Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 6/2017: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)“ features the following articles:

P. Mankowski: **The German Act on Same-Sex Marriages, its consequences and its European vicinity in private international law**

Finally, Germany has promulgated its Act on Same-Sex Marriages. In the arena of private international law the Act calls for equal treatment of same-sex marriages and registered partnerships whereas in German substantive law it aligns same-sex marriages with traditional marriages and institutionally abandons registered partnerships pro futuro. In private international law the Act falls short of addressing all issues it should have addressed in light of its purpose. In particular, it lacks provisions on the PIL of kinship and adoption – and does not utter a single word on jurisdiction or recognition and enforcement of foreign judgments. In other respects it is worthwhile to have a closer look at its surroundings and ramifications in European PIL (Brussels IIbis, Rome III, Matrimonial Property, and Partnership Property Regulations), i.e. at the coverage which European PIL exacts to same-sex marriages.

P.F. Schlosser: **Brussels I and applications for a pre-litigation preservation of evidence**

The judgement is revealing a rather narrow finding. An application for a pre-litigation preservation of evidence is within the meaning of Art. 32 Brussels Ia Regulation not tantamount to “the document instituting the proceedings or an equivalent document”. The commentator is emphasizing that this solution cannot be subject to any reasonable doubt. He further explains, however, that the Regulation is applicable to such applications and the ensuing proceedings to the effect that the outcome of such a preservation of evidence must be recognized to the same degree as a domestic preservation is producing effects in the main proceedings. In particular is it clear for him, that such recognition must not be restricted by the German numerus clausus of legally recognized means of

evidence.

T. Lutzi: **Jurisdiction at the Place of the Damage and Mosaic Approach for Online Acts of Unfair Competition**

Once again, the Court of Justice was asked to determine the place of the damage under Art. 5 No. 3 Brussels I (now Art. 7(2) Brussels Ia) for a tort committed online. The decision can be criticised both for its uncritical reception of the mosaic approach and for the way in which it applied the latter to the present case of an infringement of competition law through offers for sale on websites operated in other member states. Regardless, the decision confirms the mosaic approach as the general rule to identify the place of the damage for torts committed through the internet.

K. Hilbig-Lugani: **The scope of the Brussels IIa Regulation and actions for annulment of marriage brought by a third party after the death of one of the spouses**

The ECJ has decided that an action for annulment of marriage brought by a third party after the death of one of the spouses falls within the scope of Regulation (EC) No 2201/2003. But the third party who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in the fifth and sixth indents of Art. 3(1)(a) of Regulation No 2201/2003. The ECJ does not differentiate between actions for annulment brought after the death of one of the spouses and an action for annulment brought by a third party. The decision raises several questions with regard to the application of Art. 3 of Regulation No 2201/2003.

J. Pirrung: **Forum (non) conveniens – Application of Article 15 of the Brussels IIbis Regulation in Proceedings Before the Supreme Courts of Ireland and the UK**

On a reference submitted by the Irish Supreme Court, the ECJ ruled that Art. 15 of Council Regulation (EC) No 2201/2003 (Brussels IIa) is applicable where a child protection application brought under public law concerns the adoption of measures relating to parental responsibility, (even) if it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other State thereafter commence proceedings separate from those brought in the first State, pursuant to its own domestic law and possibly relating to different factual circumstances. In order to determine that a court of

another Member State with which the child has a particular connection is better placed, the court having jurisdiction must be satisfied that the transfer of the case to the other court is such as to provide genuine and specific added value to the examination of the case, taking into account the rules of procedure applicable in the other State. In order to determine that such a transfer is in the best interests of the child, the court having jurisdiction must be satisfied that the transfer is not liable to be detrimental to the situation of the child, and must not take into account, in a given case relating to parental responsibility, the effect of a possible transfer of the case to a court of another State on the right of freedom of movement of persons concerned other than the child, or the reason why the mother exercised that right, prior to the court being seised, unless those considerations are such that there may be adverse repercussions on the situation of the child. The judgment is juxtaposed to the decision of the UK Supreme Court – pronounced some months before that of the ECJ – in re N, an Art. 15 case concerning a different situation without freedom of movement questions. Both jurisdictions have found acceptable results, the UKSC, though happily much faster than the ECJ, perhaps not entirely without one or the other risk concerning its treatment of procedural questions

