THE NEW INTERNATIONAL ADOPTION SYSTEM IN SPAIN

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I. Introduction

The International Adoption Act (Law 54/2007, of December 28, hereinafter the IAA), is the first special Private International Law (PIL) act issued in Spain. It appears at a time when the Spanish scientific community, with the support of the public authorities, has started to assess the convenience of a global modernisation of the Spanish PIL system.[1] This system is characterised by being dispersed, both formally and, worse still, time wise; there are numerous regulations found in multiple legislative texts, spread out over time: from 1881 (State legislation currently in

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[1] See PALAO MORENO G., 'Jornada sobre la Reforma del sistema español de Derecho internacional privado', in: *REDI* 2002, at 520-522; *id*., 'II Jornadas sobre la Reforma del sistema español de Derecho internacional privado', in: *REDI* 2005, at 536-538; and subsequent information published in *Revista Electrónica de Estudios Internacionales* (<www.reei.org>) since issue No. 11 (2006). The IAA is completely unrelated to this study process.

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force concerning the recognition of foreign judgements) till today. Most conflict rules regarding Private Law date from 1974, with partial reforms in the last thirty years. Within this period, the 1978 Constitution represented a judicial revolution for PIL[2] and others followed it, such as the mass transposition of international conventions in the 1980s and Spain's adhesion to the European Communities in 1986. However, there was no global response from the Spanish legislator. The system required (and probably still requires) a complete review. From this general perspective, the IAA can be seen as the legislator's choice to undertake modernisation by partial reforms rather than a global review. Also, as it is the first special act in the Spanish PIL system, its solutions could be conceived as the model to be followed by the legislator. I hope and believe, however, that this will not be the case.

In my opinion, the IAA responds to a merely political situation; the Draft was dated February 2007, and the public outrage about the scandal associated with the French organisation called Zoë's Ark and the attempt to bring 103 minors from Chad to France, in the last few days of October 2007, was the trigger for the urgent approval of a bill which had not been expected to see the light before the 2008 General Poll. Irrespective of this, Spain is clearly one of the countries with the largest number of international adoptions,[3] and the previous law both created, and was incapable of, solving problems requiring legislative intervention.

The IAA, however, contains a heterogeneous, extensive, regulation of international adoption and other measures for protecting persons without legal capacity, possibly the most comprehensive in Comparative Law, with 34 long Sections. Commentators are divided between those who wholeheartedly support the new text[4] and those who criticise it.[5] To determine its specific scope and the originality

[2] ÁLVAREZ GONZÁLEZ S., 'Desarrollo y normalización constitucional del DIPr español', in: *Pacis Artes. Obra homenaje al Profesor Julio González Campos*, Madrid 2005, at 1139-1163.

[3] Adoptions of foreign children by Spanish nationals fell by 18.4% in 2007 (3681) relative to 2006 (4472), largely due to the stricter requirements established by the countries of origin. In spite of this, according to the competent authorities, Spain is one of the three countries accrediting the largest number of international adoptions, together with the United States and Sweden. In 2006, the number of adoption applications was 11843 and, in Spain, international adoptions represent 80% of the total (source: Secretary of State for Social Affairs, Ministry of Education and Social Policy, July 22, 2008).

[4] CALVO CARAVACA A.L./CARRASCOSA GONZALEZ J., *La Ley 54/2007 de 28 de diciembre 2007 sobre adopción internacional (Reflexiones y comentarios)*, Granada 2008.

[5] BORRÁS RODRÍGUEZ A, 'Espagne. Nouvelle loi sur l'adoption internationale', in: *Société de Legislation comparée/Section de droit international privé* (<www.slc-dip.com>); ÁLVAREZ GONZALEZ S., 'El Proyecto de ley sobre adopción internacional: una crítica para sobrevivir a su explicación docente', in: *Actualidad civil* 2007, No. 22, at 2597-2618; *id.*, 'Reflexiones sobre la ley 54/2007, de adopción internacional', in: *La Ley. Revista jurídica española de doctrina, jurisprudencia y bibliografía* 2008, No. 6910; *id.*, 'La Ley de adopción internacional. Reflexiones a la luz de su texto, de sus objetivos y de la comunión entre ambos' in: *Anuario español de Derecho internacional privado* 2007, t. VII, at 39-69; CALVO BABIO F., 'Revisión crítica de la nueva Ley de adopción internacional', in: *Iuris.*

of its solutions, it is essential to refer to its background and the problems found in the previous law (II) before focusing on its content (III). My description of the old law only emphasises the most significant aspects for the understanding of the solutions provided by the IAA, ignoring the regulation and practice of the Convention of 29 May 1993 on the Protection of Children and Co-operation in matters of Intercountry Adoption (hereinafter, the Hague Convention). Given the paper's length and purpose, I will merely provide a 'screenshot' of international adoption in Spain; in view of the scope and complexity of the IAA and the large number of situations it governs, I will simply summarise its basic lines, without focusing on detail other than to provide examples. For the same purpose, I will not be considering Comparative Law and I will essentially use Spanish doctrinal references.

II. International Adoption in Spain prior to the International Adoption Act (Law 54/2007)

A. The Regulation Arising from the Reform of the Preliminary Title of the Civil Code: the Omnipresence of National Law

In matters of international adoption, the first regulation containing rules regarding international jurisdiction and conflicts rules dates from 1974. On the occasion of the reform of the Preliminary Title of the Spanish Civil Code (hereinafter, Cc), a Section was added (Sec. 9.5 Cc) which was based on the national law of the adopter and the jurisdiction of the adopter's national authorities, with less importance given to local law and the child's national law.[6] It established a bilateral and practically absolute view of the national law applicable to personal status, for both international jurisdiction and applicable law. In matters of jurisdiction, the origin of the solution, oddly enough, was inspired by a convention which never came into force: the Convention of 15 November 1965 on Jurisdiction, Applicable Law and

Actualidad y práctica del derecho 2008, No. 125, at 56-63; ESPLUGUES MOTA C., 'La nueva ley española de adopción internacional de diciembre de 2007: ¿Una ocasión perdida?', in: *Riv. dir. int. pr. proc*. 2008 2, at 363-380.

[6] 'Adoption, with regards to its effects and the ability to adopt, shall be regulated by the Law of the adopter. [...] In adoption by husband and wife, when there is no common national Law, that of the husband at the time of the adoption shall be applied. [...] The adoptee's personal law shall be observed with regards to his capacity, his consent and the way in which it is contemplated. [...] The authorities of the adopter's nationality shall have jurisdiction to establish the adoption or, when an adoption is made by husband and wife, those of their common nationality or, lacking that, those of the State in which the adopter has his habitual residence or the adopting spouses have their common habitual residence. [...] The formalities of the act shall be according to the Law of the place where the adoption is formalised, without prejudice to Section 11, point 3'.

