

Certificat de coutume: New volume in French

Gustavo Cerqueira, Nicolas Nord, and Cyril Nourissat have recently edited a new volume on the “Certificat de coutume - Pratiques en droit des affaires internationales” (in French). The editors have kindly provided us with an English translation of the blurb available on the publisher’s website:

Statement or written certificate on the content of a foreign law rule, the Certificat de coutume is subject to a heterogeneous practice both in terms of its establishment and its processing. Ignored by many jurists, its reliability is often called into question due to a double insufficiency that it may conceal: about the law attested when it is issued by a public authority, about the impartiality when a private person issues it.

However, these criticisms are not insurmountable. In addition to the combination with other means of establishing the content of the foreign law rule in question, the Certificat de coutume does not avoid obliterating any contradictory discussion and the freedom of interpretation of the authority before which it is produced. The liabilities associated with the Certificat de coutume, whether that of the drafter, the counsel of the parties or the notary using such a certificate, constitute a formidable safeguard against tendentious approaches. Above all, we must not ignore the virtues of empiricism, which could – in these times of debates regarding a future codification of French private international law – reveal important and good practices to be considered de lege ferenda.

The book contains the reflections of several experts on the practice – little known to the public – of the Certificat de coutume in international affairs at a symposium held on 12 April 2022 at the Conseil supérieur du notariat français. The real added value of this book therefore lies in the desire to lift the veil on the Certificat de coutume, which currently constitutes a blind spot in private international law. Its name is certainly known to all, but its legal system still appears to be embryonic.

This book aims to be constructive and to come up with concrete proposals, the

fruit of collective reflection, bringing together the key players in the field.

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