A.-R. Börner: **News on the competence-competence of arbitral panels under German law – Simultaneously a note on the Federal High Court decision of August 9, 2016, I ZB 1/15**

The Federal Court of Justice of Germany has decided that the arbitration clause even survives the insolvency of a party (severability), unless stipulated to the contrary or in case of the existence of reasons for the nullity or termination of the arbitral agreement, such reasons either existing separately or resulting from the main contract. Under the German Law of Civil Procedure, the challenge to the state court that – contrary to an early decision of the arbitration panel affirming its competency – the panel has no competency, must be raised within the very short timeframe of one month, otherwise the judicial review will be forfeited. The Federal Court of Justice had held until now that in case of a (supervening) final award the state court procedure ended and that the arguments against the competency had to be raised anew in the procedure on the enforceability of the award. The Court has now accepted the criticism by the scientific literature that this places an undue burden on the challenging party. So it now holds that the second procedure (on enforceability) will be stayed until the first procedure (on

competency) is terminated, as its result takes precedence.

B. Köhler: **Dual-use contracts as consumer contracts and no attribution of consumer status of a third party to the proceedings under Brussels-I Regulation**

The determination of the scope of the provisions on jurisdiction over consumer contracts in Art. 15 to 17 Brussels I Regulation is one of the most controversial problems in international procedural law. The German Federal Supreme Court's decision raises two interesting questions in this respect. The first controversial issue concerns the classification of contracts for both professional and private purposes as consumer contracts. In its judgment Gruber, the European Court of Justice had held that such a dual-purpose contract can only be considered a consumer contract if the role of the professional purpose is marginal. However, the European legislator adopted the criterion of predominant purpose in recital 17 to the Consumer Rights Directive (2011/83/EU). Regrettably, the German Federal Supreme Court missed an opportunity to clarify the classification of dual-purpose contracts within the Brussels I Regulation. The Court applied the criterion laid down by the ECJ in Gruber without further discussion. In a second step, the Court held – convincingly – that Art. 16 (2) Brussels I Regulation presupposes that the consumer is a party to the proceedings. The capacity of consumer of a third party cannot be attributed to a defendant who, him- or herself, is not a consumer.

L. Hübner: **The residual company of the deregistered limited**

The following article deals with the consequences of the dissolution of companies from a common law background having residual assets in Germany. The prevailing case law makes use of the so-called "Restgesellschaft" in these cases. By means of three judgments of the BGH and the Higher Regional Court of Brandenburg, this article considers the conflicts of laws solutions of these courts and articulates its preference for the application of German company law on the "Restgesellschaft". It further analyses the subsequent questions as regards the legal form and the representation of the "Restgesellschaft", and the implications of the restoration of the foreign company.

D. Looschelders: **Temporal Scope of the European Succession Regulation and Characterization of the Rules on the Invalidity of Joint Wills in Polish**

Law

Joint wills are not recognized in many foreign legal systems. Therefore, in cross-border disputes the use of joint wills often raises legal problems. The decision of the Schleswig-Holstein Higher Regional Court concerns the succession of a Polish citizen, who died on 15 October 2014 and had drawn up a joint will along with his German wife shortly before his death. The problem was that joint wills are invalid under Polish law of succession. First, the court dealt with the question whether the case had to be judged according to the European Succession Regulation or according to the former German and Polish private international law. The court rightly considered that in Germany the new version of Art. 25 EGBGB does not extend the temporal scope of the European Succession Regulation. Hereafter the court states that the invalidity of joint wills under Polish law is not based on a content-related reason but is a matter of form. Therefore, the joint will would be valid under the Hague Convention on the Form of Testamentary Dispositions. This decision is indeed correct, but the court's reasoning is not convincing in all respects.

C. Thomale: **The anticipated best interest of the child – Strasburgian thoughts of season on mother surrogacy**

The ECtHR has reversed its opinion on Art. 8 ECHR. The protection of private and family life as stipulated therein is subject to a margin of appreciation far wider than hitherto expected. In stating this view, the ECtHR also takes a critical stand towards mother surrogacy: Restricting the human right to procreate, national legislators are given room to protect the child's best interest inter alia through deterrence against surrogacy. The article investigates some implications of this new landmark decision, which is being put into the context of ongoing debates on international surrogacy.

