Commentary on the Common European Sales Law

The first commentary on the (Proposal for a) Common European Sales has just been released. Edited by Reiner Schulze from the University of Munster it provides an article by article-analysis of the envisioned optional instrument. More information is available on the publisher's website. The official announcement reads as follows.

> *The landscape of European Contract Law is rapidly taking shape. In October 2011, the European Commission proposed a Common European Sales Law (CESL) to facilitate cross-border transactions between businesses and between businesses and consumers. It contains a complete sales law and provisions for the supply of digital content and purchase of related services.*
>
> *The Commentary analyses all 202 articles of the CESL, explains their function and doctrinal context and indicates the possible problems of their application. In doing so it offers a critical contribution to the legislative procedure and prepares practising lawyers, legal scholars and students for the use of the new European case law. Each article is dealt with in the same structure:*
>
> - *Function and underlying principles*
> - *Systematical context*
> - *Analysis and interpretation, including references to potential problems in practice*
> - *Criticism and possible improvements*
> - *The authors are renowned jurists from numerous European countries and with great experience in European and international contract law*

Zaremby on the Restatements (First and Second) of Conflict of Laws

Justin Zaremby has posted “Restating the Restatement of Conflicts: Approaching the Legitimacy Question in Choice-of-Law Theory” on SSRN. The paper can be downloaded here. The abstract reads as follows:

> *Since the so-called conflicts revolution, choice-of-law theory continues to reject the vested rights approach of the First Restatement of Conflicts without fully criticizing the failures of the governmental interest theory in the Second Restatement of Conflicts. At the same time, neither approach adequately examines the question of what constitutes a legitimate resolution to a conflict between states. This Article suggests that the choice between the rights language of the First Restatement and the governmental interest language of the Second Restatement is actually a debate between legal formalism and legal realism. Both choices lead to a legitimacy deficit for theorists and judges who attempt to resolve conflicts. This Article applies liberal and republican political theory to the debate between vested rights and governmental interest, suggesting an approach to resolving conflicts that is grounded in the legitimate exercise of judicial discretion.*

Harvey and Schilling on the (Consequences of an Ineffective) Choice of the CESL

Caroline Harvey, University of Oxford, and Michael Schilling, King’s College London, have published a paper dealing with the (consequences of an ineffective)

choice of the Common European Sales Law (CESL). The paper can be downloaded here. The abstract reads as follows:

> *In order to opt in to the proposed Common European Sales Law, the parties must utilise the mechanism set out in the Regulation, in accordance with which they 'agree to use the CESL' and thus subject their contract to the CESL. This article examines an issue that has so far received little attention: the question of how the agreement to use CESL and the contract under CESL interact. Given the formal requirements that the agreement to use CESL is subject to, the agreement to use the CESL may easily suffer from a defect. The parties may then purport to conclude a contract governed by the CESL, but without a fully effective agreement that the CESL applies to it. In such circumstances the question arises whether that contract may still be effective under the CESL or under national law, in particular where the parties have performed their (perceived) obligations.*

Second Issue of 2012's Belgian PIL E-Journal

The second issue of the Belgian bilingual (French/Dutch) e-journal on private international law *Tijdschrift@ipr.be / Revue@dipr.be* for 2012 was just released.

The journal essentially reports on European and Belgian cases addressing issues of private international law. It includes one article written in French by Hélène Englert and Fabienne Collienne which offers a survey of a new procedure recently introduced by the Belgian lawmaker for the purpose of recognizing foreign adoptions (*Du nouveau dans les adoptions internationales : une procédure de régularisation*).

This issue also includes a casenote on a Belgian case by Jinske Verhellen, written in Dutch: *Ontbrekende huwelijksakte in het kader van een*

echtscheidingsprocedure: uiteenlopende standpunten in de rechtspraak.