Recognition of Decrees Relating to Adoptions. Given the priority of national law, it was decided that the authorities associated with the habitual residence would have jurisdiction only in the absence of national law.[7]

To a certain extent, the solution reflected the former practice of the *Dirección General de los Registros y del Notariado* (hereinafter, DGRN), an administrative body with important responsibilities in affairs of civil status, and was soon criticised for the evident discrimination involved in preferring the national law or authorities of the male spouse over those of the female,[8] and for the bilateral nature of the international jurisdiction rule.[9] The priority of the adopter's law with regards to the effects of adoption was also the norm prior to the reform.

Many years after Law 11/1987 derogated therefrom, the archaic solutions of 1974 continued to have effects: DGRN Resolutions of June 9, 1993[10] and December 1, 2004[11] rejected the recognition of two adoptions by application of Sec. 9.5 Cc as drafted in the Reform of the Preliminary Title in 1974. Both cases involved adoptions made abroad by Spanish adopters, and the DGRN concludes that '…validity or effectiveness [...] cannot be recognised for an adoption established by an incompetent authority according to our conflict rules. The fact that these rules have varied is of no import, as is the fact that should the adoption be made in Peru today, it would certainly have met the conditions for international jurisdiction…' (Res. of June 9, 1993); '…the validity of adoption established according to Argentinean legislation and before Argentinean authorities cannot be recognised, as section 9, point 5, of the Civil Code, as drafted by Decree 1836/1974, of May 31, established that 'the authorities of the adopter's nationality shall have jurisdiction for the formalisation of adoption and the Spanish authorities were not involved in this adoption although the adopter was Spanish' (Res. of December 1, 2004).

The solution derived from the 1974 reform was worthy of criticism in itself, but even more so from the perspective of adoptions made by Spaniards abroad. The fact that it still has some effects today is likewise worthy of criticism from the

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[7] The prevalence of national law is expressly recognised in the Description of Motives of the 1974 Reform: 'In order to provide a schematic view of the criterion predominantly used in the rules of international private law, the following characteristic notes can be found: [...] 3. Personal law is determined by nationality [...] 4. The traditional and generalised criterion of the prevalence of national law regarding persons and legal relations concerning their inherent rights is maintained.'

[8] AGUILAR BENÍTEZ DE LUGO M., 'Comentarios al art. 9', in: ALBALADEJO GARCÍA M. (Coord.), *Comentarios al Código civil y Compilaciones forales*, Jaén 1978, at 172.

[9] BOUZA VIDAL N., 'Comentario al art. 9.5', in: BERCÓVITZ RODRÍGUEZ CANO R. (Coord.), *Comentarios a las reformas del Código civil*, Madrid 1993, pp. 456-470, at 457-458.

[10] *Boletín de Información del Ministerio de Justicia*, No. 1680-82, 1993, at 4114-4117; see note of FERNÁNDEZ MASIÁ E., in: *REDI* 1995, at 360-362.

[11] *Boletín de Información del Ministerio de Justicia*, No. 1984, at 1071-1073.

perspective of the principles which should govern the control of the original judge's jurisdiction.[12]

B. Change of Model: Law 11/1987, of November 11, and the Judicialisation of the Adoption

1. The Legal Solutions

The Spanish legal system experienced the most important changes of the last century in the period between 1974 and 1987: the transition from dictatorship to democracy upon the solid basis of the 1978 Constitution changed the very concept of family and involved major legislative reforms. International jurisdiction rules in matters of adoption were altered in 1985: the Judiciary Act established that Spanish courts had jurisdiction in matters of 'constitution of adoption' when the adopter or the adoptee were Spanish or habitually resided in Spain. Two years later (thus nine years after the Constitution), the conflict of laws rule (Sec. 9.5 Cc) was changed. It went from a bilateral conflictual model to a judicialised or judicialist[13] model, in which the competent Spanish judge applied Spanish law. It also regulated consular adoption and the recognition of adoptions established by foreign authorities. From the perspective of the practice of the Spanish authorities, application of Spanish law was the norm in the application of Sec. 9.5 Cc (drafted in 1974), according to its derived *forum-ius* relations,[14] although the new rule also made important changes.

According to N. Bouza Vidal, this reform, part of a more comprehensive reform of adoption in its most substantive aspects, had the following characteristics: a) configuration of adoption as an act of voluntary jurisdiction, with a Judge involved in its constitution; b) attribution to the Spanish authorities of some control over international adoptions; c) consideration of adoption as a protective measure for minors, and d) priority of the child's interests above all others.[15] The applicable law was Spanish law plus – eventually – the national law of the child (alternately)

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[12] ÁLVAREZ GONZÁLEZ S., 'Reconocimiento e inscripción en el *Registro civil* de las adopciones internacionales', in: *REDI* 2006, at 683-710. The few Spanish authors who have discussed this issue focus on the time of recognition: REMIRO BROTÓNS A., *Ejecución de sentencias extranjeras en España: la jurisprudencia del Tribunal Supremo*, Madrid 1974, at 198-199; CALVO CARAVACA A. L., *La sentencia extranjera en España y la competencia del juez de origen*, Madrid 1986, at 82-83.

[13] RODRIGUEZ MATEOS P., 'La nueva orientación de la adopción internacional en la Ley 21/1987 de 11 de noviembre', in: *La Ley. Revista Jurídica Española de Doctrina, Jurisprudencia y Bibliografía* 1988, pp. 783-790, at 784-785.

[14] ESPINAR VICENTE J. M., 'Filiación y adopción', in: GONZÁLEZ CAMPOS J. D., *Derecho internacional privado. Parte especial*, *vol. II*, Oviedo 1984, at 218-219.

[15] BOUZA VIDAL N., 'La nueva Ley 21/1987, de 11 de noviembre, sobre adopción y su proyección en el Derecho internacional privado', in: *Revista General de Legislación y Jurisprudencia* 1987, pp. 897-931, at 914; *id.* (note 9), at 460.

or the national laws of the adopter and the child (cumulatively), considering two basic interests: public (national) control of the adoption and its international efficacy.[16] As we shall see, these interests continue to be upheld in the IAA, with a regulation also contemplating the application of several laws in order to guarantee the international efficacy of adoption. The mandatory and conditional application of the child's national law, or those of the adopter's or child's nationality or habitual residence, to guarantee the efficacy of adoption, was not unanimously favoured by doctrine.[17]

Besides a special consular adoption regulation, also generally criticised by Spanish doctrine,[18] the most interesting aspects of the 1987 reform were finally those relating to the effects in Spain of adoptions constituted abroad, as a result of the gradual increase in the number of these adoptions within Spanish society. The first Draft demanded an undefined verification of the foreign jurisdiction and of the law applied to capacity and consent. A clerical error was made upon publication, so it is now stated that this was the 'adopter's law' and not the 'adopted child's law', as had been approved by Parliament.[19]

This regulation underwent different changes until the IAA came into force. The most important took place in 1996, through the Legal Protection of Minors Act (Organic Law 1/1996, of January 15). In Sec. 9.5, this law introduced a specific rule for the recognition of adoptions constituted by foreign authorities in cases where there are Spanish adopters: it would not be recognised as an adoption if the effects were not those established in Spanish legislation, and adoptions by Spanish adopters habitually resident in Spain would not be recognised if the authority had not declared their suitability.

