A Judgment of the ECHR at the Intersection between International Child Abduction, Parental Responsibility and Migration Law

Pietro Franzina is associate professor of international law at the University of Ferrara.

By a judgment of 30 July 2013 (available only in French), a Chamber of the European Court of Human Rights found that Switzerland had violated its obligations under Article 8 of the European Convention on Human Rights in a cross-border case concerning the return of a minor and his custody (application No. 33169/10, *Polidario* v. *Switzerland*; a press release in English may be found here).

Article 8 of the Convention enshrines the right to respect for private and family life. It provides that there shall be "no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

In 2001, the applicant, Catherine Polidario, a national of the Philippines, had a child with a Lebanese man who had acquired Swiss nationality. A few months later, Ms Polidario, then an illegal immigrant, was ordered to leave the country. She returned to the Philippines with the child. In 2004 she signed an *affidavit* authorising the father to have his son back in Switzerland. The father did not return his son to the Philippines, although the affidavit made clear that he was to keep the child just "for the holidays".

Despite the fact that Ms Polidario held custody rights and parental authority in respect of the child, her attempts with the Swiss authorities to obtain his return to the Philippines were unsuccessful (the State of Philippines, by the way, is not a party to the Hague Convention of 25 October 1980 on the Civil Aspects of

International Child Abduction).

While proceedings were pending in Switzerland concerning the custody of the child, Ms Polidario asked the Swiss immigration authorities for leave to remain in the country, as a means to exercise her parental rights and to maintain a relationship with her son.

Finally, from 2010, custody of the child was awarded to the father and Ms Polidario was granted access rights which had to be exercised in Switzerland, whereas she had no authorisation to stay in the country.

In its judgment, the Court recalled at the outset that, pursuant to Article 8 of the European Convention, States must not only refrain from interfering with an individual's private and family life. Positive obligations arise from the said provision along with negative ones, requiring States to adopt measures aimed at ensuring the actual enjoyment of family rights. This implies, *inter alia*, that the rights relating to the relationship between a parent and his or her child should be determined by the competent authorities on the ground of the legally relevant elements, and not on the ground of the mere fact that a *de facto* situation has eventually consolidated over time ("et non par le simple écoulement du temps").

Thus, the Court added, where the custody of a child is disputed, appropriate measures (including those preparatory measures as may be necessary in order to allow a parent and a child to reunite) should be taken rapidly, since the passage of time may entail irreparable consequences for the family relationships at stake. This was particularly true in the circumstances, in view, among other things, of the age of the child, of the fact that the proceedings in respect of return were brought by the applicant while residing in the Philippines and of the limited financial resources available to the applicant herself.

The Court conceded that, starting from 2010, measures had been taken by the Swiss authorities with a view to ensuring the effective exercise of the applicant's right to entertain regular contacts with the child, although this right – failing an authorisation to reside in Switzerland – had to be exercised by Ms Polidario as an illegal resident, thereby in the absence of a full legal entitlement ("sans bénéficier d'un statut juridique"). The Court further conceded that, in the meanwhile, notably after the procedure in Strasbourg had been initiated, the situation had improved thanks to a temporary permit of stay issued in favour of Ms Polidario.

Yet, according to the Court, the fact remains that the Swiss authorities, by failing to proceed rapidly in respect of the return of the child and his custody and by refusing to issue the applicant with a residence permit, have in fact prevented Ms Polidario to effectively exercise her rights as a parent for six years, *i.e.* from the time of the abduction of the child, in 2004, until 2010.

In the Court's view, this amounted to a violation of Article 8 of the Convention.

International Arbitration and the U.S. Federal Courts: The "Pro-Arbitration Campaign" and the UNCITRAL Rules

In the United States at least, judicial decisions deferring competence to arbitrators seem to be on the rise—if not in number, at least in profile. International Arbitration is no exception. Last week, the United States Court of Appeals for the Ninth Circuit held that both the 1976 and 2010 versions of the UNCITRAL Arbitration Rules authorize the arbitral panel to determine its own jurisdiction and arbitrability. In Oracle America, Inc. v. Myriad Group, A.G. (9th Circ. Docket No. 11-17186, July 26, 2013), the Court of Appeals concluded that "incorporation of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules into an arbitration provision in a commercial contract constitutes clear and unmistakable evidence that the parties to the contract intended to delegate questions of arbitrability to the arbitrator."