Latest Issue of RabelsZ: Vol. 76, No. 3 (2012)

The latest issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law" (RabelsZ) has just been released. It contains the following articles:

- *Reinhard Zimmermann*, **Testamentsformen: »Willkür« oder Ausdruck einer Rechtskultur? (Testamentary Form Requirements: Arbitrary or Expression of Legal Culture?),** pp. 471-508

In the history of European private law the law of succession used to play a central role. This is different today. In most modern legal systems, comparatively little scholarly attention is devoted to it; in some of them it is not even a mandatory subject of legal training in the universities. Widely, the law of succession is regarded as static and somewhat boring. In addition, it is taken to be deeply rooted in fundamental cultural values of a society and, therefore, not suitable for comparative study or even legal harmonization. The present article challenges these views, as far as the law of testamentary formalities is concerned. It traces the comparative history of the three main types of form requirements: writing in the testator's own hand, reliance on witnesses, and involvement of a court of law or notary. It is argued that the differences between the legal systems found today do not reflect cultural differences and can, indeed, often be regarded as rather accidental; that the comparative study of a large variety of issues concerning testamentary formalities can indeed be meaningful and enlightening; that in a number of legal systems the law relating to testamentary formalities has been changed more often than many parts of the supposedly much more dynamic law of obligations; that the international will constitutes an unhappy compromise between the will-types found in the various national legal systems and that it is, therefore, not surprising that the

Washington Convention has been so remarkably unsuccessful. Attention is also drawn to the purposes served by the form requirements for wills and to the fact that, in the modern world, the holograph will (traditionally regarded as the simplest and most convenient way to make a will) is rapidly acquiring a much more solemn character. This paper is based on the Savigny lecture, delivered in Marburg on 24 October 2011, to mark the 150th anniversary of Savigny's death. It therefore concludes by asking why Savigny does not appear to have devoted much attention to the law of succession, what Savigny thought of testamentary formalities, and whether that may have any significance for us today.This paper explores the "optional instrument" as a regulatory tool inEuropean private law.

- *Dethloff, Nina,* **Der deutsch-französische Wahlgüterstand – Wegbereiter für eine Angleichung des Familienrechts? (The Franco-German Optional Matrimonial Property Regime – A Trailblazer for the Alignment of Family Law?)** pp. 509-539

The Franco-German Convention signed on the 4th of February 2010 creates a new optional matrimonial property regime that can be elected by spouses and that is subject to the same provisions in both countries. With regard to its content, the property regime is not a fundamentally new concept, instead joining elements of the German default property regime and the French optional property regime of a community of accrued gains in a quite successful manner. The implementation of elements of the French legal system, which generally places a stronger emphasis on rights in rem, improves the just participation of the spouses compared to the German regime that is rather focused on practicability and legal certainty. On the other hand, the new optional property regime seems more suitable for application in practice than the French property regime, which – due to its lumbering regulation – has not to date been commonly used. The level of protection that is attributed to the family home by the new optional community of accrued gains is not only consistent with the European common core, but from a German point of view it also establishes a clear advantage that cannot be reached by a contractual agreement.

The major significance of the new common matrimonial property regime, however, lies in the fact that for the first time ever, identical substantive family

law will be applied in two European countries. Nonetheless, the potential benefits of this uniform law will only be realised to full extent if beyond the mere unification of the law, a consistent interpretation of the provisions can be reached in the member states. Whether the new property regime unveils a ground-breaking impact will primarily depend on its future development from a bilateral convention to a uniform optional European property regime. Analysing the model from a comparative point of view and in due consideration of the therein contained option for other countries to join the Convention, the stipulations seem at least generally suitable for affiliation. However, if in a second step the community of property, which is also very common in many European countries, were to be established as a further optional matrimonial property regime – be it at a binational, multinational or even European level – this should be based on the sound foundation of a detailed comparative law inquiry, taking into account in particular the evolving Principles of Matrimonial Property Law of the Commission of European Family Law. Moreover the Franco-German community of accrued gains could function as the initial spark for the creation of further uniform law. The choice of a uniform property regime facilitates the asset planning that is usually extremely complex in crossborder situations. Nevertheless, due to the diverging stipulations of maintenance law in the participating countries as well as the varying compensation mechanisms and the different scope of judicial review or authorisation schemes, the economic consequences of a divorce can vary considerably. This could be countered by an optional uniform legal framework encompassing all aspects of marriage law. Spouses could choose this legal regime upon contracting marriage. Thus, the new Franco-German property regime could lead the way to a uniform European optional property regime and ultimately to a European marriage.