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[16] BOUZA VIDAL N. (note 15), at 917; *id.* (note 9), at 463.

[17] See, critically, RODRÍGUEZ MATEOS P. (note 13), at 785-786; GONZÁLEZ CAMPOS J. D., 'Filiación y adopción', in: GONZÁLEZ CAMPOS J. D., *Derecho internacional privado. Parte especial*, *vol. II*, Oviedo 1988, at 220; BOUZA VIDAL N. (note 9), at 920.

[18] Initially, RODRÍGUEZ MATEOS P. (note 13), at 688; BOUZA VIDAL N. (note 15), at 923, following the criticism of ESPINAR VICENTE J.Mª., 'La modificación del art. 9.5 del Código Civil en el proyecto de reforma sobre la adopción, in: *La Ley. Revista Jurídica Española de Doctrina, Jurisprudencia y Bibliografía* 1986, pp. 996-1001, at 999 and GONZÁLEZ CAMPOS J. D. (note 17), at 222. After the Hague Convention became applicable to Spain, criticism of consular adoption has increased: GONZÁLEZ BEILFUSS C., 'La aplicación en España del Convenio de La Haya de 29 de mayo de 1993 relativo a la protección del niño y a la cooperación en materia de adopción internacional', in: *Revista Jurídica de Cataluña* 1996, pp. 313-345, at 343-345.

[19] 'In an adoption established by the competent foreign authority, the *adopter's* law shall govern with regards to capacity and consent. The consent required by such law may be granted before an authority of the country in which the adoption process starts or, subsequently, before any competent authority. For the adoption of a Spanish national, consent is required of the public authority corresponding to the child's last residence in Spain'. The error was corrected three years later by Law 11/1990, of October 15, reforming the Civil Code, in application of the principle of non-discrimination for reason of gender.

The 1996 reform occurred after the Hague Convention became applicable in Spain and, besides regulating legal conflicts, it introduced a specific rule concerning international adoption, regulating certain aspects of the functions of public authorities responsible for international adoption and organisations accredited to mediate in such adoption processes. It also required that communication between the Spanish central authorities and those of other States should be coordinated as established in said Convention.

In this partial reform process, Law 18/1999, of May 19, added a new paragraph concerning revocable adoptions: 'Attribution by foreign law of a right to revoke adoption shall not prevent its recognition if said right is waived in a public deed or before the *Registro civil* (Register of Births, Marriages and Deaths)'. The idea was to accept adoptions other than full adoptions, which differed from adoption as established in Spanish law in that they could be revoked by the adopters. Although it enabled numerous adoptions to be recognised in Spain, the unilateral concept of the provision (the waiver was only valid for Spain) created theoretical problems, which remain unresolved.[20] The IAA maintains this possibility of a unilateral waiver of revocation (Sec. 26).

2. *Problems in Practice*

This relatively broad regulation, amended several times since 1987, generated different types of problems. Some were not related to the legislation itself, focusing on the registration of international adoptions and autonomous legislation (rules of the Spanish regions or *Comunidades Autónomas*) for the protection of minors. Others were derived from its interpretation, which was not very clear and at some points confusing and dense.

Among the problems not directly related to the specific regulation of international adoption, we must mention the existence of legislation relating to the *Registro civil*, conceived much earlier[21] and poorly adapted to the requirements of modern international adoption in Spain. Unlike that which occurred with the rules on conflicts of law, registration legislation was barely amended.[22] Since 1957, the basic rule has established that '[t]he Register shall contain records of all pertinent facts affecting Spanish nationals and those occurring in Spain, even when they

[20] ÁLVAREZ GONZÁLEZ S., 'Adopción internacional y sociedad multicultural', in: *Cursos de Derecho Internacional de Vitoria Gastéiz-1998*, Madrid 1999, pp. 175-211, at 202; more in agreement with the legal solution, ESPINOSA CALABUIG R., 'Una nueva reforma en materia de adopción internacional en España', in: *Revista General del Derecho* 2000, No. 667, at 1-19.

[21] The *Registro civil* is dated June 8, 1957 and its regulations of application are dated November 14, 1958.

[22] Directly linked to international adoption, Law 15/2005, of June 8 and Law 15/2005, of November 18. *Cf.* MASEDA RODRIGUEZ J., 'Nueva normativa registral sobre adopción internacional. La modificación de los arts. 20.1 y 16 LRC por la Ley 15/2005 y por la Ley 24/2005', in: *REDI* 2005, at 1196-1201.

affect foreign nationals'; this, for example, means that all adoptions formalised outside Spain by foreigners resident in Spain are adoptions not contemplated in, or verified by, the Spanish *Registro civil*, which normally examines the status of adoptions established by foreign authorities. With regards to vital facts relating to civil status, their exhaustive enumeration (Sec. 1 of the *Registro civil* Act) also generates problems regarding adoptions not equivalent to those contemplated in Spanish law.

Additionally, all the Spanish *Comunidades Autónomas* have jurisdiction regarding the protection of minors and have issued their own rules, including administrative aspects and mediation in international adoptions. Each region has its own Central Authority within the framework of the Hague Convention. This has given rise to different practices, in international adoption matters, in different regions. The IAA attempts to solve this problem but, as we shall see, has difficulty in delimiting legislative powers between State and regional authorities.

With regards to the problems derived from the interpretation and application of the PIL system itself, they were mostly related to the recognition of adoptions established abroad. On the one hand, the jurisdiction of the judge of origin was derived from the ill-defined phrase '...in adoptions established by the *competent foreign authority*...'. On the other hand, verification of the applied law was also derived from a poorly drafted sentence: '...in adoptions established by the competent foreign authority, the *child's law shall prevail* with regard to capacity and consent'. However, although the solution to the first problem, consisting of the bilateralisation of jurisdictional criteria applicable to Spanish authorities[23] was generally accepted, the scope of verification over the applied law was questioned.[24]

Also questioned was the possibility of converting a simple foreign adoption into full adoption under Spanish legislation. Different interpretations were given to the following words: '...the consent required by such law may be granted before an authority of the country in which the adoption was started or, subsequently, before any other competent authority...'. Some found here a clear possibility of conversion, whereas others differed.[25]

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[23] BOUZA VIDAL N. (note 15), at 927; GONZÁLEZ CAMPOS J. D., *Derecho internacional privado. Parte especial*, 6ª ed., Madrid 1995, at 372; RODRÍGUEZ MATEOS P., 'Comentario al art. 9.5 del Cc', in: ALBALADEJO M. / DÍAZ ALABART S. (Coord.) *Comentarios al Código civil y compilaciones forales*, T. I, vol. 2, Madrid 1995, pp. 242-259, at 253; GUZMÁN ZAPATER, M., 'Adopción internacional: ¿Cuánto queda del Derecho Internacional Privado Clásico?', in: *Mundialización y familia*, Madrid 2001, pp. 83-120, at 109. Against, ÁLVAREZ GONZÁLEZ S. (note 20), at 190.

