DISTANCE, DIVERSITY, DISLOCATION -

FAMILIES FACING GLOBALISATION

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CHAIR'S REPORT AND KEYNOTE PAPERS

INTERNATIONAL COMMISSION ON
COUPLE AND FAMILY RELATIONS

In collaboration with

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CHAIR'S REPORT ON THE 49th CONFERENCE OF THE INTERNATIONAL COMMISSION ON COUPLE AND FAMILY RELATIONS, Sydney 2002.

1. INTRODUCTION

Globalisation has itself become a matter of global concern. National governments and international bodies debate the subject; action groups hold conferences and mount demonstrations; the world's media bombard readers, listeners and viewers with facts and the products of investigative journalism; and people all around the world strive to make sense of their own experiences of the changing nature of the world in terms of the utterances of gurus, politicians, neighbours and their own family members. The 11th September 2001 shocked countries not previously subject to international terrorist atrocities into a realisation that terrorism itself is now a dreaded aspect of globalisation. While the notion of the *global village* had a positive, human ring to it, globalisation has acquired very different connotations – disempowerment, exploitation, eroded differences, machiavellian deals, and profligacy. And globalisation, in its many guises, has also been described as the enemy of family life. Communities, rich and poor, are responding to that threat to families in many different ways.

Motivated by the desire to learn from the experiences and the initiatives of others, and by a recognition of the need to create complementary national and international pro-family policies and practices to counterbalance some of the harmful effects of globalisation, participants from family-related organisations in twenty-one countries and five continents came together in Sydney for the forty-nineth multidisciplinary conference of the International Commission on Couple and Family Relations.

Keynote speakers - a leading industrialist, a professor of psychology, an eminent anthropologist and legal expert, and a specialist in social welfare - addressed the conference theme and were supported by eight workshops about service initiatives in different countries. Participants met for four sessions in several groups to examine the ideas and issues being raised in more detail. Their discussions ranged over consideration of theoretical issues and the practicalities of delivering front-line services. In plenary session the groups spoke of working assumptions being questioned, new analyses of social processes having been made and, predominantly, of their own creative efforts to find better balances between the positive and negative consequences of globalisation on couples and families. Participants' feedback indicated that the conference had been experienced as personally enriching as well as offering family-related professionals some new ideas and a broader perspective on the purposes of their activities

2. THE DIMENSIONS OF THE CONFERENCE THEME

A random sample of individuals arriving to participate in the conference was asked 'What does globalisation make you think of?' There were no two identical responses:

- the HIV/Aids pandemic
- the depleted ozone layer and global warming
- the world is only an email away
- growing economic migration
- huge numbers of families disrupted by the wage-earners' need to work overseas
- the effects of local disasters being brought into the living rooms of people all round the world
- the problem of the ruthless exploitation of natural resources by supranational organisations and the fact that those organisations do not offer source countries a fair financial return
- global branding – the 'McDonald's' syndrome
- the progressive erosion of distinctive traditional cultures by pervasive commercial activity and media messages
- 11th September 2001.

Those different perspectives make it apparent that virtually every aspect of the lives of couples and families could be affected by humankind's growing capacities to take actions that have a global impact. Responding to such an awareness in February 2002 the ILO Director General, Juan Somavia, announced the establishment of the World Commission on the Social Dimension of Globalisation and said:

> Globalisation has to deliver what working people and their families aspire to – a decent job, security and a voice in the decision-making. People want a better shot at the gains that globalisation is meant to deliver. That means access to much better opportunities for decent work, and promoting development with social justice in the context of open economies and open societies.(1)

When preparing to address issues related to globalisation ICCFR first recognised its enormous potential for both beneficial and harmful change in terms of the lives of couples and families, and then acknowledged the need to narrow the focus somewhat in order that its conference might examine the matters most directly affecting family life in some detail. Distance, Diversity and Dislocation are terms which have a currency for those engaged in both the public and the private aspects of the lives of couples and families. Those words were chosen to serve as part of the conference title to invite the consideration of influences on both the inner and the outer worlds of partners and families. In the event that device also assisted the process of relating participants' professional skills to the conference's subject matter.

3. DISTANCE

The physical separation of partners or family members is not a new phenomenon. For thousands of years hunters and herders have been separated from their kinfolk seasonally, or for more substantial periods. The heritage of the 21st Century is *imposed* separation. Today, a greater percentage of the world's population is apart from kinfolk than ever before, and a greater percentage of those away from 'home' regard themselves as being forced into that separation. The distances are greater, the periods longer – extending to decades - but the crucial difference is the individual's, the family's, the community's sense that those separations are not under their control.

Alcoa World Alumina Australia is a part of one of the world's largest producers of alumina and aluminium. Wayne Osborn, President of that company, described the situation he and other employees faced when he joined the company some 22 years earlier. The workforce was predominantly male. Individuals were transferred from work-site to work-site as the need for differing skills changed. Career advancement was linked to an individual's readiness to work in a variety of locations and gain experience. Temporary postings commonly involved a separation from wife and family. Numbers of posts were filled by fly-in, fly-out employees, the working week being spent on site and the weekends at home. There was no systematic provision for those who found parental or dependant care responsibilities in conflict with the demands of their job.

Alcoa is a very successful business, financially. In 2001 it was awarded the Australian Chamber of Commerce and Industry Work and Family Gold Award. This came about as a result of a decade or more of effort to modify employment policies and practice so as to attract a greater proportion of female workers at all levels and to build a flexibility into the relationship between employer and employees which responds to the needs and expectation of the workforce. This has been done in order to attract and retain the best people since it is those people who can ensure achievement of the company's ten word business plan – Alcoa aspires to be the best company in the world.

Alcoa's experience has shown that the needs and expectations of the workforce change over time as does the workforce itself. The impact of growing numbers of woman employees is being experienced as are the effects of an ageing workforce. Alcoa's success has been built on a continuing dialogue with workers and their family members. The awareness that employees have special, individual, and changing needs will oblige the company to sustain and enhance that dialogue in the future. Progress has been made and the company is committed to maintaining the priority given policies and practices which recognise the responsibilities and needs that arise from employees' lives outside the workplace. (2)

Though a long-term concern of organisations such as ICCFR, the interface between work and family received little attention in private and public sector organisations until the last decades of the last century, and similarly little analysis (Haas, Hwang & Russell cited in (3)). The responses of organisations in most western countries to work and family issues have shown a major shift in orientation driven by changes in the demographics of present and potential workforces. Family responsibilities have been shown to influence job choice, resignations, absenteeism, commitment to employment and application to work tasks. A recognition developed that organisations had opportunities to adopt 'family-friendly' policies and practices as an incentive to increase motivation and commitment, to attract and retain the best quality people, to enable the advancement of the best quality people (of both sexes), and to secure recognition as 'good' corporate citizens and caring organisations. Cooper & Lewis (cited in (3)) summarised research indicating that people with family responsibilities who work in unresponsive organisations are more likely to experience stress-related illnesses and reduced quality of life. Nonetheless, Russell (3) writes of managers in a major organisation expressing the view that if an individual finds it "too hot in the kitchen (then) get out".

While the more obvious problems associated with parenting and dependant care have resulted in "Flexible Work Options" and "Dependant Care Arrangements" (Bankert & Litchfield cited in (3)) it appears that a low priority has been given to employees' troubled intimate relationships, although it is suggested that such issues are addressed through the agency of Employee Assistance Programmes (EAPs). In European countries EAPs have proliferated in the past fifteen years. This form of 'managed care' commonly provides an organisation's employees with a limited number of counselling/therapy sessions on request (six sessions is a typical maximum). Where necessary referrals may be made to sources of more specialised assistance and for medical care. The content of such sessions is confidential but statistical information shows that issues addressed include workplace complaints and grievances, sexual harassment, poor peer relationships, PTSD, occupational stress, absenteeism, eating disorders, substance abuse, depression, the emotional concomitants of ill-health, parenting problems, carer problems, as well as failed or troubled intimate relationships. The profit motive of the paymasters of these independent service organisations – industrial/commercial enterprises – makes it natural for efforts to be made to research cost/benefit relationships. The extent to which such research leads to modification of problem-causing policies and practices in the employing organisation is not clear, nor is it evident that any particular attention is given to the workplace influences contributing to failed/troubled intimate relationships. (4)

Russell's analysis (3) provides ample evidence of the interdependence of individuals' workplace performance and the quality of their intimate relationships. A persuasive case is made for more to be done through social policy, legislation, and the ways employers engage and manage their workforces, to minimise the disruptive impact of the job on employees' couple and family relationships. He proposes that, just as companies nowadays undertake analyses of the environmental impact of business strategies and development, they should include an *intimate relationship impact analysis* in their planning and management procedures.

Distance, a lack of emotional engagement, mutual trust and communication, is widely recognised as a factor contributing to difficulties and breakdown in intimate relationships. Conventional wisdom encourages distanced partners to spend more time together, engage in shared activities and to talk out their difficulties. Couple and family therapists have theorised about the dynamics of 'distanced' relationships in terms of both the psychological make-up of the partners and the social contexts in which such relationships are lived out. It has long been recognised that external influences such as workplace responsibilities, hobbies and substance abuse can play a part in creating and sustaining distance with an impact comparable to that of the classic affair. It can be argued that the existence of each of those influences is ultimately a matter of choice for one or both of the partners. However, the foregoing discussion will have made it clear that one of the effects of globalisation has been to exert enormous economic and social pressures on individuals in ways that effectively rob them of choice about where, when and how they earn their living. That sense of powerlessness can permeate an intimate relationship, making otherwise manageable

situations ‘impossible’ and destroying hopes for contentment and creative family life. It appears that major companies like Alcoa are recognising that the direct engagement of employees and their family members in the processes of making the workplace and its demands as family-friendly as possible is to everyone’s benefit. Profitability grows, testing work assignments are accomplished, employees experience direct responses to their individual needs and life stages, and families and loved ones (no longer thought of merely as employees’ dependants) find themselves part of a mutually supportive matrix. Hunters and herders, though often separated from their kinfolk, were members of communities in which all, from the youngest to the oldest, had roles and a sense of common purpose.

4. DIVERSITY

Henry Ford, and his black Model T motorcars, was perhaps the precursor of what has come to be known as the ‘one size fits all’ approach to solving the needs and issues of industrialised society. That approach can be found to underlie many of the earlier manifestations of globalisation and in some spheres of human enterprise standardisation does appear to be the sensible way ahead. But the evidence makes it clear that whether it is policy on whaling, the reduction of atmospheric pollution, or the introduction of the Euro currency, the voices that remind us about the fundamental diversity of the world’s communities, the riches with which that diversity endows us, and thus the need to heed differing values systems, cultural traditions and survival needs, are powerful and cogent.

At first sight it might be thought that international law would be one aspect of the march of globalisation where diversity could not be tolerated. Marie-Claire Foblets (5) provided a view of current developments taking place in Europe in international private law as it particularly relates to family life which made it clear that a respect for diversity lay at the heart of the enterprise in which she and others were engaged. The world’s different cultures and different philosophies have resulted in the codification of disparate bodies of family law. In an era when up to 10% of the population of most ‘Western-European’ countries are of non-European origin the family laws practiced and obeyed by migrant communities may not only be different, they may clash with the domestic legal culture. For example, polygamy and monogamy are practices sanctioned by different legal systems.

In all but a very few countries in the world the migrant populations are destined to increase in size. The reducing birth-rate and ageing populations of the Western European countries will make that a necessity in future. Migrants may wish for assimilation and citizenship in their new domicile, choose dual or multiple citizenship, or retain both the citizenship and the cultural attributes of their country of origin. Host countries vary in their readiness to accommodate those different arrangements but all will face the need to have legal procedures which can address the issues that arise when ‘families’ are disrupted by conflict or the breakdown of the adults’ relationship. Here ‘families’ must encompass all those configurations of men, women and children sanctioned by one or other legal system elsewhere as well as responding to the fact that many families are based on a cross-cultural adult relationship.

The development of the legal apparatus needed to respond to such challenges is an arcane process (5) as is illustrated by Vonken (cited in (5)). The issues that task raises offer the layperson important insights into the enormous care, sensitivity, rigour and integrity that must be exercised if individuals and communities are to be supported in their wish to retain their religious and cultural diversity whilst being assured that all may enjoy the opportunities of legitimate migration and a full engagement in the life of their new domicile. That is, if the tensions between the preservation of diversity and maintenance of ordered societies world-wide are to be resolved. One graphic expression used by Foblets suggests the hazards faced both by the international lawyers and by all who take up the challenge of addressing diversity in the context of globalisation. A ‘limping relationship or situation’ is one which, though sanctioned in one society, conflicts with the legal culture of another. The task which Foblets identifies for law practitioners in the context of Muslim migrants in Europe might equally well be applied to all those charged with the task of managing the processes and the consequences of globalisation:

> To find appropriate alternative solutions that solidly protect the constitutional (human rights) values prevailing in the host country, but in a way that allows

Muslims (and other minorities) to conform to their religion, *if that is their wish.* (5)

At an individual level diversity is both an enrichment and a shock. The Yorkshire aphorism 'All the world's queer except thee and me' expresses the experience. Our own families of origin represent normality. Our friends and even our partners can shock us by acting on the basis of different assumptions and priorities though at other times offering the exhilarating experience of seeing the world through different eyes.
Couple and family therapists are familiar with the diversity to be found within families, even when the partners grew up in the same street. They are also familiar with the destructive influence of power imbalances within families which can result in one or other family member being denied the scope to be different, be that difference based on gender, belief or culture. It appears that what offers the hope of health and creativity in families and communities is, to quote Juan Somavia again (1), 'a voice in the decision-making', that is, some opportunity to make informed life choices. Diversity itself is not a value, it is a fact of life. How that diversity is managed needs to depend on the views of those who embody the quality. If everyone was delighted with a black Model T car Henry Ford got it right!