The complete facts of the case including the parties' arbitration clause is set out in the text of the judicial decision. In brief, Oracle and Myriad signed a Source License agreement which provided that "[a]ny dispute arising out of or relating to this License shall be finally settled by arbitration [before the AAA and under the UNCITRAL rules]," with certain specified exclusions. When a dispute developed between the parties, Oracle filed suit in the U.S. District Court for the Northern

District of California and sought an injunction preventing Myriad, a Swiss company, from proceeding with arbitration. Myriad responded with a motion to compel arbitration. The District Court granted the injunction and denied the motion to compel arbitration, concluding that the incorporation of the UNCITRAL arbitration rules did not constitute clear and unmistakable evidence that the parties intended to delegate questions of arbitrability to the arbitrator. The district court reasoned that the relevant provision of the 2010 UNCITRAL rules states only that the arbitrator has authority, but not exclusive authority, to decide its own jurisdiction.

The Ninth Circuit rejected that holding. First, the appellate panel resolved a threshold dispute as to whether the 1976 or 2010 versions of the UNCITRAL Rules applied, and ultimately held that there was no substantive difference between the two versions in this regard. With this said, the real issue was whether the incorporation of the UNCITRAL Rules "constitutes clear and unmistakable evidence that the parties intended to arbitrate arbitrability." The Ninth Circuit followed the DC Circuit and the Second Circuit and answered in the affirmative. Indeed, "[v]rtually every circuit to have considered the issue has determined that incorporation of the American Arbitration Association's (AAA) arbitration rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability. *** The AAA rules contain a jurisdictional provision similar to Article 21(1) of the 1976 UNCITRAL rules and almost identical to Article 23(1) of the 2010 UNCITRAL rules."

This decision (and those it relies on) may form the international component of a nationwide trend for federal courts to fall in line with the U.S. Supreme Court's "pro-arbitration campaign." Naturally, though, we must juxtapose this decision with BG Group v. Republic of Argentina, which the Supreme Court will hear and decide in its upcoming term (indeed, the D.C. Circuit case favorably cited by the Ninth Circuit in Oracle was the decision under review in BG Group!). BG Group involves an investment treaty arbitration conducted in the UNCITRAL rules between a British company and Argentina. The tribunal had held that it had jurisdiction to decide the dispute, notwithstanding BG Group's failure to proceed first in Argentina's own courts which the treaty required as a prerequisite to arbitration. While the tribunal would surely have power to decide on arbitrability challenges after the agreement to arbitrate became effective (at least in the Ninth, Second and D.C. Circuits), what about decisions on threshold contract

defenses before the agreement to arbitrate is even triggered? The district court confirmed the award, holding that the arbitrators had power to decide such questions, but the DC Circuit reversed. As the parties and amici begin to file their briefs before the Court, the how far the "pro-arbitration" policies of the FAA and the New York Convention extend is very much in play.

Third Issue of 2013's Journal du Droit International

The third issue of French *Journal du droit international* (*Clunet*) for 2013 was just released. It contains two articles discussing the Brussels I Recast and several casenotes. A full table of content is available here.

The first is authored by Judge Jean-Paul Beraudo, who sat on the French Cour de cassation (*Regards sur le nouveau règlement Bruxelles I sur la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale*).

> *Symbolically, Regulation (EU) n° 1215/2012 meets the project of abolition of the declaration of enforceability prior to enforcement in the Member State addressed, wanted by the Tampere Programme of 1999. Thereby, the enforceability decided in the Member State of origin applies in the entire territory of the European Union. However the recognition, on one hand, is made more difficult than in all previous texts. On the second hand, the new regulation opens more judicial recourses to the opposing party, on more groundings, than in the previous rules. It is regrettable that Regulation (CE) n° 805/2004 creating a European Enforcement Order for uncontested claims, which could have been used as a starting point for the development of Regulation (UE) n° 1215/2012, remained completely ignored.*
>
> *The new regulation also pretends to resolve issues not addressed by the previous texts : assigning a priority of jurisdiction to the court for which a choice-of-court agreement has been concluded in order to decide on the validity*

of this agreement ; stay of proceedings in Member States in case of lis pendens or related action pending before the courts of third States, which are neither member States nor territories bound by the Bruxelles or the Lugano Convention.