[24] *Cf.* BOUZA VIDAL N. (note 15), at 928 and ESPLUGUES MOTA C., 'El nuevo régimen jurídico de la adopción internacional en España', in: *Riv. dir. int. pr. proc.* 1997, pp. 33-75, at 62, for broad control, including the bilateralisation of Sec. 9.5 Cc; RODRÍGUEZ MATEOS P. (note 23), at 252, for limited control of the capacity and consent to be adopted.

[25] In favour, BOUZA VIDAL N. (note 15), at 929-930; RODRIGUEZ BENOT A., 'La eficacia en España de las adopciones simples constituidas al amparo de un ordenamiento extranjero. Una relectura del art. 9.5 C.c. a la luz del Convenio de La Haya de 29 de mayo de 1993', in: CALVO CARAVACA A L. / CARRASCOSA GONZALEZ J. (Coord.), *Estatuto personal y multiculturalidad de la familia*, Madrid 2000, at 181-202; ESTEBAN DE LA ROSA

However, the greatest problem derived from legislation prior to the IAA was possibly the practice of the *Registro civil*, which prevented recognition of simple adoptions by Spanish nationals. The limits established for the scope of action of the *Registro civil* did not clarify the status of children subject to simple adoptions by foreigners resident in Spain. The DGRN alleged a solid practice, widely supported by doctrine,[26] according to which simple foreign adoptions could not be recognised and registered as adoptions '...without producing serious doubts concerning their efficacy'. The non-recognition of simple adoption 'as adoption' was directly derived from the law; but it did not seem logical for this to only affect Spanish adopters, and it was not confirmed that a simple foreign adoption could be recognised 'as a simple adoption'. Register practice degraded the foreign institution, which was seen as mere 'fostering', and this solution was not compatible with our own conflict rules.[27] With the same practice, simple adoptions became a means for the *ex novo* establishment of 'Spanish' adoptions, which did not always benefit from all the necessary guarantees regarding the consent of the original family.[28] The situation was paradoxical, considering that the Hague Convention forced our authorities to recognise simple adoptions and their typical effect of establishing a link of filiation between the adopters and the child.

This homogeneous practice included some exceptions, which were either not consolidated or did not have the opportunity to become consolidated because they occurred immediately before the IAA. Among the former, DGRN Resolution of November 13, 1998[29] stated that '…(a)lthough Guatemalan adoption cannot be recognised in Spain as such, that does not prevent it from being recognised in our country with regard to the effects that the Guatemalan legal system attributes to the institution 'The nature and content of filiation, including adoptive filiation and parent-child relations, shall be governed by the personal law of the child' (Sec. 9-4 Cc), and in this case the national Guatemalan law of the child established that parental authority pertained to Spanish nationals. Unlike other cases in which there was not even filiation between the Spanish holders of 'parental authority' and their fostered minor, no reason can be found to reject in Spain, for reasons of public

G. (Coord.), *Regulación de la adopción internacional. Nuevos problemas nuevas soluciones,* Madrid 2007, at 245-260; against, RODRÍGUEZ MATEOS P. (note 23), at 254; also, Resolución Circular DGRN de 15 de julio de 2006, in: *Boletín Oficial del Estado*, August 30, 2006.

[26] A minority supported the recognition of simple foreign adoptions which did not go against the Spanish legal system, with its own effects: ÁLVAREZ GONZÁLEZ S. (note 20), at 192; CALVO BABÍO F., *Reconocimiento en España de las adopciones simples realizadas en el extranjero*, Madrid 2003, at 255-256, although through its classification as a 'measure for the protection of minors' and application of the corresponding rule regarding guardianship and other measures for the protection of persons without mental capacity (Sec. 9.6 Cc).

[27] ESPINAR VICENTE J. Mª., 'La adopción de menores constituida en el extranjero y el reconocimiento de la patria potestad en España (algunas reflexiones en torno a la heterodoxa doctrina de la DGRN)', in: *Actualidad civil* 1997, at 757-771.

[28] GONZÁLEZ BEILFUSS C., in: *Anuario Español de Derecho Internacional Privado* 2006, at 1067.

[29] *Boletín de Información del Ministerio de Justicia*, No. 1851-52, at 2550-2553.

order… a parental authority relationship based on a true adoption, although it can be classified as simple or not full. This Directorate has agreed… to order registration of the birth of… and marginally the option of Spanish nationality by reason of parental authority…'.

Among the latter, we find DGRN Resolution of November 23, 2006.[30] This case did not involve the recognition of the effects of a simple adoption established abroad, but a change of its classification. After a detailed analysis of Ethiopian legislation and a comparison with Spanish law, the DGRN amended its previous practice and concluded that the effects of adoption in Ethiopian law were as established in Spanish law, in spite of the continuing links between the child and his biological family, and the possibility of revoking the adoption. The rationale applied by the DGRN was intended to favour recognition, thus not hesitating to be flexible when approaching the demands of Ethiopian law as closely as possible to those of the Spanish legal system.

3. The Immediate Predecessor of the IAA: DGRN Circular Resolution of July 15, 2006

A few months before the preparation of the International Adoption Draft (February, 2007), and a year and a half before it was passed, the DGRN issued an extensive Resolution to '…bring more light to the increasingly complex general legal system applicable to the registration of adoptions established by foreign authorities in the Spanish *Registro civil*'.[31] The importance of this Resolution lies not only in the fact that it was binding for those responsible for the Spanish Register, but also in the fact that many of the interpretative proposals for this former legislation have become part of the IAA. This shows how important exclusively register-related aspects have been for the new text, even though the efficacy of adoption established abroad does not depend on its inclusion in the Spanish *Registro civil* (as this inclusion is not constitutive). In any case, as I mentioned earlier, not all foreign adoptions can be included in the Register, such as when Spanish nationals are not affected.