- *Helmut Koziol, Grabriele Koziol*, **Ansprüche des geschädigten Retters bei Selbstgefährdung eines Bergsteigers – Lösungsansätze im österreichischen, deutschen und japanischen Recht (Self-endangerment of an Alpinist – Claims of the Damaged Rescuer: Approaches under Austrian, German and Japanese Law)**, pp. 540-561

If an alpinist places himself in an emergency situation due to his own lack of care or boldness and another person in trying to rescue him suffers damage,

the question arises on which basis and to which extent the rescuer is entitled to claim damages from the rescued alpinist. The present article surveys possible solutions under the doctrine of negotiorum gestio in case of necessity and tort law under Austrian, German and Japanese law. While all three legal systems provide for the compensation of expenses incurred by the negotiorum gestor, none of them has an explicit provision on the compensation of damage suffered by thenegotiorum gestor. For Austrian law, an analogous application on the liability of the principal in case of contractual agency which is based on the idea of assumption of risks is proposed. German and Japanese law, however, seek to solve the problem through a broad interpretation of the term "expenses". Japanese law offers still a further solution with statutory compensation schemes for rescuers in certain emergency situations. As for claims based on tort law, the problem arises that it cannot easily be argued that it is wrongful to put oneself at risk by going on a dangerous mountain hike. Thus, a careful balancing of the i

- *Kuipers, Jan-Jaap,* **Bridging the Gap – The Impact of the EU on the Law Applicable to Contractual Obligations**, pp. 562-596

Despite the increasing activity of the European Union (EU) in private law, differences between the legal systems of the Member States are likely to remain. If differences in private law are liable to hinder the smooth functioning of the internal market, one would expect the European Union to have a major interest in Private International Law (PIL). However, for a long time, the opposite has proven to be true.1

Although EU law and PIL in essence both aim to resolve a conflict of laws, they underlie a different rationale. Mutual recognition combined with a country of origin principle does not do more than settle a claim of application between the laws of the host Member State and home Member State in favour of the latter. However, EU law revolves around the creation of an internal market, whereby it is perceived to be an obstacle to the functioning of the internal market when a producer would be subject to the laws of both the host and home Member State. European PIL tries to serve international trade and transnational relationships by bringing back a legal relation to its natural seat. It does not matter which law is found to be applicable. Although PIL is unfamiliar with the political nature that colours EU law, its ambitions are wider, in the sense that it

tries to serve international trade as a whole and not just the needs of the internal market. The international harmony of decisions, where the outcome of a dispute is similar regardless before which court the proceedings are brought, is a goal in itself. For that purpose, a contract should be governed by the same law, regardless in which country proceedings are brought. Hence, EU law is concerned with whether the imposition of a rule constitutes a restriction to the internal market whereas PIL, in the European tradition, does not seek to neutralise the disadvantages that result from discrepancies of national laws but instead tries to locate the geographical centre of the legal relationship.

In the past decade, the European Union has become increasingly active in the area of PIL. It will first be demonstrated that the Rome I Regulation2 does not have any specific orientation towards the objectives of the internal market. On the contrary, in particular with regard to consumer contracts, conflict of laws rules may sometimes even undermine the confidence of the consumer in the internal market. Despite the positive harmonisation, the precise relation between EU law and PIL has yet to be fully crystallised. Two major questions remain unresolved. The first addresses the role of Rome I in the international arena. Should the international scope of application of secondary law be determined autonomously, on the basis of its aim and purpose, or should one fall back upon Rome I? The second question concerns the role of Rome I in the internal market. To what extent can the determination of the applicable law be left to the conflict of laws norm? Do fundamental freedoms, be it in the form of a favor offerentis or a country of origin principle, impact upon the applicable law? Finally, the article will conclude with some suggestions on how to enhance the coordination between EU law and PIL

- *Ulrich, Ernst,* **Das polnische IPR-Gesetz von 2011 – Mitgliedstaatliche Rekodifikation in Zeiten supranationaler Kompetenzwahrnehmung (The Polish Private International Law Act of 2011 – National Recodification in Times of Exercise of Supranational Competences**), pp. 597-638

The Private International Law Act of 2011 is the third instance of Polish legislation in this area, being preceded by regulations from 1926, when the country regained its independence, and 1965, after the introduction of the national Civil Code. The initiative for a reform had been formulated in 1998,

even before the EU accession, stating that the country should enact provisions of the Rome Convention and that the statute from 1965 was not detailed enough. Opponents of the draft considered it an advantage that the Act from 1965 was both short and complete. They did not find it necessary to replace tried provisions given that the introduction of EU regulations seemed to be a matter of time. They also uttered doubts about the quality of the proposed innovations and underlined that no one had established the extent to which the new rules would answer problems courts faced under the old law.