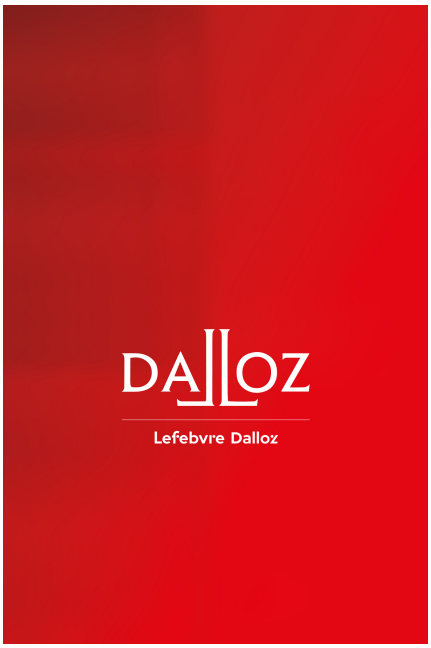
But these rules, incomplete or recessed from the French system of conflict of jurisdictions, give a new life to the old question of whether the ordinary law must prevail on the harmonized law since the first mentioned is more favorable than the second to international judicial cooperation.

Fabien Cadet, who is an administrator at the Council of the European Union, is the author of the second article (*Le nouveau règlement Bruxelles I ou l'itinéraire d'un enfant gâté*).

After two years of intensive negotiations, Regulation No 1215/2012 was adopted recently and recasts Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Council, the European Parliament and the Commission put a special attention on this recast process. This paper analyses the provisions of the new Regulation in the light of the innovations and technical improvements which had been suggested by the Commission in its proposal.

Second Issue of 2013's Revue Critique de Droit International Privé

The last issue of the *Revue critique de droit international privé* will shortly be released. It contains four articles and several casenotes. A full table of contents is available here.



Franco Ferrari (NYU Law School), *Tendance insulariste et lex forisme malgré un droit uniforme de la vente*.

> *The principles governing interpretation of article 7 of the Vienna Convention on the international sale of goods discourage the formation of any conceptual dependency with national legal systems and, moreover, banish any practice leading to its eviction in favour of the lex fori. This article shows that the case-law of the various Contracting States does not always comply with such prohibitions directed at insularism and lexforism and envisages the means through which to deal with trends which run counter to the uniformity of the law of international sales.*

Christelle Chalas (Paris VIII University), *L'affaire* Ferrexpo *: baptême anglais pour l'effet réflexe des articles 22, 27 et 28 du règlement Bruxelles I.*

Cecile Legros (Rouen University), *A propos de l'affaire du* Costa Concordia *: les méandres des sources applicables à la responsabilité civile contractuelle du transporteur de passagers par voie maritime. Qu'apporte le règlement « accidents maritimes » du 23 avril 2009 ?*

> *The tragic affair of the Costa Concordia wreck incites us to study the regime applicable to compensation of damages suffered by passengers of a cruise or a maritime transport, especially when the situation is international. In this field, potentially applicable rules are numerous, conflictual as well as substantial.*

Thus, identifying the relevant source – international convention, european Regulation, or domestic rule applicable through a conflictual mechanism – is quite complex. The entry into force in december 2012 of a new european Regulation on maritime accidents may change the deal. This Regulation uniformizes the liability regime of the carrier, not only of transports linked with EU, but also of certain domestic transports. Its provisions aim to improve passengers' rights without however enabling them to access to a protectory regime consistent with consumer law.

Domenico Damascelli (University of Salento, Italy), *La « circulation » au sein de l'espace judiciaire européen des actes authentiques en matière successorale.*

Swedish Conference on Civil Justice in the EU

On 17-18 October 2013, the Swedish Network for European Legal Studies, the Faculty of Law of Uppsala University and the Max Planck Institute Luxembourg will organize a conference in Uppsala: Civil Justice in the EU – Growing and Teething? Questions regarding implementation, practice and the outlook for future policy.

Conference Day 1: October 17th

9.00 Opening of the Conference
Prof. Antonina Bakardjieva Engelbrekt, Stockholm University, Chairman of the Swedish Network for European Legal Studies

9.15 Keynote Address – The State of the Civil Justice Union
Prof. Burkhard Hess, Max Planck Institute Luxembourg

9.45 Avoiding "Torpedoes" and Forum Shopping
Does the jurisdiction framework work in practice?
What about third country litigants and the EU legal order?

