

**INSURANCE IN  
PRIVATE  
INTERNATIONAL LAW**

*A European Perspective*

**FRANCESCO SEATZU**

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Private International Law  
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## INSURANCE IN PRIVATE INTERNATIONAL LAW

This book provides a much-needed analysis of this very important subject for international business lawyers, including discussion of the jurisdictional and choice of laws issues arising from cross-border contracts of insurance and reinsurance concluded by electronic means.

This book is the first published in England to devote itself to a detailed analysis of the choice of laws rules in the EC Insurance Directives. It is aimed at academics and practitioners, at private international lawyers and at insurance lawyers. The private international law rules of the EC Insurance Directives deal with the applicable law to insurance contracts covering risks situated within the EU. They do not deal with the applicable law to reinsurance contracts and insurance contracts covering risks situated outside the EU. This should be ascertained by reference to the choice of laws provisions in the 1980 Rome Convention on the law applicable to contractual obligations. Detailed discussion of these rules is also provided, and proposals for reform suggested.

# Preface

*The entire problem of the conflict of laws with regard to insurance is much in need of monographic treatment*

Otto Kahn Freund<sup>1</sup>

Insurance is a fascinating area of private international law. It brings into focus the very basis of private international law including the reasons for displacing the law of the forum and the methods of selecting the governing law. Moreover, it raises some unique issues in private international law, as by its own character, it combines contract principles with those of tort.<sup>2</sup> For instance, a claimant to recover in a personal injury action from an insurer for the conduct of the insured must prove, first, that the insured is liable for his injuries and, secondly, that the insurance grants coverage for that liability. Choice of law questions usually arises in such cases as the place of the contract and the place of the accident often are not the same.

The curious dearth of subject-specific literature in the United Kingdom tends to give a peculiarly pioneering tinge to any effort to collate and analyse what rightly can be described as earlier attempts to focus on aspects of a subject which has been recognised by some writers as incapable of being reduced to simple coherent rules.<sup>3</sup> Yet increasing travel and multistate commercial activity have created factual situations which were and are bound, at some stage, to involve the law of insurance and the conflict of laws. The introduction of a foreign element in an insurance or reinsurance contract inevitably raises potential problems of private international law. These range from establishing which court has jurisdiction and which is the applicable law to securing recognition and enforcement of foreign judgments. Not surprisingly, in recent years something of a revolution has occurred in the United Kingdom and the other Member States of the European Union where new approaches to choice of law in insurance contracts have been adopted as a result of the implementation of the European Insurance Directives.

It is well known that the Second and Third 'Generation' of Insurance Directives provide very detailed choice of law rules which apply to insurance contracts covering risks situated within the EC.<sup>4</sup> Moreover the EEC Convention

<sup>1</sup> [1959] *Modern Law Review* 198.

<sup>2</sup> Mengis (1987) *Louisiana Law Review*.

<sup>3</sup> See Ubertaini, (1962) *Diritto internazionale*, 353; Carnahan, *Conflict of Laws and Life Insurance Contracts* (Buffalo, Dennis, 1958); Rabel, *The conflict of laws: a comparative study* (Ann Arbor, The University of Michigan, 1958) 359–352.

<sup>4</sup> See Art 7 of the Second Council Directive on Non-Life Insurance, 88/357EEC (OJ 1998 L172/1), and Art 4 of the Second Council Directive on Life Assurance, 90/619, (OJ 1990 L330/50), Arts 27 and

on the law applicable to contractual obligations of 1980 (the Rome Convention) contains contract choice of law rules which apply to insurance contracts covering risks situated outside the EC.<sup>5</sup> Unlike the Insurance Directives, this Convention contains no provision to deal specifically with insurance contracts. When it comes to jurisdiction, the Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 2000 (the Brussels I Regulation) and the EC/EFTA Convention (the Lugano Convention) provide specific rules of jurisdiction for insurance contracts regardless of whether these contracts cover risks situated within or outside the EC/EFTA.<sup>6</sup>

The time is ripe for a thorough examination of the regime of private international law for insurance and reinsurance contracts in Europe, and the possible options for reform of the European rules on jurisdiction and the law applicable to insurance and reinsurance contracts. But this has to be carried out against the substantive law background in Europe. Part I will therefore look at the substantive law background and its significance for the private international lawyer. Part II will provide a critical analysis of the rules on jurisdiction for insurance and reinsurance contracts and possible options for reform. Parts III and IV will provide a critical analysis of the choice of law provisions and possible options for reforms. Finally, Part V will look at jurisdiction and applicable law problems that arise in Europe in relation to insurance and reinsurance

