Brand on Implementing the 2005 Hague Convention

Ronald A. Brand (University of Pittsburgh School of Law) has posted Implementing the 2005 Hague Convention: The EU Magnet and the US Centrifuge on SSRN.

> *Competence for the development of rules of private international law has become more-and-more centralized in the European Union, while remaining diffused in the United States. Nowhere has this divergence of process in private international law development been clearer than in the approach each has so far taken to the ratification and implementation of the 2005 Hague Convention on Choice of Court Agreements. In Europe, ratification has been preceded by the 2012 Recast of the Brussels I Regulation, coordinating internal and external developments, and reaffirming Union competence for future developments, both internally and externally. In the United States, debate has arisen over whether the Convention should be implemented in a single federal statute – as was done for the New York Convention in the Federal Arbitration Act – or through state-by-state enactment of a Uniform Act promulgated by the National Conference of Commissioners on Uniform State Laws. These differences in approach are important to future negotiations in multilateral fora such as The Hague Conference on Private International law, UNCITRAL, and UNIDROIT. They demonstrate a coherence of approach within the EU which attracts not only its own Member States, but also external constituencies in international negotiations, and diffuse development of the law in the United States, which tends to make leadership in multilateral negotiations difficult.*

The paper is forthcoming in the *Liber Amicorum Alegrias Borras*.

TDM Special Issue: "Reform of Investor-State Dispute Settlement: In Search of A Roadmap."

Investor-State Arbitration has become a salient feature of international dispute settlement, but its continued vitality is not beyond reproach. I myself have waded into the debate with an article published this month in the ICSID Review. Furthering this dialogue, TDM is pleased to announce a forthcoming TDM special issue: "Reform of Investor-State Dispute Settlement: In Search of A Roadmap."

Co-edited by Jean E. Kalicki (Arnold & Porter LLP and Georgetown University Law Center) and Anna Joubin-Bret (Cabinet Joubin-Bret and World Trade Institute), this special issue will explore recent calls for reform of the investor-State dispute settlement system, along with the viability of five "reform paths" recently proposed for discussion by UNCTAD, the United Nations Conference on Trade and Development (see UNCTAD IIA Issues Note, "Reform of Investor-State Dispute Settlement: In Search of a Roadmap," 29-30 May 2013).

You can find an extensive call for papers on the TDM website.

Publication is expected in October or November 2013. Proposals for papers (e.g., abstracts) should be submitted to the editors by 15 September 2013. Contact info is available on the TDM website.

Low on the Psychology of Choice of Laws

Gary Low (Singapore Management University School of Law) has posted A Psychology of Choice of Laws on SSRN.

> *There is certainly a lot of choice going around in the market for contract law.*

This is a good thing, since choice is key to self-determination and may help improve our laws. Yet there may be such a thing as choice overload, and the introduction of the Common European Sales law is a timely reminder to consider its and effect for the market for contract law. This article does just that. It explains what choice overload is, why it comes about, and what can be done to ameliorate its effects. The conclusion is that CESL will not cause choice overload but will not help in that respect either. Given the prospect of overload, this article evaluates the possible solutions to the problem, and advances the argument in favour of categorizing laws in order to help decision-makers to choose prudently.

The paper was published in the *European Business Law Review* in 2012.

Third Issue of 2013's ICLQ

The third issue of *International and Comparative Law Quarterly* for 2013 includes one short article by Cameron Sim on *Choice of Law and Anti-Suit Injunctions: Relocating Comity.*

English private international law generally gives a potential role, where appropriate, to foreign law, by allowing for the application of choice of law rules to determine its relevance. Yet in the context of anti-suit injunctions granted otherwise than in aid of a contractual right not to be sued, choice of law is conspicuously absent. In those cases, courts simply apply the lex fori without paying any regard to foreign law, although the notion of comity is taken into account in the final decision on whether to grant anti-suit relief. Clearer identification of the grounds for granting such relief should limit application of the lex fori to instances where the anti-suit injunction serves as a form of ancillary relief to protect the judicial processes of the forum, and in which comity plays no role. In all other cases, which ultimately concern private justice between the parties, comity is best understood as an expression of justice in cases involving foreign elements, and better reflected through choice of law rules, which might lead to the application of foreign law. This approach is

preferable to invoking comity as a consideration relating to the manner in which the court regulates the grant of anti-suit relief, because courts tend to bestow rights, which parties may not otherwise have, under the cloak of comity. Understanding comity as the catalyst for taking account of foreign law assuages concerns about interfering with foreign courts, acts as a deterrent to remedy shopping, and provides greater certainty as regards the vindication of rights. The case for widening the application of choice of law in this context does not depend on Rome II, but if the principle is accepted, courts must follow the process which it specifies.

