Kleinschmidt on the European Certificate of Succession

Jens Kleinschmidt (Max Planck Institute for Comparative and PIL, Hamburg) has Optionales Erbrecht: Das Europäische Nachlasszeugnis als Herausforderung an das Kollisionsrecht (The European Certificate of Succession: An Optional Instrument as a Challenge for Private International Law) posted on SSRN.

The legal systems of the EU Member States have developed varying instruments that enable an heir or legatee to prove his position and protect third parties dealing with the holder of such an instrument ("certificates of succession"). However, these instruments are often of little use when presented abroad. In cases where the estate is located in more than one country, heirs or legatees are therefore required to apply for several national certificates. This will cost them time and money. The EU Succession Regulation (Reg. 650/2012) tackles this unsatisfying situation in two ways. On the one hand, Art. 59 on the "acceptance" of authentic instruments may promote the circulation of national certificates of succession. Under this approach, however, national certificates retain the effects attributed to them by their country of origin. On the other hand, therefore, Arts. 62 ff. create a supranational European Certificate of Succession (ECS) which may be applied for if heirs or legatees of a legatum per vindicationem need to invoke their status or exercise their rights in another Member State. The ECS does not replace the national systems but rather constitutes an optional instrument that may be applied for in lieu of a national certificate. In order to fulfil its purpose, the content of the ECS must be based on uniform private international law rules. Here, despite the harmonization efforts of the Regulation, three areas present particular challenges: (i) the relationship with conflicts rules for matrimonial property, (ii) dealing with legal institutes unknown to the legal system of the Member State where the ECS is presented, and (iii) determining the law applicable to incidental questions. Uniform interpretation and uniform characterization can only be safeguarded by the ECJ, to which, however, not all national authorities competent for issuing an ECS may refer their questions for a preliminary ruling. The ECS is based on a set of uniform rules on competence and procedure that respect the autonomy of the Member States and at the same time ensure that the ECS may perform

its tasks. The question remains whether the ECS will be regarded as an attractive option compared to the existing national certificates. The far-reaching, uniform effects of the ECS and the advantages brought about by standardization regarding language and content speak in favour of the ECS. However, in certain areas a national certificate may afford a more comprehensive protection. Moreover, the implementation of the ECS into practice will have to allay the fear that its issuance may be excessively cumbersome.

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Note: Downloadable document is in German.

The paper is forthcoming in the *Rabel Journal of Comparative and International Private Law (RabelsZ)*.

ELI – UNIDROIT Joint Project on Civil Procedure

The European Law Institute has announced its intention to explore whether to launch a joint project with UNIDROIT on European civil procedure building on the ALI – UNIDROIT Principles of Transnational Civil Procedure.

On 23 May, ELI representatives John Sorabji, Matthias Storme, Remo Caponi and Christiane Wendehorst attended a meeting in Rome kindly hosted by UNIDROIT.

The meeting focused on the development of a joint project between the ELI and UNIDROIT in cooperation with the American Law Institute (ALI) on the topic of

European Civil Procedure.

This meeting enabled various parties of this joint venture to dicuss the scope and aims of the project, ahead of a workshop to be held on 18-19 October where ALI representatives will also be present.

The productive meeting resulted in a draft agenda for October's workshop. It is hoped that the two day event, which will feature a public conference and an expert seminar, will see plans and targets officially established.

The seminar on 19 October will only be open to those invited, but any ELI Fellows who are interested in this field should register their interest with the Secretariat, who will pass this information on to the organisers.

South African Constitutional Court rules on taking of evidence

It is not every day that a Constitutional Court rules on a matter of evidence. The case *Tulip Diamonds FZE v Minister of Justice and Constitutional Development and Others* concerned the taking of evidence in South Africa for a criminal investigation in Belgium. It was on a matter of common interest in South Africa and Belgium: diamonds. In the course of a criminal investigation in Belgium, the authorities issued a letter of request for evidence in South Africa. This concerned evidence that had to be produced by Brinks Southern Africa, established in South Africa. This company was not involved in the suspected criminal activities, but transported diamonds for Tulip from Angola and Congo to the United Arab Emirates. Tulip was the intermediary of Omega, the Belgian company who allegedly imported the diamonds under false certificates to conceal their real value and therefore the company's taxable profit. The documents that the Belgian authorities sought to be transferred concerned invoices by Brinks Southern Africa

to Tulip.

