General Guidelines for the European Account Preservation Order

As already reported by Pietro Franzina at Aldricus, the Cyprus Presidency has transmitted to the Council of the European Union suggested general guidelines for future work on the European Account Preservation Order.

One of the critical issues raised by the text is the protection of the debtor. On this front, the Presidency proposes the following amendments:

> *(a) The application for a Preservation Order should contain an affirmation that the information provided by the creditor is true and complete, as well as a reminder that any deliberate false statements or omissions may lead to legal consequences under the law applicable.*
>
> *(b) In principle, only a court should be empowered to issue a Preservation Order.*
>
> *(c) The Preservation Order should be revoked without any intervention being required on the part of the debtor if the creditor fails to initiate proceedings on the substance of the matter within the time-limit specified in the proposed Regulation. Further discussions are needed to define the functioning of this mechanism (including the issue of time limits).*

Additionnally, it is suggested to explore further:

> *(a) The creditor should be liable to the debtor for any damage caused by any violation by him of his duties under the proposed Regulation, under circumstances and standards to be agreed later by the Member States.*
>
> *(b) When the creditor applies for a Preservation Order before initiating proceedings on the substance of his claim, he should, in principle, have to provide some kind of security to ensure adequate compensation to the debtor for damage caused by any violation by the creditor of his duties under the proposed Regulation. The court should have discretion to dispense with this*

requirement in situations where the provision of such security would be inappropriate or unnecessary.

Interested readers will find the text of the document here.

Wautelet on Multiple Nationalities and Choice of Law

Patrick Wautelet (Liège University) has posted L'Option de Loi et les Binationaux: Peut-On Dépasser le Conflit de Nationalités?(*Choice of Law in Family Relationships and Multiple Nationalities – A Case for a New Approach?*) on SSRN.

The English abstract reads:

In this paper I analyse the scope of the choice of law offered to parties in various family relationships (such as divorce, matrimonial contracts or alimony). In several jurisdictions and under rules of European private international law, parties may select which law will apply to their relationship. In most cases a choice may be made for the law of the nationality of the persons concerned. The question arises how such choice should be handled when the person concerned possesses several nationalities. After reviewing several possible readings, I suggest that the classical rules dealing with multiples nationalities should not be applied when the conflict of laws rules allow a party to select the applicable law.

Italian Book on Chinese Private International Law

Renzo Cavalieri and Pietro Franzina are the editors of this book on the Reform of Chinese Private International Law (*Il nuovo diritto internazionale privato della Repubblica Popolare cinese*).

The contributors are a number of Chinese and Italian scholars.

- Lu Song (China Foreign Affairs University, Beijing), *L'adozione della Legge cinese sul diritto applicabile ai rapporti civili con elementi di estraneità* [The Drafting Process and the Adoption of the Chinese Statute on the Law Applicable to Foreign-Related Civil Relations]
- Zhang Liying (China University of Political Science and Law, Beijing), *Alcune caratteristiche della legge cinese sul diritto applicabile ai rapporti civili con elementi di estraneità* [Some Features of the Chinese Statute on the Law Applicable to Foreign-Related Civil Relations]
- Pietro Franzina (University of Ferrara), *La codificazione cinese delle norme sui conflitti di leggi: elementi per un'analisi in chiave comparatistica* [The Chinese Codification of Conflict-of-Laws Rules: A Comparative Analysis]
- Long Weidi (Wuhan University and University of Groningen), *L'autonomia privata e le norme imperative nella prima codificazione cinese delle norme sui conflitti di leggi* [Party Autonomy and Mandatory Provisions in the First Chinese Codification of Conflict-of-Laws Rules]
- Renzo Cavalieri (Ca' Foscari University, Venice), *L'applicazione della legge straniera da parte dei tribunali della Repubblica Popolare Cinese* [The Application of Foreign Law by the Courts of the People's Republic of China]
- Sara D'Attoma (Ca' Foscari University, Venice), *Matrimonio e famiglia nel diritto internazionale privato della Repubblica Popolare Cinese* [Marriage and Family Relations in the Private International Law of the People's Republic of China]
- Anna Gardella (Università Cattolica del Sacro Cuore, Milan), *I diritti patrimoniali nella legge cinese di diritto internazionale privato: successioni e diritti reali* [Patrimonial Rights in the Chinese Statute of

Private International Law: Successions and Rights In Rem]

- Laura Sempi (University of Salento), *La proprietà intellettuale nella nuova legge cinese sul diritto internazionale privato* [Intellectual Property in the New Chinese Statute on Private International Law].
- Luca G. Radicati di Brozolo (Università Cattolica del Sacro Cuore, Milan), *La legge cinese del 28 ottobre 2010 sui rapporti civili con elementi di estraneità: alcuni rilievi conclusivi* [The Chinese Statute of 28 October 2010 on Foreign-Related Civil Relations: Some Concluding Remarks].