Brand on the New Hague Judgments Project

Ronald A. Brand (University of Pittsburgh School of Law) has posted Jurisdictional Developments and the New Hague Judgments Project on SSRN.

A Working Group of the Hague Conference on Private International Law is revisiting possible multilateral rules on the recognition of foreign judgments. This was the subject of broader negotiations on jurisdiction and judgments that ran from 1992 until 2005, concluding in the Hague Convention on Choice of Court Agreements. Any effort to coordinate judgments recognition rules necessarily requires consideration of the jurisdictional bases of authority of the court from which a judgment originates. Problems of coordination are exacerbated because differences in existing jurisdictional bases are colored by: (1) basic differences between civil law and common law approaches to judicial analysis, (2) differences in the extent to which jurisdiction is a constitutional matter, and (3) differences in focus on the interests of plaintiffs and defendants. Recent developments in both the United States and the European Union have both highlighted existing differences in approaches to adjudicative jurisdiction, and demonstrated some areas in which there may be greater hope for common ground. While rules on general jurisdiction may be moving closer together,

> *rules on specific jurisdiction seem to be suffering greater divergence. Any new multilateral efforts will also have to take into account the impact on parallel efforts to obtain ratifications of the Choice of Court Convention. While there are jurisdictional bases on which agreement should not be difficult in a new judgments project, those are probably the bases for which recognition and enforcement abroad will be least valuable to the judgment creditor.*

The paper is forthcoming in *A Commitment to Private International Law – Essays in Honor of Hans Van Loon*.

Hague Conference Seeks to Recruit Senior Legal Officer

The Permanent Bureau of the Hague Conference on Private International Law is seeking a

Senior / Principal Legal Officer (full-time)

to carry out work in the fields of international procedural law and commercial law, in particular as regards the Choice of Court Convention, the Choice of Law in International Contracts, and the Judgments Project, as well as such other work as may be required by the Secretary General from time to time, including in the field of legal co-operation.

Duties will include promotion of the instruments mentioned, comparative research, preparation of research papers and other documentation, assistance in the preparation of and participation in conferences, seminars and training programmesthe provision of support services.

The successful applicant will possess the following qualifications:

– Law school education in private law, preferably at the post-graduate level, including private international law (conflict of laws) and international procedural

law (jurisdiction, recognition and enforcement of judgments, legal and administrative co-operation), familiarity with comparative law (substantive and procedural law).

– Excellent drafting capabilities (e.g. LL.M. dissertation or doctoral thesis, law review or other publications).

– Seven to ten years experience in private practice, public service or academia.

– Excellent command, preferably as a native language (both spoken and written), of at least one of the working languages of the Hague Conference (i.e., French and English), with good command of the other; knowledge of other languages an asset.

Type of appointment and duration: two-year contract, possibly renewable.

Starting date: October/November 2013.

Grade (Co-ordinated Organisations scale): A2/1 subject to relevant experience.

Deadline for applications: 23 August 2013.

Applications should be made by e-mail, with Curriculum Vitae, letter of motivation and at least two references, to be addressed to the Secretary General, at: secretariat@hcch.net

H/T: Pietro Franzina

Volumes 357, 359 and 360 of Courses of the Hague Academy

Volumes 357, 359, and 360 of the Collected Courses of the Hague Academy of International Law were just published.