5. DISLOCATION

Thai society, in common with several others in the region, is finding ways to adjust to a number of different kinds of dislocation. Rural, agrarian people have been moving into the towns and cities drawn by the promise of greater earning and an engagement in the technology and excitement of a 'modern' lifestyle. The traditional family life in which the village serves as the basic social and economic unit, and in which friends, co-workers and others are referred to as 'mother', 'father', 'aunt', to connote their place in the hierarchy, commands the individual's loyalty and respect. Its welfare is the primary concern. Initially, those moving to towns and cities may be obliged to adopt a lifestyle built around the nuclear family, and some subsequently adopt that form of family living by choice. Numbers of Thais have migrated to the Middle East, Europe and America, again losing their traditional sources of support, and only involved in familiar patterns of family and community decision-making with difficulty. The villages themselves find their hierarchies incomplete and familiar roles unfilled.

Internal and external migration dislocates village life and places the migrants in unfamiliar and less supportive environments. As time has passed the traditional valuings of individuals have come to exist in tension with the meritocratic judgements of the cities, industry and commerce. Divorce is more prevalent amongst external migrants. Significantly, these dislocations have created new problems for government. His Majesty the King of Thailand promulgated guidance based on a philosophy of a 'Sufficient Economy' designed to underpin the 'warm family' and generate a more sustainable and resilient economy. It is no overstatement to say that Thai society was dislocated in the latter decades of the 20th century, but it is now actively working to make the resources for economic and social development available to people nation-wide rather than relying on the cities and migrants overseas to fuel the nation's engagement in the global economy and technological advances, and to respond to the growing expectations of members of its society. (6)

Thrust into an environment in which familiar points of reference are unavailable, unimagined opportunities are available, and an alien value system informs the actions of the surrounding community, individuals, couples and families are forced to question who they are, how they are valued by those around them, and what their aspirations should be. Migrants commonly face an existential dislocation which demands a redefinition of personal identity and risks the loss of core beliefs, values and priorities. Some cling to the familiar, take pride in not 'fitting in', and thereby may foster a ghetto mentality. Others surrender to the new social context. Many chose to try to create their personal synthesis of values, beliefs and objectives so as to keep intact their distinctive qualities whilst at the same time adopting bridge-building behaviours and life-style patterns so as to gain access to, and engagement with, the aspects of their new environment which they themselves value. These are costly processes for those involved. The more so if the host community is itself inflexible, perhaps because fearful that the newcomers will disrupt cherished ways of life.

Russell's message (3) that work performance and the state of health of the individual's intimate relationships are highly inter-dependent has added importance if the worker and the family members are engaged in the stressful transitions demanded by the experience of dislocation.

The experience of European nations, seeking to redefine themselves while faced with the dislocations of globalisation, suggests that parallels can be drawn between the needs and experiences of individuals and families and those of whole societies. No research is known which inter-relates nations' capacities to negotiate such transitions successfully and the well-being of its citizens' families and intimate relationships, but it would be unsurprising if an inter-dependence was demonstrated. Those who work most closely with those relationships and families join with Thai colleagues in a conviction that the successful management of globalisation is dependent upon greater efforts to ensure that citizens have the security and stability offered by thriving intimate relationships and families.

6 PROFESSIONAL SEMINAR

Those conference participants able to extend their stay in Sydney took part in a brief professional seminar designed to build on the discussions of the conference's working groups. The opportunity was taken to learn more about the collaboration between the Australian Federal Government and the country's family organisations. That collaboration had already been evidenced when Mr Ross Cameron, Parliamentary Secretary, Family and Community Services, launched 'Two equals One', a jointly developed pre-marriage education kit, during his opening address to the conference.
Government funding had been used by the family organisations to commission two studies, 'In Search of Quality' (7) and 'Delivering Person Centred Services (8). The reports were introduced by a member of the consultancy involved and were elaborated upon by the senior officers of Family Services Australia, Catholic Welfare Australia and Relationships Australia, Libby Davies, Margaret Roots and Dianne Gibson. Their accounts demonstrated their organisations' concern to refine the positive responses already being made to a wide variety of situations in which couples and families required professional support by adopting an evidence-based approach to service delivery. Other participants were able to provide information about comparable activity in their own countries. The seminar made abundantly clear the fact that , in the countries represented, significant achievements had already been made in finding ways to provide professional support for those whose relationships were being disrupted by Distance, Diversity and Dislocation.

7. ACKNOWLEDGEMENTS

ICCFR wishes to acknowledge the Eeora people, the traditional owners of the land in which the 2002 Conference was held.

The Commission extends its grateful thanks to the Family Relationships Forum and specifically to Dianne Gibson (Relationships Australia and ICCFR Board member), Libby Davies (Family Services Australia) and Margaret Roots (Catholic Welfare Australia) for the invitation to hold its conference and seminar in Sydney and for undertaking the demanding task of making the arrangements for those events.

It would not have been possible to organise the Conference without the support and financial assistance from the Department of Family and Community Services, the Attorney-General's Department, the Family Court of Australia, The Australian Government's Overseas Aid Programme, and Schapiro, Thorn Inc. Grateful thanks is extended to each of those benefactors.

The conference was greatly enriched by its **Opening and Keynote Speakers**:

- Ross Cameron, Parliamentary Secretary, Department of Family and Community Services, Australia.
- Wayne Osborn, President of Alcoa World Alumina Australia and

Managing Director of Alcoa of Australia
- Graeme Russell, Associate Professor in Psychology, Macquarie University, NSW, Australia
- Marie-Claire Foblets, Professor of Law and Anthropology, Department of Social and Cultural Anthropology, K.University of Leuven, Belgium
- Nareewan Chintakanond, Professor and member of the National Council on Social Welfare, Thailand

and by the contributions of:

- The Honourable Alastair Nicholson, Chief Justice of the Family Court of Australia
- Sue Pidgeon, Acting First Assistant Secretary, Attorney-General's Department, Australia

who chaired plenary sessions.

Workshops were led by

- Josephine Akee (Family Consultant, QLD, Australia) *Working with Torres Strait Islanders,*
- Claire Barnes (Kids' Turn, San Fransisco, USA) and Claire Missen (Marriage and Relationship Counselling Services, Dublin, Ireland) *Teen Gender Development in Divorcing or Separating Families,*
- Kristina Bell (Division of General Practitioners, NSW, Australia) *Relationship Education and Linking People in Distant Rural Australia,*
- Margaret Harrison (Family Court of Australia) *Family Court Projects,*
- M Hassan Khan (Fiji Council of Social Services) *The Fiji Crisis and the Family,*
- Zama Mabaso (FAMSA, Durban, SA) *Migratory Labour Sytem in South Africa and its impact on Family Life,*
- Angela Pangan (Norfil Foundation, Philippines) *Globalisation: Its Effect on the Filipino Family,*
- Anne Warner (Sisters Inside, Brisbane, Australia) *Women's Isolation ensures Family Dislocation.*

ICCFR is most grateful for these excellent presentations.

The skills of those leading working groups were greatly appreciated. They were: Simone Bavery (South Africa), Anne Holland (Australia), Robin Purvis (Australia), Anna Tarabini (Italy), and Paul Tyrrell (Australia). Within those groups there was a generous sharing of personal as well as professional experience and they became the heart of the conference's programme. ICCFR is privileged to have been able to offer participants the opportunity for that creative exchange and thanks all who took part for the richness of the ideas they generated.

Gerlind Richards, ICCFR General Secretary, yet again worked tirelessly and with great attention to important detail to support the conference's local organisers. Gerlind's concern for the interests and well-being of all who have contact with the Commission keep it a lively, creative influence for the good of couples and families throughout the world.

Derek Hill

Chair,

International Commission on
Couple and Family Relations ICCFR

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WORK AND FAMILY BALANCE

Opening Keynote Paper at the 49th ICCFR Conference

Wayne Osborn
President, Alcoa World Alumina Australia

Distinguished guests, ladies and gentlemen, thank you for the invitation to join you at this conference as your key note speaker. It's a privilege to be invited to speak here this evening.

My name is Wayne Osborn and I am the President of Alcoa World Alumina Australia. The role as Alcoa's President is a new one for me – as I'm only 6 months into the job after 22 years with Alcoa. I started my working life as an Electrical Engineer and have had the opportunity to work in many of Alcoa's Australian locations.

I feel that I'm probably the last person who should be standing here before you speaking on work and family balance. I'm not the most appropriate role model as I have a wife who stays at home and does everything for me.

I have also been accused over the years of being an unthinking male. Not in touch with what's going on around me or of other people's feelings.

In my defence, one of the few things I can say is that I'm not alone. There are many males like me. Many men who have never appreciated from first hand experience what diversity and work and family balance are all about and how enormously important they are to many people and to the future success of any business.

But that's where the heart of the problem lies – in trying to educate and change the views of men like me. Change the view that a work environment flexible to the needs of men and women with a life and commitments outside of work is a good work environment. In fact it's an essential work environment to attract and keep the best employees.

During my years with Alcoa I have seen enormous change. The company has changed in tune with its shareholders' needs, the push for globalisation and streamlining of our processes - and more recently, the growing awareness that our employees also have special and individual needs which must be recognised.

When I said we've changed in tune with these needs – I must add that sometimes that tune hasn't always been very harmonious! There have been discords and challenges along the way.

Tonight I'm looking forward to sharing with you some of our achievements and challenges in making our workplace one that is more diverse and family friendly.

But before I do this, I'd like to set the scene for you.

To appreciate the inroads we've made and what we're trying to create, it's important for you to understand the type of workplace Alcoa operates in and the many faces of Alcoa.

Alcoa is an industry. It is also a very successful business, financially.

We operate in mines, refineries and smelters. Alcoa World Alumina Australia is a major producer of aluminium from two smelters in Victoria, and the world's biggest producer of alumina from three refineries in Western Australia.

Our parent company Alcoa Inc, is a fully integrated aluminium producer with headquarters in Pittsburgh, USA.

Alcoa is active in all major aspects of the industry - technology, mining, refining, smelting, fabricating and recycling.

Our aluminum products and components are used worldwide in aircraft, automobiles, beverage cans, buildings, chemicals, and a variety of industrial and consumer applications.

Alcoa has more than 300 operating locations in 38 countries and employs around 125,000 people worldwide.

In Australia, we employ 5,320 people – that's 485 women and 4,835 men.

That's almost 10 times more men working for Alcoa in Australia than women. Which is another point important to note Alcoa - like most heavy industries - is a very male dominated industry.

That's one of our biggest challenges – and a goal we set for ourselves some years back **– to increase the number of women working for Alcoa in Australia**. We wanted to open the doors to women working as truck drivers, mechanics, process operators, professionals and at our executive level.

We have gone some way in welcoming women into these jobs but I admit that it has been a frustrating road and we have not yet achieved the gender balance we hoped for.

But gender aside for the moment. In the 2000/1 financial year, Alcoa's men and women helped the company generate $882m in profit.

We recognise and appreciate that ultimately it's our people who make Alcoa a success.

Alcoa aspires to be the best company in the world. If that sounds like a vision statement, yes it is. It's also a business plan, summarised down to just 10 words.

The ramifications of aspiring to be the best company in the world are huge. It means that in no part of Alcoa's activities, in no part of the world, can we afford to be anything other than world class.

One part of that giant jigsaw involves having one of the best work and family policies in Australia, and to be able to show that we have. Not just having a policy, but applying it and showing that it works.

Our employees are people with families and lives outside of work and our policies need to reflect that to ensure our continued success and to ensure we continue to attract the best people to our company.

One of our core values is to relentlessly pursue excellence in everything we do, every day. That's very demanding as a value. It doesn't allow for things to be put to one side, or ascribed secondary importance.

We've been working on our work and family policies for the past decade, and we will continue to work on them to keep up employee expectations and hopefully set the pace in some areas.

Every year, there's change in the expectations of employees, their families and the community towards the relationship they have with employing companies.

As well as incremental change, there is structural change. We've all seen the effects of women entering the workforce, and we're starting to see the effects of an aging workforce.

The differences between the career expectations of baby boomers and generation X-ers are marked, and it sounds like generation Y has an equally divergent outlook.

The intersection between employees, their families and the workplace will never stop changing.

So our bottom line success depends on us maintaining a flexibility that will continue to recognise the needs of people – real people, not employee statistics – so as to remain attractive to the best candidates.

Last year, Alcoa was honoured to receive the Australian Chamber of Commerce and Industry National Work and Family Gold Award.

This award was welcome recognition that right now, we're doing pretty well in creating a workplace flexible to the needs of our people….but we must continue looking forward.

I'd like to share with you our journey, our learnings, in creating a more diverse workplace. At least, this is our journey up to now – there are many more challenges ahead and there have been disappointments and ideals not yet realised along the way.

The interface between work and family has been a long-term subject of concern for individuals, families and researchers. Nevertheless, until recently, there was very little analysis of the different responses of private and public sector organisations to work and family issues (cf. Friedman, 1991; VandenHeuvel, 1993; Bailyn, Rapoport, Kolb & Fletcher 1996; Breakspear, 1998; Haas, Hwang & Russell, 1999). A major reason for this lack of analysis, of course, was that apart from providing maternity leave, few organisations demonstrated any explicit interest in work and family issues. In a major shift in orientation, however, workplace responses to work and family issues have become a more obvious concern to private and public sector organisations in most western countries. And, as was pointed out by Friedman (1991, p. 9), "Thousands of companies have responded to the family needs of workers despite the limited body of research available."

