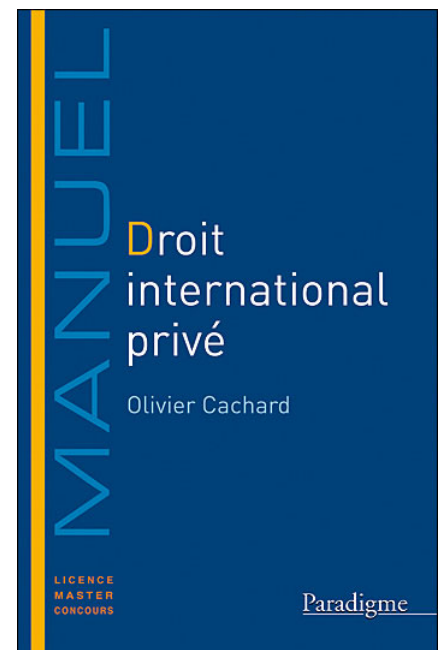


ATS and the lack of corporate liability under International Law

For those interest in the fate of the american ATS, see the recent order of the US District Court of the Southern District of Indiana [here](#) (a summary of the decision by Antoine Martin, PhD reasearcher in International Law at the University of Surrey and editor of International Law Notepad website, may also be found [here](#)).

New French Book on Private International Law

Professor Olivier Cachard, who is the Dean of the Law Faculty of Nancy, has recently published a book on French private international law.



The book is short (less than 300 pages). It aims at surveying the subject, and will thus be very useful for not only for students, but also for foreigners wishing to get a first acquaintance with the subject. Remarkably, it also includes quite a few materials such as cases, statutory texts and extracts from leading articles.

More details can be found [here](#).

New French Book on International Commercial Law

The second edition of Jean-Michel Jacquet, Philippe Delebecque and Sabine Corneloup's manual on international business law (*Droit du commerce international*) was released this summer.



It is one of the few comprehensive French books in this field, and it is up to date.

For more details, see [here](#).

Rueda and Cuniberti on Abolition of Exequatur

Isabelle Rueda and I (University of Luxembourg) have posted Abolition of Exequatur - Addressing the Commission's Concerns on SSRN. The abstract reads:

After the European Council called for the reduction of intermediate measures necessary for the enforcement of judgments, the European Commission has initiated a process of gradual abolition of exequatur in the European Union. The exequatur procedure, however, serves the important purpose of preventing the

*enforcement of foreign judgments made in violation of human rights. Along with many other critiques of the project, this Article argues that existing mechanisms sanctioning human rights violations do not serve the same purpose, and that the new remedies forged by the Commission do not afford the same level of protection. However, unlike many other critiques, the Article argues that the concerns articulated by the European lawmaker with respect to the traditional *exequatur* procedure should not be ignored and could be addressed by reforming *exequatur* in a less radical way.*

The paper can be freely downloaded [here](#). All comments welcome!

Faculty Position at National University of Singapore

The Faculty of Law at the National University of Singapore invites applications for full-time academic appointment at all levels.

JOB DESCRIPTION:

We seek candidates who are committed to excellence in research and teaching. Applications in all areas are welcome. At present, we are especially interested in scholars who specialise in (1) Conflict of Laws (Private International Law) or (2) Law and Economics.

ABOUT NUS:

NUS Faculty of Law is a leading law school in Asia widely noted for its global outlook and high standards of scholarship and education. The law school has more than 60 academic staff members and more than 1200 undergraduate and postgraduate students. The Faculty is actively engaged in research and its members regularly publish books and monographs as well as articles in leading

journals in Singapore and abroad.

Apart from the LL.B. programme, NUS also offers double degree programmes in law and business, law and economics, law and life sciences, and law and accountancy, and a concurrent degree programme in law and public policy. It has a vibrant graduate community of students working towards the LL.M. (with or without specialisation) and Ph.D. degrees. Together with New York University School of Law, the NUS law school offers the NYU@NUS programme which allows students to earn an LLM concurrently from both institutions and the LL.B. (NUS) and LL.M. (NYU) concurrent degree programme. For more information on the NUS Faculty of Law, please visit: <http://www.law.nus.edu.sg>

The strength of the NUS Faculty of Law lies in its outstanding students and faculty. The law school offers subjects ranging from the theoretical to the practical, with comparative and cross-disciplinary perspectives. The overriding objective is to provide students with a liberal legal education that will allow them to realise their full potential intellectually and professionally.