The new statute is twice as long as its predecessor (even though essential issues are no longer ruled by internal law) but generally keeps its structure and style. On many detailed questions one finds special conflict rules. As new areas of regulation, consumer contracts, intellectual property and negotiable instruments have appeared. The new law also offers the possibility of a choice of law in matrimonial and succession matters. Another innovation is the introduction of habitual residence, used not only in the EU-unified legal areas, but also in the autonomous rules on family and succession law. Where it broadens the possibility of choice of law, it represents progress, but where it is to be taken into account only subsidiarily next to traditional elements such as citizenship and residence, its impact is doubtful. Several changes might make the application of PIL easier, yet others will rather provoke doubts.

The new Act demonstrates that there is still a large amount of room for national regulation. Some space has been left for general provisions, too, but they lose their function of providing a general overview with every new piece of EU regulation. The introduction of an entirely new PIL cannot be seen as an answer to EU requirements, nor was it required on account of practical needs. Rather, it is the realisation of a vision of completing the shorter act previously in force.

Minne on Choice of Law Rules for

Set-Off in the Financial Sector

Gregory Minne, who is a senior associate at Arendt & Medernach in Luxembourg, has posted Les Règles de Conflit de Lois en Matière de Compensation Dans le Secteur Financier (The Conflict-of-Law Rules Concerning Set-Off in the Financial Sector) on SSRN. The abstract reads:

> *La présente étude propose de revenir sur les règles de conflits susceptibles d'être rencontrées lorsque le mécanisme de la compensation opère. La perspective luxembourgeoise ainsi que les pratiques de la place apportent un éclairage intéressant à cette problématique.*
>
> *The objective of this study is to reconsider the rules relating to conflicts likely to be encountered during the operation of the mechanism of set-off. The Luxembourg perspective as well as the practices of the financial centre shed an interesting light on this issue.*

The paper was published in the *Bulletin Banque et Droit* last year.

French Code of Private International Law

Michel Attal, who lectures and practices in Toulouse, and Julie Bauchy, a doctoral student at Toulouse I University, edited the first French code of private international law last year.

The book is not an official code but rather an academic entreprise which purports to gather all applicable rules (statutes, international treaties, European regulations and directives) of private international law.

More information on this useful pocketbook is available here.

Brand on UNCITRAL Online Dispute Resolution Project

Ronald A. Brand (University of Pittsburgh School of Law) has posted Party Autonomy and Access to Justice in the UNCITRAL Online Dispute Resolution Project on SSRN.

> *The United Nations Commission on International Trade Law (UNCITRAL) has directed its Working Group III to prepare instruments that would provide the framework for a global system of online dispute resolution (ODR). Negotiations began in December 2010 and have produced an as-yet-incomplete set of procedural rules for ODR. It is anticipated that three other documents will be prepared, addressing substantive principles to be applied in ODR, guidelines and minimum requirements for ODR providers and neutrals, and a cross-border mechanism for enforcement of the resulting ODR decisions on a global basis.*
>
> *The most difficult issues in the ODR negotiations are centered on the coordination of the ODR process with national rules of private international law (conflict of laws), national rules of consumer protection, and the international arbitration law framework. If any global system of ODR is to be successful, it must avoid difficult questions about the application of national mandatory rules of law, it must be considered to provide fair procedures and results for consumers, and the results obtained must be enforceable across borders. This will only happen if the system respects the ability of individual parties (regardless of category) to enter into binding ODR agreements at the time they form the basic contract for an online transaction.*
>
> *This article reviews international efforts at constructing an acceptable system of ODR for low-value high-volume online transactions, and addresses the role of party autonomy in the success of any resulting ODR system. The ODR project will fail if parties are denied the autonomy to opt into the resulting system of dispute resolution. Party autonomy is key to the difficult issues of consumer protection, applicable law, and enforcement within the existing international*

litigation and arbitration regimes. It makes no sense to design a system states agree is fair to all and then, through rules that require reference to national or regional laws, prevent the use of that system.

The paper is forthcoming in the *Loyola University Chicago International Law Review*.