Various reasons have been given for this heightened interest (US: Friedman & Galinsky, 1991; Europe: Lewis, 1997; Australia: Squirchuk & Bourke, 1999; Japan and South Korea: Russell, 1999; Brazil and Mexico: Lobel & Tousingnant, 1999). Overwhelmingly, reasons focus on changes in the demographics of the present and potential workforce (Haas, Hwang & Russell, 1999). Analyses of work/family issues conducted in Europe, the US, Australia, Japan, South Korea and Brazil all show that in the past 20 years there has been a significant increase in the number of employees (women and men) with dependent care responsibilities that will potentially create conflicts and influence their employment behaviour. This has been shown to happen at various levels: influencing decisions on whether to take up a job (e.g., take up because conflict levels are perceived to be low; not relocate because it conflicts with dependent care responsibilities or partner career aspirations), to leave a job (creating too many conflicts and tension), whether to be present or absent on a particular day (see VandenHeuvel (1993) for an analysis of the impact on absenteeism), level of commitment to an employer, concentration and focus on particular tasks.

Analyses conducted in a broad range of national contexts (see Haas et al, 1999) also illustrate a commonality in arguments about the potential opportunities for organisations:
(i) As an incentive to increase motivation and commitment and thus achieve higher levels of productivity from the current labour pool, especially during a period of downsizing and reduced career opportunities with flatter organisations.
(ii) As a way of attracting and retaining the best quality people.
(iii) Enabling the best quality people to advance in an organisation. It has been recognised that barriers to women advancing in corporations include: having to take time out for dependent care responsibilities; lack of flexibility in career structures; and traditional rules and work practices based on assumptions of the male breadwinner model.
(iv) To obtain community recognition by being seen as a 'good' corporate citizen or a caring organisation.

As is pointed out by Edgar (1999), the work/family policy or "business-benefits" debate has traditionally been conducted within a "workplace effects" framework -- that is, reducing the impact of family needs or responsibilities on workplace productivity. Few organisations or governments consider the potential links between workplace practices and expectations and individual, family and community well-being. There are some exceptions to this, of course. First, in Sweden, as Haas & Hwang (1999) argue:

> "Government efforts to support working mothers were not just motivated by economic concerns, however. Two specific ideological goals have also strongly influenced the development of work-family programs - gender equality and children's well-being. Sweden is unusual in that these two goals are not seen as in serious conflict with one another. In many societies, people regard promotion of dual-earner families as harmful to children's well-being . . ." Haas & Hwang (1999, p 135-136)

Second, there is the reasonably substantial academic literature on the impact that work demands have on role overload, individual stress, family well-being and child outcomes. Much of the research has been reactive in nature, e.g., focusing on the impact of employment status (e.g., Gottfried & Gottfried, 1988; Gottfried, Gottfried, Bathurst & Killian, 1999; Haas, 1992; Pleck, 1985, 1986; Rapoport & Rapoport, 1971), conflict, stress and spillover effects (e.g., Barnett & Marshall, 1992; Frone, Russell & Cooper, 1992; Lewis & Cooper, 1987; Thomas & Ganster, 1995), or on nontraditional employment patterns within families (e.g., Lamb, 1999). Cooper and Lewis (1995) provide a summary of research which indicates people with family responsibilities who work in unresponsive organisations are more likely to experience stress-related illnesses and reduced quality of life. A highly critical aspect of personal and family life that is missing from these analyses (see, for example, Bond, Galinsky & Swanberg, 1998) is the potential impact workplace demands have on intimate relationships, and the possible reciprocal positive workplace impact of having quality/satisfying intimate relationships.

Should organisations be concerned about the quality of intimate relationships?

If the responses of organisations to the work and family needs of employees is any indication, it would seem that the "intimate relationship issue" has a relatively low priority. The emphasis tends to be much more on addressing the work/family needs of employees through "Flexible Work Options" and "Dependent Care Arrangements" (cf. Bankert & Litchfield, 1998). Many organisations, of course, would argue that they are addressing relationship issues by providing Employee Assistance Programs (EAP) (e.g., 97% of companies in the Bankert & Litchfield study reported that they were). EAPs are by their very nature confidential and therefore there are limited opportunities for any data from the analyses of problems or services provided to contribute to changes in workplace practices and expectations. Further, in my experience of providing consulting services to organisations over the past 10 years, I have found that very few have shown an interest in including the analysis of the quality of marital and intimate relationships into work and family strategies. Most respond is the way described in below:

> Recently I conducted a senior management seminar on work and family (with the primary focus being on addressing the business arguments) in an organisation. As part of the early discussion with the group it emerged that one manager worked on a fly-in, fly-out basis (leaving home early Monday morning, working in a remote mining plant, and returning home on Friday afternoon). He had an eighteen year old and a sixteen year old. The eighteen year old was doing her final school exams and he was having the usual adolescent challenges with the 16 year old. He was struggling with parenting issues as well as with his relationship with his spouse. I asked him: 'Does the corporation have any concern about the difficulties you currently have with your family relationships?' He emphatic response was, "no". I asked the entire group whether an organisation should have any concern or responsibility in reducing the exposure of employees to relationship risks. What eventuated was a very heated debate. I was challenged by several managers who argued that this was really a matter of personal values and that if a person experienced relationship difficulties because of their job, they should resign and find another job ("if it too hot in the kitchen, get out"), this is not a corporation's problem and they should not have to be concerned about it. All managers, agreed however, that it was a corporate

responsibility to eliminate or reduce environmental risks (e.g., ensuring the air is not polluted) and to ensure that employees are not exposed to occupational health and safety risks. Personal and family relationships, however, were not considered to be a concern for an organisation's business outcomes.

In another organisation, however, the response was quite different. In this case, I was preparing to present a "Diversity" workshop to a group of senior managers. In a preliminary briefing session to determine what the key issues were for this group, family lifestyle and the balance between work and family was raised as a key concern. When asked what they considered to be the issues for this group, one senior manager said: "We need to do something about relationships at the top: take a look at our senior management team. They are all men and I think there are only two who have not been divorced or are not currently separated from their families. This can't be good for decision-making and job effectiveness". Note, however, that the concern here was for the impact that the quality of family relationships have on workplace productivity, not on how workplace practices and expectations might have contributed to the relationship difficulties. Given the acceptance of the links between productivity and family/couple relationships, however, it was an easy step to take to include these issues on the management agenda within a broader framework. This broader framework covered the exploration of reciprocal effects and a critical analysis of the ways in work demands impact on relationships. Taking this even further, however, to change current practices and expectations, however, was much more difficult.

My argument is that the quality of intimate relationships does matter to individuals, to families and to the community and that they should matter to the workplace. A focus on providing better opportunities for people to both establish and maintain intimate relationships would be expected to have a positive impact on personal and family well-being and on a person's effectiveness at the workplace.

Globalisation and intimate Relationships:

The Challenge to Stay Connected

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The nature of close relationships and their impact on well-being

Cramer (1998, p. 1) in a recent comprehensive review points out that close or intimate (involving passion, mutual trust and commitment) relationships are a major part of the lives of most people. He reports findings from a UK study (sample size -- 1416 adults) by Jowell, Wotherspoon and Brook (1987) which show that 77% of people either live with a spouse/partner or have a continuing close relationship with someone they don't live with. Critically, after reviewing the available research Cramer concludes that: "There is growing evidence from longitudinal studies that the presence of supportiveness of a close relationship is related to living longer and being less psychologically distressed." (p. 58). Further, Barnett (1994) has found that for full-time employed men and women in dual-earner couples, having higher quality marital relationships can "buffer" the negative effects of job demands on psychological distress.

Research shows that intimacy -- being sensitive to the other's needs and getting to know one another -- grows from spending time together, talking to each other and listening. Intimacy develops from the everydayness of life and from comparing experiences at the end of the day. This leads to an involvement of each in the life of the other and a sense of being important and heard. It does not depend on sessions of soul-searching but feeling free enough to speak about the little things that hurt or excite, and knowing there is a receptive ear at the other end of the conversation.

Generally, research shows that there are four key indicators of the quality of close/spousal relationships (Spanier, 1976): (i) The extent to which there is consensus on key relationship issues (e.g., philosophy of life, recreation, friends); (ii) The level of satisfaction with the relationship; (iii) The level of relationship cohesiveness (e.g., how often something is calmly discussed, how often there is a stimulating exchange of ideas, how often there is shared laughter); and (iv) Agreement and satisfaction with the expression of affection. Findings from many studies conducted over the past 30 years tend to support this conceptualisation. For example, Cramer reviews evidence concerning views about factors that either "wreck a marriage" or "make for a happy marriage". The five most commonly mentioned factors for each question for both women and men were:

- Wreck a marriage: "neglect and bad communication"; "selfishness and intolerance"; "Infidelity and jealousy"; "Poverty, money disagreements"; and "Conflicting personalities, no common interests".
- Make a happy marriage: "Give and take, consideration"; "Comradeship, doing things together"; "Discussing things, understanding"; "Mutual trust and help"; and "Love and affection".

Cramer concludes (p. 74) that research consistently shows that the following factors predict marital compatibility: being loving, sexually satisfied, communicative and emotionally stable. In one of the more comprehensive studies it was found that those who were maritally satisfied had more problem-solving communication, more and better leisure time together, more affective communication, less conflict over childrearing, less sexual dissatisfaction and fewer financial disagreements. (pp. 71-72). These are all factors that are likely to be linked to workplace demands and expectations.

The impact of workplace demands and expectations on intimate relationships.

In a recent study I conducted in a large organisation (sample size 3977) employees were asked both what family demands have an impact on their work and what work demands have an impact on their family life (and what the specific impact is). The five most commonly mentioned family demands were: time pressures (47%); lack of time for social and recreational activities (33%); financial difficulties (33%); problems juggling work/family commitments with spouse; and difficulties in their relationship with their spouse (15%). The five most commonly mentioned work demands were: coming home from work feeling stressed (53%); having to change work hours at short notice (34%); difficulties in relationships with co-workers (33%); coming home late from work (27%); and pressures from work deadlines (25%). These work demands were reported to have a significant impact on the following aspects of family life: generally poor quality family relationships (45%), not being able to plan family life (19%), not enough time for spouse (17%), not enough time for self (7%) and a high level of conflict with spouse (6%). Even though some of these figures might look small, it is important to keep in mind that 6% of the workforce is approximately 240 employees.

Findings also indicated that relationship issues are even more critical for senior managers. Forty percent of this group regularly go home stressed; forty-two percent say that their work has a negative impact on their partner relationship; and forty-eight percent say it has a negative impact on their family life. The spouses of senior male managers have very different views about the work and family priorities of the manager, and about the impact his work has on family life and on their relationship. I will illustrate this though the findings from one corporation where I surveyed a hundred and forty-two male managers and seventy-three of the partners of the male managers. There was a huge gap between what senior male managers thought was happening in their family life and what their partners thought was happening. Nearly eighty percent of partners compared with only 50% of male managers agreed that: "Work demands of employees frequently mean they spend less time together than they would like." Intimacy in relationships is also a key issue, and partners are much more concerned about this than the managers are. Intimacy in relationships develops by having the space and the time just to relax and talk in an open and frequent way. In this study 45% of the female spouses compared with 30% of the senior male managers agreed that the demands of the management job made it difficult for them to spend time talking and relaxing together.

One of the groups being given increased attention are younger males (under 35) who have young children (usually below school age) and who also have partners in the paid workforce who are pursuing careers. It is estimated that that dual worker/career couples constitute up to 40% of the workforce now and this number is likely to grow in the future. Survey findings indicate that men in these relationships are feeling more stress and are keener to change the corporate world to enable them to have a better balance between their work and family/personal life. In a recent survey I conducted, sixty-three percent of this group of young men said that they would refuse a job or promotion if it had a negative impact on their family life or on their partner's career, or they would refuse a transfer for those same reasons. Other data I have collected suggests that twenty percent of these men have actually made employment or career decisions based on the perceived impact on family relationships. Family and partner issues matter to young men and corporations need to take account of this.

Academic research has also shown that work/family conflict and job stress are associated with lower levels of marital satisfaction for women (MacEwen & Barling, 1988) and men (Kinnunen, Gerris & Vermulst, 1996), and withdrawal from marital interactions by both women and men (MacEwen & Barling, 1994). Bedeian, Mossholder & Touliatos (1987) have found that the impact of job factors on home and family life is lower when higher levels of emotional support are provided by partners in dual-career relationships. Adams, King and King (1996) have also found that higher levels of family emotional and instrumental support are associated with lower levels of work/family interference. Working unsociable hours in shift work has also been found to have an impact on intimate relationships. In a large scale longitudinal study (White and Keith 1990) shift work was found to reduce marital quality and increase the probability of divorce (while the effects are significant, they are relatively small).

Moreover, findings indicated that shift work has an impact on all aspects of marital quality: marital happiness, marital interaction, disagreements, marital problems and sexual problems.

Similar kinds of outcomes would be expected in relation to some of the current workplace demands and reduce the capacity of employees (both women and men) to either establish or maintain quality intimate relationships. Two work demands that are especially likely to have this impact are: extended hours of work and working at unsocial times. Bittman and Rice (1999) conclude that:
"The study of time-diaries provides support for those who argue that changes in working time are affecting the time available for other activities. Since the 1970s, working times have become more dispersed, with higher rates of unemployment, fewer days of work, but longer working days. Standard working hours are now less typical for both men and women workers. Work at unsociable times (outside the hours of 9 to 5 on weekdays) has also increased over the course of this period." (p. 5).

