Conference Report: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – 20 Years Later

On 8 May 2015, UNIDROIT hosted an international conference on the occasion of the 20th „birthday“ of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. The illicit trade with cultural property is a huge market, and legislators on all levels of law-making seek to provide for a regulatory scheme that confines this trade as far as possible. This is a truly difficult task, however, given that the art and cultural property market is fully globalized. A first step on the level of international treaties was taken by the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (Luxembourg ratified this Treaty on 3 February 2015 as the 128th Contracting State). Soon it became clear that this Treaty should be amended by a more effective instrument providing, inter alia, for self-executing claims for the return of stolen property even against good faith-acquirers who would, if they can prove their good faith, (merely) get a fair compensation. This instrument was to become the UNIDROIT Convention that was adopted on the Diplomatic Conference in Rome in June 1995. Whereas the Convention certainly was a progress conceptually, the sucess amongst the states was moderate: only 38 States have ratified or acceeded the Treaty so far. Therefore, it was one of the key objectives of the Conference to further promote the Convention, but also to evaluate the practical experiences of Contracting States to which belongs, inter alia, the hosting State Italy.

After notes of welcome by Prof. Alberto Mazzoni, President of UNIDROIT, Ms Giovanni Marinelli, Deputy for Cultural Affairs at the Municipality of Rome, H.E. Ambassador Nassif Hitti, Head of Mission of the Arab League to Italy, Ms Maria Vittoria Marini Clarelli, speaking on behalf of H.E. Mr Dario Franceschini, Minister of Italy for Heritage and Cultural Activities, and Mr Alfredo Pérez de Armiñán, Assistant Director-General for Culture, UNESCO, Prof. Kurt Siehr, Professor emeritus of the University of Zurich, Max-Planck-Institute of Comarative and International Private Law in Hamburg opened the floor by

presenting on „Difficulties in private international law relating to the restitution of cultural objects“. Siehr recalled the landmark cases of *Attorney-General of New Zealand v Ortiz*, [1984] AC 1, *Winkworth v. Christie Manson and Woods Ltd. and Another*, [1980] 1 ER (Ch) 496, and *Islamic Republic of Iran v The Barakat Galleries Ltd* [2007] EWCA Civ 1374 as well as of course the seminal decision by the German Federal Court of Justice on the illicit export of nigerian masks. Siehr made clear that typical problems arise from the territorial limitations of jurisdictions and the principle of non-enforcement of foreign public law in local courts, a principle that sometimes is confused with the well-accepted doctrine of the application of foreign public law by local courts in connection with a preliminary question such as who is the owner of the object in question (see on this doctrine the Resolution of the Institute of International Law of Wiesbaden 1975 on „The Application of Foreign Public Law“). Thus, the obstacle of non-enforcement of foreign public law does indeed require to be taken care of by international instruments such as the Treaties mentioned above, but any source state may contribute on its own by enacting export laws that result in automatic forfeiture once an attempt of illegal exportation of a cultural object is made. Then such a state may claim return of the object under private law as being the owner. It becomes apparent that the protection of cultural property is a challenge that requires both public and private enforcement mechanisms. This was further substantiated and illustrated by the presentations by Edouard Planche, Programme Specialist, Section for Cultural Heritage Protection Treaties, Division of Heritage, UNESCO, Mr Francesco Rutelli, President of Priorità Cultura, and Ms Maria P. Kouroupas, Cultural Heritage Center, U.S. Department of State.

Prof. Jean-Sylvestre Bergé, Université Jean Moulin (Lyon 3) reflected on the dynamics of sources in international law on the basis of the Treaties mentioned above. Dr. Maamoun Abdulkarmin, Director General, Antiquities and Museusm, Syria (IDGAM) demonstrated via skype the immense looting taking currently place in Syria. Prof. Spyridon Vrellis, Professor emeritus, University of Athens and Director of the Hellenic Institute of International and Foreign Law, Athens, commented on the legal status and factual situation of archaeological objects. Mr Sandro Barbagallo, Curator of the Department of Historical Collections, Vatican Museums, and Mr José Angelo Estrella Faria, Secretary-General of UNIDROIT, analysed the special status of ecclesiastical objects, and Mr Marc-André Haldimann, Associated Researcher at the University of Bern as well as Mr Jorge Sánchez Cordero, Director of the Mexican Center of Uniform Law, Vice President

of the International Academy of Comparative Law, discussed the status of private collections. Prof. Manlio Frigo, University of Milan, Member of the ILA Heritage Committee presented the international development of case law and practice on the restitution of cultural objects, and Prof Marie Cornu, Director of Research, CNRS, France, Member of the ILA Heritage Law Committee, discussed the adoption of the recast of the European Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 in respect to interactions between European Union law and international law.