The main traits of this important Resolution which, for the DGRN, represented the correct interpretation of the system prior to the IAA, can be described as follows, in relation to the recognition of adoptions established by foreign authorities not affected by the Hague Convention or another international agreement: a) verification of the jurisdiction of the foreign authority is pursuant to the forum established by the foreign system, subject to the Spanish international *ordre public*, for cases where there is no reasonable link between the adoption and the authority of the country in which it is established; b) verification of the law applied by the foreign authority extends to the consent, assent or hearings required for the adoption, of both the child and the prospective parents; it also extends to capacity and

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[30] *Boletín de Información del Ministerio de Justicia*, No. 2056, at 769-779.

[31] DGRN Circular Resolution of July 15, 2006 (note 25).

prohibitions to adopt; this verification is intended to ensure that the foreign authority applies 'the State law referred to by the rules of conflict of the foreign country in question'; c) the formal aspects of the adoption shall be pursuant to the general rule established in Sec. 11 Cc, regarding 'the forms and solemnities of contracts, wills and other legal acts', consecrating the traditional *locus regit actum* rule alternative to other several connections; d) the difference between Spanish and foreign adopters in relation to the demand for equivalent effects between foreign adoptions and those regulated by Spanish law is justified – according to the DGRN – by the existence of 'registry conflict of laws (*Derecho conflictual registral*)', according to which only foreign adoptions affecting Spanish nationals are registered; e) absence in the Spanish system of a mechanism to convert a simple into a full adoption; f) simple adoptions are neither recognised as adoptions nor included in the *Registro civil*, but the 'existence, validity and effects of such simple adoptions, including parental authority' shall be determined by the child's national law (material recognition); g) simple adoptions shall be legally classified as 'fostering' for the sole effects of the *ex novo* establishment in Spain of a full adoption pursuant to Spanish material law.[32]

III. The International Adoption Act (Law 54/2007, of December 28)

A. Objectives and Methodological Options of the IAA

The IAA, like most recent legislation, makes every effort to describe its aims and goals and the means by which it intends to achieve them. These goals are varied; together with the wish to put an 'end to the regulatory dispersion characteristic of the previous legislation', we find the ever-present 'interests of the minor' as a guide to all adoption processes. As we shall see, these 'interests of the minor' are identified, in some cases exclusively, with the idea of an internationally valid adoption, which is effective in several States; these 'interests of the minor' would justify a new 'international harmony of solutions'.

The first organisational goal (to put an end to regulatory dispersion) was – and is – difficult to accomplish, considering the limits of the Spanish State legislator. As I mentioned earlier, the Autonomous Regions have responsibilities in matters concerning the protection of minors and various aspects of administrative dossiers relating to international adoptions: the involvement of minor-protection agencies, intermediation in international adoptions, accreditation, monitoring and verification of International Adoption Collaborating Agencies, the relationship between the latter and people wanting to adopt, the suitability of prospective parents, the post-adoptive obligations of adopters, etc., are all aspects regulated by

[32] *Cf.* a critical discussion of this Resolution in ÁLVAREZ GONZÁLEZ S. (note 12), *passim.*

the Autonomous Regions, usually in more detail and more precisely than the IAA itself. In my opinion, most of Title I of the IAA, which regulates these same aspects, is not constitutional, as it invades the jurisdiction of regional legislators.[33] These rules, however, are usually drafted in a flexible manner, and most of them represent calls for collaboration between the different regional agencies; they are rules the breach of which is not sanctioned, using a postmodern language more typical of a speech than of a law: '*every attempt shall be made to ensure* regional coordination'; '...the competent public agencies *shall promote measures to achieve maximum coordination... shall attempt to ensure* homogeneous procedures'; '...[c]ollaborating International Adoption Organisations *may* establish agreements...'; '...the competent public agencies *shall make every effort to ensure* the greatest possible homogeneity...'.

Obviously, the State legislator was unable to alter international treaties applicable to matters of adoption. The rest of the legislation was hardly changed, and where there were amendments (not directly linked to international adoption), they were made within the same legal text (*Registro civil* Act, Civil Procedure Act, Cc), so the formal dispersion remains. The IAA even forgot to derogate from the Law of the Judiciary System with regards to the international jurisdiction of Spanish judges to establish adoption.[34]

The second, obvious, objective – i.e. the interests of the adopted minor – has given rise to a complex legislation which fits poorly into an orthodox model: there are calls for cooperation between authorities as a cornerstone of international adoption; there is also a clear option for the conflict of laws in matters concerning the establishment of adoption, its modification and its declaration of nullity; a strange mixture of unilateralism and bilateral conflict rules for the conversion of adoption; a difference between the recognition of simple adoption, through the national law of the child, and the recognition of other adoptions by establishing unilateral conditions, which appeal to the conflict and international jurisdiction rules of the foreign authority.

This is a truly strange methodological puzzle, even more so if we consider some of the proposed interpretations discussed later. I would just like to show what was, possibly, a missed opportunity to escape from the traditional problems relating to the recognition of adoptions established by foreign authorities. When Sec. 3 of the IAA refers to the *Informing principles of international adoption*, it says that:

> 'The international adoption of minors shall respect the principles inspiring the Convention on the Rights of the Child, of November 20, 1989 and the Hague Convention, of May 29, 1993, relating to the protection of children's rights and cooperation in matters of interna-

[33] I fully develop this opinion in ÁLVAREZ GONZÁLEZ S., 'La Ley de adopción…' (note 5), at 43-47.

[34] A problem of minor importance, as the *lex posterior* can be considered to derogate there from. There should not be a problem due to the organic nature of the Law of the Judiciary System, which is not necessary for international jurisdiction rules.

> tional adoption. [...] To that end, the competent Public Agency, shall include the standards and safeguards of the Hague Convention, of May 29, 1993, in the agreements relating to international adoption signed with non-adherent States.'

This declaration is in agreement with the recommendation of the Hague Conference on International Private Law in its Special Commission of September, 2005, where it repeated Recommendation No. 11 of the special Commission of November/December 2000[35]; and it is implemented by the IAA with mandates such as that specified in Sec. 4, which establishes that an international adoption process shall not be possible when '...the country [of origin] does not provide appropriate guarantees for the adoption and adoption practices and procedures do not respect the interest of the minor or comply with the international ethical and legal principles to which Section 3 refers'. The IAA, then, aims to make practices not relating to the Hague Convention fit the cooperation model it initiated. The necessary step regarding recognition is, however, not made. In this respect, the IAA does not take its own assumptions to their logical conclusion: if the adoption process is completely verified from the very beginning and the authorities of the State of origin provide the same guarantees as Spain (otherwise, Sec. 4 would prevent the procedure from going forward), this trust could have generated a less complex system, not as strict with regards to verifying the activities of the foreign authority, at least in cases in which the adoption procedure started in Spain.