A full table of contents can be found here.

Kate Provence Pictures: the Remarkable Irish Remedy

In this era of increasing "approximation" of European laws, some readers might sometimes wonder whether choice of law is gradually losing relevance.

Well, it seems that, in the area of privacy and rights relating to personality, it really does not. In France, victims of privacy infringments can get damages and injunctions. In Ireland, these remedies are probably available, but it is also possible to get the editor of the newspaper suspended and indeed to shut down the newspaper all together.

The Irish Daily Star published in September pictures of the Duchess of Cambridge sunbathing in the South of France.

This did not make one of the owners of the Irish Daily Star happy at all, the BBC has just reported:

> *Media tycoon Richard Desmond, whose Northern and Shell group co-owns the paper, had threatened to shut it down.*
>
> *The Dublin-based Irish Daily Star said in a statement: "As a result of the publication on 15 September 2012, issues arose with the shareholders of*

Independent Star Limited.

"Having considered those issues in tandem with Mr O'Kane, it is Mr O'Kane's decision to resign as editor of the Irish Daily Star, effective immediately."

Northern and Shell group co-owns the newspaper with the Irish-based Independent News and Media.

Independent News and Media said Mr O'Kane acted at all times in a highly professional and appropriate manner and in the best interests of the newspaper.

He followed all editorial policies and guidelines, it added.

Both co-owners had criticised the decision of Mr O'Kane to publish the pictures, although Independent News and Media said closing down the title would be disproportionate.

One wonders whether other Member states have even more spectacular remedies. Rumour has it that a cell in the Tower of London is being currently prepared in case a member of the English press might be tempted to follow a similar path. The English press being notoriously well behaved, however, it seems unlikely that this new Nuclear Weapon would ever be used.

ECJ Rules on Res Judicata of Judgments Declining Jurisdiction

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On November 15th, the European Court of Justice delivered its judgment in case C-456/11 *Gothaer Allgemeine Versicherung and others*. It ruled that the judgment of a Member state which declined jurisdiction on the ground of the existence of a jurisdiction clause was res judicata and was thus binding on courts of other

Member states.

A German company (Krones) sold a brewing installation to a buyer in Mexico and charged another German company (Samskip) with the task of organizing the transport from Antwerp to Mexico. Among the transport documents there was a bill of lading which stipulated an exclusive jurisdiction of the courts of Iceland. Alleging a transport damage, the transport insurers of Krones sued Samskip in Antwerp. The appeal instance dismissed the claim on the basis that transport insurers were bound by the jurisdiction clause. Transport insurers and Krones then sued Samskip in Germany. Samskip argued that German courts had no jurisdiction because of the jurisdiction clause and that German courts were bound by the Belgian judgment under the Brussels Regulation.

Under German law a judgment dismissing a claim for lack of jurisdiction is qualified as a procedural judgment, and there is a strong opinion in German legal literature which holds the view that procedural judgments have no recognizable contents. Also, under German civil procedure law the concept res judicata is very restrictive and the reasoning of a judgment does often not participate in the res judicata effect. The Court of Bremen, therefore, sent the file to the ECJ for a preliminary ruling asking whether the Belgian judgment was a judgment in the sense of the Brussels Regulation and if so whether the Bremen court would have to recognize not only that Belgian courts do not have jurisdiction but also that the jurisdiction clause is valid.

In its above mentioned judgment of 15 November 2012 the ECJ ruled that a judgment by which the court of a member state declines jurisdiction on the basis of a jurisdiction clause was a judgment in the meaning of art. 32 of the Brussels Regulation even if it was categorized as a mere procedural judgment under the national law of a member state. The ECJ further ruled that the court before which the recognition of such a judgment is sought is bound by the finding regarding the validity of the jurisdiction clause even if such finding were made in the grounds of the judgment.

