Land Grabbing in Mubende-Neumann (article)

Professor Zamora Cabot continues his line of research on the subject of multinational enterprises liability with this article (ckick here to download), where he raids into a field of the out-most concern, such as that of land grabbing, over the very significant case *Mubende-Neumann*.

After an introduction, Section I highlights some of the most relevant aspects of the subject matter; at the same time it indicates the working plan. Then, in Section II, the author implements a definition of the land grabbing phenomenon, together with the trends over which an exponential growth has been based. Also, some basic questions such as those of property titles on lands and their surrounding problems, together with the influence of the right to food and the right to land, are developed. This Section concludes by referring to regulatory approaches based on non-committal attitudes when it comes to facing land grabbing, and the special scrutiny it should undergo in connection with countries either submerged or suffering from conflict situations, i.e., weak environments where land grabbing problems may develop into human rights questions.

Section III states the facts and legal consequences of the case *Mubende-Neumann,* a procedure of massive eviction that took place in Uganda in 2001, where the Government, after signing an agreement with a firm of German origin, expelled in a particularly brutal and violent way more than two thousand people from the lands they occupied, and delivered them to a branch of the above-cited corporation. These facts prompted a legal proceeding in Uganda, on the one hand, and another one based on the OECD Guidelines for multinational companies, on the other; both are exposed in the article in a synthetic way. The author ends this Section by setting off the report drawn up by GI-ESCR on this case before the United Nations Human Rights Committee, and the notes addressed by the Committee to Germany (October 2012) in its Concluding Observation nº 16.

Section IV deals with the subject of the so-called “extraterritorial obligations” of the States, explaining their precedents, the main actors implied in their development, their legal framework (the Covenant of Civil and Political Rights

and the Covenant on Economic, Social and Cultural Rights, as the most outstanding among them). It also adresses the issue of how to conciliate these obligations with extraterritorial laws.

The study ends up in Section V with some concluding reflections, critical remarks adressed to the German authorities performance in the case under consideration and, more generally, in all cases arising out of human rights violations on the part of the German multinational corporations. Still, as a note of hope, the autor underlines the increasing number of occasions in which the countries hosting companies and investments are reacting in favour of the affected communities through their institutional framework. As exemple, the Instance decision issued by a judge of Kampala in the case *Mubende-Neumann* or, just as well very recently, that of the Supreme Court in India, *Comunidad Dongria Kondh, of Orissa*, in face of the mining colossus Vedanta. Two cases in which the fight both affected communities undertook in defence of their rights turned to be decisive, thus constituting a most important pattern and a valuable element for reflection towards the future.

South African Constitutional Court does it again

On 27 June 2013 South Africa's constitutional court has ruled on two matters of interest for specialists of private international law, specifically international civil procedure.

In the first judgment, *Government of Zimbabwe v. Fick and Others*, the Court ruled on the enforcement of a costs order granted by the Tribunal of the Southern African Development Community (SADC). At the basis of the dispute was the expropriation of the land of Zimbabwean farmers without compensation. The Tribunal, with its seat in Windhoek, Namibia, has in the meantime been suspended due to the political row that followed this and other judgments.

When Zimbabwe refused to comply with the costs order, the farmers approached

the South African courts for registration and enforcement. Property belonging to Zimbabwe, and situated in South Africa, was attached.

On the matter of immunity the Constitutional Court found:

"*Zimbabwe's agreement to be bound by the Tribunal Protocol, including article 32*[on enforcement and execution]*, constitutes an express waiver in terms of section 3(1) of the Immunities Act. It is a waiver by Zimbabwe of its right to rely on its sovereign immunity from the jurisdiction of South African courts to register and enforce decisions of the Tribunal made against it.*"

The Constitutional Court ruled that the common law rules on enforcement, applicable to the judgments of foreign states, had to be extended to the judgments granted by international tribunals.

The second judgment, *Mukaddam v. Pioneer Foods (Pty) Ltd and Others*, concerned a class action against a number of producers of bread, based on anti-competitive conduct. Mr Mukaddam was one of a number of bread distributors. The Competition Tribunal had already found the producers guilty of anti-competitive conduct and imposed fines. The High Court of the Western Cape and the refused certification, since many of the applicants were corporate entities and since the courts found that the issues raised against the various respondents were different.