The request was approved by the Minister of Justice and given to a magistrate to carry out. The magistrate issued a subpoena to an employee at Brinks. Before she could submit the documents, Tulip got wind of the request. After negotiations and a temporary interdict by the High Court for Brinks not to transfer the documents, Tulip approached the court for a review of the approving of the request. The issue then arose whether Tulip had standing under the Constitution or under common law to bring these proceedings.

Some of the issues in the case concern criminal procedure law, but the matter of standing is also of interest for civil cases, to my mind.

The judgment (issued on 13 June 2013) is available on the website of the Constitutional Court and on the Legalbrief site.

UK Supreme Court Rules on Anti Suit Injunctions

Yesterday, the Supreme Court of the United Kingdom ruled in Ust-Kamenogorsk Hydropower Plant JSC (Appellant) v AES Ust-Kamenogorsk Hydropower Plant LLP (Respondent) that English courts have jurisdiction to injunct the commencement or continuation of legal proceedings brought in a foreign jurisdiction outside the Brussels Regulation/Lugano regime where no arbitral proceedings have been commenced or are proposed.

The Court issued the following Press Summary.

Background

The appellant is the owner of a hydroelectric power plant in Kazakhstan. The respondent is the current operator of that plant. The concession agreement between the parties contains a clause providing that any disputes arising out of, or connected with, the concession agreement are to be arbitrated in London

under International Chamber of Commerce Rules. For the purposes of this appeal the parties are agreed that the arbitration clause is governed by English law. The rest of the concession agreement is governed by Kazakh law.

Relations between the owners and holders of the concession have often been strained. In 2004 the Republic of Kazakhstan, as the previous owner and grantor of the concession, obtained a ruling from the Kazakh Supreme Court that the arbitration clause was invalid. In 2009 the appellant, as the current owner and grantor of the concession, brought court proceedings against the respondent in Kazakhstan seeking information concerning concession assets. The respondent's application to stay those proceedings under the contractual arbitration clause was dismissed on the basis that the Kazakh Supreme Court had annulled the arbitration clause by its 2004 decision.

Shortly thereafter the respondent issued proceedings in England seeking (a) a declaration that the arbitration clause was valid and enforceable and (b) an anti-suit injunction restraining the appellant from continuing with the Kazakh proceedings. An interim injunction was granted by the English Commercial Court and the appellant subsequently withdrew the request for information which was the subject of the Kazakh proceedings. However, the respondent remained concerned that the appellant would seek to bring further court proceedings in Kazakhstan in breach of the contractual agreement that such disputes should be subject to arbitration in London. As a result the respondent continued with the proceedings. The English Commercial Court found that they were not bound to follow the Kazakh court's conclusions in relation to an arbitration clause governed by English law and refused to do so. The Commercial Court duly granted both the declaratory and final injunctive relief sought.

The appellant appealed to the Supreme Court of the United Kingdom on the grounds that English courts have no jurisdiction to injunct the commencement or continuation of legal proceedings brought in a foreign jurisdiction outside the Brussels Regulation/Lugano regime where no arbitral proceedings have been commenced or are proposed.

Judgment

The Supreme Court unanimously dismisses the appeal. The English courts have a long-standing and well-recognised jurisdiction to restrain foreign proceedings

brought in violation of an arbitration agreement, even where no arbitration is on foot or in contemplation. Nothing in the Arbitration Act 1996 ("the 1996 Act") has removed this power from the courts. The judgment of the court is given by Lord Mance.

Reasons

- An arbitration agreement gives rise to a 'negative obligation' whereby both parties expressly or impliedly promise to refrain from commencing proceedings in any forum other than the forum specified in the arbitration agreement. This negative promise not to commence proceedings in another forum is as important as the positive agreement on forum [21-26].
- Independently of the 1996 Act the English courts have a general inherent power to declare rights and a well-recognised power to enforce the negative aspect of an arbitration agreement by injuncting foreign proceedings brought in breach of an arbitration agreement even where arbitral proceedings are not on foot or in contemplation [19-23].
- There is nothing in the 1996 Act which removes this power from the courts; where no arbitral proceedings are on foot or in prospect the 1996 Act neither limits the scope nor qualifies the use of the general power contained in section 37 of the Senior Courts Act 1981 ("the 1981 Act") to injunct foreign proceedings begun or threatened in breach of an arbitration agreement [55]. To preclude the power of the courts to order such relief would have required express parliamentary provision to this effect [56].
- The 1996 Act does not set out a comprehensive set of rules for the determination of all jurisdictional questions. Sections 30, 32, 44 and 72 of the 1996 Act only apply in circumstances where the arbitral proceedings are on foot or in contemplation; accordingly they have no bearing on whether the court may order injunctive relief under section 37 of the 1981 Act where no arbitration is on foot or in contemplation [40].
- The grant of injunctive relief under section 37 of the 1981 Act in such circumstances does not constitute an "intervention" as defined in section 1(c) of the 1996 Act; section 1(c) is only concerned with court intervention in the arbitral process [41].
- The reference in section 44(2)(e) of the 1996 Act to the power of the court to grant an interim injunction "for the purposes of and in relation to