As for the objective of guaranteeing the interests of the minor through the establishment of internationally strong adoptions, the specific solutions in the three sectors regulated by Title II of the IAA (jurisdiction of the authorities, applicable law and recognition of adoptions established abroad) add a note of unnecessary complexity without even guaranteeing the objective:

a) The international jurisdictional criteria for adoption are the same as under the former legislation: the adopter or child must either be of Spanish nationality or habitually resident in Spain. At least in theory, this allows adoptions without a reasonable link with Spain, so the objective of internationally strong adoption runs a serious risk of not being met. Doctrine, which is clearly in favour of the IAA, states that the law has a *'disconnection clause'* for cases in which there is no such link, as the Law's explanatory report (*Exposición de Motivos*) is sending a 'very clear mandate to Spanish judges and courts. They should not establish an international adoption if there are absolutely no ties to Spain'.[36] Unfortunately, the IAA does not contain such flexibility and explanatory reports are not legally binding.

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[35] See <www.hcch.net>. *Cf.* BORRÁS RODRÍGUEZ A., 'La Conferencia de La Haya de Derecho internacional privado (2005)' in: *Anuario Español de Derecho Internacional Privado* 2005, pp. 1199-1216, at 1210-1215.

[36] CALVO CARAVACA A. L. / CARRASCOSA GONZÁLEZ, J. (note 4), at 85-90. Although the Explanatory Statement does say that '...a Spanish authority should not proceed to establish, amend or declare null and void an international adoption if the case has absolutely no ties to Spain'.

b) With regards to applicable law, we find the technical paradigm of the establishment of internationally strong adoptions by the imperative or facultative concourse of several applicable laws. The basic system is the application of Spanish or a foreign law, together with the possibility of several more laws concurring in the establishment of an adoption. This possibility was previously present in the former Sec. 9.5 Cc, and criticised precisely from the perspective of the 'interests of the minor'.[37] The national law of the child may be applied together with Spanish law '...only when the competent Spanish authority believes that it will facilitate the validity of the adoption in the country of the child's nationality' (Sec. 19); at the request of the adopter or the *Ministerio Fiscal* (State Counsel's Office), it is also possible to demand the consent, hearings or authorisations required by national law or the law of the habitual residence of the adopter or the child, providing said consent, hearings or authorisations are in the interests of the child: '...It shall particularly be considered to be 'in the interests of the child' if, in the court's opinion, considering foreign laws facilitates the validity of the adoption in other countries connected to the case, *and only in as much as that is the case*' (Sec. 20).[38] The basic idea is also repeated concerning adoptions regulated by a foreign law (Sec. 21).

c) To conclude with the solutions aimed at ensuring the 'interests of the minor', identified with the international validity of adoption, the conditions for the recognition of foreign adoptions include the verification of the jurisdiction of the authority of origin and of the law applied by the same, similar to the DGRN requirements under the previous legislation: Sec. 26 of the IAA establishes that:

> '... adoption established by foreign authorities shall be recognised in Spain as adoption if the following requirements are met:
>
> 1. It has been established by a competent foreign authority.
>
> The foreign authority in question is classified as internationally competent if the adoption process respected the forum specified in its own Law.
>
> Notwithstanding the above, should the adoption present no reasonable ties of origin, family history or other similar links, with the country of the authority establishing the adoption, the foreign authority in question shall be classified as lacking in international jurisdiction.
>
> 2. It has been established pursuant to State laws designated by the conflict rules of the country from which the foreign authority establishing the adoption depends.'

This legal definition of the DGRN's interpretation of the previous system is also supported by the idea that only an adoption, which is valid in the country of origin,

[37] *Supra* (note 17).

[38] Italics are mine.

may be subject to recognition. This is a logical goal. What we now need is to identify the best technical mechanisms to attain it. The IAA's fails to do so.[39]

B. Major Innovations

The time spent here on the situation prior to the IAA is now justified by our affirmation that most of the interpretations given by the DGRN to the former Sec. 9.5 Cc[40] is now positive legislation. At least with regards to the basic structure of international jurisdiction, applicable law and the recognition of adoptions established by foreign authorities, the continuum is more than evident: identical broad international jurisdiction criteria with the excessive presence of Spanish nationality; priority of application of Spanish law together with the possibility of also applying the national law of the child or, in some cases, the law of the habitual residence or nationality of the adopter or child; establishment of a recognition system in which there inexplicably continue to be differences between Spanish and foreign adopters (even though they live in Spain); these differences have spread to cases in which the adopted child is Spanish and there has been an attempt to justify them by pointing out that 'the legislator believes that an adoption «*not linked to Spain*» (= foreign parents and foreign child) is not part of Spanish society but subject to '*mere transit*' through Spanish society. The recognition of such an adoption does not therefore directly affect Spanish society'.[41] I am evidently unable to share such a simplistic viewpoint.

Therefore, and having spent some time describing the old system, I will be focusing on the innovations, which have a more than merely decorative value. They are clearly identified in the Explanatory Statement:

> 'The Law – it states – also includes a regulation previously absent from our positive Law, relating to the effects in Spain of simple or less than full adoption established by a foreign authority, and the possibility of its conversion into full adoption, establishing the factors required in each case for the competent Spanish authority to agree on said conversion'.

In my opinion, these are the two most important novel aspects of the IAA. As I mentioned earlier, I believe that the first was also defensible in the previous system, although I was clearly in the minority. Sec. 30 of the IAA simply states that:

> 'Simple or less than full adoption established by a foreign authority shall be effective in Spain, as simple or less than full adoption, if it

[39] *Cf.* the development of this idea in ÁLVAREZ GONZÁLEZ S., 'La ley de adopción…' (note 5), at 63-66.

[40] *Supra* II.B.3.

[41] CALVO CARAVACA A. L. / CARRASCOSA GONZÁLEZ J. (note 4), at 203. The italics are in the original text.

> complies with the child's national law pursuant to Section 9.4 of the Civil Code.
> 2. The child's national law, in the simple or less than full form, shall determine the existence, validity and effects of such adoptions, together with the attribution of parental authority.'

I fail to see why there should be a different technical solution for full and simple adoptions. The option of a conflictual solution for simple adoption is not justified either from a procedural perspective or from the viewpoint of the guarantees involved in the two types of adoption, which often differ merely in a legal option concerning a specific effect of the adoption. Actually, under the previous legal regime I had already supported the application of the same recognition system (that of Sec. 9.5 Cc) to both full and simple adoption.[42] But, of course, conflictual recognition is certainly better than no recognition.