Other work demands (especially for those who work in global or national organisations) that could have a negative impact on intimate relationships include:

- *Constant short term travel*. For some employees this means being away for short periods of time -- between 5 and 10 days on a reasonably constant basis, e.g., every three to four weeks. Many corporations require employees to travel on personal time (e.g., on weekends, early morning, during evenings) to ensure they are available during regular business hours at their destination.
- *Overseas assignments for up to 12 months*. Corporations usually have policies that enable family members to relocate with employees if the assignment is to be over 12 months. Yet some continue to design assignments that make it difficult for the maintenance of intimate relationships (e.g., assignments of 11 months, assignments to foreign countries that also involve considerable short-term travel).
- *Expectations about 24 hour accessibility*. For many employees this means staying back at the office to participate in global video-conferences (that are often based on US time frames, e.g., 9 am East Coast US would be 9 pm Perth, Australia time). Expectations about availability for telephone conferences and to respond to e-mails from home have also increased.

Each of these work demands has a potential to have a negative impact on all aspects of relationships noted above: consensus, satisfaction with the relationship, relationship cohesiveness (spending time together in a relaxed environment) and agreement and satisfaction with the expression of affection. It also makes it less likely that those in dual career relationships are able to provide the continuing day to day personal support that people find beneficial in ensuring their well-being. Effective communication and resolution of conflicts and differences are also made much more difficult. As Gottman (1997, p. 28) argues: "If there is one lesson I have learned from my years of research it is that *a lasting marriage results from a couple's ability to resolve the conflicts that are inevitable in any relationship."*

How can organisations respond?

There are several possible ways for organisations to respond, e.g.:

- Include questions about relationships in surveys or needs analyses to assess: the impact word demands have on relationships, current relationship difficulties and their possible impact on work performance, current relationship satisfaction.
- Conduct surveys with spouses/partners of employees to assess the same kinds of issues.
- Conduct focus groups with employees and their spouses/partners. An example of an approach I have taken in one corporation is:
  Working with managers and their partners: A three-hour workshop was conducted with senior managers and their partners as part of a strategic planning process (a three day corporate retreat). The focus was on investigating the impact work/life and relationship issues have on the managers and their partners and on the business outcomes for the

organisation. There was some reluctance to include this as part of the process -- as the CEO said: "This is high risk stuff, it had better work!" This was a highly successful session with partners/spouses arguing strongly that the time was too short and that they would have preferred to have continued discussing the issues rather than go on a planned social outing.

- Include intimate relationship issues in business analyses of work and life initiatives -- to consider the possible impact on productivity and employee retention (especially for dual career couples).
- Conduct a Men at Work program focusing on work/life balance, personal and physical health, relationships and being a parent. Recognise the specific difficulties men have in seeking help for relationship issues.
- Include the discussion of the importance of intimate relationships in management training that involves work/life issues. Traditionally such training has focussed much more on enabling managers to achieve personal work/life balance and more general issues concerning dependent care responsibilities.
- Relocation and short-term assignment policies and practices need to reflect a greater consideration of intimate relationship issues. Specific strategies need to be developed to facilitate the maintenance of intimate relationships for couples who are relocated or separated because of work. Currently employees evaluate organisations positively in terms of addressing their financial and dependent care issues when relocating or while on assignment, but fail to take account of their intimate relationship needs.
- Travel policies could be reviewed to reduce the expectations of employees travelling on personal time. Some organisations have already put such policies in place. These have included: business travel only on regular work days, two days leave following travel that has involved personal time and adjustment to different time zones.
- Adopt a life span approach to the consideration of relationship issues. For younger employees the major concerns might be: being able to establish relationships and being able to spend the time to fufil their commitment to a long-term relationship (e.g., in the case of a newly married couple). A common report from younger employees is that work/family strategies tend to focus more on dependent care issues and fail to take account of their relationship needs (for some, there is an even higher expectation of travel and working longer hours).
- Support and establish partnerships with community based relationship organisations.

More generally, organisations could broaden their approaches to work/family issues by including the consideration of intimate relationship at every stage. What is needed is an approach that includes an **intimate relationship impact analysis** for current and future work demands and expectations.

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'Locating' Families in a Time of Unprecedented Mobility: Recent Developments in the Field of International Private Law in Europe

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In recent decades 'conflicts justice' in the realm of international family law has undoubtedly gained momumentum in most European countries. This is in part due to the increase of case-load that is submitted to the judges and that relates to family disputes involving Muslim migrants. In this article I briefly depict how 'conflicts justice' in most European host countries today in the domain of cross-cultural family relations is facing the impact of the unprecedented cross-boundary mobility of people, particularly from Islamic countries that is engendering a new type of social and cultural pluralism.

Introduction:

My presentation builds upon one particular aspect of the vast issue that is very much at the core of the debate in Europe today on how to conceive the future of our (multicultural) societies in termes of peaceful cohabitation with the many newly immigrated communities from all over the world. I will focus on the position of Muslims and Muslim women in that debate.

Conflicts of civilisation(s) are a fascinating topic of research. However, in practice, these conflicts are probably among the most difficult to settle. It is one thing to speak of clashing cultures as a subject of academic interest, yet it is another to deal with them on a day-to-day base.

The subject which I propose to discuss here is of necessity but a very small part of a vast field, namely the question which arises when a family court in Europe today is obliged to consider what degree of recognition he - or she [1] - will give to family laws practised and obeyed by migrant communities which have their origin elsewhere *and that clash with the domestic legal culture*. The question is becoming increasingly important, in almost all European countries today, *particularly in the realm of family law* as a consequence of the massive migration movements from the former colonies of the Western powers that, in barely thirty years, i.e. since the sixties and the seventies, have caused major changes in the area of international family law.

On the average, up to 10% of the population in most until recently called "Western-European" countries today are of non-western, i.e. non-European origin: people immigrated from our previous colonies or drawn to Europe, either because of labour immigration facilities in the 60's and 70's, or, since the late 80's, mainly people seeking asylum under the 1951 UN Convention Relating to the Status of Refugees [2].

Post World-War II immigration to Europe is characterized by *two main features* that are very much a challenge, an obstacle also to the lawyers who are looking for the appropriate

[1] For purposes of facility I will further in this contribution solely use the masculine gender of nouns that may equally refer to male and female judge.

[2] CARLIER, J.-Y., VANHEULE, D. (eds.), *Europe and Refugees: A Challenge?*, The Hague, Kluwer Law International, 1997; CRAWLEY, H., *Women as Asylum Seekers. A Legal Handbook*, London, ILPA, 1997; GUILD, E., *The Developing Immigration and Asylum Policies of the European Union. Adopted Conventions, Resolutions, Recommendations, Decisions and Conclusions*, The Hague, Kluwer Law International, 1996.

techniques of law that allow for managing in a peaceful way conflicts, clashes between basic values of the host-society (basically, the 1950 European Convention on Human Rights [3] and cultural values imported by newly immigrated populations. The first feature is the cultural and demographic *diversity* of the many groups who have immigrated from all over the world: the statistics show extremely heterogeneous origins. The second feature is the very *resistence* shown by a growing number of migrants to attempts of all kinds at assimilating these people to the values of the majority society. Some groups show more resistent than others. *Muslims so far, are among the most resistent*.

The reasons why these two features constitue an impedimentum, a challenge to say the least, to lawyers today, are basically linked to the legal history of Europe, of Continental Europe, in particular. The techniques inherited from the past to cope with conflits of laws issues, have not been conceived with a view to the present-day situation. I will first try to be clear on that. What I intend doing in this presentation is basically twofold. In the first part, I will rapidly explain the main reasons of the inadaptation today of the legal techniques in Continental Europe, inherited from the past, to handle the issue of the recognition - from a legal point of view - of non-western legal cultures that claim the protection of the law. These claims may be particularly provocative when it comes to grant recognition to *discriminatory* legal traditions and systems. In the second part, I will illustrate the discussion on possible solutions to this vast problem by refering to one concrete study we published in 1998 in Belgium [4], on demand of the Belgian Minister of Justice, that illustrates the way lawyers cope with the dilemma: cultural relativism and/or human (women's) rights. The study focuses on one particular instance: the protection of Muslim women (and their daughters) immigrated within the realm of family law.

PART I: The legal techniques at hand. The dramatic inadaptation of century-old techniques.

I.1. Unprecedented cross-boundary mobility: the internationalisation of family law in Europe today.

The issue of the recognition to be given to foreign legal cultures that claim the protection of the law in Europe touches on a socially and politically highly sensitive problem area as it forces to openly discuss the question of the degree of tolerance to be shown by the courts in the host country and the role of judges when handling disputes involving migrants from non-western countries. Problems related to marital property law, to descendency, to the mutual rights and obligations of the spouses, to adultery and cohabitation, to inheritance and transfer of property, to custody, to conflicts of nationalities within one family, etc. manifest sharply how difficult it has become for family judges in Europe to achieve justice in disputes involving disputants who, for the mere reason that they have kept their nationality of origin, keep on resorting - at least partially - under the legal system of a foreign country.

Two questions then arise: 1. Does the European judge acknowledge the 'foreign' family rules as *law*? 2. Does he acknowledge these rules on *equal* terms with his (own) legal system?

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[3] *European Treaty Series* [ETS], N° 5. Text amended according to the provisions of Protocol N° 3 (ETS N°45), which entered into force on 21 September 1971, of Protocol N° 5 (ETS N° 55) which entered into force on 20 December 1971, and of Protocol N° 8 ETS N° 118), which entered into force on 1 January 1990 and comprising also the text of Protocol N° 2 (ETS N° 44) which, in accordance with article 5, par. 3, thereof, has been an integral part of the Convention since its entry into force on 21 September 1970.

[4] FOBLETS, M.-Cl. (ed), *Femmes marocaines et conflits familiaux en immigration: quelles solutions juridiques appropriées*? [Migrant women from Morocco involved in family disputes. What are appropriate legal solutions?], Antwerp/Apeldoorn, Maklu, 1998

In order to answer these questions and to understand the issue at stake underlying them, one has to find out whether the legal techniques at hand offer appropriate facilities to the courts to properly resolve the increasing amount of ever more complex international family disputes that occur in their their jurisdiction. Firstly, what are these techniques? And secondly, are these techniques sufficiently tuned to the social and demographic developments that have occured since the sixties and the seventies in Europe?

I.2. 'Conflicts justice': the choice-of-law rules

The techniques that are used by the courts to resolve international family disputes are called 'choice-of-law' techniques, or 'choice-of-law' rules, or even, 'conflicts rules'. These techniques deal with a series of questions that can be grouped together under the following headings: 1. Jurisdiction (will a court take the case?); 2. Choice-of-law (what law will the court apply if it does take the case?); 3. Recognition and enforcement of foreign judgements (can other states and nations be expected to honor decisions enacted or adjudicated by foreign judicial or administrative authorities?). Analytically, these three categories of questions are distinct. Functionally, however, they are intertwined.

A lack of consensus on the way to handle these three questions explains a great deal of the complexities that characterize contemporary choice-of-law techniques. I will not attempt to depict these complexities here. The subject is far too difficult and the literature and treatises built up over the years too voluminous to be 'manageable' in a brief article like this [5]. I therefore will attempt to focus on the second question, i.e. the question what law the court should apply to cross-boundary disputes and, more particularly, look briefly at the kind of issues that question raises in dealing with conflicts between western and non-western laws at a time of unprecedented cross-boundary mobility (*cf. infra* I.5.).

But before I develop my exposé on the choice-of-law question in contemporary Europe, it may be useful to very briefly remind of the origins of our choice-of-law techniques in Europe (*cf. infra* I.3.) and insist on the role played by the judges in applying these techniques (*cf. infra* I.4).

I.3. The origins of conflicts law

Cross-boundary relationships between individuals predate, by many centuries, postcolonial migration to Europe. They arose as soon as members of different human societies began to deal with each other. But the true beginning of the choice-of-law techniques, as we know them today, had to await the revival of the Roman law in the twelfth century, when the *glossators* began to attach the choice-of-law problem to a passage in the first title of the Justinian's Codex [6]. Medieval scholars began to debate whether local *statuta* could be applied extraterritorially to citizens abroad, and wether foreign citizens within the forum's territory were bound by its laws.

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[5] See for general writings on the choice-of-law problem, i.a.: VONKEN, A.P., "Balancing Processes in International Private law. On the determination and weighing of interests in the conflict of laws and the 'openness' of the choice of law system", in: *Forty Years on: The Evolution of Postwar Private International Law in Europe* (Centre for Foreign Law and Private International Law), Deventer, Kluwer, 1990, p. 171-194; COX, S.E., "Razing Conflicts Facades to Build Better Jurisdiction Theory: The Foundation - There is no Law but Forum Law", *Valparaiso University Law Review*, 28 (1993), nr. 1, p. 1-82; SINGER, W., "Real Conflicts", *Boston University Law Review*, 69 (1989), nr. 1, p. 3-129. Two examples of introductionary comments on the choice-of-law problem in relation to post-war migration to Europe and in particular to the question of contemporary cross-cultural family issues, are: DEPREZ, J., "Les évolution actuelles du droit international privé français dans le domaine du droit familial en relation avec les convictions religieuses" [French private international law: recent developments in the domain of family relations with respect to religious convictions], *Revue de droit canonique*, 45(1995), p. 7-40; VERWILGHEN, M., DE VALKENEER, R., *Relations Familiales Internationales* [International Family Relations], Brussels, Bruylant, 1993

[6] Even if this title is concerned with religion, rather than with conflicts problems.

By viewing the problem in this fashion, the glossators hit upon what has since been called 'choice-of-law rules', a term suggesting that choice-of-law problems are caused by the clash of sovereign commands and that the ultimate attempt must be to reconcile sovereignty and the exigencies of interstate relationships [7].