arbitral proceedings" was not intended to exclude or duplicate the court's general power to grant injunctive relief under section 37 of the 1981 Act [48].

- Service out of the jurisdiction may be affected under Civil Procedure Rule 62.2 which provides for service out where an arbitration claim affects arbitration proceedings or an arbitration agreement; this provision is wide enough to embrace a claim under section 37 to restrain foreign proceedings brought or continued in breach of the negative aspect of an arbitration agreement [49].

H/T: Dominic Pellew

EU Regulation on Mutual Recognition of Protection Measures in Civil Matters

In its 3244th meeting, held in Luxembourg on 6 June 2013, **the JHA Council adopted the regulation on mutual recognition of protection measures in civil matters**, proposed by the Commission in 2011 (see our post by *Marta Requejo* here). The text of the regulation, subject to the ordinary legislative procedure, had been previously adopted by the European Parliament at first reading on 22 May 2013, introducing a number of amendments to the Commission's proposal that were the result of a compromise reached with the Council (the full procedure file is available on the OEIL website; the key events of the legislative history have been reported by *Pietro Franzina* and *Ilaria Aquironi* on Aldricus).

Here's an excerpt of the Council's press release:

> *The regulation will enter into force on the twentieth day following that of its publication in the Official Journal and shall apply from 11 January 2015. The United Kingdom and Ireland have decided to take part in the application and*

the adoption of this instrument.

Denmark will not be bound by it or subject to its application.

What's new?

The regulation will apply to protection measures ordered with a view to protecting a person when there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk, for example as to prevent any form of gender-based violence and violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion. It is important to underline that this regulation will apply to all victims irrespective of whether they are victims of gender-based violence.

The national legal traditions in the area of protection measures are highly diverse. In some national laws protection measures are regulated by civil law, in others by criminal law and some regulate them under administrative law.

A European Sister Judgment for Kiobel?

***An analysis of the Versailles Court of Appeal* case AFPS and OLP v. Alstom and Veolia,** by Elise Maes, Research fellow of the Max Planck Institute Luxembourg

On 22 March 2013, the Court of Appeal of Versailles (France) ruled in the case *AFPS and OLP v. Alstom and Veolia* on the civil liability of two French companies for their role in the alleged illegal construction of a light rail system in the occupied West Bank in Israel.

Facts

In 2000, the Israeli company Citypass Limited was established, which consists of four Israeli companies and two French companies (Alstom Transport and Connex, which operated under the name Veolia Transport as of 2006). Citypass signed in 2004 a public service concession contract with the state of Israel to design, manufacture, exploit and maintain a light rail system. Further on, Alstom and Veolia signed additional contracts with Citypass, regulating the specific rights and obligations in the execution of the concession contract. Alstom and Veolia were however not a party to the general concession contract between Citypass and the State of Israel.

The light rail system connects the City of Jerusalem with the West Bank, which is occupied by Israel. The construction of this transportation system was highly criticised by pro-Palestinian movements, who stated that this project abetted the Israeli occupation. One of these pro-Palestinian groups, the AFPS (l'Association France Palestine Solidarité), filed a claim in 2007 against Alstom and Veolia before a French lower court (*tribunal de grande instance de Nanterre*). Later that year the OLP (l'Organisation de Libération de la Palestine) joined the lawsuit voluntarily and became co-plaintiff. The plaintiffs asserted that the state of Israel illegally occupied Palestinian territory and therefore the construction of the light rail, which continues the alleged illegal Jewish colonisation, is in itself illegal and thus violates several international law provisions. The plaintiffs formulated three demands. First of all, they asked to declare the contract void for unlawful contractual object or purpose. The unlawful contractual object or purpose allegedly lay in the fact that Israel's true motivation in constructing the light rail system was to continue and secure the occupation in the West Bank in violation of several international law provisions, such as the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention) and the Hague Conventions. Secondly, they demanded a prohibition on the further execution of the contract under financial compulsion ("astreinte"), which can be compared to an injunction suit. Finally, they also asked for compensation. The court in Nanterre dismissed the case on 30 May 2011. On 22 March 2013, the Court of Appeal of Versailles confirmed the dismissal.