It may be noteworthy that this recast also triggered activity within the legal orders of the EU Member States. Germany, for example, is currently consolidating and even perhaps codifying its entire cultural property law, a legislative process to which the author of these lines was invited by the German Federal Government to contribute as an expert (see written expert opinion for the hearing by the German Government on 22 April 2015).

Finally a roundtable on the understanding of the core term of „due diligence“ closed the Rome conference at the prestigious Museo Capitolini in its Sala Pietro da Cortona. Many times the spirit of Rome for adopting all kinds of treaties was evoked, and indeed, being at a location of such a significance for culture and history of mankind should help to improve the regulatory framework in particular for the protection of cultural property. It cannot be a surprise that a large number of experts worldwide attended UNIDROIT's „birthday party“ for its Convention in this field.

Addendum

Further to these notes on the UNIDROIT Conference it may be of interest to be informed about the following two recent, noteworthy publications (amongst many others in the vast and rapidly growing field of cultural property law):

- Alessandro Chechi, The Settlement of International Cultural Heritage Disputes, Oxford University Press2014 (review of this book in the next issue of the GermanYearbook of International Law)

- Klaus Schurig, Nazibeflecktes Kunsteigentum und die USA, in Christian Fahl et al. (eds.), Ein menschengerechtes Strafrecht als Lebensaufgabe, Festschrift für Werner Beulke, pp. 1329 et seq., C.F. Mueller-Verlag 2015, discussing choice-of-law issues in respect to Nazi-looted art

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Prof. Lortie on Child Abduction

Interdisciplinary Association of Comparative and Private International Law in co-operation with the University of Vienna is organising a lecture on **Direct judicial communications under the 1980 Hague Child Abduction Convention and the International Hague Network of Judges**. The lecture will be given by the First Secretary of the Hague Conference on Private International Law Prof. Philippe Lortie, on 20 May 2015 at 6.30 p.m. in Juridicum, Vienna.
Additional information is available in the leaflet.

The New European Insolvency Regulation- Seminar

A seminar on the new European Insolvency Regulation, organized by professors Francisco Garcimartín and Juana Pulgar, and sponsored by the Revista de Derecho Concursal y Paraconcursal, will be held on June, 3, at the Real Academia de Legislación y Jurisprudencia (Madrid). The event will bring together leading and renowned experts in the field, among which Katja Lenzing and Prof. Miguel Virgós Soriano. The spoken language of the first panel will be English; the second one will be held in Spanish.

For more information and to access the detailed program click here.

Book: The Brussels I Regulation Recast (OUP) – Dickinson & Lein (eds)



Brussels I Regulation Recast (OUP)

A new, major commentary on the Brussels I Regulation Recast has been published by Oxford University Press. Here's the summary:

- The only text describing the provisions of the Regulation and their inter-relationship with one another, with focus on the changes introduced in the recast process
- Summarises the structure of the Regulation and the role played by the case law of the European Court of Justice

- A bibliography for each article enables readers to access other sources of commentary (including leading texts in key jurisdictions, monographs and articles)
- Critical analysis of the text of the relevant Articles and recitals are combined, with a short reference to the legislative history
- Written by leading experts in the field
- Helpfully written in an accessible and concise way

The Brussels I Regulation has undergone a lengthy review process, resulting in Regulation (EU) 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). The provisions of the new Regulation apply from 10 January 2015.

This work, written by a number of leading experts on the subject, provides a commentary on the Recast Regulation. It contains a concise article-by-article commentary on all provisions of the recast Regulation with reference to the existing case law of the European Court of Justice and leading national decisions, and provides additional focus on the newly introduced changes, in particular to the provisions on lis pendens and the recognition and enforcement of judgments.

