

Publication Private International Law responses to Corruption

Prof. Dr. Xandra E. Kramer (Professor at Erasmus School of Law, Rotterdam) has posted an article on the interface between private international law and corruption on SSRN entitled 'Private International Law Responses to Corruption. Approaches to Jurisdiction and Foreign Judgments and the International Fight Against Corruption'. It is part of a publication containing three research reports on 'International Law and the Fight Against Corruption' (from a criminal law, a public international law and a private international law point of view). These reports are written for the annual meeting of the Royal Dutch Society of International Law (Dutch branch ILA), and will be discussed on 2 November 2012. The abstract reads:

'This paper explores how private international law responds to corruption, with a focus on the assessment of international jurisdiction and the recognition and enforcement of foreign judgments. The question is what the possible private international law responses are in cases where a foreign court or a foreign judgment is tainted by corruption. The paper evaluates to what extent private international law provides adequate mechanisms to deal with corrupt conduct and how courts approach allegations of corruption in these cases. It considers rules and courts' approaches in the Netherlands, England and The United States. It is concluded that only in little cases courts actually consider corruption in deciding private international law questions since the courts approach these questions in a rather formal way. Some of the court decisions, or at least the argumentation in these cases, are to be regretted.

It is stated that the problem of corruption also raises the question as to the position of private international law in today's world and in particular Von Savigny's paradigm of value-neutrality. Its particular strength may be that private international law is utilised as a neutral mediator in international disputes where law, culture, and values differ. In a rather formal way it regulates and coordinates issues of the applicable law and jurisdiction while leaving diversity intact. But whatever one thinks of the Savignian idea that private law stems from the people's mind (or *Volksgeist*), the reality today is that private law is an important instrument to effect policy objectives and to influence human

behaviour. In an era of globalisation and in the face of the reality of corruption, not only criminal law and public international law can make a stand; private law and private international law can play a role as well. As the discussion in this paper shows, the private/public law divide is not always useful in the first place. This does not mean that the primary role of private international law should be that of a normative agent or a system of global governance. The point is that where necessary, such as in cases of serious corruption resulting in a real risk of injustice, private international law engagement is appropriate. Courts should not hide behind self-induced comity and formalism – instead, in these cases a guiding factor should be the international consensus on the repudiation of corruption. Only then can private international law contribute to the international fight against corruption.’