Corporations not subject to international law

This post will not go into detail about all elements of the substantive claims, but will focus on the justified rejection of civil liability of corporations under international law. The Versailles Court of Appeal rightly stated that the invoked

treaties (among which the Fourth Geneva Convention and the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict) only contain obligations for the contracting State parties. More specifically, the Court ruled explicitly that the defendant companies neither signed the mentioned international law provisions, nor were they recipients of obligations that the treaties contain and as a consequence they are not subjects of international law ("*Les societies intimées morales de droit privé qui ne sont pas signataires des conventions invoquée (sic), ni destinataires des obligations qui les contiennent, ne sont pas, en consequence, des sujets de droit international.*").

The decision is interesting for two reasons.

First of all, the decision is noteworthy with regard to its reasoning. One might argue that it is not *because* the corporations did not sign the treaties or *because* they are not recipients of obligations mentioned in the treaties, that they are not subjects of international law. Instead, the generally acknowledged position in international law that corporations are not counted among the subjects of international law could have been the starting point of the Court's reasoning. From this principle that corporations do not have international personality follows then that corporations cannot sign international treaties and international law cannot inflict rights and obligations on them. Although this reasoning is different, the outcome remains the same: international law has no direct effect on companies.

A European sister for Kiobel?

Furthermore, what makes this French judgment all the more interesting is that the United States Court of Appeals for the Second Circuit appears to have rendered a "sister judgment" in the case Kiobel v. Royal Dutch Petroleum. Both cases show some differences. Kiobel dealt for instance also with the issue of universal jurisdiction and the Supreme Court in the end decided on those grounds. The cases do however have in common that they depart from facts of extraterritorial conduct of corporations that comprised an alleged breach of international law. The Second Circuit was the first and only appellate court to rule that corporations could not be held liable for violations of international law under the American Alien Tort Claim Acts (ATCA).

Depending on the focus, different conclusions can be drawn from the comparison

between both cases.

When it comes to the question whether *corporations are subject to international law*, it cannot be derived from these two judgments that there is a convergence between the United States and the French view on this matter. The Versailles Court referred in its judgment to the American ATCA-case law and decided that it was not relevant for the French case, because the ATCA-case law deals with the application of domestic American law. Indeed, Kiobel dealt with the issue of corporations that had violated international law being civilly liable under *federal common law* (ATCA). The French case on the other hand handled the issue of corporations committing violations of international law and their civil liability under *international law* (the fourth Geneva Convention and the Hague Convention of 1954). Therefore, it cannot be concluded that the Second Circuit's view accords with the Versailles Court's ruling that international law does not create liability for corporations.

On the other hand, when focusing on *civil liability of corporations for violations of international law*, both cases do coincide. In the Second Circuit decision, as well as in the French case, the corporations were not held civilly liable, respectively under domestic law and international law. There seems to be a tendency in the United States and Europe to decline corporate liability for international law breaches (although the Supreme Court in Kiobel did not close the door to all cases of international law violations committed by corporations, given that the Court did not decide explicitly that corporations are immune from the ATCA). Additionally, the intersection between both cases is interesting because they both illustrate that the legal framework for corporate liability for violations of international law is currently underdeveloped, be it under international law or under the applicable national law. As long as multi- and transnational corporations do not have international personality or there is no sufficient national legal framework that regulates corporate international conduct, companies will keep benefiting from this legal gap. With the volume of international commercial transactions growing every day, actions of private companies become increasingly influential. It appears that international law and national legal systems have not yet adapted to this changed reality.

Commission Recommendations collective redress

After years of intensive debates on either sectoral instruments or a horizontal instrument, the European Commission released its long-awaited communication on collective redress on 11 June 2013. To those that have followed the discussions, it will not come as a surprise that the Commission is not proposing a harmonised horizonal EU collective procedure. Instead, it recommends a series of common, non-binding principles for collective redress mechanisms in the Member States that – in the words of Justice Commissioner Viviane Reding – respects the very different traditions in the Member States. The press release, text of the communication and recommendations are available here. The news item reads as follows:

The European Commission has today set out a series of common, non-binding principles for collective redress mechanisms in the Member States so that citizens and companies can enforce the rights granted to them under EU law where these have been infringed. The Recommendation aims to ensure a coherent horizontal approach to collective redress in the European Union without harmonising Member States' systems. National redress mechanisms should be available in different areas where EU law grants rights to citizens and companies, notably in consumer protection, competition, environment protection and financial services. By recommending to Member States to put in place national collective redress mechanisms the Commission wants to improve access to justice, while ensuring appropriate procedural guarantees to avoid abusive litigation. The Recommendation complements the proposal for a Directive on antitrust damage actions (see IP/13/XXXX) harmonising procedural law issues relating to private enforcement other than collective redress.