In its judgment, *Children's Resource Centre Trust v Pioneer Food* (delivered on 29 November 2012), the Supreme Court of Appeal grappled with the issue that the South African Constitution allows class actions (in s. 38c), but that there is no legislation on the matter. The Court stated: "*We are thus confronted with a situation where the class action is given express constitutional recognition, but nothing has been done to regulate it. The courts must therefore address the issue in the exercise of their inherent power to protect and regulate their own process and to develop the common law in the interests of justice.*"

It has long been disputed whether class actions are only permitted in constitutional matters or also in civil matters. Therefore the claimants invoked their right to access to food (s. 27,1b of the Constitution). The Court, however, found that their right to access to the courts (s. 34) was sufficient to allow a class

action, as they would not be able to bring their claims as individual plaintiffs. Moreover, the Court recognised the general possibility of civil class actions and set down requirements for such actions, including certification. The Court set down the elements that a court should use in the assessment of certification:

- the existence of a class identifiable by objective criteria;
- a cause of action raising a triable issue;
- that the right to relief depends upon the determination of issues of fact, or law, or both, common to all members of the class;
- that the relief sought, or damages claimed, flow from the cause of action and are ascertainable and capable of determination;
- that where the claim is for damages there is an appropriate procedure for allocating the damages to the members of the class;
- that the proposed representative is suitable to be permitted to conduct the action and represent the class;
- whether given the composition of the class and the nature of the proposed action a class action is the most appropriate means of determining the claims of class members.

The Court subsequently allowed certification of one of the classes and refused certification for the other in this particular case (the different classes related to different geographical areas of the country and different dates).

The standard set by the Supreme Court of Appeal was accepted by all parties, and the Constitutional Court proceeded on that basis. The Court then found that the factors laid down by the Supreme Court of Appeal had to be assessed in view of the interests of justice and that the absence of one factor must not oblige a court to refuse certification. The appeal was allowed on this basis. The South African Courts are thus again developing the law of civil procedure.

A New Rule of Venue for

Proceedings involving Foreign Companies in Italy

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

The Italian Government has recently adopted a package of measures aimed at stimulating growth and enhancing the efficiency of public administration (decree No 69 of 21 June 2013). Some of these measures relate to civil procedure. One of them is specifically concerned with litigation featuring a foreign element.

Under article 80 of the decree, where jurisdiction lies with Italian courts (be it under EU rules, international conventions or domestic provisions), civil proceedings involving a company whose seat is situated outside Italy may be decided solely by the Tribunal of Milan, Rome and Naples. Milan shall be in charge of proceedings that would otherwise need to be commenced before the courts of northern regions; Rome would do the same in respect of cases that would normally be brought before the courts of central Italy, including Sardinia; Naples will cover the southern part of the country, including Sicily.

The new provision shall apply, in principle, to all proceedings in civil and commercial matters to which a foreign company is a party, provided the latter does not have a branch or an establishment with a permanent representative in Italy. Multi-party proceedings involving but one foreign company shall likewise fall within the scope of the rule. This shall include cases where a foreign company is sued as a third party in an action on a warranty or guarantee: in this scenario, should the original proceedings be instituted before a court other than the "major" courts mentioned above, both the original and the third-party proceedings shall be transferred – upon the request of the foreign company at stake – to the competent "major" court.

By way of exception, the ordinary provisions on venue shall remain applicable in matters relating to consumer contracts, employment contracts and social security, as well as to proceedings to which an Italian administrative authority is a party.

The new provision, it is submitted, shall not prevent an Italian court other than

the courts indicated above to entertain a claim where it is the court specifically designated by a valid choice-of-court agreement. In matters governed by article 23 of the Brussels I regulation (and, tomorrow, article 25 of regulation No 1215/2012), a different reading would actually defeat the purpose of the uniform regime and should accordingly be disregarded as inconsistent with the primacy of EU law. The same may be said of choice-of-court agreements governed by the Lugano Convention of 2007, the respect for which is equally ensured by EU law through article 216(2) of the TFEU.

Article 80 of the decree does not purport to affect the provisions governing venue in respect of enforcement and insolvency proceedings.

The new rule is intended to apply to proceedings instituted on or after the thirtieth day following the entry into force of the statute expected to convert the decree into law. During the conversion procedure, due to be concluded by the end of August, the provision might be amended by the Italian Parliament.

It is reasonable to expect that, further to the reform, Italian judges having a particular expertise in the field of private international law will tend to concentrate in the “major” courts indicated above.