The search for criteria that would determine the spatial dimension of laws preoccupied scholars for centuries. In the European medieval society there were good reasons to ponder conflicts questions. In sixteenth-century France, for example, even after the Kings had established the crown's supremacy, the law varied from province to province, and there was a basic split between the Germanic *'coutumes'* (customs) of Northern France and the *'droit écrit'* (written law) that prevailed south of the Loire Valley.

The idea that it is possible to reconcile the territorial limits of sovereignty and the free flow of international relationships between individuals [8] reappears in later centuries. In fact, it has become the central attempt of modern conflicts analysis [9]. Among lawyers, there is much discussion on the choice of the appropiate law to be applied to the *family relations* that are designated as 'mixed, 'cross-cultural', 'multipatride', or just 'international', meaning either that the family members are of different cultural background or that the family group has settled in a country that is not the country of their common origin [10].

I.4. 'Conflicts justice': the role of judges in international family disputes

In practice, questions concerning the choice of the law applicable to multistate family cases present themselves to a variety of decisionmakers: not only to the parties themselves, but also to their council, to the courts, administrative agencies and legislatures. They take a particular urgency in the context of cross-cultural litigation involving not just different, but *clashing*, i.e. more or less *incommensurate* family laws: African, Asiatic or Islamic family laws on the one hand, European family law on the other hand.

The rough and the tumble of a lawsuit in this type of cases puts into an even sharper focus the consequences of *choosing* one rather than the other law to decide the fate of spouses and their common children. Cross-cultural conflicts of law leave the judge who has to deal with family disputes in an awkward position: he is compelled to act as a multistate decisionmaker and his judgment will affect relationships among family members that, by definition, are not confined to his own culture. Cross-cultural family conflicts require the judge to consult 'unfamiliar' foreign law that, he may find out, is as unsatisfactory as his own law (the *lex fori*) because both were framed with local circumstances with scant regard to transnational realities.

The earliest attitude of many European judges to this question, an attitude which is not yet wholly extinct, has been to regard some (foreign) family laws regulating kin relations in non-

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[7] See i.a.: EHRENZWEIG, A., *A Treatise on the Conflict of Laws*, 1962, p. 312-313

[8] In practice, choice-of-law problems only arose when the *ius commune* had to give way to local statutes and many conflicts issues were controlled by superior law that eliminated the need of choice.

[9] The choice-of-law rules determine the law that is the 'most suitable' to be applied to a particular relationship by tracing *(the so-called choice-of-law-process)* the interests of the parties involved and the *connecting factors* (*cf. infra*) that will determine whether one national law or another is to resolve a concrete dispute . The choice-of-law techniques thus ultimately face a highly political question, namely the question which 'connecting' factor is most suitable to express the nexus between a given legal relationship and a particular state jurisdiction.

[10] In the latter case, the internationalisation of the family relation is not a matter of cultural diversity *among* the family members, but results from the minority position of the family group within the country of (temporary or definite) residence.

western communities as not being in any true sense *law* [11]. But at the present day it is hardly, if at all, doubted that non-western family laws are valid law, at least for the people concerned. *The question then arises what law is to be applied when these people settle in Europe*.

That last question, arising from the fact that many newly immigrated communities originating from Islamic countries settled in Europe during the last thirty years, is of perhaps the greatest practical importance for the European societies today. At the moment there are hundreds of thousands Muslims in France. The number of Algerians married to French women has highly increased since the seventies [12]. Statistics concerning immigration from Muslims to other European countries show rates that are very comparable to the census in France [13]. The numbers make clear that the conflicts between western and non-western family laws in Europe today have become a key issue in the area of international family law [14]..

I shall first present a general sketch of the four main factors that, either in combination or independently, form the basis of contemporary choice-of-law debate among law practitioners in most European host countries: (1) nationality; (2) domicile; (3) the choice of the 'better law'; and (4) party autonomy. Against that outline, I will risk a glimpse into the future and consider the issue of conflicts uncertainty for a number of concrete situations.

I.5. In search of the appropriate 'connecting factor'

The policies of the courts and other authorities regarding choice-of-law issues vary considerably, both historically and geographically, from one country to another and from one domain of family law to the other. Jurisprudence, on the whole, has often been guided by rather incompatible goals. In some cases, courts in the first place aim at the assimilation of disputants to the values of the majority society. The first concern then is to apply a uniform set of rules to all, regardless of their origin, race or creed. This is the way private international disputes are settled by American and Canadian courts. Traditionally in the U.S. and in Canada, until today, the choice of the applicable law is determined by the parties' domicile. In Continental Europe on the contrary, courts traditionally have favoured preservation of cultural distinctiveness of foreigners and newcomers: therefore, conflicts rules lead to selection of a person's national law.

However, conflicts uncertainty is not just the product of differences among the countries between choice-of-law traditions, nor of the tacit incompatibilities between conflicts policy

[11] With the effect i.a. that if anyone to whom domestic law (the law of the host country) was applicable entered into personal relation with another who is subject to another national law, the relationship automatically was considered to be governed by the domestic law.

[12] See i.a.: TODD, E., *Le destin des immigrés. Assimilation et ségrégation dans les démocraties occidentales*, Paris, Seuil, 1994, esp. p. 280 sq..

[13] See i.a.: NONNEMAN, G., NIBLOCK, T., SZAJKOWSKI (eds.), *Muslim Communities in the New Europe*, Berkshire, Ithaca Press, 1997

[14] On the claims of Muslim communities in matters of family law in Europe, and particularly in the United Kingdom, see i.a.: NIELSEN, J., "Das islamische Recht und seine Bedeutung für die Lage der muslimischen Minderheiten in Europa" [Islamic law and its significance for the situation of Muslim minorities in Europe], *EPD-Dokumentation*, 34/87 (3 August 1987), and more recently, from the same author: *Muslims in Western Europe*, Edinburgh, Edingburgh University press, 1992; POULTER, S., "Cultural Pluralism and it's Limits: A Legal Perspective", in: *Britain: A Plural Society*, London, Commission for Racial Equality, 1990; Union of Muslim Organisations (UMO), *Why Muslim Family Law* for British Muslims?, London, UMO, 1983; VERTOVEC, St., CERI, P. (eds.), *Islam in Europe. The Politics of Religion and Community*, London, MacMillan, 1997. For an overview of the situation in French speaking Europe, in relation to Muhammadans: VERWILGHEN, M., CARLIER, J.-Y. (eds.), *Le statut personnel des musulmans. Droit comparé et droit international privé* [The Personal Satus of Muslims. Comparative law and private international law], Brussels, Bruylant, 1992

objectives underlying these different traditions. *Today in Europe, the choice-of-law problem itself in its very essence has changed*.

To explore that fundamental change of the very nature of the choice-of-law problem, I will here address the problem for each of the above mentioned connecting factors: nationality, domicile, 'better law' and party autonomy, demonstrating the extent to which the strengthening of the legal position (stabilisation, mainly due to naturalisation) of migrants in most European host countries over the years has introduced both immense complexity and much artificiality into the choice-of-law problem when it comes to select the most appropriate family law for the resolution of individual disputes.

I.5.1. *Nationality*

It was not until the middle of the nineteenth century that, in Continental Europe, the (civil law) definition of nationality as a personal quality [15] was incorporated into the first rules of most countries concerning the law of conflicts, providing that the national law of a person best resolves questions concerning the family relations and all matters linked - directly or indirectly - with someone's personal status. The first meaning of such a rule holds that the national law best responds to the expectations of a person who relies on the law in planning his or her family relations, *even if the conduct takes place wholly within another state's jurisdiction*. In such view nationality *is a constitutive element of one's identity* [16].

The result of such view, when interpreted in present-day context, may be odd. Today in Europe, most migrants have definitely settled in the host country (i.e. of residence). Except for the first generation of these groups, the vast majority has given up the hope of returning to the country of the ancestors. *H. Entzinger* characterizes their stay in the host countries as 'life-long temporariness' [17]. They raise their families in the country of residence, hence the community of language, culture and affiliation becomes largely divorced from the concept of nationality as a personal quality and rather applies to what social scientists call *ethnicity*.

European civil courts however, are still bound by the civil law's concept of nationality. They thus may find themselves compelled to recognise legality to conducts governed by foreign law that, in some cases, may be contrary to the basic principles of the forum's law (i.e. the law of the host country), *for the mere reason that the parties - notwithstanding a life-long residence in the host country - have kept their nationality of origin*. So far, conducts of polygamy and repudiation are among the most controversial conducts that have been legitimated by European judges in application of discriminatory matrimonial laws still in force in the country of the parties' nationality of origin [18].

In order to overcome the difficulty some European countries, starting from the seventies, have come to facilitate the acquisition by migrants of the nationality of the country of residence,

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[15] The concept of nationality as a person-bound quality was first introduced with the Napoleonic civil code.

[16] Which means i.a. it regulates the appeal an individual (national) can make upon others and, conversely, the claims others can place upon him or her.

[17] ENTZINGER, H.B., STIJNEN, P.J.J. (eds.), *Etnische Minderheden in Nederland* [Ethnic Minorities in The Netherlands], Meppel/Amsterdam, ch. 11, p. 244-264

[18] See i.a.: LAGARDE, P., "La théorie de l'ordre public international face à la polygamie et à la répudiation" [The theory of international public order with respect to polygamy and repudiation], in: *Nouveaux itinéraires en droit. Hommage à François Rigaux*, Brussels, Bruylant, 1993, p. 262-282; ANCEL, B., "La statut de la femme du polygame" [The status of the wife of a polygamous husband], in: DEKEUWER-DEFOSSEZ, Fr. (ed.), *Le droit de la famille à l'épreuve des migrations transnationales*, Paris, L.G.D.J., 1993, p. 105-124

granting nationality via the place of one's birth [19]. The aim is to promote the integration of migrant families into the legal system of the country of residence [20].

I.5.2. *Domicile*

Yet another way to solve uncertainty as to the question which law applies is the solution traditionally adopted in England. In England the question whether a legal system is applicable to a particular situation is considered in connection with the *parties' place of living* (i.e. domicile) and not in reference to their nationality.

One of the main advantages of this type of solution is that it releases the courts from having *on principle* to defer migrant family disputes to the law of the nationality of origin.

However, the English choice-of-law model may also lead to surprising consequences. Take the example of a father who, conforming to English law, is obliged to maintain his legitimate children. If this rule applies to a father who is now domiciled in England, but who, according to the law of his former domicile was married lawfully to two wifes at the same time, this father will be obliged to maintain the children of his two marriages. He cannot escape his duty of supporting these children on the pretext that under English he is only obliged to maintain his legitimate children, and that according to English law it is impossible that children, born of two different co-wives, should all of them be legitimate. And likewise, for the same reason, namely since English conflict-of-law rules accept as valid a family relationship which is rooted in the domiciliary law of another country, this same husband and father will be obliged to provide the two women with maintenance although, in English law, as enacted for the English citizen, one never thought of the possibility that a husband would have two legitimate wives. English law, which becomes applicable when spouses remove their domicile to England, will thus have to show understanding for the strange but continuing relation, which is brought under its authority.

Now that in the last few years marriages contracted in India, between Hindus or Muslims, have come to be recognised in England, this type of conflicts cases recurs ever more frequently. Assuming that a Muslim, according to the law of his domicile, could not deprive himself of his right to polygamy, should he be deprived of that right *by reason of a marriage contract(ed) in England during temporary stay there*? It will be generally admitted that a Muslim's right to polygamy or repudiation cannot be exercised in England in respect of a marriage celebrated in that country, since the exercise of this rights will be against the public policy of English law: the consequence of the English domicile of the spouses is that their marriage is a monogamous marriage. But when the young Muslim returns home, his English marriage - if it is still considered as a marriage at all - will not be regarded as an obstacle to the exercise of his polygamous privileges.

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[19] Typically, the new Dutch, French and Belgian nationality laws introduced in the eighties grant more weight to residence than in the previous laws: children born in the host country whose parents (either of the parents) were themselves 'legally' (i.e. documented) born in the host country, are automatically granted the citizenship of the host country (see, i.a. for the Dutch Nationality Law: GROOT, G.R., "Een wetsontwerp ter wijziging van de Rijkswet op het Nederlanderschap" [A Project of Amendment of the Dutch Nationality Law], *Migrantenrecht*, 1993, nrs. 5-6, p. 91-105; for the Belgian Law: CLOSSET, CH.-L., *Traité de la Nationalité en droit belge* [Treatise on the Belgian Nationality Law], Brussels, Larcier, 1993; and for France: LONG, M., *Conditions juridiques et culturelles de l'intégration* (Haut Conseil à l'intégration). Rapport au Premier Ministre [Legal and cultural conditions of integration. Report to the Prime Minister], Paris, La Documentation Française, 1992, Annex 2, p. 75 sq.

[20] The nationality laws issued since the seventies in a growing number of European countries no longer distinguish between nationals and foreigners, but between *natives* and foreigners. The latter signifying persons residing on the territory of the host country, but who have not (yet) acquired the citizenship. On the long term the criterion of the birth place is meant to lead to a legal status (formally) *equal for all*: it will suffice to be born in the country of residence to become full citizen of that country and therefore be submitted to the totality of its legislation, including what pertains to family affairs and personal status.

Likewise, conflict-of-law rules that defer to the law of the domicile of the parties, allow that European women may be bound by the ties of polygamous marriage through a form of marriage solemnised in England. Indeed, even after a Muslim had fixed his domicile in England and thereby become subject to English matrimonial law, and while so domiciliated has married a British woman, nevertheless, if thereafter he returns with his wife to an Islamic country, the marriage will be submitted to Islamic law [21].

I.5.3. *Nationality* **and** *domicile: the choice of the "better law"*

The lessons from the civil courts' difficulties in dealing with the question whether a person's national law or the law of the domicile applies to cross-boundary family relations, have induced the courts and legislatures to search for other solutions.