Let the (academic) debate continue!

Thanks to Steefan Voet, University of Ghent for the 'tip-off'.

Weighing European Private International Law in the Balance

The United Kingdom Government is currently undertaking a review of the competences of the European Union, asking what the European Union does, and how it affects government and the general public in the United Kingdom.

As part of that review, the Ministry of Justice has published a Call for Evidence on the impact of European civil justice instruments and has organised two consultation events, in collaboration with Eva Lein, Research Fellow in Private International Law at the British Institute of International and Comparative Law. The first, on the instruments dealing with civil and commercial matters, was held on Monday 3 June. The second, examining the instruments in the area of family and succession law, is due to be held on Thursday 20 June. Chaired by John Hall of the Ministry, the list of speakers is as follows:

- Carolina Marín Pedreño, Dawson Cornwell
- Mark Harper, Withersworldwide
- Richard Frimston, Russell Cooke
- Professor Paul Matthews, King's College London

The event is free, but places are limited. If you would like to attend, please book online at the Institute's website. The Ministry has also invited written responses to the Call for Evidence (e-mail to balanceofcompetences@justice.gsi.gov.uk or in hard copy to Ministry of Justice, 102 Petty France, SW1H 9AJ). You can also, if this is your thing, share your thoughts about #BOCreview on Twitter @MojGovUK.

The current malaise among many in the UK with the European Union, its institutions and laws is well known. This, however, is an area in which the *acquis*, although not problem free, seems to be working relatively well and to have been favourably received by commercial organisations, including in the financial sector. The Brussels I and Rome I Regulations are generally well-regarded, and (although it is too early to pass judgment) the Rome II Regulation seems to be

bedding down without undue difficulty. Moreover, the UK's opt-out in the civil justice field has given it the flexibility to participate in those instruments that it considers likely to be in the overall interest of businesses and citizens, while exercising caution in other areas. Greater disparities between the common law and the civil law in the areas of family law, wills and succession have resulted in the more frequent exercise of the opt-out, but the UK has remained engaged during negotiations to see if a better fit, satisfactory to other Member States, can be achieved (as in the case of the Maintenance Regulation). Overall, therefore, the balance of EU competence in this area appears satisfactory from the UK's perspective.

It should follow that the UK's policy goal in this area should not be one of retrenchment, but of continued engagement with its partners in the EU to enhance co-operation in the civil justice field, to the benefit of all. That does not, it must be emphasised, require a raft of new measures, or consistent tinkering with the old ones. Instead, it is submitted, the following activities should provide the focus of co-operation in the coming years:

- Strenghtening the EU's institutional framework in the civil justice field, notably by establishing a specialist chamber or court (with specialist judges) dealing only with private law matters. This step, above all, is essential if the EU's legislative activity is to be effective and to maintain the confidence of the Member States and the citizens.
- Ensuring better integration of the private international law instruments with other legislative instruments (particularly Directives) adopting substantive private law rules for the internal market, including for the protection of consumers and employees. The Commission should, as a matter of course, assess the inter-action of proposed, private law measures with the private international law instruments at an early stage.
- Monitoring the application and judicial development across the EU of the civil justice *acquis* as a whole over a longer period, allowing a period of reflection to assess its impact and encourage discussion of possible refinements and incremental developments to ensure better co-ordination of the instruments. The practice of routinely including "5-year review" clauses in civil justice instruments, resulting in a merry-go round of legislative reviews and proposals, should be abolished. It's time to take stock of what we have – after all, it doesn't look too bad.

Liber Amicorum Jean-Michel Jacquet

A Liber Amicorum will be published at the end of the month to honor J.M. Jacquet, who has been the professor of private international law at the Graduate Institute for International Studies in Geneva since 1994 and the Editor in Chief of the *Journal du droit international (Clunet)* since 2003 (*Mélanges en l'honneur du professeur Jean-Michel Jacquet)*.