With regards to the possibility of converting a simple into a full adoption, the IAA appears to solve the doctrinal controversy relating to the previous system by treating the issue as novel, although this creates new interpretative problems. The conversion of a simple into a full adoption is regulated by a conflict rule referring to an applicable law (Sec. 22 IAA)[43] and a substantive rule which establishes the possibility of, and requirements for, converting simple adoption *into the adoption governed by Spanish law*; these requirements are directly and substantially listed, but also include a reference to applicable law.[44]

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[42] See with further arguments ÁLVAREZ GONZÁLEZ S. (note 12), at 696-697.

[43] 'Sec. 22. *Law applicable to the conversion, nullity and review of adoption*. The previous criteria concerning the determination of the law applicable to the establishment of adoptions shall likewise be applicable to determine the law applicable to the *conversion*, nullity and review of adoptions.' The previous criteria refer to the law applicable to the *establishment* of the adoption.

[44] Sec. 30 IAA: '...4. Simple or less than full adoptions established by competent foreign authorities may be transformed into adoption governed by Spanish law when the necessary requirements are met. Said conversion shall be governed by the law determined according to the provisions herein. Simple or less than full adoption shall be classified as fostering. A prior proposal by the competent public agency shall not be necessary to open the respective judicial file. In any event, to convert simple or less than full adoption into full adoption, the competent Spanish authority shall examine the concurrence of the following circumstances: a) The persons, institutions and authorities, whose consent is required for the adoption, have been duly advised and informed about the consequences of their consent, about the effects of the adoption and, specifically, about the elimination of the legal ties between the child and his or her family of origin. b) Said persons have freely granted their consent in the legally established manner and said consent has been granted in writing. c) Said consent has not been obtained in exchange for payment or compensation of any kind and has not been revoked. d) The mother's consent, when required, has been granted after the child's birth. e) Considering the child's age and degree of maturity, he or she has been duly advised or informed about the effects of the adoption and, when required, has granted his or her consent to the same. f) Considering the child's age and degree of maturity, he or she has been heard. g) When the minor's consent is required for the adoption, it has been

In my first study of the issue, a systematic reading of Sec. 15, points 2, 4,[45] 22 and 30.4, led me to argue that the conversion foreseen by the IAA was the conversion into full adoption, as contemplated by Spanish law. I continue to believe that this is the most appropriate interpretation, although the possibility of converting a simple adoption into *full adoption as foreseen by a foreign law,* as proposed by some authors,[46] can certainly not be ruled out. Those who propose the two possibilities (conversion into full Spanish adoption and conversion into full adoption as foreseen by a foreign law) agree that the law applicable to the conversion of a simple adoption into an adoption governed by Spanish law could only determine the *admissibility* of said conversion.[47] Although, as I mentioned, the strict letter of the law does not exclude the two possibilities, I believe that there are reasons for doing so; initially, and this is no minor issue, because this distinction is not made by the IAA. Secondly, the interpretation supporting the two possibilities is backed by another distinction not made by the IAA: in this case, the law applicable to the conversion of a simple adoption into a full Spanish adoption (this being the law which *permits* or *admits* said conversion) is the 'foreign law «already applied» to the establishment of the simple adoption',[48] whereas the law applicable to the conversion in the remaining cases (conversion of a simple adoption into a full adoption pursuant to a foreign law) is determined by the rule of conflict of Sec. 22, that is an *applicable* and not an *applied* law. This distinction is not made by the IAA, where Sec. 30 merely refers to Sec. 22.[49]

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ensured that it has been freely granted in the legally established manner, without payment or compensation of any kind.'

[45] Sec. 15. '...2. If the law applied to the adoption foresees the possibility of simple adoption, the Spanish courts shall have jurisdiction to convert simple into full adoption in the cases described above. 3. The Spanish courts shall also have jurisdiction for the amendment or review of an adoption in the cases described in the first Section and also when the adoption has also been established by a foreign authority, providing that said adoption has been recognised in Spain.'

[46] CALVO CARAVACA A. L. / CARRASCOSA GONZÁLEZ J. (note 4), at 153-154.

[47] *Ibid.* at 154; the same opinion in ÁLVAREZ GONZÁLEZ, S., 'El Proyecto…' (note 5), p. 2611; *id.*, 'Reflexiones…' (note 5), n. 17.

[48] CALVO CARAVACA A. L. / CARRASCOSA GONZÁLEZ J. (note 4), at 154.

[49] An explanation is provided by the authors later, based on Sec. 15.2 'If the law applied to the adoption foresees the possibility of simple adoption, the Spanish courts shall have jurisdiction...': CALVO CARAVACA A. L. / CARRASCOSA GONZÁLEZ J. (note 4), at 306-307. This argument is not convincing. It would be, for example, if the Section were to state 'If the law applied to simple adoption *foresees its possible conversion into full....*'; but this is not the case. Even more confusing is the alternative proposed by the authors when Sec. 22 leads to the application of Spanish law; in this case, it is claimed that conversion shall be into full adoption as foreseen in Spanish law, pursuant to Sec. 30.4 (*ibid.* at 154, number 101.3). This proposal appears to consist of an alternative connection of some kind: simple adoption could be converted into full Spanish adoption when so permitted by the 'law applied' to the simple adoption or when the law designated by Sec. 22 is Spanish.

Allowing the possibility of converting a simple into a full adoption is a legislative policy decision, which could be supported by more or less arguments based on safeguarding or optimising the interests of the child. If a decision is made to admit this possibility, I see little sense in admitting it *conditional* upon one applicable law or another.

From my point of view, the law applied in the country of origin should not even be taken into account; to do otherwise would be to considerably reduce the operability of the conversion in practice, as it is evident that if a simple adoption has been established in the first place, it is because the concerned foreign system limits the possibility of a full adoption procedure.

Before I conclude, I would like to refer to another novel aspect, outside classic PIL rules, to which I partially referred in the previous Section: for the first time, the IAA establishes a series of circumstances in which adoption applications shall not be processed: '…a) When the country in which the child habitually resides is involved in a war or affected by a natural disaster, b) If the country has no specific authority which verifies and guarantees adoption, and c) When the country is lacking in appropriate guarantees for adoption and its adoption practices and procedures do not respect the interests of the minor or meet the international ethical and legal principles defined in Section 3'. This is a highly positive precept, in spite of some technical deficiencies.[50]

C. Non-regulated Aspects

Title II of the IAA is simply structured, regulating the international jurisdiction of the Spanish authorities for the establishment, amendment, review, nullity or conversion of adoptions (having progressed from the previous regulation which only referred to 'establishment of adoptions'); the law applicable by Spanish authorities for the establishment, conversion, nullity and review of adoptions (oddly enough, with regards to the applicable law, nothing is said of the 'amendment' of adoption); and the conditions for the recognition of full and simple adoptions established by a foreign authority. The IAA, however, does not regulate the law applicable *by Spanish authorities* to adoptions established by foreign authorities, which represent the majority of cases in Spain. This shortcoming is inherited from the old system; this oversight is even more shocking since, after the Hague Convention came into force, it was soon detected and denounced by doctrine.[51] The innate tendency (which is even unconsciously ratified on official agency websites) is the applica-

[50] In this case, again, there is no consensus: CALVO CARAVACA A. L. / CARRASCOSA GONZÁLEZ J. (note 4), at 56-61 *versus* ÁLVAREZ GONZÁLEZ S., 'El Proyecto…' (note 5), at 2612-2613; *id.*, 'La ley de adopción…' (note 5), at 47-48. This same rule also refers to mediation as follows: 'The mediation function in international adoption shall only be performed by Public Organisations for the Protection of Minors, duly authorised collaborating organisations and the pertinent authority of the country of origin of the minor. No other person or organisation may be involved in mediation functions for international adoptions'.

