Introduction
Rome II – A Parliamentary Tale

Diana Wallis

The Rome II Regulation¹ is a significant development in the history of private international law. The papers in this volume are to be welcomed for the rich academic analysis they provide of the Regulation. In my introduction it may be useful to give a brief account of the parliamentary perspective.

The Regulation must be understood in its context as a piece of European legislation. It has a long history. The European Union had for many years wanted to produce a complete and clear regime for the conflict of laws.

Having settled jurisdictional issues with the Brussels Convention² (and later Regulation)³ there was a need to address the issue of choice of law. The Rome Convention of 1980 dealt with the issue of choice of law in relation to contractual matters.⁴ The question of a choice of law regime for non-contractual matters was first addressed more than three decades ago. Work on the project was shelved for a number of years but was resuscitated in the 1990s, culminating finally in a Proposal⁵ for a Regulation put forward by the Commission in July 2003.

At this time, the European Parliament gained the possibility of being co-legislator in the field of private international law, with equal power to that of the Council.

In due course the Commission’s Proposal came before the European Parliament. I was Rapporteur. The task was an exciting one as there was no pre-existing Convention on the subject.

² Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
The Proposal involved the statement of a general rule prescribing as the law applicable to a non-contractual obligation that in which the event giving rise to the damage occurred. The general rule proposed by the Commission was one of the most disputed elements of the legislation. Many members of the Parliament wished to have a general rule but one with some significant judicial flexibility. This approach appealed in particular to those of the common law tradition. The solution endorsed by Parliament was to set out a non-exhaustive list of factors that may be taken into account as manifestly connecting a non-contractual obligation with another country so as to include:

(a) as far as loss-distribution and legal capacity are concerned, the fact that the person(s) claimed to be liable and the person(s) sustaining loss or damage have their habitual residence in the same country or that the relevant laws of the country of habitual residence of the person(s) claimed to be liable and of the country of habitual residence of the person(s) sustaining loss or damage are substantially identical;
(b) a pre-existing legal or de facto relationship between the parties, such as, for example, a contract, that is closely connected with the non-contractual obligation in question;
(c) the need for certainty, predictability and uniformity of result;
(d) protection of legitimate expectations;
(e) the policies underlying the foreign law to be applied and the consequences of applying that law. 

6 Article 3 provided as follows:
1. The law applicable to a non-contractual obligation shall be the law of the country in which the damage arises or is likely to arise, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.
2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country when the damage occurs, the non-contractual obligation shall be governed by the law of that country.
3. Notwithstanding paragraphs 1 and 2, where it is clear from all the circumstances of the case that the non-contractual obligation is manifestly more closely connected with another country, the law of that other country shall apply. A manifestly closer connection with another country may be based in particular on a pre-existing relationship between the parties, such as a contract that is closely connected with the non-contractual obligation in question.