The fact that the ECJ held that judgments which were categorized as “procedural judgments” in the law of a certain member state are nevertheless judgments in the sense of the Regulation is little surprising. What is more remarkable is that the court, in respect of judgments declining jurisdiction on the basis of a jurisdiction clause, amends its previous case law, particularly the doctrine of the

Hoffmann/Krieg judgment of 4 February 1988 (C-145/86): If the dismissal of the claim is based on the validity of a jurisdiction clause then such validity is to be recognized; the definition of the res judicata effect of the judgment in the national law of the state of origin is as irrelevant as the one in the state of recognition. The ECJ applies an autonomous European concept of res judicata to certain member state judgments (albeit for yet a very limited number of cases).

> *1. Article 32 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 must be interpreted as meaning that it also covers a judgment by which the court of a Member State declines jurisdiction on the basis of a jurisdiction clause, irrespective of how that judgment is categorised under the law of another Member State.*
>
> *2. Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.*

A Principled Approach to Choice of Law in Contract?

On 16 November, a Special Commission of the Hague Conference on Private International Law approved the text of the Hague Principles on the Choice of Law in International Contracts.

The Principles, an amended version of the draft text produced by the Conference's working group, are intended to be used (among other functions) as a model for national, regional, supranational or international instruments. They deal with the effectiveness and effect of a choice of law in cross-border

trade/business contracts, but not consumer or employment contracts (Art. 1). They allow not only a choice of national law (Art. 2) but also (albeit subject to conditions that are riddled with uncertainty, obfuscation and self-serving terminology) a choice of non-national rules of law (Art. 3).

The remaining Principles address other aspects of the choice of law (express and tacit choice, formal validity, law to be applied in determining choice, severability, renvoi, scope of chosen law, assignment, mandatory provisions and public policy).

The text of the Principles (which will, in due course, be accompanied by a Commentary) is as follows:

The Preamble

1. This instrument sets forth general principles concerning choice of law in international commercial contracts. They affirm the principle of party autonomy with limited exceptions.

2. They may be used as a model for national, regional, supranational or international instruments.

3. They may be used to interpret, supplement and develop rules of private international law.

4. They may be applied by courts and by arbitral tribunals.

Article 1 – Scope of the Principles

1. These Principles apply to choice of law in international contracts where each party is acting in the exercise of its trade or profession. They do not apply to consumer or employment contracts.

2. For the purposes of these Principles, a contract is international unless the parties have their establishments in the same State and the relationship of the parties and all other relevant elements, regardless of the chosen law, are connected only with that State.

3. These Principles do not address the law governing – a) the capacity of natural persons; b) arbitration agreements and agreements on choice of court; c) companies or other collective bodies and trusts; d) insolvency; e) the

proprietary effects of contracts; f) the issue of whether an agent is able to bind a principal to a third party.

Article 2 – Freedom of choice

1. A contract is governed by the law chosen by the parties.

2. The parties may choose (i) the law applicable to the whole contract or to only part of it and (ii) different laws for different parts of the contract.

3. The choice may be made or modified at any time. A choice or modification made after the contract has been concluded shall not prejudice its formal validity or the rights of third parties.

4. No connection is required between the law chosen and the parties or their transaction.

Article 3 – Rules of law

In these Principles, a reference to law includes rules of law that are generally accepted on an international, supranational or regional level as a neutral and balanced set of rules, unless the law of the forum provides otherwise.

Article 4 – Express and tacit choice

A choice of law, or any modification of a choice of law, must be made expressly or appear clearly from the provisions of the contract or the circumstances. An agreement between the parties to confer jurisdiction on a court or an arbitral tribunal to determine disputes under the contract is not in itself equivalent to a choice of law. Article 5 – Formal validity of the choice of law

A choice of law is not subject to any requirement as to form unless otherwise agreed by the parties.

Article 6 – Agreement on the choice of law

1. Subject to paragraph 2, a) whether the parties have agreed to a choice of law is determined by the law that was purportedly agreed to; b) if the parties have used standard terms designating different laws and under both of these laws the same standard terms prevail, the law designated in those terms applies; if under these laws different standard terms prevail, or if no standard terms

prevail, there is no choice of law.

2. The law of the State in which a party has its establishment determines whether that party has consented to the choice of law if, under the circumstances, it would not be reasonable to make that determination under the law specified in paragraph 1.

Article 7 – Severability

A choice of law cannot be contested solely on the ground that the contract to which it applies is not valid.

Article 8 – Exclusion of renvoi A choice of law does not refer to rules of private international law of the law chosen by the parties unless the parties expressly provide otherwise.