Historically, the problem of the controversy on nationality *versus* domicile goes back to the notorious question of the remarriage of divorcees, whose native countries did not recognize a prior divorce, an issue that starting from the sixties in Europe proved troublesome in all legal systems whose conflict-of-law techniques refer(ed) to the national law. The fact that Spain and Italy did not permit their nationals abroad to divorce until well after migration from these countries to the European Community Member-States had started, called for appropriate solutions [22]. In Europe, many law practitioners still remember the bizarre situation that used to block Spaniards from marrying German divorcees, which forced many hapless fiance(e)s to celebrate evasive marriages in Denmark [23]. The application of the personal (i.e. national) law of *both* fiances ultimately resulted in the "well-nigh absurd" [24] practice of treating German divorcees as if they still were married!

Today, one of the most delicate dilemma for the courts to solve is the one that confronts the judges with foreign family laws that, in spite of a near universal movement toward gender equality, still discriminate in favor of husbands and fathers. Courts in Europe are confronted with a plethora of foreign rules that do not meet forum standards of gender equality and non-discrimination. Civil judges are repeatedly required to recognize repudiations among Muslim spouses (repudiation). The courts policies in this utmost delicate matter diverge. Courts usually do *not* grant divorces that are more permissive than those available in their own jurisdiction, but the arguments on which the judges base their decisions diverge. Some courts insist on gender equality as a basic legal principle of the forum law and therefore deny validity to unilateral divorces as far as they systematically privilege one gender (man) over the other. Other courts, on the contrary, will protect less gender equality but argument against unilateral dissolution of the marriage for reasons resorting to the proceedings (publicity, right of the wife to be properly defended before the divorce judge in the home country, etc.).

In their search for more harmonious solutions, some courts have come to *mitigate* the sharp distinction between nationality and domicile by the notion that a person over the years might have lost a 'true social connection' with his - or her - national law. Some lower courts therefore

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[21] See i.a.: ELWAN, O., "L'Islam et les systèmes de conflits de lois", in: CARLIER, J.-Y., VERWILGHEN, M. (eds.), *o.c.*, 1992, p. 315-341: ELGEDDAWY, K., *Relations entre systèmes confessionnel et laïque en droit international privé*, Paris, 1971; GANAGE, P., "La coexistence des droits confessionnels et des droits laïcisés dans les relations internationales privées", *Recueil des Cours de La Haye*, 1979-III, p. 339-423

[22] Solutions that did not force divorcees either to abandon their new partners or to live in sin, jeopardizing the parties' and their childrens' legal status.

[23] See i.a.: JUENGER, F., "The German Constitutional Court and Conflict of Laws", *American Journal of Comparative Law*, 20(1972), p. 290 sq.

[24] RABEL, E., KEGEL, G., *The Conflict of Laws* (ed. 1958), note 307, at 558

have ventured to substitute domicile for nationality, whenever the national law appears to be the 'most closely connected' law. A famous case in the seventies, in The Netherlands, was that of a Portuguese couple who wished to divorce before the Dutch court. Although they both had kept the Portuguese nationality, the court decided *Dutch* law applied since they had lived in the Netherlands for five consecutive years and were thus "*bound to the Dutch legal order*" [25].

Some legislatures have come to authorize this view, i.a. for divorce, displacing the nationality as the primary connecting factor in case either of the spouses no longer has a 'true social connection' with his or her country of citizenship. The Dutch legislature authorises this view for divorce in Article 1(2), in conjunction with Article 1(1b), of the *Wet Conflictenrecht Echtscheiding* [26]: if one of the spouses no longer has a true social connection with the country of their common nationality, the law of their common domicile will be applied, not the law of their common nationality.

After much vacillation, the same idea has gradually come to take hold in other personal status issues (the law of persons), and in the field of succession. In France for example, in practice little has remained of the principle that refers to the national law of a person enshrined in Article 3(3) of the French Civil Code (which still calls for the application of the national law of all parties involved). The French *Cour de cassation* resolves the problem of divorcing aliens by adopting the domiciliary principle, a solution that resembles very much English solution historically applied to similar situations *(cf. infra*).

This *manipulative* way of dealing with conflict-of-law issues, also called the 'better law' (or 'proper law') approach, was first suggested by *J. Morris*, who in 1951 published a seminal article on "the proper law of torts" in the *Harvard Law review* [27]. *Morris* proposed that judges resolve multistate torts problems by selecting the law which, on policy grounds, has "the most significant connection" with the particular tort and the specific issue posed.

In the better-law-approach both nationality and domicile become 'soft' connecting factors with considerably more manipulative potential. Courts may either stress the intent of the parties to stay in the country of residence, or the objective links of the situation with the host state, to justify their preference for the law of the domicile over the personal law of the parties. They may prefer to decide the other way around, emphasizing nationality over domicile to reach appropriate results on the particular facts of each case. In the latter case, the judge will rely on the parties state of mind.

The practical illustrations of the better-law-approach are numerous. The better-law-approach, in effect, grants courts a *carte blanche* to reconcile domicile and nationality by fashioning solutions that best fit cross-boundary family disputes: it is the civil judge who determines the territorial and personal coverage of a law, not merely the reach of the substantive rule that potentially applies to a given case, but also the parties' interest in having this law being applied to their relationship. In maintenance cases for example, where discriminatory laws drastically restrict the wife's claim - as is the case in Islamic family law -, recourse to the 'better law', *in casu* the substantive law of the host country, permits the court to grant to the wife the right to lay claim to a reasonable financial assistance by the (ex-)husband.

Recourse to better law analysis ultimately forces to rely on the judge's policy. In effect, the better law approach benefits mainly to those litigants who manage to submit their dispute before

[25] Hoge Raad (Dutch Supreme Court) February 9, 1979

[26] *Wet van 25 maart 1981 houdende regeling van het conflictenrecht inzake de ontbinding van het huwelijk en scheiding van tafel en bed en de erkenning daarvan ('Wet Conflictenrecht Echtscheiding'), Staatsblad*, 1981, p. 166 sq.

[27] MORRIS, J., "The Proper Law of a Tort", *Harvard Law Review*, 64(1951), 881

a judge who is sufficiently resourceful to exploit the conflicts issues that are submitted to his jurisdiction *to the sole profit of the parties*. For this reason, some international practitioners remain critical of the better-law-approach and consider it not to be regarded as a satisfactory choice-of-law model. While the better-law-approach confers large powers upon courts, it fails to provide guidance on how to correctly use these powers. The better law approach undermines predictability without producing necessarily sound decisions.

I.5.4. *Party Autonomy*

Some scholars therefore, since a few years, are advocating a greater role for party autonomy in conflicts issues involving migrant disputants [28]. Party autonomy, also called the solution of the *optio juris*, means that the parties themselves choose the law that is applicable to their legal relationships.

Party autonomy made its entrance into the area of international family law in the second half of the seventies. The driving force behind reflections on party autonomy mainly stems from the doctrine [29]. Party autonomy was primarily seen as remedy to conflicts unpredictability: the power to designate the applicable law is a means by which parties can preclude any uncertainty in respect to the choice-of-law result; at the same time they will know exactly with which legal norms they must comply.

Freedom of choice appears to be eminently suitable for legal relationships that involve persons possessing two nationalities or having different nationalities. Take the example of spouses who no longer share the same nationality. Which law is to be applied to their divorce? The option to make an express choice in favour of one legal system thus warrants a predictable choice-of-law result. The same is true of the possibility for recognition of illegitimate children. Already some time ago, two Dutch authors had proposed that the principle of party autonomy should also control recognition and denial of paternity [30]: the person who is willing to recognize a child as his own should be accorded the freedom to choose the law by which the desired recognition can be achieved. Evidently, on the assumption that the recognition is in the best interest of the child. The proposal would considerably improve the situation of Muslim children, born from *unmarried* parents and/or mixed couples and who for that mere reason, conforming to Islamic law, are denied paternity. The fathers would be able, through the choice of the law to be applied, to effectuate paternity, thus avoiding the Islamic prohibition on illegitimate (extra-marital) father-hood.

Notwithstanding the substantive advantages of party autonomy, until today in many European countries, courts remain relatively reluctant to apply the solution of the parties' will in the field of international family relationships. In practice, only a restricted freedom of choice is permitted: the choice is generally confined to a choice from among a number of *relevantly* connected legal systems: either the common national or the common domiciliary law. In matrimonial property regulation, for example, only a limited choice is accepted. The spouses may, prior or during the

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[28] On the optio juris, i.a.: CARLIER, J.-Y., *Autonomie de la volonté et statut personnel. Etude prospective de droit international privé* [Autonomy of will and personal status: a prospective study of international private law], Brussels, Bruylant, 1992, 468 p.

[29] See, i.a.: VON OVERBECK, A.E., "L'irrésistible extension de l'autonomie de la volonté", in: *Nouveaux itinéraires [...]* o.c., p. 620-636: VANDER ELST, R., "Liberté, respect et protection de la volonté en droit international privé", in: *ibid*., p. 506-516

[30] A proposal which is motivated by the *favor infantis*: DE BOER, TH. M., OTTING, R., "Het belang van het kind" als conflictenrechtelijk keuzemotief: ontkenning van vaderschap en erkenning van kinderen in het Nederlandse internationaal privaatrecht" ['The interest of the child' as choice of law principle: denial of paternity and recognition of children in Dutch private international law], in: DE LANGEN, M., DE GRAAF, J.H., KUNNEMAN, F.B., *Kinderen en recht* [Children and Law], Deventer/Arnhem, 1989, p. 74 sq.; p. 81-83

marriage, choose the law of either party's present nationality or domicile, as well as the *lex rei sitae* (the local law, where the property is being located) in respect of immovable property. Prior to the wedding, the fiances may also choose the law of either party's domicile. Parties will *not* be allowed to choose any other law. Besides the need for conflicts certainty, yet another reason for that drastic restriction is the protection of the interest of the weaker party (or parties) involved. The courts generally restrict the parties' freedom to select the applicable law in favour of the structurally weaker party. Party autonomy is thus subject to the restriction that the choice does not prejudice the weaker party.

PART II: The case of Moroccan women claiming protection under Belgian (secular)

II.1. Who will reorient the conflict of laws? In search of new choice-of-law maxims.

It goes without saying that the evolution of post-World War II private international law in Europe deserves a more complex analysis than this succinct explanatory exposé on the most recurrent choice-of-law mechanisms that are to be found in the literature and in the jurisprudence of the civil courts of the last twenty years. One should devote at least a chapter to the current wave of private international law codifications in Europe and the unification and harmonization of substantive law and private international law [31]. I have waved crucial components of the present-day conflict-of-law mechanisms by virtue of the pragmatic argument that this first part should remain an introductionary familiarisation of an audience of socio-legal researchers with a complex, technical legal issue.

The increased significance of the rules on the choice-of-law process for socio-legal researches derives from the new type of *legal pluralism* that characterizes migrant family lifes today, at the borderline of western and non-western culture values and that challenges the courts of the host countries in their aptitude *and willingness* to find just and fair solutions for cross-cultural family disputes. Comparative research in different host countries suggests that issues such as parental authority, the name of the child, its maintenance and right of inheritance, matrimonial property law, etc. involving migrant communities of non-western origin, are perceived in different ways, depending on the choice-of-law rule that is employed by the courts.

The problem today for international law practitioners handling family involving communities of migrant origin in Europe is that there is no one, clear-cut and exclusive technique on hand for resolving the questions as to which rule should control, but rather a number of possible approaches. The appropriateness of any given choice-of-law model (nationality, domicile, 'better law', *optio juris*) is determined principally by the context of the dispute. That context today, in cases involving conflicts between incommensurate legal cultures from all over the world, is made up of an often extremely delicate complex of social, political and religious (in the case of Muslims) factors, both on the internal and interstate level. That makes the choice-of-law process horribly difficult for the courts that have to seek justice between individual litigants. The examples are numerous: unilateral discriminatory divorces, polygamous marriages, oppressive parental and marital authority rules, discriminatory matrimonial property regulations, discriminatory succession rights, etc.

Since migrant communities have come to irreversibly settle in the host countries, the choice of the appropriate connecting factor should no longer be shaped - as it traditionally used to be - first and foremost by geographical conceptions of interstate relations (temporary residence of nationals of one state in the jurisdiction of another state), but rather by a range of qualitative, functional aspects and interests that, for each choice-of-law case individually, must be weighed carefully with a view to harmonious, stable relationships between individuals and culturally dissenting - if not clashing - communities in a *plural* society.

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[31] DE GROOT, G.-R., "Op weg naar een Europees personen- en familierecht?", *Ars Aequi*, 1995, p. 29-33; ERAUW, J., "De nood aan codificatie van het I.P.R.", *Liber Memorialis François Laurent (1810-1887)*, Brussels, Story-Scientia, 1989, p. 745-761

It is difficult, not to say undoable to catch a glimpse of the future and evaluate, on base of the jurisprudence at hand, the various factors that will favour, or on the contrary form an obstacle, to the future development of conflicts regulation in relation to cross-boundary family issues. The success of the choice-of-law method greatly depends on the adequacy of the connecting factor. It is therefore not surprising that much contemporary conflicts writing addresses the nature of the choice-of-law problem. *The choice-of-law problem touches the very core of cross-cultural conflict management*.

II.2. Muslim women's choices. Religious laws and social reality

As I said in my introduction (*cf. supra*), among the communities that show most resistent to voluntarily assimilation to the majority society and identification with its values and legal heritage, are the Muslims. As a consequence of stabilised immigration of non-western origin, Islam has become after Catholicism, since the late 80's, the most important religious group in France and Belgium. The Muslim community is steadily growing, showing a clear will to manifest itself as a religious group, claiming protection of the fundamental rights and liberties to express, manifest freely its convictions in both the private and the public area [32].