UPDATE – On 15 July 2013, the committees of the Italian Chamber of Deputies charged with constitutional affairs and financial matters have jointly adopted a resolution proposing, inter alia, to delete Article 80 of the decree altogether. While the resolution does not represent in itself the final decision of the Italian Parliament on the issue, it is now highly likely that the statute whereby the decree will be converted into law will not include the new rule on venue. As a matter of fact, a strong opposition against the new provision had appeared soon after the decree was published, coming from different stakeholders, including the Italian Bar Council.

Addresses to the French PIL Committee, 2010-2012

The collection of the addresses to the French Private International Law Committee (*Comité français de droit international privé*) during academic years 2010-2011 and 2011-2012 was just published.

The committee is addressed by four speakers each year, typically two young French academics, one practitioner and one foreign academic. The publication includes non only the paper of the speaker, but also the debate which followed (all in French).

The last volume addressed the following topics:

Cyril NOURISSAT : La Cour de justice face aux règlements de coopération judiciaire en matière civile et commerciale

Bénédicte VASSALLO : La réception en France des décisions étrangères d'adoption

George A. BERMANN : Les questions liminaires en arbitrage commercial international

Tristan AZZI : La volonté tacite en droit international privé

Sabine CORNELOUP : Les questions préalables de statut personnel dans le fonctionnement des règlements européens de droit international privé

Horatia MUIR WATT : Les enjeux de l'affaire Kiobel : le chaînon manquant dans la mise en oeuvre de la responsabilité des entreprises multinationales en droit international public et privé

Sandrine CLAVEL : La place de la fraude en droit international privé contemporain

Gabrielle KAUFMANN-KOHLER : La qualification en arbitrage commercial international

ECJ Rules on Compatibility of Rules on Liability of Foreign Parent Companies with Freedom of Establishment

On 20 June 2013, the Court of Justice of the European Union ruled in Impacto Azul Lda v. BPSA 9 and Bouygues on whether national legislation which precludes the application of the principle of the joint and several liability of parent companies vis-à-vis the creditors of their subsidiaries to parent companies having their seat in the territory of another Member State is contrary to the European freedom of establishment.

The Case

On 28 July 2006, Portuguese corporations Impacto Azul and BPSA 9 concluded a promissory contract for sale and purchase ('the contract') under which Impacto Azul promised to sell a new building to BPSA 9 and the latter undertook to purchase it. According to Impacto Azul, BPSA 9 did not fulfil its contractual obligations. BPSA 9 was 100% owned by SGPS, which also had its seat in Portugal, and which was, in turn, wholly controlled by the French company Bouygues Immobilier, the parent company that managed all of the companies that formed the group. Owing to the economic crisis and unfavourable market conditions, Bouygues Immobilier decided to withdraw from the project thereby causing Impacto Azul to suffer losses caused by that withdrawal.

Following an attempt to reach an amicable settlement of the dispute with BPSA 9, Impacto Azul brought before the Tribunal Judicial de Braga (District Court of Braga) an action for damages against that company for non-performance of the contract and claimed, inter alia, that the breach of contract was attributable primarily to SGPS and to Bouygues Immobilier, as parent companies, in accordance with the joint and several liability of parent companies for the

obligations of their subsidiaries under Portuguese law.

The defendants contended that joint and several liability of parent companies did not apply to parent companies having their seat in another Member State under Portuguese law. Bouygues Immobilier having its seat in France, it could not therefore be held liable vis-à-vis the creditors of BPSA 9.

Since that exclusion leads to a difference in treatment between parent companies having their seat in Portugal and parent companies having their seat in another Member State, Impacto Azul alleged an infringement of Article 49 TFEU.

The Judgment

Is the Portuguese legislation a restriction to the European freedom of establishment?

> *35 It should be pointed out that, having regard to the fact that the rules concerning corporate groups are not harmonised at European Union level, the Member States remain, in principle, competent to determine the law applicable to a debt of a related company. Thus, Portuguese law provides for the joint and several liability of parent companies vis-à-vis the creditors of their subsidiaries, only in respect of parent companies having their seat in Portugal. As the Commission correctly points out, in circumstances such as those at issue in the main proceedings, it is not contrary to Article 49 TFEU that a Member State may legitimately improve the treatment of claims of groups present on its territory (see, by analogy, Case 237/82 Jongeneel Kaas and Others [1984] ECR 483, paragraph 20).*
>
> *36 Indeed, exclusion of the application of rules such as those in Article 501 of the CSC to undertakings established in another Member State, pursuant to the rules set out in Article 481(2) of the CSC, is not such as to make less attractive the exercise, by parent companies having their seat in another Member State, of the freedom of establishment guaranteed by the Treaty.*
>
> *37 In any event, parent companies having their seat in a Member State other than the Portuguese Republic may choose to adopt, through contractual means, a system of joint and several liability for the debts of their subsidiaries.*

Final Ruling:

Article 49 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which excludes the application of the principle of the joint and several liability of parent companies vis-à-vis the creditors of their subsidiaries to parent companies having their seat in the territory of another Member State.

