it can be avoided. So it can probably be predicted that the three remaining conditions will last.

Yet, this does not necessarily mean that they will function in the exact same way. To begin with, they may be used more often as a ground for denial. Before *Avianca*, when a plaintiff would seek a judgment from a foreign court which was not seriously connected to the dispute, because it would apply a law more favourable to his interest, there was no need to prove either that the foreign court lacked jurisdiction or that a *fraude* had occurred. It was enough to show that a different law had been applied by the foreign court. From now on, it will be necessary to bring evidence of a lack of jurisdiction or of a *fraude*. Some will predict that it will just be fine, and that the parties will be able to bring this evidence when need be. Some others will underline that proving *fraude* is always a complicated exercise. But it might also be argued that the remaining conditions, as they have been understood in the past, will not suffice to compensate the impossibility to verify whether the foreign court had applied the proper law. It might then be argued that some of the remaining conditions should be modified in order to maintain an adequate protection of the French legal order. For instance, the public policy exception could be extended.[26] Indeed, many of the commentators who advocated a change also argued that the condition ought to be kept when French mandatory rules (*lois de police*) are involved.[27] *Avianca* does not address the issue.

[24] [2007] Recueil Dalloz 1115.

[25] S Gressot-Leger, 'Faut-il supprimer le contrôle de la loi appliquée par le juge étranger lors de l'instance en exequatur?' [2003] Clunet 767.

[26] See, eg, L d'Avout and S Bollée, [2007] Recueil Dalloz 1116.

[27] See, eg, Mayer and Heuzé (n 11) 389.

Prieur and *Avianca* are a new stage of a 40-year-long process of liberalization of the French law of judgments. It will now be interesting to observe how the new *Avianca* test will be applied by French courts.

GILLES CUNIBERTI*

II. THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

A. Introduction

On 3 April 2007, the European Community (EC) became the 66th[1] Member of the Hague Conference on Private International Law (HCCH). This event marks the beginning of a new third phase in the 114-year-long history of the HCCH and a new era in the cooperation between the two organizations. This article gives an overview of the developments that led to the EC's request for accession and discusses the legal and political issues that had to be resolved.

B. The Historical Development Leading to the EC's Request for Accession

Today, the HCCH is an intergovernmental organization with its own legal personality under public international law. Its 'constitution', the 'Statute',[2] adopted in its initial form in 1951, entered into force in 1955 and remained unchanged for over 50 years until it was revised in order to make it possible for the EC (and other regional economic integration organizations (REIOs)) to become Members of the Hague Conference. The Conference, however, dates back much further than 1951: its First Session took place in 1893. Six more Sessions were held in 1894, 1900, 1904, 1925 and 1928. At that time, there was no permanent secretariat or other structure that continued to exist between the Sessions, and the Sessions were prepared by the Netherlands Standing Government Committee on Private International Law. After World War II, the Conference convened again in 1951, and it was at that Eighth Session that it was given a Statute, which equipped it with legal personality and a permanent secretariat, the so-called 'Permanent Bureau'. Over the years, the number of diplomats serving at the Permanent Bureau gradually grew from one to five (since 2002), and the number of Member States grew from eight (on 15 July 1955[3]) to 47 (1 May 1999[4]) and further to 65 (1 April 2007[5]), but the Statute remained unchanged. Towards the end of the 20th

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[1] Montenegro had submitted a declaration of succession to Yugoslavia's acceptance of the Statute on 1 March 2007, but succession was only established retroactively (with effect as of 1 March 2007) on 15 May 2007. Today HCCH counts 67 Members.

[2] For the text of the Statute in its 1951 version as well as in its amended version, see the HCCH website at <http://www.hcch.net> under 'Conventions'.

[3] Entry into force of the Statute.

[4] Entry into force of the EC Treaty as revised by the Treaty of Amsterdam, [1997] OJ C 340/1 (Amsterdam Treaty), the relevance of which will be discussed below.

[5] Day on which the EC joined the HCCH (but see also n 1).

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