The numeric importance of Islam in Continental Europe makes even more problematic the still valid principle that courts - in Continental Europe - are until today supposed to favour preservation of cultural distinctiveness of foreigners and newcomers and therefore, give preference to the law of the nationality of the disputants, results into a situation that touches the core of the issue at stake at this Conference: *religious laws clashing with the basic principles of protection of women's fundamental rights*.

The problem is even more intricate since (1) Muslims originating from countries that officially adhere to Islam, do not loose their nationality of origin, not even after having acquired the (new) nationality of the country of residence [33], and (2) since most Muslims who are actually living in Europe keep in touch, very manifestly, with the country of origin: investing their savings over there, spending yearly long holidays with the family that remained in the country of origin, choosing their fiancés in that country, etc.

Multiple citizenship on the one hand, and increased risk of limping situations make the necessity for law practitioners all the more urgent to find appropriate alternative solutions that solidly protect the constitutional (human rights) values prevailing in the host country, but in a way that allow Muslims (and other minorities) to conform to their religion, *if that is their wish*.

I got a chance to deepen this very topic as I was offered the opportunity some years ago (1997-1998) to collect, on demand of the Belgian Minister of Justice, a number of data on the problems actually encountered by Moroccan women in Belgium [34] when it comes to the regulation of their family life [35]. Together with a team of young researchers, we have been

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[32] See i.a.: BIELEFELDT, H., " 'Western' versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Debate on Human Rights", Political Theory, 2000 (28.1), p. 90-121; HAFEZ, K, STEINBACH, U. (eds.), *Juden und Muslime in Deutschland. Minderheitendialog als Zukunftaufgabe*, Hamburg, Deutches Orient-Institut, 1999; SHADID, W.A.R., VAN KONINGSVELD, P.S., Religious *Freedom and the Position of Islam in Western Europe. Opportunities and Obstacles in the Acquisition of Equal Rights*, Kampen, Kok Pharos, 1995; MODOOD, T., "Establishment, Multiculturalism and British Citizenship", *Political Quarterly*, 1994 (65/1), p. 53-73; MODOOD, T. (ed.), *Church, State and Religious Minorities*, London, Policy Studies Institute, 1997

[33] ELGEDDAWY, K., *o.c.*, 1971

[34] Moroccan immigrants constitute the largest group of Muslims in Belgium. Moroccan women therefore, are the best represented group of Muslim women in the country.

[35] *Cf. supra* note 5

collecting during 12 months materials on these problems through three types of sources: inventorisation of the jurisprudence since 1980 [36]; interviews (about 100) of law practitioners (magistrates, advocates, public officers, police officers, etc.); and, most importantly, interviews of about Moroccan men and women.

I leave here the details of our findings. I draw the legitimation to present at this Conference a draft outline of our findings from the women we got a chance to interview for this study and mainly from what they have made clear to both myself and the researchers with whom they have had long discussions during several months: the vast majority of these women, not to say all of them, are univocally claiming protection of their position *under belgian law*.

The materials show three (sociological) generations of Moroccan women, each of them experiencing the dilemma religious law - women's rights in its own way. A first generation of women aged 60 to 70, who are struggling with the consequences of polygamy: their husband most often has taken as second wife in the country of origin. These women feel very much being solely the property of their husband. They refuse to consent to their 'repudiation' (on initiative of the husband), as they are afraid that the husband will claim family reunification (in Belgium) for his second wife as soon as the first marriage is being dissoluted. The second generation are women aged 20 to 40. Most of them have been married at a very young age by their parents to a relative ('arranged marriages') in the country of origin. The cultural 'clash' between the two spouses is of the kind that opposes a European (Muslim) woman having finished her school education and a husband who has grown up in a Muslim country, expecting his wife to submit to his authority. 90% of these marriages collaps. The third or 'intermediary' generation finally, are women of all ages, who have immigrated on base of family reunification: they have been married to a husband who immigrated to Belgium many years ago, who has selected a fiancé in the country of origin with the sole purpose to keep control over her and the marriage, as she does not know Belgium at the time of her marriage and has not yet adopted a western lifestyle. Most of these 'intermediary generation' women feel extremely lonely in Belgium. They have no family or relatives of their own here. They are treated badly by their husband who dominates them in all aspects of life. This third category or women is expecting very much from the protection offered under Belgian law. They very much fair to be 'repudiated' by their husband, for dissolution of the marriage may mean the end of their right to keep their residence in Belgium.

All three profiles of women show 'victims' of the anachronism that characterizes a choice-of-law rule that until today, in principle, connects them with the law of the nationality of origin.

The responsability of a researcher, who is working on demand of a Minister, is to think of concrete, alternative solutions. Basically, what do we propose? We have been as radical as proposing to leave the actually still valid principle that refers to the law of the nationality and to give preference to the application of the law of the domicile, *in casu* Belgian law: Belgian law, in our opinion, is to be applied in Belgium, except for those couples who have explicitely expressed, at the time of their marriage, the wish to remain submitted to the law of their nationality of origin (Moroccan law) for all aspects of their marital reltationship. That means i.a. under the condition that both spouses, man and wife, fully and freely consent to that choice.

Application of the law of the domicile means a radical change in the way we conceive, historically in Europe, of respect due to foreigners. The Belgian Minister of Justice has shown extremely satisfied with the study, i.a. because it responds to the needs of the law practitioners: application of Belgian law in as many cases as possible. In case the solution proposed were to be effectively put into law, we are to expect many critical comments, mainly I presume, to come from the Moroccan authority representatives in Belgium: their jurisdiction over Moroccan nationals in Belgium is being reduced by the solution(s) we have suggested.
Two arguments in my view may be advanced in support of *party autonomy* as a valuable substitute for the automatic application of Belgian law. The first argument is premised on the

[36] We collected over 200 court decisions.

understanding that reliance on the parties' choice generally speaking yields results that are superior to heteronomous adjudication by a conflicts judge. As such, party autonomy in the choice-of-law process reflects the same values and objectives as those embodied in contracts law: the parties' will is the core of their legal relationship. Inasmuch as the courts are respectful of the parties' choice, the decision making process will be an *autonomous mode of adjudication*: the court establishes the facts and subjects them to the rule of law provided *by the parties involved*.
Autonomous adjudication therefore might well become a key issue in contemporary plural societies. Party autonomy entails the recognition that decisions as whether a case should be placed under one law or under the other, cannot *only* be deduced from the intellectual effort of the judge [37]. Parties engaging in cross-boundary relationships know better than anybody else, and *a fortiori* better than the judge, which substantive law is to govern most effectively their relationship. Take the example of a Muslim husband who sends a *talaq* (unilateral dissolution of the marriage via *repudiation*) by mail to his wife who is still living in Belgium. The repudiation is pronounced in Morocco, the domicile of the husband where it is valid. But its consequences reach Belgium where the wife is still living. I speak with diffidence but I see two issues for this type of situation: *either* the Belgian judge will consider that the repudiation is in manifest contradiction with accepted Belgian principles of fair trial and therefore to be denied validity in Belgium; *or* the validity of such a repudiation will be accepted by the judge, as it would have been if the wife had accompagnied her husband to Morocco. *Party autonomy here would at least ensure greater certainty to the parties as to the law to be applied to their mutual rights and duties*.

The second argument specifically pertains to the control by the courts over the parties' choice. The choice of the law by the parties, by no means, can result in the recognition of privileges they (both parties or one of them) would *not* enjoy under the objectively applicable law, neither can it place them - or one of them - in a better position than other citizens in the same situation (e.g. prompt divorce, relief of maintenance obligations, polygamy, etc.). Think of Moroccan spouses who, after twenty years of continuous residence in Europe, have both lost true social connection with Moroccan law. The choice for Moroccan law may not prejudice the protection that the wife would enjoy under local (e.g. Belgian) law. Thus the choice to dispose under Moroccon law will most probably be denied any validity in Europe, for the mere reason that the discrimination of the wife under Moroccan law (*Muduwwana*) in the relation to her husband negatively affects the wife's position to the sole benefit of the husband. The spouses' choice for Moroccan matrimonial law will therefore, most probably, be considered fraudulent and therefore null and void [38].

In determining the 'most appropriate' law to be applied to the relationship, both the parties' will and the content of the substantive law must be taken into account. There are two guarantees to be considered here. *In the first place*, the parties' choice may entail for the court an extra weighing of the interests involved. For instance, the court will necessarily exclude choices of law(s) that structurally prejudice the interests of the weaker party (the woman) in the relationship (as a result of discriminatory substantive laws). In the search for a 'just solution' to the choice-of-

[37] The social and demographic reality of the host societies today has become just too heterogeneous. Courts are no longer in the position of determining with accuracy the full *'legal pluralism'* that characterizes the many cross-boundary situations that are submitted to them: issues between family members (1) who share the *same foreign* nationality, (2) who possess *different foreign* nationalities, (3) who after a few years have acquired the citizenship of the host society but *have kept one or more previous nationalities*, (4) who *have lost* the nationality of the country of origin, but kept a true social connection with that society, etc. The possibilities of combination are just too numerous to be listed here.

[38] One may think here of slightly different situations, in which the court would determine that the chosen legal system benefits *in a fraudulent way*, not just to the stronger party in the relationship, *but even to all parties involved* (for example, with a view to a prompt divorce that suits the interests of both spouses). The court will then be indifferent as to the choice of law by the parties and employ its own choice of law rule(s).

law problem, *all* the relevant interests - not just the interests of the parties, but also the interests of the surrounding host society (public order arguments) - must be taken into consideration by the court. Foreign divorces for example may, in effect, discriminate couples who, for the mere reason that their relationship does not resort to conflicts law (no cross-boundary component in the relationship), have no power to designate a foreign more permissive divorce law as applicable to their case. The examples can be multiplied. Party autonomy is not to be regarded as strictly isolated.

Furthermore - the second guarantee strengthens the first one -, the parties' choice must necessarily implement the legal principles prevailing at the time of the decision and reflect the legal convictions held by the general public in the host society. A choice of law by the parties should be displaced when the consequences of the choice are not justifiable in current convictions. One instance is the maintenance claims between ex-spouses or on the parental authority: party autonomy may under no condition entail the right for the Moroccan husband to exclude the wife from the legal principle of non-discrimination that protects her under the domestic law of the host country.

In sum, party autonomy does not entail the recognition of an unlimited freedom to choose without restriction the applicable law in international cases. In fact, party autonomy in conflicts regulation does no more than reflect a similar evolution in substantive law: ultimately, it is the protective rationale and the social function of the law that keep the control over the choice-of-law process. In a way, the development of the concept of party autonomy in private international law (conflicts law) is to be viewed in connection with the popularisation (the individualisation also) of the freedom of disposition for a growing number of issues under domestic law. The solution of the *optio juris* applies already for marital property law. Today, in most European countries, spouses are allowed to displace at their best conveniences the statutory regime of community property by making an ante-nuptial contract [39]. The *optio juris* is also emerging since a few years in different European countries with regard to the choice of surnames: the room given to the parties under the substantive law to decide for themselves whether to use the partner's name, or to choose the surname for their children, offers another example of a more flexible attitude in respect of party autonomy under domestic law [40]. But in each of the given examples, state law ultimately keeps the control over the parties' choice.

In response to the question as to how European courts today *practically* should cope with cross-boundary family disputes involving Muslims of foreign origin, party autonomy contains maybe part of the solution to the dilemma women's rights - religious law. Future will tell whether it is a well-founded solution.

Nothwithstanding the above mentioned advantages of flexibility and increased certainty, many practitioners remain extremely critical of party autonomy. One main reason is that party autonomy undermines decisional harmony, softening the traditional conflicts rules by substituting 'non-rules' for fixed precepts. Party autonomy is blamed for furnishing little if any guidance in solving cross-boundary issues because, most often, the parties' remain undetermined, which in turn increases the margin of error in adjudication.

It goes without saying that party autonomy, if it is to offer a valuable solution to conflict-of-law issues, supposes a careful preparation of the parties agreement as how to live harmoniously, on a daily base, their cross-cultural family relationships. Such preparation is part of the education to become full citizens in a plural surrounding. Muslim women who are offered to possibility to remain submitted to their personal statut of origin (Moroccan law) are to be well-informed on that possibility and its consequences, for themselves and for their family life. Law practitioners therefore have to be trained to provide for such information.

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[39] Such agreement may be made either before or during the marriage and may be amended subsequently.

[40] See, i.a.: ELZINGA, W.E., DE GROOT, G.-R., Naar een liberaler naamrecht" [Towards a more liberal law on names], *Hartmans Tijdschrift voor Studenten Openbaar Bestuur*, 1984, p. 108-126

Yet another main difficulty remains: if party autonomy it is to become a keyconcept of legal identification in contemporary society, both for men and women in their mutual relationships, it is to be offered not just to Muslims originating from foreign countries, but also to converted Europeans. To this point, we reach the limits of our proposals. Our suggestion to adopt new choice-of-law rules: domicile and alternatively autonomy of the parties' will, is not to be generalised, for we had no intentions of exceeding the limits of the international private law approach. We do not suggest *'optio iuris'* is to be generalised for that would mean the retrun to religious pluralism in a way that is denying secularisation of State Law and the mechanisms of protection issued from the separation of State and religion in our countries since the late 18th Century. We therefore restrict the solution of the *'optio iuris'* to categories of people of foreign origin who have kept their nationality of origin.