ECJ Rules on Impact of Opposition to European Order for Payment on Jurisdiction

On 13 June 2013, the Court of Justice of the European Union ruled in Goldbet Sportwetten GmbH v. Massimo Sperindeo (Case C 144/12) on the impact of opposition to a European Order of Payment on jurisdiction under the Brussels I Regulation.

European Orders for Payment are issued ex parte. Defendants are entitled to oppose them. If they do, the case is handled under traditional rules of civil procedure. An issue is whether defendants who merely oppose European Orders, but do not challenge jurisdiction at the same time, submit to the jurisdiction of the court which issued the European Order under Article 24 of the Brussels I Regulation.

The Case

On 19 April 2010, Mr Sperindeo, acting through his lawyer, lodged a statement of opposition to the European order for payment within the prescribed time-limit. The grounds for his opposition were that Goldbet's claim was unfounded and that the sum claimed was not payable.

Prompted by that statement of opposition, the Bezirksgericht für Handelssachen Wien referred the case to the Landesgericht Innsbruck (Innsbruck Regional

Court), taking the view that the latter court was the competent court for the ordinary civil procedure within the meaning of Article 17(1) of Regulation No 1896/2006.

Before the Landesgericht Innsbruck, Mr Sperindeo pleaded, for the first time, a lack of jurisdiction of the Austrian courts, on the ground that he was domiciled in Italy. Goldbet contended that the Landesgericht Innsbruck had jurisdiction as the court for the place of performance of the obligation to pay a sum of money, in accordance with Article 5(1)(a) of Regulation No 44/2001. In any event, according to Goldbet, the Landesgericht Innsbruck had jurisdiction under Article 24 of Regulation No 44/2001, since Mr Sperindeo, having failed to plead lack of jurisdiction when he lodged a statement of opposition to the European order for payment in question, had entered an appearance within the meaning of that article.

The Judgment

The ECJ ruled that the statement of opposition to the European Order can only produce the effects prescribed by Regulation No 1896/2006.

> *29 [Regulation No 1896/2006] is not adversarial. The defendant will not be aware that the European order for payment has been issued until it is served on him. As is apparent from Article 12(3) of Regulation No 1896/2006, it is only then that he is advised of his options either to pay the amount indicated in that order to the claimant or to oppose the order in the court of origin.*
>
> *30 The defendant's option of lodging a statement of opposition is thus designed to compensate for the fact that the system established by Regulation No 1896/2006 does not provide for the defendant's participation in the European order for payment procedure, by enabling him to contest the claim after the European order for payment has been issued.*
>
> *31 However, where a defendant does not contest the jurisdiction of the court of the Member State of origin in his statement of opposition to the European order for payment, that opposition cannot produce, in regard to that defendant, effects other than those that flow from Article 17(1) of Regulation No 1896/2006. Those effects consist in the termination of the European order for payment procedure and in leading – unless the claimant has explicitly requested that the proceedings be terminated in that event – to the automatic*

transfer of the case to ordinary civil proceedings.

33 It will also be recalled, as is evident from Article 16(1) of Regulation No 1896/2006 and from recital 23 in the preamble thereto, that the defendant may use the standard form set out in Annex VI to that regulation in order to enter a statement of opposition to the European order for payment. That form does not provide for the option of contesting the jurisdiction of the courts of the Member State of origin.

The ECJ also held the European Order and proceedings following opposition are separate.

38 unlike the circumstances giving rise to that judgment, in which the defendant had put forward arguments on the substance of the case in ordinary civil proceedings, the arguments on the substance of the case were put forward in the main proceedings in this instance in the context of a statement of opposition to a European order for payment. Such a statement of opposition coupled with those arguments cannot be regarded, for the purposes of determining the court having jurisdiction under Article 24 of Regulation No 44/2001, as the first defence put forward in the ordinary civil proceedings that follow the European order for payment procedure.