28 of the Third Council Directive on Non-Life Insurance, 92/49/EEC (OJ 1992 L228/1) and Articles 27 and 28 of the Third Council Directive on Life Assurance, 92/96 (1992) OJ L360/1. These choice of law rules are discussed in: Dicey and Morris, *The Conflict of Laws* by L Collins *et al*, 13th edn (London, Sweet & Maxwell, 1999) 1350–76; Kaye, *The New Private International Law of Contract of the European Community* (Aldershot, Ashgate Publishing, 1993) 13–40; Plender, *The European Contracts Convention* (London, Sweet & Maxwell, 1992) para 4.49–4.53; MacNeil (1995) 44 *International and Comparative Law Quarterly* 19; Smulders and Glazener (1992) 29 *Common Market Law Review* 775; Reich (1992) 29 *Common Market Law Review* 861 at 870 *et seq*; Forlati Picchio in Bellando (ed), *Le Assicurazioni in Europa* (Torino, Utet, 1984) 155; Blanco Morales Limones, *El seguro español en el Derecho internacional privado* (Madrid, Caser, 1989); Frigessi di Rattalma, *Il contratto internazionale di assicurazione* (Padova, Cedam, 1990); Claret, *Contrats d'Assurance et Conflits de Loi en Droit Communautaire* (Doctoral thesis, University of Lille, 1994); Dubuisson, *Le droit applicable au contrat d'assurance dans un espace communautaire intégré* (Doctoral thesis, Université Catholique de Louvain; Reichert and d'Oliveira (eds) *International Insurance Contract Law* (The Hague, Kluwer Law International, 1994); Fuentes Camacho, *Los contratos de seguro y el Derecho Internacional Privado en la Unión Europea* (Madrid, Civitas, 1999); Celle, *I contratti di assicurazione grandi rischi nel diritto internazionale privato* (Padova, Cedam, 2000).

<sup>5</sup> Art 1, para 3 of the Rome Convention, (1980) OJ L 266 of 9 October.

<sup>6</sup> Arts 8 to 14 of the Brussels Regulation deal with matters relating to insurance. The text of the Brussels Regulation is to be found in OJ 2001 L 12/1. The Brussels Regulation replaces the 1968 Brussels Convention. The original text of the Brussels Convention is to be found in OJ 1978, L 304/77. The text of the United Kingdom, Danish and Irish Accession Convention of 1978 is set out in OJ 1978, L 304/1. For the text of the Greek Accession Convention of 1982 see OJ 1982 L 388/1. For the text of the Spanish and Portuguese Accession Convention of 1989 see OJ 1989 L 285/1. The text of the Austrian, Finnish and Swedish Accession Convention of 1996 is found in OJ 1997 C 15/1. A consolidated version of the 1968 Convention and 1971 Protocol, as amended by the four Accession Conventions is set out in 1998 OJ C 27/1.

contracts concluded by electronic means, and the possible solutions to these problems.

The perspective will be unashamedly European. For it is in Europe that the fundamental and unique developments in relation to the private international law for insurance and reinsurance contracts have taken place. At the same time, when thinking of solutions for reform, much can be learnt from an examination of developments in non-European States, in particular the Latin American countries and the United States.

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# Abbreviations

AA	Ars Aequi
AC	Appeal Cases, English Law Reports
<i>Act Dr</i>	Actualités du Droit
AG	Advocate General
<i>All ER</i>	All England Reports
<i>An Der Civ</i>	Anuario de Derecho Civil
<i>Ann Dr Lv</i>	Annales de Droit de Louvain
<i>Ann Fr Dr Int</i>	Annuaire français de droit international
<i>Arb Int</i>	Arbitration International
<i>Arch civ</i>	Archivio civile
<i>Arch giur</i>	Archivio giuridico "Filippo Serafini"
ASDI	Annuaire suisse de droit international
<i>Assicurazioni</i>	Rivista di diritto, economia e finanza delle assicurazioni priv.
AIDA	Association Internationale du Droit des Assurances
AIRAC	All-Industry Research Advisory Council
AYIL	Australian Yearbook of International Law
BBTC	Banca, Borsa e Titoli di Credito
<i>Benelux Jur</i>	Jurisprudentie van het Benelux Gerechtshof
BGB	Bürgerliches Gesetzbuch (Germany)
BGH	Bundesgerichtshof
BJ	Belgique judiciaire
<i>Bus Law</i>	The Business Lawyer
<i>Chunet (see JDI)</i>	
<i>Contratti</i>	I Contratti
<i>Corr giur</i>	Il Corriere giuridico
CS	Comunicazioni e studi dell'Istituto di diritto internazionale privato e straniero dell'Università degli studi di Milano
Dalloz	Revue Dalloz
<i>Danno e resp</i>	Danno e Responsabilità
DCI	Diritto del commercio internazionale
<i>Dir com e scambi int</i>	Diritto comunitario e degli scambi internazionali
<i>Dir econ ass</i>	Diritto e pratica dell'assicurazione
<i>Dir giur</i>	Diritto e Giurisprudenza
<i>Dir int</i>	Diritto internazionale
<i>Dir maritt</i>	Diritto marittimo
<i>Dir publ comp eur</i>	Diritto pubblico comparato ed europeo