And the Table of Contents:

1: Andrew Dickinson: Background and Introduction to the Regulation
2: Martin Illmer, Arnaud Nuyts, Jonathan Fitchen: Scope and Definitions (Art. 1 – 3)
3: Helene van Lith: Jurisdiction – General Provisions (Art. 4-6)
4: Matthias Lehmann, Eva Lein, Pippa Rogerson, Marie Elodie Ancel: Special Jurisdiction (Art. 7-9)
5: Stefania Bariatti: Jurisdiction in Matters Relating to Insurance (Arts. 10-16)
6: Andrea Bonomi: Jurisdiction over Consumer Contracts (Arts. 17-19)
7: Louise Merrett: Jurisdiction over Individual Contracts of Employment (Arts. 20-23)
8: Matthias Lehmann: Exclusive Jurisdiction (Art. 24)
9: Paco Garcimartin: Prorogation of Jurisdiction – Choice of Court Agreements and Submission (Arts. 25-26)
10: Xandra Kramer: Examination as to Jurisdiction and Admissibility (Arts. 27-28)

11: Pippa Rogerson, Paco Garcimartin, Matthias Lehmann: *Lis Pendens* and Related Actions (Arts. 29-34)
12: Arnaud Nuyts: Provisional, Including Protective Measures (Art. 35)
13: Pietro Franzina, Xandra Kramer, Jonathan Fitchen: The Recognition and Enforcement of Member State Jud gements (Arts. 36-57)
14: Jonathan Fitchen, Xandra Kramer: Authentic Instruments and Court Settlements (Arts. 58-60)
15: Martin George, Jonathan Fitchen, Marie-Elodie Ancel: General Provisions (Arts. 61-65)
16: Andrew Dickinson: Transitional Provisions (Art. 66)
17: Pippa Rogerson, Andrea Bonomi, Martin Illmer: Relationship with other Instruments (Arts. 67-73)
18: Andrew Dickinson: Final Provisions (Arts. 74-81)
Appendix 1. The Regulation: English, French and German language versions.
Appendix 2. Comparison of 2001 Regulation and Recast Regulation
Appendix 3. Commission Proposal (Annexes omitted)
Appendix 4. Explanatory Statement within the Final Report of the EP Legal Affairs (JURI) Committee
Appendix 5. Information Published by the Commission Pursuant to Art 76

Needless to say, this is highly recommended to all. It's available to order for £165 from the OUP website.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 3/2015: Abstracts

The latest issue of the *"Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)"* features the following articles:

Jochen Hoffmann, **"Button-click" Confirmation and Cross Border Contract**

Conclusion

Section 312j paragraph 3 and 4 of the German Civil Code (BGB) addresses and secures effective consumer protection with regard to the issue of internet-related "cost traps". Cost traps are websites that are designed to lead to the conclusion of contracts without the consumer's awareness of an obligation to pay. At the same time this regulation transposes Art. 8 par. 3 of the Consumer Rights Directive into German law. In effect, this provision ensures that an e-commerce contract between a trader and a consumer cannot be concluded if the trader does not ensure that the consumer is made aware, prior to placing his order, that he is assuming an obligation to pay, in connection with internet contracts specifically by using an unambiguously labelled button. Since this regulation is applicable to all e-commerce contracts it not only applies to "cost traps", but also to legitimate internet trading. This article addresses the problems arising from the new provision for cross border contracts in the light of the applicable conflict of laws rules.

Jan von Hein, **Authorization Requirements for a Guardian's Transaction Concerning a Vulnerable Adult's Immovable Property – Jurisdiction and Conflict of Laws**

The Court of Justice excluded, in Case C-386/12 – Siegfried Janós Schneider, the applicability of the Brussels I-Regulation to a court's authorization that an adult's guardian required for a transaction concerning immovable property belonging to the adult (Article 1(2)(a) of the Regulation). In his case note, von Hein agrees with the Court's ruling because the authorization requirement was the main object of the proceedings. If the necessity to obtain an authorization arises merely as an incidental question in litigation related to property, however, the Regulation, including the forum rei sitae, remains applicable. Moreover, the author analyses which court is competent to rule on granting an authorization to an adult's guardian for the sale of immovable property and which law is applicable to this question. He looks at this problem both from the point of view of autonomous German PIL and of the Hague Convention on the International Protection of Adults. The article shows that autonomous PIL and the Hague conflicts rules differ considerably and that in the Hague Convention's framework, authorization requirements are treated in a very differentiated manner.