39 To consider such a statement of opposition as being equivalent to the first defence would be tantamount to acknowledging, as the Advocate General noted at point 36 of his Opinion, that the European order for payment procedure and the subsequent ordinary civil proceedings, in principle, constitute the same procedure. However, such an interpretation would be difficult to reconcile with the fact that the first of those procedures follows the rules laid down by Regulation No 1896/2006, whereas the second continues in accordance with the rules of ordinary civil procedure, as is evident from Article 17(1) of that regulation. Such an interpretation would also fail on account of the fact that although – in the absence of any challenge to international jurisdiction by the defendant – those civil proceedings take their course in the Member State of origin, they will not necessarily be conducted in the same court as that in which the European order for payment procedure is pursued.

Final Ruling:

Article 6 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, read in conjunction with Article 17 thereof, must be interpreted as meaning that a statement of opposition to a European order for payment that does not contain any challenge to the jurisdiction of the court of the Member State of origin cannot be regarded as constituting the entering of an appearance within the meaning of Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the fact that the defendant has, in the statement of opposition lodged, put forward arguments relating to the substance of the case is irrelevant in that regard.

European Data Protection Authorities Order Google to Comply with European Data Protection Laws

The French data protection authority has issued the following statement this morning.

From February to October 2012, the Article 29 Working Party ("WP29") investigated into Google's privacy policy with the aim of checking whether it met the requirements of the European data protection legislation. On the basis of its findings, published on 16 October 2012, the WP29 asked Google to implement its recommendations within four months.

After this period has expired, Google has not implemented any significant compliance measures.

Following new exchanges between Google and a taskforce led by the CNIL, the Data Protection Authorities from France, Germany, Italy, the Netherlands, Spain

and the United Kingdom have respectively launched enforcement actions against Google.

The investigation led by the CNIL has confirmed Google's breaches of the French Data Protection Act of 6 January 1978, as amended (hereinafter "French Data Protection Act") which, in practice, prevents individuals from knowing how their personal data may be used and from controlling such use.

In this context, the CNIL's Chair has decided to give formal notice to Google Inc., within three months, to:

- Define specified and explicit purposes to allow users to understand practically the processing of their personal data;
- Inform users by application of the provisions of Article 32 of the French Data Protection Act, in particular with regard to the purposes pursued by the controller of the processing implemented;
- Define retention periods for the personal data processed that do not exceed the period necessary for the purposes for which they are collected;
- Not proceed, without legal basis, with the potentially unlimited combination of users' data;
- Fairly collect and process passive users' data, in particular with regard to data collected using the "Doubleclick" and "Analytics" cookies, "+1" buttons or any other Google service available on the visited page;
- Inform users and then obtain their consent in particular before storing cookies in their terminal.

This formal notice does not aim to substitute for Google to define the concrete measures to be implemented, but rather to make it reach compliance with the legal principles, without hindering either its business model or its innovation ability.

If Google Inc. does not comply with this formal notice at the end of the given time limit, CNIL's Select Committee (formation restreinte), in charge of sanctioning breaches to the French Data Protection Act, may issue a sanction against the company.

The Data Protection Authorities from Germany, Italy, the Netherlands, Spain and the United Kingdom carry on their investigations under their respective national procedures and as part of an international administrative cooperation.

Therefore,

- The Spanish DPA has issued to Google his decision today to open a sanction procedure for the infringement of key principles of the Spanish Data Protection Law.
- The UK Information Commissioner's Office is considering whether Google's updated privacy policy is compliant with the UK Data Protection Act 1998. ICO will shortly be writing to Google to confirm their preliminary findings.
- The Data Protection Commissioner of Hamburg has opened a formal procedure against the company. It starts with a formal hearing as required by public administrative law, which may lead to the release of an administrative order requiring Google to implement measures in order to comply with German national data protection legislation.
- As part of the investigation, the Dutch DPA will first issue a confidential report of preliminary findings, and ask Google to provide its view on the report. The Dutch DPA will use this view in its definite report of findings, after which it may decide to impose a sanction.
- The Italian Data Protection Authority is awaiting additional clarification from Google Inc. after opening a formal inquiry proceeding at the end of May and will shortly assess the relevant findings to establish possible enforcement measures, including possible sanctions, under the Italian data protection law.