K. Thorn/P. Paffhausen: **The Qualification of Same-sex Marriages in Germany under Old and New Conflict-of-law Rules**

In its decision in case XII ZB 15/15 (20th April 2016) the German Federal Court of Justice recognized the co-motherhood of a female same-sex couple, registered in South Africa, for a child born by one of the women. While underlining that the result of the decision – the legal recognition of the parenthood – is right, the authors point out the methodological weaknesses of the reasoning. In their

opinion, a same-sex marriage celebrated abroad had to be qualified as a "marriage" in Art. 13 EGBGB and not – as the Court held – as a "registered life partnership" in Art. 17b EGBGB (old version). Also, they demonstrate that the Court's interpretation of Art. 17b para. 4 EGBGB (old version) as well as the reasoning for the application of Art. 19 para. 1 s. 1 EGBGB are not convincing. Following the authors' opinion, the right way to solve the case would have been the legal recognition of the parenthood (as an individual case) because of Art. 8 ECHR. As Germany recently legalized same-sex marriage, the authors also show which impacts the new law will have on Germany's international matrimonial law. In particular, they point out the new (constitutional) questions risen by the new conflict-of-law-rule for same-sex marriages in Art. 17b EGBGB (new version).

D. Martiny: **Modification and binding effect of Polish maintenance orders**

The two decisions of the German Courts of Appeal concern everyday problems in modifying maintenance orders given in the context of Polish divorce decrees. In both cases the Polish district courts ordered the fathers to pay child maintenance. At that point in time, the children already lived in Germany. The foreign orders did not state the grounds for the decision in respect of either the conflict-of-law issue or the substantive law issue. The recognition of the orders under the Maintenance Regulation in the framework of the German modification proceedings (§ 238 Family Proceedings Act – Familienverfahrensgesetz; FamFG) did not pose any difficulty. However, according to established German practice, foreign decisions have a binding effect as to their factual and legal basis. Whereas the Frankfurt court's interpretation of the Polish decision concluded that it was based on German law, the Bremen court assumed in its proceedings that the foreign decision was based on Polish law. The Bremen court stated a binding effect existed even if the foreign decision applied the incorrect law. The Bremen court then gave some hints as to how the assessment of maintenance should be made in the German proceedings under Polish substantive law.

Save the date: Workshop on Sovereign Debt in Cambridge

On 25 May 2015 Anne Henow, Hayk Kupelyants, Jens van 't Klooster, Kim Hecker and Marco Meyer from the University of Cambridge will host a one day workshop on "The Ideal of Democracy and the Reality of Sovereign Debt" at Gonville and Caius College in Cambridge.

Here is the call for papers:

> *In the aftermath of the 2008 bank bailouts, sovereign debt has increased to unprecedented levels. As a result, governments saw their policy room curtailed by the demand for credibility and access to international capital markets. In Greece and Italy, democratically elected officials stepped down from power with the aim of promoting creditworthiness. The Argentine litigation in the United States again brought attention to substantial sway of bondholders over sovereign states.*
>
> *As a response, economic and legal debates on sovereign debts have been wide and varied, but they have only rarely addressed the core normative issues involved in issuing, trading, and restructuring sovereign debt. Political philosophers have been slow to respond to issues raised by recent debt crises. One likely reason for the current lack of normative reflection on the increased political importance of financial dynamics is the complexity of international financial markets.*
>
> *The aim of the workshop is therefore to bring together scholars from philosophy, law, and the social sciences to discuss the consequences of rising sovereign debts for the normative ideals that inform existing parliamentary democracy. The workshop will feature invited contributions by keynote speakers Philip Wood (Law, Allen & Overy) and Gabriel Wollner (Philosophy, Humboldt). Drawing on these diverse perspectives, the workshop will contribute to a new framework for evaluating sovereign indebtedness.*
>
> *Topics include but are certainly not limited to:*
>
> - *Financial markets and democratic sovereignty*

- *Design of sovereign debt contracts and the role of international institutions*
- *The values and dangers of sovereign debt for social welfare*
- *Sustainable public finance and investment*
- *Fair sovereign debt restructuring*
- *Dealing with sovereign debt within the Eurozone*
- *Odious debt*
- *Rights and responsibilities of bondholders*

Keynote speakers:

PHILIP WOOD is an expert in comparative and cross-border financial law and works full-time for the law firm Allen & Overy in the firm's London office. He has written around 18 books, including nine volumes in the series Law and Practice of International Finance published in He held visiting academic positions at the Universities of Cambridge, Oxford and Queen Mary.