Article 9 – Scope of the chosen law

1. The law chosen by the parties shall govern all aspects of the contract between the parties, including but not limited to – a) interpretation; b) rights and obligations arising from the contract; c) performance and the consequences of non-performance, including the assessment of damages; d) the various ways of extinguishing obligations, and prescription and limitation periods; e) validity and the consequences of invalidity of the contract; f) burden of proof and legal presumptions; g) pre-contractual obligations.

2. Paragraph 1 e) does not preclude the application of any other governing law supporting the formal validity of the contract.

Article 10 – Assignment In the case of contractual assignment of a creditor's rights against a debtor arising from a contract between the debtor and creditor – a) if the parties to the contract of assignment have chosen the law governing that contract, the law chosen governs the mutual rights and obligations of the creditor and the assignee arising from their contract; b) if the parties to the contract between the debtor and creditor have chosen the law governing that contract, the law chosen governs (i) whether the assignment can be invoked against the debtor, (ii) the rights of the assignee against the debtor, and (iii) whether the obligations of the debtor have been discharged.

Article 11 – Overriding mandatory rules and public policy (ordre public)

1. These Principles shall not prevent a court from applying overriding mandatory provisions of the law of the forum which apply irrespective of the law chosen by the parties.

2. The law of the forum determines when a court may or must apply or take into account overriding mandatory provisions of another law.

3. A court may only exclude application of a provision of the law chosen by the parties if and to the extent that the result of such application would be manifestly incompatible with fundamental notions of public policy (ordre public) of the forum.

4. The law of the forum determines when a court may or must apply or take into account the public policy (ordre public) of a State the law of which would be applicable in the absence of a choice of law.

5. These Principles shall not prevent an arbitral tribunal from applying or taking into account public policy (ordre public), or from applying or taking into account overriding mandatory provisions of a law other than the law chosen by the parties, if the arbitral tribunal is required or entitled to do so.

Article 12 – Establishment If a party has more than one establishment, the relevant establishment for the purpose of these Principles is the one which has the closest relationship to the contract at the time of its conclusion of the contract.

Regulation (EU) No 1259/2010 in Lithuania

The participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation has been confirmed by the Commission (see Decision of 21 November 2012, OJ L, 323, 22 .11.2012). The Regulation, which will enter into force in Lithuania as from tomorrow, shall apply from 22

May 2014.

European Parliament Votes to Recast the Brussels I Regulation

Yesterday (20 November 2012) the European Parliament voted, in plenary session, to adopt the report of the Legal Affairs (JURI) Committee (rapporteur: Tadeusz Zwiefka) on the Commission's Proposal (COM (2010) 748) to recast the Brussels I Regulation. A substantial majority (567-28, 6 absentions) expressed support for the Proposal, subject to the JURI Committee's amendments. As followers of the process will be aware, the result is a mixed one for the Commission. Although its primary objective of abolishing (procedural) *exequatur* is supported by the Parliament, other features of the Proposal (most notably, the recommendations to restrict the substantive grounds for opposing enforcement and to harmonise rules of jurisdiction for defendants not domiciled in a Member State) have been ejected.

The focus now moves to the Council, which is due to meet next month to consider its own position on the Proposal and on the amendments put forward by the European Parliament. The changes will not likely enter into force for another 24 months.

The wheels of European private international law keep turning.

Immunity of Warships: Argentina

Initiates Proceedings against Ghana under UNCLOS

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Cross posted at EJILTalk!

Another chapter has begun in the saga of NML Capital Ltd's attempts to collect on its holdings of Argentinean bonds (see here for earlier reporting on this blog and here for earlier reporting on *EJILTalk!*) with the initiation of inter-State proceedings by Argentina against Ghana under the 1982 UN Convention of the Law of the Sea.



