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Summary

Treaties and Third States
by Privatdozent Dr. Jan Kropholler, Hamburg

I. Binding Effects on Third States

1. The issue in public international law, of obligations binding on, and rights accruing to, third states, is not of great significance for treaties on private international law. Such treaties are intended to provide rules governing the legal relations of individuals. It seems unambiguous in most situations that third states as such derive neither rights nor duties as a result of such treaties.
2. In addition, the possibility that treaty provisions might create effects binding on third states by virtue of international custom plays a negligible role in regard to the provisions of treaties on private international law. The special norms found in these treaties do not usually have such a wide acceptance that they could have the force of international customary law.
3. Issues which bear on the obligations of states are essentially peripheral in respect of conventions on private international law, for example, the issue of whether a state is bound once it becomes independent.
4. Agreement with a third state on a general most-favoured-nation clause does not as a rule lead to any duty also to apply in relation to that third state particular conflict of laws solutions agreed upon with other states.

II. Autonomous Application in Third States

5. The content of rules in international treaties can be taken over by the legislature or judiciary even without the ratification of the treaty, specifically if legislators take a unification of law convention as a model, or the courts apply it in anticipation.
6. The doctrine of renvoi serves as a specifically private international law variation of the third state issue. An international conflict of laws treaty *erga omnes* may contain a norm which, from the point of view of a court in a non-party state, indicates a reference back. In such a case the observance of renvoi has the effect of requiring the treaty to be applied in the third state as well.

III. Connecting Factors in Third States

7. From the point of view of conflict of laws, the kernel of the third state issue is found in the substantive question of whether a convention on private international law is supposed to refer only to the legal order of the parties to the agreement or also to the legal order of third states. These days the latter solution is preferred and appears to be persuasive. International conflict of laws treaties do not generally give attention to reciprocal performance by states, but rather to an objectively appropriate private international law regulation. There is no reason for not applying these treaties also to citizens or residents of third states.

8. Similar considerations apply to international treaties which unify the substantive private law relevant to legal relations of international character. In any case, where the facts of the case display an intimate conflict of laws connection with a state party to a treaty, applying the uniform substantive law of that treaty appears generally appropriate and should not be departed from due to a lack of reciprocity in an affected third state. The demand, for example, for the application of the uniform law an international sales (UN Convention) rests on this assessment.

9. On the other hand, the issue of reciprocity still stands in the foreground in the case of international procedural conventions. It is still not sufficiently recognized that even in international civil procedure there are particular areas in which it would be possible and sensible to establish more universally formulated rules displaying less emphasis on reciprocity.

10. A specifically procedural variation of the third state issue is offered by the doctrine of the double exequatur. This doctrine, according to which the judgment of one state is effective in a third state because recognition in a second state is itself recognized in the third state, must, however, be rejected. If in the second state decisions of the first state are more easily recognized due to a recognition and enforcement treaty, such a treaty will normally be based on the prerequisites of reciprocity and special trust, prerequisites which are not satisfied in the third state due to the lack of a corresponding convention with the first state.

11. The European Convention on Jurisdiction and Enforcement in Civil and Commercial Matters offers an example of an international procedural treaty which can create burdens for residents of third states. While residents of states parties may be brought only before the moderate fora of the European Convention, the residents of third states remain subject to the exorbitant jurisdiction of the national law, and the effect of judgments therefrom is further reinforced under the Euro-

pean Convention by the recognition of judgments in all Convention states without any examination of jurisdiction. This outcome of the Convention appears unsatisfactory and the distance separating the internal European regulation of jurisdiction and the rules applicable to defendants from third states should be reduced in the future.

IV. Participation of Third States

12. To the extent that an international treaty is directed towards private law regulation acceptable world-wide, it is sensible to involve all interested states at the time of preparation.

13. The possibility of later accession by any state corresponds to the aims of most treaties on conflict of laws. The possibility of accession, even if to varying extents, remains limited for international procedural treaties, however, due to reciprocity considerations and to varying degrees of confidence in foreign systems of justice. Nevertheless, a certain tendency to relax the accession restrictions even for these treaties can be observed.

14. If third states seek participation in a treaty which does not provide for accession, the possibility of concluding a parallel treaty sometimes presents itself. The EFTA-States are interested in such a treaty parallel with the European Convention on Jurisdiction and Enforcement in Civil and Commercial Matters which implements Art. 220 of the EEC Treaty. Such a parallel treaty creates to some extent new types of difficulties, such as the problem of how parallelism in the later application of the law can be ensured if the interpretative competence of the European Court of Justice encompasses only the original Convention between the EEC member states.