GABRIEL WOLLNER is assistant professor in philosophy at Humboldt University Berlin. His academic interests are in political philosophy and ethics, and the application of these inquiries to various issues in public policy. His work has appeared in a number of journals, including 'The Journal of Social Philosophy', 'The Journal of Political Philosophy' and 'The Canadian Journal of Philosophy'.

Submission details and deadlines:

The workshop is a one day event for which participants are expected to read the presented papers in advance. Papers can be up 10,000 words in length and presentations will be limited to 10 minutes, followed by a 40 minute discussion. To apply, please send a 500 – 700 word abstract to Jens van 't Klooster (jmv32@cam.ac.uk) before the 15th of February. Accepted presenters will be asked to circulate their paper by the first of May.

Organizers: Anne Henow, Hayk Kupelyants, Jens van 't Klooster, Kim Hecker and Marco Meyer.

We gratefully acknowledge support by the University of Cambridge School of Arts and Humanities, Gonville and Caius College Cambridge and the Cambridge-Groningen 'Trusting Banks' project.

Conference: Migrant Children in the 21st Century (Cagliari, 11-12 December 2014)

The **University of Cagliari** will host on **11-12 December 2014** a two-day conference on children-related legal aspects of immigration: "**Migrant Children in the 21st Century**". All sessions will be held in English, and an entire session will be devoted to private international law issues. Here's the programme (available as a .pdf file):

Section I – The special vulnerabilities of migrant children (11th December, 15h00-18h00)

Chairman: *Massimo Condinanzi* (Univ. of Milano)

- *Adriana Di Stefano* (Univ. of Catania): Gender perspectives on child migration and international human rights law: a critical approach;
- *Valerie Karr* (Univ. of Massachussets Boston): Children with disabilities and asylum policies;
- *Flavia Zorzi Giustiniani* (Univ. Telematica Nettuno, Roma): The protection of internally displaced children;
- *Federico Lenzerini, Erika Piergentili* (Univ. of Siena): Exploitation of migrant children in economic activities;
- *Alessandra Annoni* (Univ. of Catanzaro): The protection of trafficked children in Europe.

Section II – Substantive guarantees for migrant children (12th December, 10h00–13h00)

Chairman: *Riccardo Pisillo Mazzeschi* (Univ. of Siena)

- *Roberto Virzo* (Univ. of Sannio and LUISS, Rome): International legal instruments and the protection of migrant children at sea;

- *Eleanor Drywood* (Univ. of Liverpool): Migrant children and family reunification: do the rights of the child ever prevail over immigration control?
- *Emanuela Pistoia* (Univ. of Teramo): What protection for children of migrant workers deported from EU Member States?
- *Francesca De Vittor* (Univ. Cattolica del Sacro Cuore, Milan): Migrant children's right to education. The gap between recognition of principle and effective protection;
- *Federico Casolari* (Univ. of Bologna): The right of migrant children to political life.

Section III – The protection of best interest of migrant children through private international law (12th December,15h00-18h00)

Chairman: *Roberto Baratta* (Univ. of Macerata)

- *Aude Fiorini* (Univ. of Dundee): Establishing habitual residence of migrant children;
- *Thalia Kruger* (Univ. of Antwerp): The civil aspects of international child abduction;
- *Paul R. Beaumont, Katarina Trimmings* (Univ. of Aberdeen): Legal parentage and reproductive technologies;
- *Maria Caterina Baruffi* (Univ. of Verona): Recognition and enforcement of measures concerning right of access;
- *Laura Carpaneto* (Univ. of Genoa): Recognition of protection measures affecting migrant children.

(Many thanks to Ester di Napoli, Univ. of Cagliari, for the tip-off)

Call for Papers: 'Privacy under

International and European Law’

Utrecht Journal of International and European Law is issuing a call for papers in relation to its forthcoming 80th edition on ‘Privacy under International and European Law’.