- Volume 357

        - J. Dugard, The Secession of States and Their Recognition in the wake of Kosovo
        - L. Gannagé, Les méthodes du droit international privé à l'épreuve des conflits de cultures
    - Volume 359
        - D. Opertti Badán, Conflit de lois et droit uniforme dans le droit international privé contemporain: dilemme ou convergence? (conférence inaugurale)
        - Chen Weizuo, La nouvelle codification du droit international privé chinois
        - Christian Kohler, L'autonomie de la volonté en droit international privé: un principe universel entre libéralisme et étatisme
    - Volume 360
        - Jürgen Basedow, The Law of Open Societies — Private Ordering and Public Regulation of International Relations. General Course on Private International Law

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The Kiobel Judgment of the US Supreme Court and the Future of Human Rights Litigation – Seminar at the MPI Luxembourg

On July 4th, 2013, the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law invited experts from the USA and Europe to a colloquium to discuss the consequences of the US Supreme Court's decision in the proceedings *Kiobel v. Royal Dutch Shell Petroleum Co.* The seminar aimed at a broad perspective: Subject of the discussion were the consequences of the judgment with regard to public international law, procedural law and private international law – from the viewpoint of Europe and the United States respectively.

Dr. *Clemens Feinäugle* (MPI Luxembourg) started by presenting how the reasoning of the judgment relates to the general principles of jurisdiction in public international law. He emphasized that *Kiobel* can hardly be qualified as a suitable leading case as far as the limits of exercising state jurisdiction in the international context are concerned. In this regard, the judgment (or at least the reasoning of the majority) follows too strictly the decision in *Morrison v. National Australia Bank, Ltd.* on presumption against territoriality which, on its part, is strongly oriented at the prerequisites of US constitutional law. In terms of legal policy, the US Supreme Court passed the buck to the Congress: If US courts were to adjudicate substantially human rights claims against civil actors, this should be authorized by the Congress – just as it had done it in 1997 in the *Torture Victims Protection Act* (in a rather questionable manner). The fact that *Kiobel* is to be read primarily from the viewpoint of the domestic discussion within the US on the role of International Law as "federal common law" was made clear by Prof. *David Steward* (Georgetown University Law Center). He presented the *Alien Tort Claims Act* (ATCA) in the context of the longstanding discussion on the legal role of international treaties, particularly the question of whether the constitutional separation of powers limits the authority of the federal state with regard to foreign affairs. A further perspective was taken by the following presentations: Prof. *Horatia Muir Watt* brought up the question of the regulatory approach of the US Supreme Court and criticized the unclear notion of "extraterritoriality" in the *Kiobel* judgment. Prof. *Patrick Kinsch* (Luxembourg), on the other hand, noted from an international private and procedural law perspective that the ATCA can hardly be qualified as a suitable and effective instrument for the domestic implementation of international human rights protection: The Act regulates only the subject matter jurisdiction of US federal courts as opposed to state courts rather than the international jurisdiction (personal jurisdiction). From this observation Prof. *Kinsch* derived the forecast that future human rights claims in the USA would be brought increasingly before state courts.

In the second part of the seminar, a round table chaired by Professor B. Hess raised the issue of the practical consequences of the *Kiobel* judgment. Prof. *Jägers* (Tilburg) started with presenting the Dutch parallel judgment to *Kiobel*. On January 30th, 2013, The Hague District Court rejected a damage claim brought by Nigerian victims against Shell as a parent company but upheld the action against the subsidiary. The Dutch court based its judgment on Nigerian tort law – the claim against the parent company was dismissed for lack of evidence.

Nevertheless, *Jäger* pointed out the general readiness of Dutch courts to deal with such disputes. Prof. *Catherine Kessedjian* (Paris) referred to the Sofia Declaration of ILA on International Civil Litigation and the Public Interest. It also stipulates the jurisdiction of the courts at the seat of the defendant company – particularly when no effective judicial protection can be obtained at the place of the human rights violations. Dr. *Anke Sessler*, Siemens AG, München, described from the perspective of an internationally operating company that a lawsuit in the USA is connected with substantial workload, time consumption and costs and at the same time is characterized by structural advantages for the plaintiff. Prof. *Trey Childress* (Pepperdine University) reported on the practical consequences of the *Kiobel* judgment: Overall, the last decade was marked by the increasingly restrictive attitude of US courts towards F-cubed litigation. US federal courts have strengthened the requirements with regard to pleading, general jurisdiction, class certification – also discovery has its limits. *Kiobel*, in particular, has already had a sustainable impact on the 25 currently pending ATCA lawsuits in the USA. Six of them have already been rejected, only one is still admissible: it concerns the bomb attack at the US embassy in Nairobi. In this case, the Federal Court affirmed the prevailing interest of the USA in continuing the proceedings. All things considered, *Childress* could hardly see increasing chances for ATCA claims in the US. This, however, does not mark the end of human rights litigation – the plaintiffs are rather expected to resort to alternative grounds in order to support their claim (such as federal common law or the respective conflict of law rules of the states). This would naturally lead to different defense strategies on the part of the respondent, e.g. removal from state to federal courts and invoking the *forum non conveniens* objection which some federal courts have granted even before examining the personal jurisdiction.