APPLICATION PROCEDURE:

To apply, please visit: http://law.nus.edu.sg/about_us/academic_positions.html for more information.

If you have any queries, you may email: lawlsfj@nus.edu.sg (Contact: The Search Committee Secretariat).

APPLICATION DEADLINES: 31 Dec 2010 and 1 June 2011

Another twist in surrogacy

motherhood saga

Many thanks to Isabel Rodríguez-Uría Suárez

The 5th of October the Spanish Dirección General de los Registros y el Notariado (hereinafter DGRN) has issued an Instruction about the regulation of affiliation registration in cases of surrogate pregnancy in order to protect the best interests of the child and the interests of the women who give birth (see BOE, n. 243, 7.10.2010).

According to the Instruction, a prerequisite is required for the registration of births by surrogate motherhood: it is necessary to produce before the Spanish responsible of the Registro Civil a judicial resolution of the competent Court of the country in which the surrogate pregnancy occurred. The judicial resolution must determine the affiliation of the child. This requisite is demanded in order to control the legal requirements of the surrogate pregnancy contract and to ensure the protection of the best interests of the child and the interests of the pregnant mother.

The foreign court decision raises a question of recognition in Spain. The DGRN distinguishes between contentious and non-contentious proceedings: on the one hand, contentious foreign decisions must be recognized by *exequatur*; on the other hand, the DGRN gives a set of guidelines for the recognition of non-contentious decisions in affiliation matters. In short, the Spanish officer in charge of the Registro Civil must check: a) the formal validity of the foreign decision b) that the original court had based its international jurisdiction in conditions equivalent to those provided by Spanish law c) the due process respect d) that the interests of the child and the pregnant mother had been guaranteed e) that the foreign decision is a final decision and that the consents given in the contract are irrevocable.

Finally, the Spanish DGRN states that foreign registration certificates do not support affiliation registration in the Registro Civil.

Conference on the Judge and the Border in Beirut


An international conference will be held on 22 October 2010 in Beirut, Lebanon, on 'The Judge and the Border'.

The morning session focuses on 'The extra-territorial activity of the courts', and deals with the powers of the courts in respect of foreign territories, foreign evidence, foreign litigants, foreign judgments, etc. The afternoon session deals with 'International judicial cooperation and conflict of laws', and covers issues such as *lis pendens*, the reception of foreign procedural institutions, the application of foreign mandatory rules, etc.

The speakers include Professors Paul Lagarde, Bernard Audit, Pascal de Vareilles-Sommières, Léna Ganagé, Marie-Maure Niboyet, Etienne Pataut, Arnaud Nuyts, Mouhib Maamari, Sami Mansour, Haffiza Haddad. The Conference (in French and Arabic) is held under the auspices of the 'Conseil supérieur de la magistrature' and 'Institut d'Etudes Judiciaires du Liban'.

The full programme can be found on www.dipulb.be.

(European) Mercy for Jérôme Kerviel? (updated)

Jérôme Kerviel was a young trader with a promising future. Today, a French criminal court ordered him to pay his employer Société Générale € 4.9 BILLION in damages. The court has also sentenced him to serve 3 years in prison. Unsurprisingly, Mr Kerviel has already announced that he will appeal. 

€ 5 billion is a high sum that Mr Kerviel will likely have difficulties paying. The court has forbidden him to be a trader again. That will not help. Given his current salary (he is in computers now), journalists have calculated that he may need to

work 177,000 years to pay his debt. After all, as journalists have also reported, € 5 billion is the GDP of Benin.

It seems that some innovative legal argument would be welcome here. On the top of my hat, two come to mind.

First, Mr Kerviel may want to pay nothing at all. What about trying insolvency? Unfortunately, it is not available for him in France, as he is a mere employee. But it might be elsewhere in Europe. If he settles in such country, could he after a while take advantage of local insolvency law, and obtain recognition of the judgment in France under the insolvency regulation?