With information gathering and sharing techniques becoming ever more advanced, States are being forced to take a stand on their permissible cost for individual privacy. As the international legal system struggles to keep up with the irreversible process of globalisation, its role in regulating these competing interests is coming under increasing discussion. That’s why the Board of Editors are inviting scholars to submit papers addressing any legal issues relating to privacy and international law from an international or European law perspective. While this edition is primarily concerned with privacy and international law, relevant issues may have broader implications, including: the responsibility of private actors under international law; privacy as a human right; the conflict between State interests and individual rights; the internet and territorial limits; data protection; diverging national approaches to the protection of privacy and the rise of cybercrime. All types of manuscripts, from socio-legal to legal-technical to comparative will be considered.

The Board of Editors will select articles based on quality of research and writing, diversity and relevance of topic. The novelty of the academic contribution is also an essential requirement. Prospective articles should be submitted online and conform to the journal style guide. For further information please consult the website, or send an email to utrechtjournal@urios.org.

(Deadline for Submissions: 14 November 2014)

Devaux on French Choice of Law Rules on Marriage

Angelique Devaux has posted The New French Marriage in an International and Comparative Law Perspectives on SSRN.

> *"Drinking, eating, sleeping together is marriage it seems to me" already wrote Antoine Loysel, Jurisconsult, into Institutes Coutumières at the beginning of the 16th century.*
>
> *After several failed attempts and the creation of a civil partnership designed as a semi-loophole to a heated debate and timely subject, it took France more than twelve years after the Netherlands to finally join the family of countries authorizing marriage of homosexual couples.*
>
> *Equality is the key word of the French reform: Equality in duties and rights that allows an identical access for legal protection to marriage like for opposite-sex couples, inspired from The Declaration of Human and Civic Rights of 26 August 1789 .*
>
> *To perfect the equality to an international level, the Act of 17 May 2013 included language which states that marriages performed in a foreign jurisdiction satisfy the legal requirements of marriages in France. The new bill also confirms France's traditional choice of law rule according to which the law of the nationality of each spouse applies to the substantive validity of marriage. In order to be effective, the statute adopts a new conflict of law rule providing that same-sex marriage would still be allowed when the national law, or the law of the residence, or the law of the domicile of one of the spouses allows it. Intended to translate an extensive and cosmopolitan access to same-sex marriage, the new rules of conflict of laws suffer in reality from imperfection and do not provide an equal access to marriage for all, in particular due to historical international conventions that superseded the law.*
>
> *The difficulties for both gay and lesbian spouses occupy an even more prominent place in today's globalized world where more and more couples live outside their country of origin. As soon as cross-border elements come, the new definition of French marriage faces a multitude of challenges related to*

immigration, benefits, adoption, international wealth management, matrimonial property regime, divorce, and succession.

What are the surrounding practical consequences when same-sex married couples decide to move abroad, and how to solve or to anticipate all the dormant problems?

In this paper, I am examining some of the potential issues related to same-sex marriage and conflict of laws in a comparative law perspective, and I suggest a new approach to deal with these coming questions in accordance with the international and European tools that may serve individuals from countries that already have opened marriage to same-sex couples, and those who want to join the international family.

Scoreboard Favors Chevron

For those who are not yet aware -the news has been immediately published in national and local newspapers all around the world- yesterday a US federal judge ruled in favor of Chevron Corp., saying that the $9.5 billion environmental judgment in Ecuador (the Lago Agrio saga: for background and developments see here) against the oil giant was “obtained by corrupt means.”

The decision can be downloaded here.

Supreme Court to Hear Another

ATS Case

Following on the heels of the Supreme Court's decision in *Kiobel* (highlighted here), the Court today granted certiorari in the case of *DaimlerChrysler AG v. Bauman, et al.* In granting cert., the Supreme Court will either resolve the cryptic reference in Chief Justice Roberts's opinion for the Court that "mere corporate presence" cannot suffice to avoid the presumption against extraterritoriality, or it might resolve the case purely on personal jurisdiction grounds. If the former, we will know significantly more about how much the ATS will be contracted. If the latter, we will know much more about agency and affiliate jurisdiction, which is an area of increasing importance in transnational litigation.