Has the ECJ:s case law added predictability?
Chair Docent Marie Linton, Uppsala University
Prof. Gilles Cuniberti, University of Luxembourg
Prof. Trevor Hartley, London School of Economics
Prof. Michael Hellner, Stockholm University
Deputy director Erik Tiberg, The Government Offices of Sweden

11.00 Coffee

11.30 Alternative Dispute Resolution
Are the new rules for consumer ADR and ODR the right approach?
Can mandatory mediation ensure access to justice?
Is further and deeper regulation the way forward?
Chair Prof. Bengt Lindell, Uppsala University
Prof. Antonina Bakardjieva-Engelbrekt, Stockholm University
Dr. Jim Davies, University of Northampton
Dr. Cristina Mariottini, Max Planck Institute Luxembourg

12.45 Lunch

14.15 Simplified Procedures and Debt Collection – Much Ado About Nothing?
Has an additional small claims mechanism added anything in practice?
Enforcement and payment orders – Has the removal of exequatur been successful?
Attachment of bank accounts – First step to harmonization of execution measures?
Chair Prof. Torbjörn Andersson, Uppsala University
Dr. Mikael Berglund, The Swedish Enforcement Authority
Dr. Carla Crifò, University of Leicester
Prof. Xandra Kramer, Erasmus University
Dr. Cristian Oro, Max Planck Institute Luxembourg

15.30 Coffee

16.00 Track 1 – Family Law
Choice of law in divorce matters not for all Member States –First step in civil justice fragmentation?
How will the new Regulation on Succession change the landscape of civil justice?
Chair Prof. Maarit Jänterä-Jaareborg, Uppsala University

Dr. Björn Laukemann, Max Planck Institute Luxembourg
Other speakers pending confirmation

Track 2 – Collective Redress
Can it provide additional guarantees for European consumers?
Is it a necessary step in private enforcement of competition law?
Observations on the Commission Recommendation
Chair Dr. Eva Storskrubb, Roschier
Prof. Laura Ervo, Örebro University
Prof. Michele Carpagnano, University of Trento
Dr. Rebecca Money-Kyrle, University of Oxford
Dr. Stefaan Voet, Ghent University

Conference Day 2: Friday, October 18th

9.00 The Quest for Mutual Recognition
Are the current network initiatives and e-justice measures enough?
Balancing efficiency in civil justice against procedural human rights
How are the national courts coping with mutual recognition?
Is complete abolition of exequatur possible?
Chair Prof. Antonina Bakardjieva-Engelbrekt, Stockholm University
Prof. Torbjörn Andersson, Uppsala University
Docent Marie Linton, Uppsala University
Prof. Marta Requejo-Isidro, Max Planck Institute Luxembourg
Dr. Eva Storskrubb, Roschier

10.15 Future Measures and Challenges
EU Commission (Representative to be confirmed)
Legal Counsellor Signe Öhman, The Permanent Representation of Sweden

11.30 End of Day 2

The conference is free of charge. For registration, see here.

The 3rd Petar Sarcevic conference on family law

The Third International Scientific Conference Petar Sarcevic: *Family and Children – European Expectations and National Reality* will take place in Opatija, Croatia, on 20-21 September 2013. The programme of this conference includes the following speakers and topics:

Friday, 20 September

Prof. Dr. KATARINA BOELE-WOELKI
Utrecht University
Family Law in Europe: Past, Present, Future – Keynote Address

Dr. BRANKA RESETAR
J. J. Strossmayer University of Osijek
European Principles on Parental Responsibility in the 2013 Draft Family Act

Prof. Dr. NENAD HLACA
University of Rijeka
Misuse of the Right to Family Reunification

Prof. Dr. AUKJE VAN HOEK
University of Amsterdam
Mediation in Family Matters with a Cross-Border Element – The Dutch Experience

Saturday, 21 September

Prof. PAUL BEAUMONT
Aberdeen University
A Possible Framework for a Hague Convention on International Surrogacy

Prof. Dr. COSTANZA HONORATI
University of Milano-Bicocca
The New Italian Provisions on Unicity of Status Filiationis and their PIL Implications

Dr. INES MEDIC MUSA
University of Split
Cross-Border Placement of a Child under the 1996 Hague Convention and the Brussels II Regulation

Dr. MIRELA ZUPAN
J. J. Strossmayer University of Osijek
Key Issues in the Application of the Maintenance Regulation

Dr. PATRICIA OREJUDO PRIETO DE LOS MOZOS
Compultense University of Madrid
Matrimonial Crisis under the Brussels II Regulation

Dr. THALIA KRUGER
University of Antwerp
Partners Limping Accross Borders?