Readers have pointed out to me that it might be enough for Mr Kerviel to move inside France. Alsace and Moselle have kept a special insolvency regime (French Commercial Code, Art. L 670-1), that German debtors particularly fancy, and which is open to everybody, including employees. The geographic requirement is to be domiciled in one of these two regions. Mr Kerviel could thus move to Metz or Strasbourg and, if he could show that he would have genuinely settled there, benefit from local insolvency law. However, the rule of French law which does not allow debts resulting from criminal offences to be cancelled in such cases, also applies in Alsace and Moselle. But maybe other jurisdictions would allow the cancellation for even such debts.


Secondly, Mr Kerviel may want to pay his debt, and think that he would thus need to be back in business again. Would the ban of the French criminal court be recognised outside of Europe? Could he practice in other major financial centers of the world?

UPDATE: Société Général people have told the French press that they would not insist that Mr Kerviel pay the entire sum. When asked whether that meant that they did not intend to ask for any payment, they said that it only meant that they would be happy to explore whether they could reach an agreement with Mr Kerviel. Well, even if Mr Kerviel was fortunate enough to settle for 1% of the entire sum, he would still need 1,770 years to meet his new obligation. In any case, he announced this morning on a French radio that he was not asking anything to SocGen.

Enforcement, Liability and Jurisdiction

Which court has jurisdiction over liability actions against banks in relation to enforcement measures? In Europe, does such action fall under Article 22 of the Brussels I Regulation?

In April this year, the French Supreme court for private and criminal matters  (*Cour de cassation*) delivered an interesting judgment in this respect. A French creditor had obtained a judgment from the Paris court of appeal ordering her debtor to pay him monies. The creditor then sought to enforce the judgment in Ivory coast, where he had been able to locate a bank account opened in the name of the debtor. He thus contacted a local enforcement officer (*huissier de justice*) who carried out an attachment (*saisie-attribution*) over the bank debt. The bank, Banque internationale pour le commerce et l'industrie en Côte d'Ivoire, declared that it held CFA Franc 11 million (€ 16,700).

 However, the debtor immediately challenged the validity of the attachment before an Abidjan court on the ground that it did not comport with of OHADA law (articles 160 and 34 of the relevant statute). The court set aside the attachment. The creditor appealed, but did not wait for the result to ask the *huissier* to carry out a second attachment which would this time not violate local enforcement law. When the *huissier* did, however, he was told by the bank that there was only CFA Franc 3000 (€ 4.57) on the account. Eventually, the Abidjan Court of appeal confirmed that the first attachment was a nullity.

I am not sure whether, under OHADA law, the bank was meant to freeze the debt for the time of the challenge of the validity of the attachment. In any case, the creditor decided to sue the bank and initiated a quasi-delictual (i.e. for negligence) action before French courts. As far as jurisdiction is concerned, the plaintiff relied on 14 of the Civil code which grants jurisdiction to French courts for all actions initiated by a French national. For 40 years, the *Cour de cassation* has ruled that Article 14 and 15 of the Civil of code apply to all claims, except

claims over real property and enforcement. The issue here was of course whether a liability action against a bank belongs to the enforcement of decisions. In a judgment of 14 April 2010, the *Cour de cassation* held that it does, and declined jurisdiction.

l'article 14 du code civil, qui permet au plaideur français d'attirer un étranger devant les juridictions françaises, doit être exclu pour des demandes relatives à des voies d'exécution pratiquées hors de France ; qu'ayant retenu que l'action engagée par M. X... contre la BICI CI découlait directement des voies d'exécution pratiquées entre les mains de celle ci en Côte d'Ivoire, elle en a déduit, à bon droit, que M. X... ne pouvait se prévaloir de ce texte, peu important que la régularité de la saisie litigieuse n'eût pas été contestée

Rumour has it that the main goal of the court was to limit the scope of Article 14 and 15. From a European perspective, however, this might be an unfortunate judgment. To which extent does it inform what the position of the court would be with respect to Article 22 of the Brussels I Regulation? A short (but maybe incomplete) survey of European scholarship shows that many writers have argued, in particular in Germany and France, that liability actions against banks should not fall within the scope of Article 22. Or should they?

Hamburg Lectures on Maritime Affairs 2010

The International Max Planck Research School for Maritime Affairs and the International Tribunal of the Law of the Sea (ITLOS) organize this year's Hamburg Lectures on Maritime Affairs.

The lectures will be held in **Hamburg from 7 October to 10 November** and are open to the public. However, registration in advance is required.

The programme as well as information on the venue and registration and can be

found here.