Astrid Stadler, **A uniform concept of consumer contracts in European civil law and civil procedure law? – About the limits of a comprehensive**

approach

In “Vapenik”, the ECJ had to decide whether Article 6 para 1 lit. d of Regulation 805/2004 prevents the confirmation of a judgment by default as a European enforcement order if the judgment was based on a c2c-relation and the plaintiff had not sued the defendant in the Member State where he was domiciled but in the courts where the contractual obligation had to be fulfilled. The question raised was whether Article 6 para 1 lit. d applied only to b2c situations or also to cases in which both parties were consumers. The ECJ denied the application of the provision based on the reasoning that the defendant was not a “weaker party”. This interpretation of the EEO Regulation was deduced from the rationale of “consumer contracts” in the Brussels I Regulation, the Rom I Regulation and Directive 93/13. The ECJ, however, provided only a very cursory comparison of the underlying policies of consumer protection. Particularly the idea of granting consumers a preferential treatment with respect to international jurisdiction differs from the purpose of consumer protection in substantive law and conflict of laws. With respect to Regulation 805/2004 the ECJ’s decision does not adequately balance the interests of the two consumers involved and unnecessarily privileges the plaintiff. It increases the defendant’s risk to suffer from a deficient cross-border service of documents without the chance of objecting to the enforcement of the judgment by raising grounds for non-recognition.

Jörg Pirrung, **Brussels IIbis Regulation and Child Abduction: Stones Instead of Bread ? – Urgent preliminary ruling procedure regarding the habitual residence of a child aged between four and six years**

After twelve mostly satisfactory decisions on the interpretation of the Brussels IIbis Regulation with respect to parental responsibility cases, the ECJ has given only conditional answers to the questions referred to it by the Irish Supreme Court. In this case it was not adequate to use the urgent preliminary ruling procedure instead of an expedited procedure. In substance, the Court interprets Articles 2 (11), 11 of the Regulation as meaning that, where a child was removed in accordance with a judgment later overturned by an appeal judgment fixing the child’s residence with the parent living in the Member State of origin, the failure to return the child to that State following the latter judgment is wrongful, if it is held that the child was still habitually resident in that State immediately before the retention, taking into account the (subsequent) appeal and that the judgment authorising the removal was (only) provisionally enforceable. If it is held, conversely, that the child was at that time no longer habitually resident in the

Member State of origin, a decision dismissing the application for return based on Article 11 is without prejudice to the application of the rules established in Chapter III of the Regulation relating to the recognition and enforcement of judgments given in a Member State. On the whole, the opinion of Advocate General Szpunar stating expressly that the fact that proceedings relating to the child's custody were still pending in the State of origin is not decisive as habitual residence is a factual concept and not depending on whether or not there are legal proceedings, seems more convincing than the judgment itself.

Marianne Andrae, **First decisions of the ECJ to the Interpretation of Article 12(3) Regulation (EC) No 2201/2003, Comment to Cases C 436/13 and C 656/13**

Article 12 (3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 applies to separated matters of parental responsibility. The ECJ classifies this rule as a prorogation of jurisdiction for the holders of parental responsibility. This paper submits several arguments against this judgment. The jurisdiction of the courts is always justified for the particular application and it does not continue after pending proceedings have been brought to a close. This acceptance must be obtained at the time the matter is seized to the courts including the specific issues of the proceeding. An agreement, after the matter was brought to court, does not justify jurisdiction. The tight time requirements must be transferred to the jurisdiction under Article 8 (1) of that regulation. An interpretation whereupon the requirements of the jurisdiction can be fulfilled after pendancy and which orientates to the best interests of the child remains for an amendment of the regulation.