It will be recalled that on 2 October 2012, whilst on an official visit, the Argentinean naval training vessel the *ARA Libertad* was arrested in the Ghanaian port of Tema. Its arrest was ordered by Justice Richard Adjei Frimpong, sitting in the Commercial Division of the Accra High Court, on an application by NML to enforce a judgment against Argentina obtained in the US courts (see here for the decision of the US Court of Appeals for the 2nd Circuit). The judge considered that the waiver of immunity contained in the bond documents, which provided that:

> *To the extent the Republic [of Argentina] or any of its revenues, assets or properties shall be entitled … to any immunity from suit, … from attachment prior to judgment, … from execution of a judgment or from any other legal or judicial process or remedy, … the Republic has irrevocably agreed not to claim and has irrevocably waived such immunity to the fullest extent permitted by the laws of such jurisdiction (and consents generally for the purposes of the Foreign Sovereign Immunities Act to the giving of any relief or the issue of any*

process in connection with any Related Proceeding or Related Judgment).

extended to lift the vessel's immunity from execution. Argentina has strongly resisted this assertion of jurisdiction, claiming that it violates the immunity enjoyed by public vessels, which cannot be impliedly waived. It appears that the vessel remains under the control of a skeleton crew, who have prevented any efforts by the Ghanaian authorities to move the vessel, whilst being preventing themselves from leaving port.

Both States being parties to UNCLOs, on 29 October 2012 Argentina instituted arbitration proceedings against Ghana under Annex VII UNCLOS (Ghana not having made a declaration under Article 287 UNCLOS: see Article 287(3)). On 14 November 2012 Argentina applied to the International Tribunal for the Law of the Sea for the prescription of provisional measures prior to the constitution of the Annex VII tribunal (see ITLOS press release here).

The prescription of provisional measures by ITLOs is covered by Article 290(5), which provides that:

> *Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea … may prescribe … provisional measures in accordance with this article if it considers that prima facie the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires.*

However, even given the rather low hurdle to be vaulted, it is perhaps doubtful whether the first criterion ('that *prima* facie the tribunal which is to be constituted would have jurisdiction') can be satisfied. Article 287(1) UNCLOS provides that such a tribunal 'shall have jurisdiction over any dispute concerning the interpretation or application of this Convention', and it is unclear whether the dispute falls within the provisions of UNCLOS. Argentina may well have the law on its side as regards State immunity for warships. It may be, however, that ITLOs and an UNCLOS Annex VII arbitral tribunal are not the right fora for the settlement of its dispute with Ghana.

It may well be, as argued by Argentina in its request for the indication of provisional measures (see here), that the *Libertad* is a warship for the purposes of Art 29 UNCLOs. However, Article 32 then states:

> *With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.*

Subsection A of Section 3 of Part II of UNCLOs deals with the rules applying to all ships concerning innocent passage in the territorial sea. Articles 30 and 31 respectively cover non-compliance with warships of the laws and regulations of a coastal State concerning passage through the territorial sea, and flag State responsibility for any loss or damage to a coastal State resulting from the non-compliance by warships with the laws and regulations of the coastal State concerning passage through the territorial sea. Put simply, therefore, the Convention states that it says nothing about the immunities of warships in the territorial sea (Article 32 falling within Part II of UNCLOs dealing with the legal regime of the territorial sea – despite the provision's blanket terms another provision does exist (Article 95) concerning the immunities of warships on the high seas), still less about the immunities of warships in internal waters (which no provision of UNCLOs covers), leaving the matter to be dealt with elsewhere.

In addition to relaying on Article 32, Argentina also refers to the right of innocent passage and freedom of navigation (Articles 18(1)(b), 87(1)(a) and 90). However, the Libertad was arrested whilst in port, within Ghanaian internal waters (Article 11 UNCLOS), so that it does not seem apt to see its seizure as impeding its right of innocent passage, still less its freedom of navigation. If so, any arrest pursuant to judicial proceedings would be a similar violation. It is also difficult to see the *Libertad's* official visit to Tema as an incident of innocent passage. Indeed, Argentina, in its request for provisional measures (paragraph 4), argues that the visit was specifically governed by an agreement between the two States, which would seem unnecessary were the vessel simply exercising an already-existing right. Moreover, Article 28 UNCLOs provides that although a coastal State can only levy execution against or arrest a ship for the purpose of civil proceedings in respect of obligations or liabilities assumed or incurred by the ship herself in the course or for the purpose of her voyage through the waters of the coastal State, this limitation is without prejudice to the right of a coastal State:

> *in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters*

which strongly suggests that the limitation itself only applies to vessels exercising their right of innocent passage within the coast State's territorial sea, not those within its internal waters (as does the location of Article 28 within Part II of UNCLOS). It is not Ghana's assertion of a general jurisdiction to arrest ships within its ports and harbours that Argentina objects to, but its exercise of that jurisdiction with regard to a vessel which Argentina argues is immune from it. In reality, the dispute revolves around whether, as a matter of international law, Ghana should accord State immunity to the *ARA Libertad*. Argentina's request, by spending 18 out of its 22 paragraphs of legal grounds on the matter, makes this point clearly.