Two rounds of discussions elaborated on and expanded the arguments of the speakers. It became clear that human rights litigation remains a controversial subject. Some discussants assessed *Kiobel* – in line with the judgment of the ICJ in *Germany v. Italy, Greece Intervening* from February 3rd, 2012 – as a "missed opportunity", whereas others welcomed the decision as a politically balanced reflection of the stand of current legal developments. The lively discussion showed that the research profile of the MPI Luxembourg, combining public international law, international litigation and questions of transnational regulation, can give a strong impetus towards understanding important issues of legal policy.

Brand on Challenges to Forum Non Conveniens

Ronald A. Brand (University of Pittsburgh School of Law) has posted Challenges to *Forum Non Conveniens* on SSRN.

This paper was originally prepared for a Panel on Regulating Forum Shopping: Courts' Use of Forum Non Conveniens in Transnational Litigation at the 18th Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium: Tug of War: The Tension Between Regulation and International Cooperation, held at New York University School of Law, October 25, 2012. The doctrines of forum non conveniens and lis alibi pendens have marked a significant difference in approach to parallel litigation in the common law and civil law worlds, respectively. The forum non conveniens doctrine has recently taken a beating. This has come (1) in its UK form as a result of decisions of the European Court of Justice, (2) through a lack of uniformity of application throughout the common law world, (3) as a result of legislation and litigation in Latin American countries, and (4) through the misapplication of the forum non conveniens doctrine in cases brought to recognize and enforce foreign arbitration awards. This article reviews those challenges, and considers the compromise reached in 2001 at the Hague Conference on Private International Law when that body was considering a general convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It concludes with thoughts on the importance of remembering that compromise and the promise it holds for bringing legal system approaches to parallel litigation closer together.

The paper is forthcoming in the *New York University Journal of International Law and Politics.*

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (4/2013)

Recently, the July/August issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

- ***Bettina Heiderhoff***: "Fictitious service of process and free movement of judgments"

When judgments or court orders are to be enforced in other member states, it is an essential prerequisite that the defendant was served with the document which instituted the proceedings in sufficient time (Article 34 Nr. 2 Brussels I Regulation).

When the service was conducted in a fictitious manner, the issue of service "in sufficient time" causes friction. It is acknowledged that the measure for timeliness – or, in such a case, more accurately for rightfulness – is not set by the state of origin, but by the recognising state. However, if the criteria are taken from the autonomous procedural rules of the recognising state, as has occasionally happened, minor differences between national laws can cause unreasonable obstacles to the recognition of titles.

In order to fulfill the aim of the Brussels I Regulation, to improve the free movement of judgments and strengthen mutual trust, the criteria must, therefore, not be taken from the national rules of the recognising state, but ought rather to resemble the standards valid for breaches of public policy. Only such a "mildly Europeanized" standard for fictitious services may avoid a trapping of the claimant who, trusting in the decision of the court of origin, is then surprised by the differing measures of the recognising state.

- ***Haimo Schack***: "What remains of the renvoi?"

The renvoi is one of the main principles of classic private international law. The renvoi doctrine aims for the conformity of decisions in different jurisdictions, which may also facilitate the recognition of the decision abroad. With this goal in mind the following article gives an overview of the acceptance of renvoi in different national jurisdictions. In addition, the article evaluates and criticizes the tendency to push back the doctrine of renvoi in international treaties and in EU private international law. Especially in the former domain of renvoi, i.e. the law of personal status, family and inheritance law, the European conflict rules are dominating more and more and preventing the conformity of decisions in relation to third countries. As a means to achieve this decisional harmony the renvoi remains useful, it shows the cosmopolitan attitude of classic private international law.