Prof. Dr. VESNA TOMLJENOVIC and Dr. IVANA KUNDA
EU General Court, University of Rijeka
Rome III: Is it Right for Croatia?

The conference is scheduled to commence at 4 pm on Friday 20 September and continue the next morning at the hotel 4 opatijska cvijeta, with privileged prices for the conference attendees sending this accommodation form. The registration form for the conference should be sent to zeup@pravri.hr just as any questions regarding the conference. Here are also the details regarding the payment of the conference fee.

This conference follows the two Petar Sarcevic conferences reported previously, the first on the Brussels I Regulation and the second on maritime law. There seems to be no better topic for the third conference devoted to Petar Sarcevic than family law. His academic interests focused not only on private international law but extensively also on family law. In 1998 he became an associate member and in 2001 full member of the prestigious Institut de droit international and was appointed as Rapporteur of the Fourth Commission on the topic “Registered Partnership in Private International Law”. He was a member of numerous other international associations, including the International Society of Family Law, where he served as its president from 1997 to 2000 and member of the Executive Council for almost 15 years. Unfortunately, he was unable to lecture at The

Hague Academy of International Law on the topic “Private International Law Aspects of Cohabitation Without Formal Marriage” in July 2005.

Do we need a Rome 0-Regulation?

As reported earlier in our blog, Stefan Leible and Hannes Unberath from the University of Bayreuth hosted a conference on the question whether we need a Rome 0-Regulation in June 2012. Recently, the conference volume has been published. For the moment it is available in German only. However, the editors are contemplating an English version at a later stage.

The volume contains the following contributions:

- *Felix M. Wilke*, Einführung, pp. 23 et seq.
- *Erik Jayme*, Kodifikation und Allgemeiner Teil im IPR, pp. 33 et seq.
- *Rolf Wagner*, Das rechtspolitische Umfeld für eine Rom 0-Verordnung, pp. 51 et seq.
- *Michael Grünberger*, Alles obsolet? – Anerkennungsprinzip vs. klassisches IPR, pp. 81 et seq.
- *Giesela Rühl*, Allgemeiner Teil und Effizienz. Zur Bedeutung des ökonomischen Effizienzkriteriums im europäischen Kollisionsrecht, pp. 161 et seq.
- *Helmut Heiss/Emese Kaufmann-Mohi*, ”Qualifikation“ Ein Regelungsgegenstand für eine Rom 0- Verordnung?, pp. 181 et seq.
- *Gerald Mäsch*, Zur Vorfrage im europäischen IPR, pp. 201 et seq.
- *Oliver Remien*, Engste Verbindung und Ausweichklauseln, pp. 223 et seq.
- *Heinz-Peter Mansel*, Parteiautonomie, Rechtsgeschäftslehre der Rechtswahl und Allgemeinen Teil des europäischen Kollisionsrechts, pp. 241 et seq.
- *Marc-Philippe Weller*, Der ”gewöhnliche Aufenthalt“ – Plädoyer für einen willenszentrierten Aufenthaltsbegriff, pp. 293 et seq.
- *Martin Gebauer*, Stellvertretung, pp. 325 et seq.
- *Jan von Hein*, Der Renvoi im europäischen Kollisionsrecht, pp. 341 et seq.

- *Florian Eichel*, Interlokale und interpersonale Anknüpfungen, pp. 397 et seq.
- *Hans Jürgen Sonnenberger*, Eingriffsnormen, pp. 429 et seq.
- *Wolfgang Wurmnest*, Ordre public, pp. 445 et seq.
- *Eva-Maria Kieninger*, Ermittlung und Anwendung ausländischen Rechts, pp. 479 et seq.
- *Stefan Leible*, Hannes Unberath, p. 503

More information is available on the publisher's website (in German).

PhD Positions in Private International Law in Luxembourg

The Faculty of Law of the University of Luxembourg will be seeking to recruit several PhD candidates in Private International Law.

Candidates should be PhD students who will be expected to work on their doctorate, to teach a few hours per week (one to three) and to contribute to research projects in private international law, mostly under my supervision. They are 3-year contracts, which can be extended for one year.

Ideally, candidates would hold a Master's degree in private international law or in international dispute resolution (litigation or arbitration). Their language skills should be sufficient to work in a multilingual environment. Skills in another social science (economics, political science, etc…) would be an advantage.