The other criterion for the prescription of provisional measures set out in Article 290(5) ('urgency') might be thought less problematic. The provisional measures sought by Argentina, however, are that Ghana 'unconditionally enables' the *Libertad* to leave Tema and Ghana's jurisdictional waters, and to be resupplied to that end (paragraph 72bis, Argentina's request for provisional measures). Provisional measures are intended 'to preserve the respective rights of the parties to the dispute … pending the final decision' (Article 290(1)). It cannot be said that the measures requested by Argentina do anything to preserve any rights Ghana might have. Indeed, it prescribed, they would seem essentially to settle the dispute. A case can be made for the release of the vessel, not least because NML has already made it clear that it would permit it on payment of US$20 million, but not, at this stage, unconditionally.

Interestingly, on 26 October 2012, just prior to commencing arbitration proceedings against Ghana, Argentina withdrew, 'with immediate effect' its declaration under Article 298 UNCLOs exempting disputes falling within Article 298(1)(a), (b) and (c) from the compulsory procedures entailing binding decisions provided for in section 2 of Part XV of UNCLOS insofar as it concerned 'military activities by government vessels and aircraft engaged in noncommercial service'. Article 298(1)(b), which covers: 'Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service …' This may have been *ex abundanti cautela*. Although the training of

naval cadets could be seen as a military activity, a goodwill visit to Tema perhaps could not, still less the arrest, following a court order, of a vessel on such a visit.

As yet, Ghana's attitude to the proceedings has not been revealed. Argentina's request for provisional measures (paragraph 39) indicates that the Ghanaian Government did argue before Justice Frimpong that the *Libertad* was immune from the jurisdiction of the Ghanaian courts. However, acts of the Ghanaian courts are equally acts of the Ghanaian State and it is the court's opinions which have prevailed and which Argentina complains about. In general, it would seem that the Government is between a rock and a hard place. It cannot overrule its court's decisions without breaching domestic law. Indeed, it might even be, given NML's penchant for litigation, that any interference with the judicial process leading to the *Libertad's* release could give rise to a claim for denial of justice by NML under the UK-Ghana BIT.

Fourth issue of 2012's Journal du Droit International

The fourth issue of French *Journal du droit international* (*Clunet*) for 2012 was just released. It contains two articles addressing issues of private international law and several casenotes. A full table of content is accessible here.

In the first article, Walid Ben Hamida, who lectures at Evry University, discusses the application of the UNIDROIT Principles in arbitration proceedings involving states or international organizations (*Les principes d'UNIDROIT et l'arbitrage transnational : L'expansion des principes d'UNIDROIT aux arbitrages opposant des États ou des organisations internationales à des personnes privées*).

> *Originally destined to international commercial contracts, UNIDROIT principles are now experiencing a remarkable growth in transnational relationships. Due to their neutrality, universality and quality, they have been well received by the arbitrators and the parties in many arbitrations opposing private parties to*

States or international organizations. In this article, the author makes an inventory of the references to UNIDROIT principles in transnational arbitral jurisprudence and analyzes the reasons of their application. He analyses both traditional transnational arbitration based on classical arbitration clauses and unilateral transnational arbitration resulting from the acceptance by the private party of an offer of arbitration expressed by a State or by an international organization.

In the second article, Olivier Dubos, who is a professor of public law at the University of Bordeaux, explores the issues raised by the different interpretations of Article 33 of the Montreal Convention adopted by French and American courts (*Juridictions américaines et juridictions françaises face à l'article 33 de la Convention de Montréal : un dialogue de sourds ?*).

Article 33 of the Montréal Convention « for the Unification of certain rules for International Carriage by air », gives the victims of an air transport accident an « option » to bring their action for damages before different fora that the aforementioned article designates. The French Supreme Court (Cour de cassation) recently considered that this freedom of option took on an imperative character and accordingly considers that the French jurisdictions are not available if the plaintiff first chose a jurisdiction of another State (the USA in the latter case). On the other hand, for some American jurisdictions, article 33 can be combined with the theory of « 'forum non conveniens » which allows them to refuse to adjudicate a claim grounded on the Montreal convention. However, such an interpretation of article 33 does not win unanimous support amongst American judges. The victims who, in accordance with article 33, have chosen to take their case before the American jurisdiction could find themselves in a deadlock…