- ***Hannes Wais***: "Hospital contracts and Place of Performance Jurisdiction under § 29 ZPO (German Code of Civil Procedure)"

This article comments on a recent decision of the German Federal Supreme Court, in which the court ruled that, for payment claims from a hospital contract, § 29 ZPO conferred jurisdiction upon the courts in the locality of the hospital. The Court decided that, not only for the purposes of § 29 ZPO, the place of performance of the monetary obligation from a hospital contract is the creditor's seat and not that of the debtor (in contrast to what is generally accepted for monetary obligations). This article will discuss the implications of this decision, and will consider the possibility of a conceptual "reversal" of § 29 ZPO.

- ***Markus Würdinger***: "Der ordre public-Vorbehalt bei Verzugsaufschlägen im niederländischen Arbeitsrecht" – the English abstract reads as follows:

The substantive ordre public rarely plays a role when it comes to recognition and enforcement of foreign legal decisions. This article deals with such a case. It is about the declaration of enforceability of a Dutch court decision in Germany. The judgment in question decided the applicant's claim for unpaid wages plus a statutory increase of 50% as a penalty for late payment in his favour. The Higher Regional Court of Düsseldorf (OLG) rightly interpreted Art. 34 EuGVVO (Regulation (EC) No 44/2001) narrowly and refused to consider this

decision as being comparable to an award of punitive damages.

- ***Urs Peter Gruber***: "Die Vollstreckbarkeit ausländischer Unterhaltstitel – altes und neues Recht" – the English abstract reads as follows:

For a maintenance creditor, the swift and efficient recovery of a maintenance obligation is of paramount importance. In the Brussels I Regulation – which until recently was also applicable with regard to maintenance obligations – and in various conventions there are procedures for the declaration of enforceability of decisions. In these procedures, the courts have to ascertain whether there is a maintenance claim covered by the Regulation or the convention and whether there are reasons to refuse recognition of the foreign decision. In the new Regulation (EC) No 4/2009 on maintenance obligations however, a declaration of enforceability of decisions is no longer required, provided that the decision was given in a Member State bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. In this case, a decision on maintenance obligations given in a Member State is automatically enforceable in another Member State. The article discusses recent court decisions on the declaration of enforceability in maintenance obligations. It then examines the changes brought about by the Regulation (EC) No 4/2009 on maintenance obligations. Weighing the interests of both the creditor and the debtor, it comes to the conclusion that the abolition of the above-mentioned procedures is fully justified.

- ***Wolf-Georg Ringe***: "Secondary proceedings, forum shopping and the European Insolvency Regulation"

The German Federal Supreme Court held in a recent decision that secondary proceedings according to Article 3(2) of the European Insolvency Regulation cannot be initiated where the debtor only has assets in a particular country. The requirements for an "establishment" go beyond this and require an economic activity with a "minimum of organisation and certain stability". This decision stands in conformity with the leading academic comment and other case-law. Nevertheless, the decision is a good opportunity to stress the importance of secondary proceedings and their function to protect local creditors. This is particularly true where the secondary proceedings are initiated (as here) in the context of a cross-border transfer of the "centre of

main interests" (COMI) of the debtor. The ongoing review of the European Insolvency Regulation should respond to this problem in one of the regulatory options provided.

- ***Moritz Brinkmann***: "Ausländische Insolvenzverfahren und deutscher Grundbuchverkehr" – the English abstract reads as follows:

Art. 16 EIR provides for the automatic recognition of insolvency proceedings which have been commenced in another member state. The recognition of insolvency proceedings pertains not only to the debtor's power with respect to the estate, but also to his procedural position as well as to questions regarding company law or the law of land registries. The decision rendered by the OLG Düsseldorf (March 2, 2012) illustrates that these consequences are easily ignored in the routine of everyday legal life as long as courts and parties have difficulties in accessing reliable information as to the status of foreign proceedings. The existing deficits in terms of access to information regarding foreign insolvency proceedings may thwart the concept of automatic recognition. Hopefully, the coming reform of the EIR will address this issue (see proposed Art. 22 EIR in COM (2012) 744 final).

- ***Kurt Siehr***: "Equal Treatment of Children of Unmarried Parents and the Law of Nationality"

A child of unmarried parents acquires nationality of Malta only if the child is recognized by the Maltese father and legitimized by marriage or court decision. The European Court of Human Rights decided that this provision violates the European Convention of Human Rights, especially Article 8 on the right of family life and Article 14 on non-discrimination. There are doubts whether the decision is correct. A more careful phrasing of Maltese law could avoid the violation of the Convention. Or is the decision of the European Court of Human Rights its step further towards a human right for nationality?