The book will be structured as follows:

Première partie – Arbitrage et Juridiction Internationale

- Dolores Bentolila, Quelques réflexions sur le statut des tribunaux arbitraux fondés sur des traités en matière d'investissement
- Andrea Bonomi et David Bochatay, L'aménagement de la priorité laissée à l'arbitre pour statuer sur sa propre compétence
- Olivier Cachard, Arbitrage et soupçons de la légalisation de revenus issus d'activités illicites
- Lucius Caflisch, Arbitrage et protection des droits de l'homme dans le contexte européen
- Jean Devèze, L'expert et l'arbitre, différents mais si proches
- Gabrielle Kaufmann-Kohler, The transnationalisation of national contract law
- Catherine Kessedjian, La pratique arbitrale
- Pierre Mayer, La dispersion des demandes connexes entre plusieurs procédures arbitrales est-elle inéluctable ?
- Éric Wyler, Le concept d'acceptabilité du Jus auctoritas au cœur de la juridiction internationale ?

Deuxième partie – Droit du commerce international et droit international économique

- Philippe Delebecque, Droit du commerce international et droit maritime

- Pascale Deumier, Les sources du droit et les branches du droit. À propos d'une conception doctrinale des sources du droit du commerce international
- Marcelo G. Kohen, La portée et la validité des clauses contractuelles exorbitantes de renonciation à l'immunité des États
- Éric Loquin, Retour sur les sources premières de la lex mercatoria : les usages du commerce international
- Suzy H. niKièma, Les« mesures » d'expropriation indirecte en droit international des investissements : les actes et omissions de l'État d'accueil
- Jean-Baptiste Racine, La protection du professionnel contractant en matière internationale
- Luca G. Radicati di Brozolo, Règles transnationales et conflit de lois : réflexionsà la lumière des principes UNIDROIT et des principes de la Haye
- Mélanie Samson, L'Organisation mondialedu commerce : un forum approprié pour la protection de la santé publique ?
- Jorge E. Viñuales, Vers un droit international de l'énergie : essai de cartographie

Troisième partie – Droit international privé

- Isabelle Barrière Brousse, Le droit international privé de la famille à l'heure européenne
- Sabine Corneloup, Entre autonomie conflictuelle et autonomie substantielle le choix du futur Droit commun européen de la vente. À propos de la proposition de règlement de la Commission européenne du 11 octobre 2011
- Hélène Gaudemet-Tallon, Unité et diversité : quelques mots de Droit international privé européen
- Marie-Ange Moreau, Continuité des règles de DIP en matière de contrat de travail international et communautarisation
- Thomas Schultz, Postulats de justice en droit transnational et raisonnements de droit international privé. Premier balisage d'un champ d'étude
- Anne Sinay-Citermann, État des lieux sur les articles 14 et 15 du Code civil en droit international privé

- Claude Witz, L'application du droit étranger en Allemagne (Questions choisies)

Quatrième partie – Droit africain

- Néji Baccouche, Impôt, révolution et démocratisation du système politique tunisien
- Parfait Diédhiou, La reconnaissance et l'exécution des sentences arbitrales dans l'Acte uniforme relatif au droit de l'arbitrage de l'OHADA
- Joseph Issa-Sayegh, Regards sur l'intégration régionale du droit social dans les États africains francophones subsahariens
- Ousmane mBaye, L'Ouest africain à l'épreuve de la mondialisation : étude clinique du Sénégal
- Paul-Gérard pouGoué et Gérard nGoumtsa Anou, L'applicabilité spatiale du nouveau droit OHADA de la vente commerciale et le droit international privé : une réforme inachevée

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Folkman on Comity

Theodore J Folkman (Murphy & King, P.C.) has posted Two Modes of Comity on SSRN.

> *Some have suggested that US courts should not deny recognition and enforcement to foreign judgments on grounds of fraud or a denial of due process in the particular foreign proceeding, as long as the foreign judiciary is systematically adequate. This paper, based on remarks given at the University of Pennsylvania Journal of International Law's Fall 2012 Symposium, evaluates that suggestion by considering the various kinds of comity that US courts accord to one another, in particular, the comity required by the Full Faith and Credit Clause and the comity a federal court gives to a state court in habeas corpus cases. It outlines the ways in which each of these two models of comity can be a model for US treatment of foreign court judgments, and it considers recent decisions in which US courts have shown a tendency to use a more deferential model of comity when considering whether to recognize foreign*

judgments.