The Kiobel Judgment of the U.S. Supreme Court and the Future of Human Rights

In the aftermath of the *Kiobel* judgement of the U.S. Supreme Court a number of questions related to the access to justice in defence of human rights remain unanswered. The Max Planck Institute Luxembourg has decided to address the

topic in a one-day seminar gathering academic, experts and professionals from Europe (Professors B. Hess, H. Muir Watt, C. Kessedjian, N. Jägers, P. Kinsch, Dr. C. Feinaeugle and A. Sessler) as well as from the U.S. (Professors D. Stewart and D.T. Childress III). We also expect the attendance of representatives of other stakeholders, such as NGOs.

The event will take place in Luxembourg on July, 4th; click here to see the program.

Venue: Max Planck Institute (4 Alphonse Weicker, L 2721). Language: English.

To register just send an email to registration@mpi.lu

Call for Papers: ASIL-ESIL-Rechtskulturen Workshop on International Legal Theory

Politics and Principle in International Legal Theory

Call for Papers

On November 14–15, 2013, the University of Michigan Law School will host the Second Annual ASIL–ESIL–*Rechtskulturen* Workshop on International Legal Theory. It is a collaboration between Michigan Law School, the Interest Groups on International Legal Theory of the American and European Societies of International Law, and the *Rechtskulturen* Program, an initiative of the *Wissenschaftskolleg zu Berlin* at Humboldt University Law School. The principal aim of this collaboration is to facilitate frank discussion among legal scholars from diverse backgrounds and perspectives on the fundamental theoretical questions that confront the discipline today.

American and European legal scholars often approach international legal theory with different assumptions about the relationship between law and politics, as

well as the relationship between normative theory and positive jurisprudence. Positivist, realist, natural-law, critical, feminist, TWAIL and policy-oriented approaches are present in both American and European international legal scholarship, yet the prevalence and salience of these approaches for international lawyers on either side of the Atlantic differ. In an effort to both better understand and move beyond these regional dynamics, workshop participants will discuss the role of "politics" and "principle" in international legal discourse from a variety of perspectives. Examples of topics that might be relevant include:

- How should scholars and practitioners of international law negotiate the competing demands of "politics" and "principle"? How do they actually negotiate such demands?
- What role does politics (or the study of international relations) play in law and international legal scholarship? What role should it play?
- How does law inform politics (or the study of international relations)? What role should law play?
- What role remains for principle(s) in an era of post-modern value-relativism and global legal pluralism?

We anticipate that the workshop will generate new perspectives on these enduring theoretical questions, as well as intensify transatlantic engagement on emerging debates within international legal theory. Addressing a variety of topics in constructive confrontations beyond comparison, we will seek to overcome transatlantic divides and to open new avenues in global international law scholarship.

Selection Procedure and Workshop Organization

Interested participants should submit an abstract (800 words maximum) summarizing the ideas they propose to develop for presentation at the workshop. Submissions of all proposals that engage the workshop's theme are encouraged. Papers that have been accepted for publication prior to the workshop are in principle eligible for consideration, provided that they will not appear in print before the workshop. Papers will be chosen for presentation by peer review, taking into account not only the need for a balance of topics and viewpoints, but also for geographic diversity among the participants.

Although discussants will be assigned to introduce the papers at the workshop, all

participants will be expected to read all of the contributions in advance and come prepared to contribute to the discussion. The organizers hope that the event will serve as a showcase for innovative research on international legal theory, while at the same time strengthening personal and professional ties between scholars on either side of the Atlantic, and beyond.

Abstract submissions should be sent to asil.esil.rechtskulturen@gmail.com by July 21, 2013. Successful applicants will be notified by August 12, 2013. Papers must be fully drafted and ready for circulation by October 14, 2013. Applicants are strongly encouraged to assess all possible options with regard to receiving funding from the institutions with which they are affiliated. If funding cannot be obtained in this way, they should indicate as part of their submission whether they will require financial assistance to cover the costs of travel and accommodation for the event.

Questions regarding the workshop may be directed to:

Evan Criddle ejcriddle@wm.edu

Jörg Kammerhofer joerg.kammerhofer@jura.uni-freiburg.de

Alexandra Kemmerer alexandra.kemmerer@wiko-berlin.de

Julian Davis Mortenson jdmorten@umich.edu

Kristina Daugirdas kdaugir@umich.edu

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.

This pre-print version is published in this Research Paper Series with the

Note: Downloadable document is in German.

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