<i>Riv trim dir e proc civ</i>	Rivista trimestrale di diritto e procedura civile
<i>Dir UE</i>	Il Diritto dell'Unione europea
<i>ECC</i>	European Commercial Cases
<i>ECR</i>	European Community Law Reports
<i>EdD</i>	Enciclopedia del Diritto
<i>EFTA</i>	European Free Trade Association
<i>Etudes Lalive</i>	Etudes de droit international en l'honneur de Pierre Lalive, Bâle-Frankfurt am Main, 1993
<i>Europa e diritto</i>	Europa e diritto
<i>Europa e diritto privato</i>	Europa e diritto privato
<i>Foro it</i>	Foro italiano
<i>Foro pad</i>	Foro padano
<i>Gaz Pal</i>	Gazette du Palais
<i>Giur it</i>	Giurisprudenza italiana
<i>Giur comm</i>	Giurisprudenza commerciale
<i>Giust civ</i>	Giustizia Civile
<i>Hague Recueil</i>	Recueil des Cours de l'Acaemie de Droit International de La Hague
<i>IAIS</i>	International Association of Insurance Supervisors
<i>INA</i>	Istituto Nazionale delle Assicurazioni
<i>IJIL</i>	International Journal of Insurance Law
<i>IPrax</i>	Praxis des Internationalen Privat und Verfahrensrechts
<i>IYIL</i>	Italian Yearbook of International Law
<i>Liber Amicorum</i> <i>K Siehr</i>	Private Law in the International Arena, The Hague, 2000
<i>JDI</i>	Journal de Droit International
<i>JMLC</i>	Journal of Maritime Law and Commerce
<i>JT</i>	Journal des Tribunaux
<i>Jur Rev</i>	Juridical Review
<i>Jus</i>	JUS-Rivista di Scienze Giuridiche
<i>Liber Droz</i>	E pluribus unum. Liber amicorum Georges AL Droz. On the Progressive Unification of Private International Law, The Hague, Boston, London, 1996
<i>Lloyd's Rep</i>	Lloyd's Reports
<i>Mélanges Loussouarn</i>	L'internationalisation du droit. Mélanges en l'honneur de Yvon Loussouarn, Paris, 1994
<i>NGCC</i>	La Nuova Giurisprudenza Civile Commentata
<i>NLCC</i>	Le Nuove Leggi Civili Commentate
<i>RabelsZ</i>	Rabels Zeitschrift für ausländisches und internationales Privatrecht
<i>RBDI</i>	Revue belge de droit international
<i>RDCiv</i>	Rivista di diritto civile

<i>RDE</i>	Rivista di diritto europeo
<i>REDE</i>	Revista Española de Derecho Europeo
<i>REDI</i>	Revista Española de Derecho Internacional
<i>Resp civ prev</i>	Responsabilità civile e previdenza
<i>Rev Esp Seg</i>	Revista Española de Seguros
<i>Rev giur ass terr</i>	Revue juridique de l'assurance terrestre
<i>Rev dir eur</i>	Revue trimestrelle de droit européen
<i>Rev Marché Commun</i>	Revue de Marché Commun
<i>Riv not</i>	Rivista del Notariato
<i>Studi Broggin</i>	Collisio legum. Studi di diritto internazionale privato per Gerardo Broggin, Milano, 1997
<i>Studi Capotorti</i>	Divenire sociale e adeguamento del diritto. Studi in onore di Francesco Capotorti, Milano, 1999
<i>Studi Giuliano</i>	L'unificazione del diritto internazionale privato e processuale. Studi in memoria di Mario Giuliano, Padova, 1989
<i>Trav Com fr de dip</i>	Travaux du Comité français de droit international privé

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