Yearbook of Private International Law, Vol. XIII (2011)

The latest issue of the Yearbook of Private International Law (Volume XIII – 2011) has recently been published. Edited by *Andrea Bonomi,* Professor at the University of Lausanne, and *Gian Paolo Romano*, Professor at the University of Geneva, the volume focuses, among others, on recent developments in European private international law.



The official announcement reads as follows:

The current volume of the "Yearbook of Private International Law" includes three special sections: The first one is devoted to the recent European developments in the area of family law like the proposal on the matrimonial property régimes in its relation with other EU instruments, such as Brussels IIbis or Rome III. Another special section deals with the very hotly debated question of the treatment of and access to foreign law. The third one presents some recent reforms of national Private International Law systems. National

reports and court decisions complete the book.

Recent highlights include:

- *multiple nationalities in EU Private International Law*
- *the European Court of Human Rights and Private International Law*
- *parallel litigation in Europe and the US*
- *arbitration and the powers of English courts*
- *conflict of laws in emission trading*
- *res judicata effects of arbitral awards*

The *Yearbook* includes the following contributions:

Doctrine

- Stefania Bariatti, Multiple Nationalities and EU Private International Law – Many Questions and Some Tentative Answers
- George A. Bermann, Parallel Litigation: Is Convergence Possible?
- Patrick Kinsch, Private International Law Topics Before the European Court of Human Rights – Selected Judgments and Decisions (2010-2011)
- Jonathan Hill, The Powers of the English Court to Support an Arbitration in "Foreign Seat" and "No Seat" Cases
- Christa Roodt, Border Skirmishes between Courts and Arbitral Tribunals in the EU: Finality in Conflicts of Competence
- Koji Takahashi, Conflict of Laws in Emissions Trading
- Thomas Kadner Graziano, The CISG Before the Courts of Non-Contracting States? Take Foreign Sales Law as You Find It

European Family Private International Law

- Cristina González Beilfuss, The Proposal for a Council Regulation on the Property Consequences of Registered Partnerships
- Ilaria Viarengo, The EU Proposal on Matrimonial Property Regimes – Some General Remarks
- Andrea Bonomi, The Interaction among the Future EU Instruments on Matrimonial Property, Registered Partnerships and Successions
- Beatriz Campuzano Díaz, The Coordination of the EU Regulations on

Divorce and Legal Separation with the Proposal on Matrimonial Property Regimes
- Simone Marinai, Matrimonial Matters and the Harmonization of Conflict of Laws: A Way to Reduce the Role of Public Policy as a Ground for Non-Recognition of Judgments

Application of Foreign Law

- Carlos Esplugues Mota, Harmonization of Private International Law in Europe and Application of Foreign Law: The "Madrid Principles" of 2010
- Shaheeza Lalani, A Proposed Model to Facilitate Access to Foreign Law

News from Brussels

- Mel Kenny / Lorna Gillies / James Devenney, The EU Optional Instrument: Absorbing the Private International Law Implications of a Common European Sales Law

News from Rome

- Alessandra Zanobetti, UNIDROIT's Recent Work: An Appraisal

National Reports

- Yasuhiro Okuda, New Provisions on International Jurisdiction of Japanese Courts
- Tomasz Pajor†, Introduction to the New Polish Act on Private International Law of 4 February 2011
- Mathijs H. ten Wolde, Codification and Consolidation of Dutch Private International Law: The Book 10 Civil Code of the Netherlands
- Seyed N. Ebrahimi, An Overview of the Private International Law of Iran: Theory and Practice (Part Two)
- Nikolay Natov / Boriana Musseva / Teodora Tsenova / Dafina Sarbinova / Zahari Yanakiev / Vasil Pandov, Application of the EU Private International Law
  Instruments in Bulgaria
- William Easun / Géraldine Gazo, Trusts and the Principality of Monaco

Court Decisions

- Michael Bogdan, Defamation on the Internet, *forum delicti* and the E-Commerce Directive:
  Some Comments on the ECJ Judgment in the *eDate* Case
- Michel Reymond, The ECJ *eDate* Decision: A Case Comment
- Matthias Lehmann, Exclusive Jurisdiction under Art. 22(2) of the Brussels I Regulation:
  The ECJ Decision *Berliner Verkehrsbetriebe v JPMorgan Chase Bank* (C-144/10)
- Jan von Hein, Medical Malpractice and Conflict of Laws: Two Recent Judgments by the German Federal Court of Justice
- Kun Fan, The Risks of Apparent Bias when an Arbitrator Acts as a Mediator – Remarks on Hong Kong Court's Decision in *Gao Haiyan*