To be clear, here is the Question Presented in *Daimler*:

Daimler AG is a German public stock company that does not manufacture or sell products, own property, or employ workers in the United States. The Ninth Circuit nevertheless held that Daimler AG is subject to general personal jurisdiction in California—and can therefore be sued in the State for alleged human-rights violations committed in Argentina by an Argentine subsidiary against Argentine residents— because it has a different, indirect subsidiarythat distributes Daimler AG-manufactured vehicles in California. It is undisputed that Daimler AG and its U.S. subsidiary adhere to all the legal requirements necessary to maintain their separate corporate identities. The question presented is whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State.

While this case is before the Court on the personal jurisdiction question, the Court would, I think, also be able to decide the broader ATS question, assuming, as in *Kiobel*, the Court treats the question as one going to jurisdiction and not the merits.

In related ATS news, the Court today also vacated and remanded *Rio Tinto PLX, et al. v. Sarei, et al.* to the Ninth Circuit for further proceedings in light of the *Kiobel* decision.

ATS Suit Dismissed

On September 4, Judge Naomi Buchwald of the Southern District of New York dismissed an Alien Tort Statute suit against President Mahinda Rajapaksa of Sri Lanka, on the basis of a Suggestion of Immunity filed by the Justice Department, at the request of the State Department Legal Adviser. Under customary international law and longstanding U.S. practice, sitting heads of state or government are considered to have immunity from civil suits in U.S. courts.

Judge Buchwald's decision is also notable for her rejection of the plaintiff's argument that head of state immunity should not shield officials accused of *jus cogens* violations.

Source: J. B. Bellinger, Lawfare blog (click to see the whole post and for a link to the decision)

Alien Tort Statute

For those interested in current thinking on the United States Supreme Court's consideration of the Alien Tort Statute in *Kiobel v. Royal Dutch Petroleum*, SCOTUSBlog has a fascinating online symposium available here.

Kiobel – Amicus Brief of

Comparative Law Scholars

A group of U.S. French and German comparative law scholars have filed an amicus brief in *Kiobel* under the lead of Professor Vivian Grosswald Curran.

The brief summarizes the argument as follows:

> *Understanding other countries' domestic legal systems and practices is necessary to determining if United States law is in conflict with theirs, and more specifically if the United States would be unique in the world by allowing extraterritorial civil jurisdiction under the Alien Tort Statute ("ATS"). This brief will argue that universal criminal jurisdiction for jus cogens violations in civil-law States is analogous to extraterritorial civil jurisdiction under the ATS.*
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> *Unwarranted similarities between "criminal" and "civil" law in both legal orders have been assumed erroneously because both civil- and common-law systems have the same two classifications. They have significantly different meanings and functions in the different legal orders, however. United States tort law is more similar to civilian criminal law than to civilian civil law in many ways. "Civilian" in this brief denotes legal systems, such as those of Continental Europe, emanating from Roman law and organized around a Civil Code. Civilian criminal law and United States civil law have comparable functions because of the roles of judges, prosecutors, and lawyers in the respective legal orders and societies, and because of the methods for victims to initiate legal actions in the criminal courts of civilian States, and in tort lawsuits in the United States.*
>
> *Civilian judges specialize in either criminal or private law, with criminal-law judges in civilian States having a more didactic, public role than their private-law counterparts. Civilian prosecutors traditionally are non-partisan, neutral figures. Criminal trials, which include those that arise under universal jurisdiction, are public, and organized around a concentrated, oral event. Tort trials in civilian States, on the other hand, often take place exclusively in writing, with no oral testimony, and giving the public no opportunity to witness them. Where victims in civilian States join criminal trials as civil parties, they benefit from the State's resources and can be compensated financially. By contrast, in a tort suit, they would be barred from contingency fee arrangements and class action suits, so civil actions would not be an effective*

option for many.

Conversely, the aspects of criminal trials in civilian States which render extraterritorial or universal criminal jurisdiction appropriate in those legal systems do exist in United States tort law: both are aired in public; both allow victims effective access to the court system; and both allow victims financial compensation. Although civilian States traditionally have rejected prosecutorial discretion, they have tended to adopt it to varying degrees for universal jurisdiction cases in the interests of international harmony. Similarly, in ATS cases, the Act of State and Foreign Sovereign Immunities Act restrain undue ATS extraterritorial jurisdiction.