[51] GONZÁLEZ BEILFUSS C. (note 18), at 320-321.

tion of the *lex fori*: that is, Spanish law or, to be more precise, different Spanish laws depending on the *Comunidad Autónoma* concerned. In practice, this means that an adoption by two French nationals residing in Barcelona follows the same procedure and will be governed by the same law as one by a French man and Spanish woman residing in Barcelona, or two Chinese nationals residing in the same city: aspects such as the minimum age for adoptive parents, the age difference between the adoptive parent and the child, the possibility of adoption by spouses or stable partners of different or the same gender, are in practice unrelated to the international aspects of the situation, unless they are classified as pertaining to capacity, in which case they fall under the rules of national law.[52]

In practice, the typically administrative nature of this first phase of international adoption and the territorial scope of rules concerning the protection of minors in the *Comunidades Autónomas* make it possible to avoid conflicts because of the legal conditions of adoptive parents. It also solves another typical problem caused by the plurality of Spanish law, that of inter-regional or inter-local law: what are the legal conditions of two adoptive parents, one from Navarre and the other from Catalonia (these regions not only have their own international adoption laws but also their own civil law systems), who initiate proceedings in Madrid to adopt a child in China? This problem has not yet arisen, but might do so in the future; nevertheless there is no *ad hoc* solution in the IAA, which was created with the idea of covering all possible cases.

Oddly enough, the aspects of international adoption relating to registration remain unaltered. Indeed, in Sec. 30.3, the IAA states that simple adoptions are not to be included in the *Registro civil*. This is, at the very least, questionable, considering that most of these adoptions create parental ties and attribute parental authority; moreover, although simple adoption by Spanish nationals does not automatically give the child Spanish nationality, he or she has the right to opt for Spanish nationality under the terms of Sec. 20.1.a) of the Cc: 'Persons who are or have been subject to the parental authority of a Spanish national [...] are entitled to opt for Spanish nationality'.[53] Nevertheless, the changing structure of the Spanish population, with a strong and fully integrated immigrant component (the opposite was the case in the 1950s, when the legislation applicable to the *Registro civil* was published) probably requires a more global reform: I fail to see why the adoption of a Chinese child by two French nationals residing in Spain can be included in the register when it is established by a Spanish judge and not when it is established in China but is effective in Spain. But this is a legislative policy issue, which, as I say, transcends international adoption itself.

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[52] DGRN Resolution Circular of July 15, 2006; critically, ÁLVAREZ GONZÁLEZ S. (note 12), at 703-705; evidently, these are not 'capacity' issues: see ESTEBAN DE LA ROSA G. (note 25), at 174.

[53] *Cf.* DGRN Resolution of November 13, 1998 (note 29), obviously recognising the importance of the law of the foreign State of origin.

IV. Conclusions

In the last twenty years there have been important developments in international adoption in Spain. It is now one of the three countries welcoming the largest number of foreign children within the framework of adoption. The legislation governing international adoption in Spain is shared between the State legislator, who is exclusively responsible for rules 'regarding conflicts of law', and the regional legislators, who are responsible for defining rules regarding the protection of minors and, in application of the Hague Convention, have their own central authorities.

State legislation on jurisdiction, applicable law and recognition of foreign adoptions has evolved through partial reforms since 1987. In my opinion, the DGRN, the administrative agency responsible for the *Registro civil*, has interpreted the legislation literally, without making use of all the system's potential. Nonetheless, some of the problems arising in practice, such as those affecting the status of simple adoptions, were due to the legislation itself and not to the way in which it was interpreted.

The latest major milestone is the IAA. It is not only important as international adoption legislation, but also as the first special PIL statute in Spain. Though the IAA was intended to provide full regulation of international adoption, this is not the case; partly because the State legislator was not competent to do so, and partly because the IAA pays too much attention to formal and theoretical issues. I have briefly described the law's lack of a regulatory model; there is too little model and too much bombastic adjectivising. The authors, who defend it to the hilt, do not hesitate to applaud the 'social nature' of its conflict rules, its 'creative expressions', the existence of conflict rules combating 'market reflexiveness', or the 'polyphony of valued messages' of these rules.[54] There is also no shortage of artificial elements open to scientific debate, and a good dose of theoretical complexity, although it lacks the technical precision required to clearly identify its solutions. Objectively, the IAA contains no explicit element intended to make the system flexible, other than those of a generic nature in the legal system. The fact that, a few months after its publication, its supporters are defending more references to 'judicial development' and 'teleological reductions' than evident interpretations of concise, clear, and complete rules is a sign that something is wrong; in other words, that '... instead of seeking simplicity, effectiveness and consistence in the response, ... an assumed, and always formal, doctrinal logic appears to prevail'.[55]

As we have seen, the IAA has barely altered the *status quo*; this means that in practice nothing is going to change overly much. The IAA does not appear to have triggered massive legislative movements in the *Comunidades Autónomas*.

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[54] CALVO CARAVACA A. L. / CARRASCOSA GONZALEZ J., 'Constitución de la adopción internacional en la Ley 54/2007 de 28 de diciembre: aplicación de la ley española', in: *La Ley: Revista jurídica española de doctrina, jurisprudencia y bibliografía* 2008, No. 6953, May 26, 2008.

[55] ESPLUGUES MOTA C. (note 5), at 365.

The functions of the regional public agencies responsible for international adoption will not be undergoing major changes. The work of the *Registro civil* will be more complicated and we will start to see simple adoptions, and particularly conversions of simple into full adoptions therein. The IAA includes interesting novel aspects and, especially, transmits a message of commitment to the countries of origin of adopted minors, thus showing the interest of the Spanish authorities in clear-cut international adoptions. From a technical perspective, however, in relation to PIL, I believe that the IAA has 'missed its opportunity'[56] to consistently regulate international adoption. I can only hope that this is not an indication of the basic lines to be followed when modernising Spanish PIL.

[56] As indicated in the graphic title of the paper by ESPLUGUES MOTA C. (note 5).