Forum

- Jeremy Heymann, The Relationship between EU Law and Private International Law Revisited: Of Diagonal Conflicts and the Means to Resolve Them
- Ilaria Pretelli, Cross-Border Credit Protection against Fraudulent Transfers of Assets – *Actio pauliana* in the Conflict of Laws

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ICC and Civil Reparations

Many thanks to Assistant Professor Nicolás Zambrana (University of Navarra, Spain), author of this comment on the ICC decisions against Lubanga.

First Decision on Civil Reparations by the International Criminal Court

Last 14 of March, the International Criminal Court (ICC) issued its first judicial decision ever, declaring Thomas Lubanga guilty of the crime of conscripting and enlisting children under the age of fifteen years and using them to participate actively in hostilities in the Democratic Republic of Congo. The following 10 of

July, another decision, sentencing Lubanga to 14 years in prison, was issued by the same tribunal. Finally, last 7 of August a decision on reparations for the victims has been issued by the ICC. The first thing to be observed is that there does not seem to be a declaration by the tribunal concerning the **civil liability** of Lubanga in any of the three decisions, even if art 75 of the Rome Statute foresees that the ICC may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Furthermore, Lubanga is believed by the court to have no known assets, so no monetary fines have been imposed and no monetary reparations will be exacted from him, although the tribunal foresees that he should provide an apology to the victims as part of the reparations. If the person condemned by the ICC has assets with which to satisfy the fines imposed or the amounts of the reparations decided by the court, the Rome Statute foresees, in article 109.1, that **State Parties** (i.e. parties to the Rome Statute) **shall give effect to those fines or forfeitures** ordered by the Court without prejudice to the rights of *bona fide* third parties, and in accordance with the procedure of their national law. This article can be complemented by article 93 of the Statute, which declares the obligation by countries to abide by orders of the ICC requesting seizures of property under the law of the country. This procedure seems, at least as regards its goals, rather similar to a common ***exequatur* system of recognition and enforcement of foreign judgements**, only this time there is no foreign country where the judicial decision originates but an international tribunal. Nevertheless, it could be anticipated that, as it happens with the **enforcement of decisions issued by human rights courts** such as the European Court of Human Rights, even if the international obligation to abide by the decision of the international tribunal is clear, nothing is foreseen in case the enforcing State delays or altogether refuses to comply with the decision. This may be easily done since the compliance with the ICC's decision on fines and seizures of property of the person condemned has to be carried out in accordance with the law of the country and few countries may have already adapted their legislation on enforcement of foreign judgments to the Rome Statute. It is also peculiar that, even if the person condemned has no assets with which to satisfy his or her civil liability, the Rome Statute foresees (art. 75.2) that the reparations can still be made "through" a **Trust Fund** funded by the States. This Trust Fund operates in such a way that the ICC only needs to find somebody guilty of one of the crimes established by its Statute in order to set in motion an elaborated machinery that will try to repair all kind of damages, individual or communitarian,

physical or psychological, caused by the crimes (art. 97 of the Rules of the Rules of Procedure and Evidence of the ICC). However, the most interesting part of the 7 August decision is the set of principles elaborated by the ICC in order to "calculate", design and distribute the reparations. It is worth noting that these principles are only valid for the Lubanga case, as the Rome Statute foresees that in every case the ICC will establish the principles needed to establish the reparations. Even if this almost one hundred pages decision sets out those principles, **it does not quantify the reparations** or even determine their exact nature, leaving that for the Trust Fund, which will have great discretion for this task, being only monitored by a Chamber of the ICC. One interesting feature of these principles is that they do not limit the reparations to victims present at the trial but to any person, community or entity that is found to have suffered from the crimes adjudicated. Therefore, the principles choose to make the victims a "class", as in the **US class action system**. Another interesting feature is that the ICC Lubanga principles state that victims may obtain reparations also under other mechanisms, according to national or international law. Another one of the principles will sound familiar to civil and common lawyers because it says that Restitution should, as far as possible, restore the victim to his or her circumstances before the crime was committed. This is certainly a landmark decision because it opens the way to non punitive redress for the victims of egregious international crimes.