Clearly, our role as researcher in this type of study is limited. Future will probably confirm our conviction that we urgently have to change our western frame of thinking inherited from the past when it comes to settle disputes among family members of foreign origin: Islamic family laws are not *per definition* to reject, Moroccan women may feel the need - for themselves - to keep on resorting under the *Mudawwana* in organising their family life in Europe. The responsability of the law practitioners who is to consider the situation, is to make sure that the woman's choice for application of the *Mudawwana* is based upon a free consent and that she is sufficiently informed on the consequences of her choice [41]. However, as to the question whether Muslim women who will concretely make use of the opportunity to choose the law to be applied to them, will also be able to resist - or not - within their tradition, to their husbands privileges, to 'patriarchy', once they have opted for continuation of their 'submission' to Islamic family law, the anwser is still unclear. It's women's responsability.

In sum, we suggest a reversed approach to the choice-of-law problem when dealing with Muslim women in particular. It offers, under certain conditions, the possibility for Muslim women to opt for continuation in Europe of a life style conforming to Islam, at least in the domain pertaining to family law . Whether they will effectively make use of that possibility, once they would be allowed to do so, and the way they will do it, is very much a matter of their view on Muslim identity in migration context. It is very much up to them to know, for themselves, how to advance simultaneously both religious freedom and human rights in the context of European secular society. Our hope is that the formula of option, under conditions that are of course to be clearly defined, may for them be part of the outcome, as it offers a (solid) platform for identity building in plural context.

Is it too optimistic from our part? Muslim women, by means of the *'optio iuris'*, may well be in the position to organize at best their social relationships within an evermore pluralistic societies. There is probably no more noble task for a law practitioner in contemporary Europe than to contribute to that organisation, through the improvement of the choice-of-law techniques. The responsability of today's international family law practitioners in Europe, after immigration, is not whether to refuse or give effect to an institution or status unknown under domestic law, rather, they have to work out rules applicable to *the interplay* of the legal cultures that today in Europe are seeking, with variable success, to survive through cross-boundary family relationships.

[41] We devote a substantial part of the book to the technicalities that allow for control of the validity of the consent and on ways to offer opportunities to get the necessary information on the effects, the benefits and disadvantages of the choice.

The Impact of Distance on Families: Thailand's Case

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Introduction

The family is the most important group to which most people ever belong. The parents give the daily care necessary for young children and teach them their first lessons in how to live with other people : to love, help and in time take responsibilities. In some families, such loving care is missing. This does not lessen the importance of the family. But it may make a difference in how the Children feel toward other people. Nowsaday, there is an increasing number of women and men live alone because they have lost their marriage partners.

In Thailand, it can be seen as one huge extended family but the alternatives traditional life were enormously attractive, especially to those in the cities who were in closest touch with Western lifestyles. Machines promised an easier life, higher productivity per man hour and higher incomes for the workers. These can change the size of Thai families which are only a small group of people. The opportunities for increased income lured thousands of people from countryside to work in the new factories and service industries. They left their families in the countryside and work a long time in Bangkok or going oversea to work so we can say that because of the need of high income in the new model lifestyle that make the distance of the families in Thai society.

The impact of distance of Thai families are the divorce of some workers who work oversea and in the city was increased after they gone back to their families. The research said that 66.5% of the workers who had ever worked

The Government has organized many policies of solve the problem and the support the concept of the warm family in Thai Society.

Family Relations in Thailand

In Thailand, every household has within it a system of dynamics and attitudes governing personal interaction which is repeated on all levels of society. The Thai nation can be seen as one huge extended Family. The place to observe the interactions between family members is the countryside where there have been relatively fewer outside influences.

From earliest childhood, every Thai learns a code of behavior for relating to those around him which he will find perfectly viable when, later, he ventures out of his home to deal with the hierarchies of school, the office and the government. He will even use the words denoting members of the family "mother", "father", "uncle", "aunt", "brother" and "sister" when addressing friends, co-workers and other he comes in contact with during the course of the school or work day.

In rural life, Thais traditionally have preferred to have large families. Although regional differences will determine its size, a typical Thai family will almost always extend beyond the nucleus of parents and their offspring to include grandparents, cousins, an uncle or aunt or even the children of more remote upcountry relatives, all living amicably together in the same house or compound. The village serves as the most straightforward model not only because the great majority of Thai families live in rural areas, but also because it represents the most basic social and economic unit. Urban households retain similar values, though in many cases these have been modified by the pressures of modern live and by the tidal wave of non-Thai influences that has washed over the country's urban centres during the past decades.

A rural family often lives in a simple wooden house whose single room will serve as bedroom, living room, kitchen or dining room, as the situation demands. This communal lifestyle, in which everyone lives together in an open space with little or no privacy obviously requires tact, compromise, courtesy and tolerance if social harmony is to be preserved.

Essentially, the family represents security and stability in an uncertain world and as such commands the individual's loyalty and respect. Its welfare is always the primary concern, and it is incumbent upon each family member to consider his actions in light of their consequences to the family's well-being. Within each household, the father guides and guards. The mother plays a supportive role, handing finances and influencing family decision.

From birth, village children are treated permissively. Lovingly tended, comforted, nursed and spoiled, they remain the centre of the household's attention throughout their first two carefree years. After that, the socializing process to make them responsible adults begins. Once a child turns four, deliberate mischief is punished, although corporal punishment is exceedingly rare. A visual sign of displeasure, or a few scolding words, however subtle, will deter further misconduct.

Respect for elders is taught from a very early age, and before they are long out of infancy children begin to accept their place in the family hierarchy and to act accordingly. The distinction between pu-yai (elders) and pu-noi (juniors or subordinates) describes the relationship between parents and children as well as between siblings of different ages. This respect for one's elders, universal in Thailand, is formulated in a complex system of words and titles used to distinguish between older and younger brothers and sisters and aunts and uncles whose age is greater or less in comparison with one's parents. Each of these words has overtones of rank and indicates the amount of deference to which one is entitled. This same delineation of roles will enable the child to determine his relationship to outsiders when he grows older. It should be remarked that a child's deference toward his elders is maintained throughout his life.

As he approaches adulthood, a young person's perspective expands to the larger world outside the home. He learns to defer to the superior age and position of the boss or village headman when seeking guidance in daily affairs. Viewed in a national context, this attitude guarantees a strong degree of cultural conservatism. Traditionally sanctioned ideas are lovingly cherished and communicated by revered elders to receptive youth. This system is in total contrast with the meritocracy favoured I many contemporary Western cultures where esteem is given to the young for their capacity to constantly overturn tradition with a flow of new ideas.

A sense of responsibility is also inculcated from early childhood, with each child assigned such chores as feeding chickens and buffaloes, leading livestock to graze in communal pastures, or looking after younger brothers and sisters to free his parents for essential household and field work. Duties and determined according to age, and as capabilities manifest themselves, by ability. Responsibility gradually increases to include a greater share of the family interests. Children are allowed to participate in family discussions and their opinions are taken into account.

One of the prime responsibilities placed on children is that of taking care of parents in their old age. This form of social security is a prominent feature of the Thai concept of family. There is no feeling of being inconvenienced by caring for aged parents, whose acquired wisdom gives them an elevated place in the household. Unlike old people in many other cultures, who live out their last years lonely and rejected, Thailand's aged see their former devotion to their children reciprocated and actively help in ushering their grandchildren and great grandchildren into responsible adulthood.

Beyond the family, the next larger unit of social organization is the village. Identifiable in all its aspects as an extension of the family beyond the home, each village is composed of many households, a temple, a school and a village government. Villages have no oligarchies defining codes of conduct. Decision-making within the village on major issues is by consensus; Thais will generally abide by community decisions reached in this manner.

Personal friendships within the village but outside the immediate family are predominantly based on kinship and proximity. Individual talents for farming, hunting, astrology, medicine, music or storytelling also give people reasons for seeking and enjoying each other's company. The principal larger social groups within the village are formed spontaneously to aid each other in various activities. Usually comprised of neighbouring families and their friends, these groups will gather to muster the required labour force for planting and harvesting, irrigating the fields, constructing a house or any similar task which makes requirements above what a single family could manage unassisted. Often these community groups will extend their attention to the maintenance of communal property such as the wat, the village school, roads and canals.

Religion is at the root of this sincere consideration for others that permeates every aspect of Thai village life. Buddhism is the source of the Thai virtue of namjai, a pastel concept encompassing spontaneous warmth and compassion that allows families to make profound anonymous sacrifices for friends and to open the door to a stranger as if he were one of the family.

The community also shows up in force for weddings, births and funerals, when the household overflows with relatives and friends who come to offer emotional, moral, physical and often financial support. The entire village normally joins in the appropriate rejoicing or sorrow, demonstrating an expanded family-type solidarity that will manifest itself on a countrywide scale during national calamities. On these occasions Thais from every province will contribute to support victims of natural catastrophes.

Effects of Distance on Families in Thailand

Although Thai have many extended and warm family, but in Thailand, as elsewhere, the alternatives to traditional life were enormously attractive, especially to those in the cities who were in closest touch with Western lifestyles. Machines promised an easier life, higher productivity per man hour and higher incomes for the workers. These can change the size of Thai families from extended families into nuclear families which are only a small group of people related to one another by birth, adoption, or marriage, sharing a household, and caring for one another or A group made up only of father, mother and children.

With the dynamic growth the cityscape began to change. More and more cars appeared on the roads, new buildings sprang up everywhere and Bangkok began to spread out in all direction. The opportunities for increased income lured thousands of people from the countryside to work in the new factories and service industries. They left their families in the countryside and work a long time in Bangkok or going overseas to work so we can say that because of the need of high income in the new model lifestyle that make the distance of the families in Thai Society. In conclusion the reasons of distance on families in Thailand are as follow :-

1. Both parents may be employed and perhaps must spend long periods traveling to and from work.

2. Some families have only one parent because of separation, divorce, or the death of a parent, divorce, or the death of a parent.

3. Poverty and Economic hardship led many Thais especially landless child to migrate to urban area and overseas for well being of their families.

Impact of Distance of families

1. From the research of Ministry of Labour and Social Welfare of Thailand, the characteristic and the type of the 523 oversea worker's families after going back to their families are as follow.

TABLE 1 :

Characteristic of family	Number	Percentage
Seperated family	175	33.5
Staged with the same family	348	66.5
Total	523	100.0

Resource : Ministry of Labour and Social Welfare of Thailand in the year 2001

Table 1 says that 66.5% of workers who had ever worked oversea have still stayed with the same families to take care of their fathers and mothers but the others and mothers but the other 33.5% have separated from their families because they had very much money to built their own new families in Bangkok or in big cities and left their fathers and

TABLE 2 :

Type of family	Number	Percentage
Nuclear family	441	84.3
Extened family	82	15.7
total	523	100.0

Resource : Ministry of Labour and Social Welfare of Thailand in the year 2001

Table 2 says that 84.3% of overseas worker's families change to be nuclear family and the other 15.7% have still been extended family.

From these two tables, we can see that the characteristics and type of the oversea workers have change. They wanted to separate from their fathers and mothers to build the own new families so the type of their families have changed from extended families to the nuclear families. The situation risks for them to have many family problems.

2. From the report of Ministry of Labour and Social Welfare of Thailand, the divorce of the workers who work oversea was increased after they gone back to their families. This is because of they are separated for a long time and their marriage partners can not live alone or they have much money from working oversea and can get the new young marriage partners.

3. The Children in the families which his or her father and mother spend very much time to work outside or oversea are the risk group to take drug or to be drug abusers during they live alone in the house and lack of the socialization process from the families.

Thai Government Policies to solve the problem

The Royal Thai Government has organized many policies to solve the problem and to support the concept of the warm family in Thai Society which are as follows :

1. "Sufficiency Economy" is a philosophy bestowed by His Majesty the King to his subjects through royal remarks on many occasions over the past three decades. The philosophy provides guidance on appropriate conduct covering numerous aspects of life.

After the economic crisis in 1997, His Majesty reiterated and expanded on the "Sufficiency Economy" in remarks made in December 1997 and 1998. The philosophy points the way for recovery that will lead to a more resilient and sustainable economy, better able to meet the challenges arising from globalisation and other changes. "Sufficiency Economy" is a philosophy that stresses the middle path as the overriding principle for appropriate conduct by the populace at all levels. This applies to conduct at the level of the individual, families, and communities, as well as the for sufficient protection from internal and external shocks. To achieve this, the application of knowledge with prudence is essential. In particular, great care is needed in the utilisation of untested theories and methodologies for planning and implementation. At the same time, it is essential to strengthen the moral fibre of the nation, so that everyone, particularly political and public officials, technocrats, businessmen and financiers, adheres first and foremost to the principles of honesty and integrity. In addition, a balanced approach combining patience, perseverance, diligence, wisdom and prudence is indispensable to cope appropriately with critical challenges arising from extensive and rapid socioeconomic, environmental, and cultural changes occurring as a result of globalisation.

2. Enhance business and economic development at village level through joint ventures between communities and the private sector and find materials for locally produced goods.

3. Promote the small and Medium Enterprises (SMEs) and establish the center of SMEs to support the training and seminar for small private sectors.

4. Promote non-farming employment in village, particularly sub-contracted jobs such as wearing and parts of industrial production process.

5. Provide fiscal and financial incentives for the private sector to arrange training course for labour, production, distribution and marketing management.

6. Facilitate the relocation of industries from the Bangkok Metropolitan Region to provincial and rural areas and also include upgrading transportation and telecommunications facilities.

7. Promote the establishment of single industrial centre, in the form of an industrial estate for medium and small-scale industries, for each group of provinces. Similar industrial networks with neighboring province should be promoted.

8. improve the information system to be used for development administration.

9. support community development by fostering community leaders and youth leaders who are committed to the community's social and environment development and who encourage cooperation between community residents and local agencies.

10. Raise the financial management knowledge and skills of community residents, especially community saving groups.

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