- ***Fritz Sturm***: "Forfeiture of the choice of surname: The European Court of Human Rights compels the Swiss Federal Court to set aside its former judgment"

The Swiss Federal Court, 24 May 2005, did not authorize foreign husbands to have their surname governed by their national law (s. 37 ss. 2 Swiss Private International Law Act) when they have previously chosen to take the wife's surname as the family name, situation which could not have occured if the sexes had been reversed. In fact, in this case the husband's surname would automatically become the family name and the wife could choose to have her surname governed by her national law. For the Court of Strasburg this difference in treatment is discriminatory (violation of art. 14 in conjunction with art. 8 ECHR). The Swiss Federal Court has therefore been compelled to set aside its former judgment.

- ***Dirk Looschelders:*** "Jurisdiction of the Courts for the Place of Accident in case of a Recourse Direct Action by a Social Insurance Institution against the Liability Insurer of the Tortfeasor"

In the present judgement the Austrian High Court (OGH) deals with the question whether a social insurance institution can sue the liability insurer of the tortfeasor in the courts for the place where the harmful event occurred. The OGH comes to the conclusion that such a jurisdiction is granted at least by Article 5 no 3 Brussels I Regulation. The problematic issue whether the priority provision of Article 11 (2) read together with Article 10 s. 1 Brussels I-Regulation applies, is left undecided. In the decision Vorarlberger Gebietskrankenkasse the European Court of Justice has held that the social insurance institution cannot take a recourse direct action against the liability insurer under Article 11 (2) read together with Article 9 (1) (b) Brussels I Regulation. According to the opinion of the author, jurisdiction in such cases shall generally not be determined by Chapter II Section 3 of the Brussels I Regulation. Therefore, Article 11 (2) read together with Article 10 s. 1 Brussels I Regulation is inapplicable, too. In consequence, contrary to the opinion of the OGH, the social insurance institution cannot be regarded as an injured party in terms of Article 11 (2) Brussels I-Regulation.

- ***Michael Wietzorek***: "On the Recognition of German Decisions in Albania"

There is still no established opinion as to whether the reciprocity requirement of § 328 Sec. 1 No. 5 German Civil Procedure Code is fulfilled with regard to

Albania. A decision of the High Court of the Republic of Albania dated 19 February 2009 documents that the Court of Appeals of Durr?s, on 5 December 2005, recognized two default judgments by which the Regional Court of Bamberg had ordered an Albanian company to pay two amounts of money to a German transport insurance company. One single court decision may not be sufficient to substantiate that there is an established judicial practice. Yet the reported decision appears to be the only one available in the publicly accessible database of the High Court dealing with the recognition of such foreign default judgments by which one of the parties was ordered to pay an amount of money.

- ***Chris Thomale***: "Conflicts of Austrian individual labour law and the German law of the works council – intertemporal dimensions of foreign overriding mandatory provisions"

The Austrian Supreme Court (Oberster Gerichtshof) recently held that the cancellation of an individual employment contract between a German employer and an Austrian employee posted in Austria was valid despite the fact that the employer failed to hear his German works council properly beforehand. The case raises prominent issues of intertemporal conflicts of laws, characterization of the mentioned hearing requirement and the applicability of foreign overriding mandatory provisions, which are discussed in this article.

- ***Sabine Corneloup:*** *"*Application of the escape clause to a contract of guarantee"

The French Cour de cassation specifies how to apply the escape clause of Art. 4 n° 5 of the Rome Convention to a contract of guarantee. The ancillary nature of guarantees leads national courts often to the application of the law governing the main contract, on the basis of a tacit choice of law or on the basis of the escape clause. The latter is to be used very restrictively, according to the Cour de cassation. It is necessary to establish first that the ordinary connecting factor, designating the law of the habitual residence of the guarantor, is of no relevance in the examined case. Only after this step, the courts can examine the connections existing with another State. This restrictive interpretation adds a condition to the text that seems neither necessary nor appropriate.

- ***Oliver Heinrich/Erik Pellander***: “Das Berliner Weltraumprotokoll zum Kapstadt-Übereinkommen über Internationale Sicherungsrechte an beweglicher Ausrüstung”
- ***Stefan Leible***: “Hannes Unberath † (23.6.1973–28.1.2013)”