Tobias Helms, **The independent contestability of interlocutory judgments on international jurisdiction in family law cases**

The Stuttgart Higher Regional Court correctly held in its judgment of May 6, 2014 that, contrary to the wording of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG), German courts can pass interlocutory judgments on questions of their international jurisdiction in all family law cases. This conclusion can rightly be reached – in light of the statutory history of the FamFG – by way of an analogous application of Sec. 280 of the Code of Civil Procedure (ZPO).

Rainer Hüßtege, **Grenzüberschreitende Wohngeldzahlungen**

Wulf-Henning Roth, **Applicable contract law in German-Danish trade**
Given the opt-out of Denmark from the Area of Freedom, Security and Justice, Danish courts do not apply the conflict rules of the Rome I-Regulation, but still the EC Convention on the Law Applicable to Contractual Obligations of 1980 (Rome Convention). As Germany has not yet given notice of a termination of the Rome Convention, it appears to be not beyond doubt whether in settings relating to Denmark German courts have to apply the conflict rules of the Rome I-Regulation, given its call for universal application (Article 2) and in the light of Article 24 (1), whereby the Rome Convention shall ("in the Member States") be deemed replaced by the Rome I-Regulation. In contrast, the OLG Koblenz, pointing to Article 1 (4), holds Article 24 (1) to be inapplicable in the specific case as Denmark may not be regarded as a "Member State". The Appellate Court applies the Rome Convention despite the fact that the German legislator has explicitly excluded the direct applicability of the Rome Convention.

Malte Kramme, **Conflict law aspects of the successor's responsibility for debts of the acquired business, before and after the Rome-Regulations**
The German Federal Court of Justice deals, in its decision of 23 October 2013, with several current questions in the field of private international law. Firstly, the court adopts a position on the question of which conflict rule applies to the liability claim against the successor to a mercantile business carrying on the business under an identical trade-name (section 25 para. 1 sentence 1 German Commercial Code). Furthermore, the court decided which law applies to forfeit and limitation of claims underlying the United Nations Convention on Contracts for the International Sale of Goods. As the court applied the old legal regime prior to the entry into force of the Rome-Regulations, the article focuses on the question of how the case has to be solved under the new legal regime. This analysis shows that the Regulations "Rome I" and "Rome II" do not cover the law of obligations in an exhaustive manner. Remaining gaps need to be filled applying nonunified German private international law.

Dieter Henrich, **Children of Surrogate Mothers: Whose Children?**
The legal parentage of children, born by surrogate mothers and handed over to the intended parents, is a highly debated question. Strictly forbidden in Germany, surrogacy is allowed in other countries. In a case of children born by a surrogate mother in California the German intended fathers (a same sex couple) applied for recognition of the decision of the California court, which established a parent-

child relationship between the child and the couple. While the lower courts in Germany denied the application because of incompatibility with German public policy (cf KG IPRax 2014, 72) the Bundesgerichtshof (the Federal Court of Justice) decided in favour of the applicants, but restrained explicitly the recognition on cases of foreign court decisions and to cases, where at least one of the intended parents is the biological parent of the child. So the recognition of foreign birth certificates (e.g. from the Ukraine) is still an open question as well as the recognition of parentage decisions, if neither of the intended parents is a biological parent.

Susanne Lilian Gössl, **Constitutional Protection of ‚Limping' Marriages and the ‚Principle of Approximation'**
The Court decides how to treat a "limping" marriage which is not valid under German law but nevertheless falls in the scope of and is therefore protected by the concept of "marriage" of the German Constitution (Art. 6 para. 1 Basic Law). The article examines how the German status registration law over the last four decades has subsequently been adapted to the needs of cross-border status questions.

Susanne Lilian Gössl, **Adaptation of Status Registration Rules in Cases of ‚Limping' Status**
The subject of this article is how to handle the birth registration of a child born by a surrogate mother according to German and Swiss law. Both legal systems are absolutely opposed to surrogacy but also under the obligation to protect the child's right to know his/her decent. The Swiss Court found a possibility to resolve the resulting legal tension. The author shows that the court's resolution, an adaptation of the national civil status registry law, is a mechanism which has already been frequently used by German courts in other situations of "limping" status. She proposes to extend that existing jurisprudence to cases of cross-border surrogacy.