Applications should include:

- A motivation letter.
- A detailed curriculum vitae with list of publications and copies thereof, if applicable.
- A transcript of concluded university studies.
- The name, current position and relationship to the applicant, of one

referee.

They should be sent to me by email (gilles.cuniberti@uni.lu). I am also available to answer any questions at the same address.

Deadline for applications: September 1st, 2013.

Lex Mercatoria, International Arbitration and Independent Guarantees

What is the relationship among the new *lex mercatoria*, international commercial arbitration, and independent contract guarantees?. Under the title "*Lex Mercatoria*, International Arbitration and Independent Guarantees: Transnational Law and How Nation States Lost the Monopoly of Legitimate Enforcement", a recently published essay by Cristian Gimenez Corte analyses how these elements interact; whether their interaction may have led to the establishment of a new, truly autonomous, transnational legal system; and, if it does, whether and how the transnational legal system is related to, and impacts on, national legal systems. Accordingly, the essay does not seek to provide an in-depth analysis of the nature of each of these legal institutions separately; it rather studies the relations among them, and the outcome of these relations.

Let's start with the relationship between the new *lex mercatoria* and international commercial arbitration. An international contract may be governed solely on the basis of the transnational *lex mercatoria*, without reference to any national law. However, if a dispute arises, one of the parties may bring a claim before a national court, and then national law will necessarily come into play. The parties to an international contract may still, nonetheless, circumvent the jurisdiction of national courts, which are the constitutional organs of the state with the power to adjudicate legal disputes, and refer their dispute to arbitration. This interplay between the substantive *lex mercatoria* and international commercial arbitration

as a dispute settlement mechanism has been seen as establishing an 'autonomous' legal system, independent from national legal systems.

Yet, if the arbitral award is not executed voluntarily, the wining party will have to request the assistance of a national court, and of national law, to *enforce* the arbitral award. Thus, at the end of the day, the transnational legal system would not be entirely autonomous; it would depend upon national law, because at the moment of truth, legitimate enforcement remains a monopoly of the governments of nation states.

At this point, independent contract guarantees enter into play. Parties to an international contract may choose the new *lex mercatoria* as the substantive law of the contract; they may also incorporate an arbitration clause; and, finally, they may agree on an independent contract guarantee as a warrant for the execution of the award. In accordance with the terms and conditions of the independent contract guarantee, the guarantor will pay the winner of the arbitration upon demand, accompanied by the award. Hence, the arbitral award will be enforced without the intervention of any national court.

As seen, the *classical* theory of the *lex mercatoria* as an autonomous system of law finds its own limits at the enforcement stage. The incorporation of independent contract guarantees, however, allows that limit to be exceeded by providing the *lex mercatoria* with its own means of enforcement, thus establishing a truly autonomous and transnational system of law.

In this scenario, the transnational legal system is composed of substantive transnational customary law, which is implemented by private arbitrators, who may even enforce their own decisions without support from national courts. Hence, there is no participation or control by the constitutional organs of national states over the production, adjudication, or even enforcement of transnational law. This situation should necessarily lead to the question of the formal validity and the legitimacy of transnational law—that is, how and on whose behalf this 'law' is invoked and applied.

As said, these arguments are developed in depth in an article published in the *Transnational Legal Theory* journal, which further examines whether and how national law 'validates' transnational law, by analysing the interplay and linkages between them. As a conclusion, the study briefly addresses the issue of the

legitimacy of the transnational legal system.

Source: Transnational Legal Theory, Volume 3, Number 4, 2012, pp. 345-370. Click here to access. Also available at SSRN.

Rolph on Australia as a Destination for 'Libel Tourism'

David Rolph (University of Sydney Law School) has posted Splendid Isolation? Australia as a Destination for 'Libel Tourism' on SSRN.

> *The phenomenon of 'libel tourism' has caused tension between the United States and the United Kingdom. The issue highlights the differences between American and English defamation laws and conflict of laws rules. Both in the United States and the United Kingdom, there has been legislation proposed or enacted to address the real or perceived problem of 'libel tourism'. This article analyses 'libel tourism' and the responses to it in both countries. Given that Australia's defamation laws and conflict of laws rules are arguably more restrictive than those of the United Kingdom, this article examines the prospect of Australia becoming an attractive destination for 'libel tourism'.*

The paper was published in the *Australian International Law Journal* in 2012.