Alexander R. Markus, **Jurisdiction in Matters Relating to a Contract Under the Brussels/Lugano Regime: Agreements on the Place of Performance of the Obligation in Question and the Principle of Centralisation of Jurisdiction**
According to the Swiss Federal Supreme Court, parties can by agreement only specify the place of performance of the characteristic obligation under article 5(1)(b) of the 2007 Lugano Convention; contractual specifications of the place of

performance of non-characteristic obligations are irrelevant in terms of jurisdiction.

Jörn Griebel, **Investment Arbitration Awards in Setting Aside Proceedings in the US – Questions Regarding the Review of Local Remedies Clauses Within Investment Treaties**
National setting aside proceedings are more and more often concerned with investment arbitration awards. This is due to a constant rise of investment arbitration proceedings. Although two thirds of all investment disputes are adjudicated according to the ICSID rules, which provide for a special review mechanism, the remaining awards may be subject to review before national courts. The US Supreme Court decision had to decide on the degree of review in a dispute concerning local remedies clauses within an investment treaty and the possible impact of such clauses on the consent to arbitrate. The Court held that it had no competence to review the award in respect of such clauses.

Conference on Jurisdiction & Dispute Resolution in the Internet Era

The conference titled Jurisdiction & Dispute Resolution in the Internet Era: Governance and Good Practices, organised by the University of Geneva, the Faculty of Law, and two other institutions, is scheduled for 17 and 18 June 2015 in Geneva. Each conference day is divided into two sessions:

> *Session 1: Conflict of laws/private international law in the Internet era: which courts shall decide Internet-related disputes?*
> *Session 2: What alternative resolution systems for Internet-related disputes today and tomorrow?*
> *Session 3: What mechanisms for solving disputes in the ICT industries? The case of the licensing of Standard Essential Patents (SEP) under Fair,*

Reasonable and Non-Discriminatory (FRAND) terms
Session 4: How shall jurisdictional immunity and inviolability apply in the Internet Era?

More information is available at the conference website.

The Much Expected Ruling on Case C-536/13

The Grand Chamber says:

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State, since that regulation does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State.

Click here to access the decision.

Many thanks to Prof. B. Hess for the alert.

Agnieszka Frackowiak-Adamska on Time for a European ‘full faith and credit clause’ (article)

Dr Agnieszka Frackowiak-Adamska, Chair of International and European Law at the Faculty of Law, Administration and Economics,University of Wroclaw, Poland, has just published an article analysing the possibility of introducing one European general mutual recognition clause for judgments in civil and commercial matters, to replace the today’s plurality of recognition clauses provided by at least 10 different Regulations. In the author’s words, the contribution discusses briefly the acts providing for mutual recognition of judgments in civil and commercial matters. It aims to compare them, to assess if , when and how, they may be replaced by one denominator (part I). Furthermore it explains deficiencies of the current situation, including potential breaches of fundamental rights by some of the acts abolishing the *exequatur* (part II). Finally, a reform proposal is laid down, accompanied by an explanation of potential drawbacks and methods of addressing them.

The paper is published in 2015 Common Market Law Review 52, pp. 191-218.

Professor Ron Brand on “Understanding Judgments Recognition”

The twenty-first century has seen many developments in judgments recognition law in both the United States and the European Union, while at the same time experiencing significant obstacles to further improvement of the law. This article, just posted here to SSRN, describes two problems of perception that have prevented a complete understanding of the law of judgments recognition on a

global basis, particularly from a U.S. perspective. The first is a proximity of place problem that has resulted in a failure to understand that, unlike the United States, many countries allow their own courts to hear cases based on a broad set of bases of jurisdiction, while recognizing judgments from other countries only if they are based on a much narrower set of bases of jurisdiction. This gap between direct and indirect bases of jurisdiction results in a level of discrimination against foreign judgments that does not exist in the United States and some other countries, and makes a harmonized global approach to judgments recognition difficult. The second is a proximity of time problem that has resulted in a failure to remember the full context of Justice Gray's historic analysis in Hilton v. Guyot, the seminal case in U.S. judgments recognition law. This article seeks to explain the consequences of both problems, and then comments on how a clearer understanding of these two problems of proximity may aid in making further progress in judgments recognition law.