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Towards a Renewed Universalism in Law

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Despite the phenomena of internationalization and Europeanization, legal process remains essentially national in character, marked by the central role played by sovereign nation-states. Law is national by its construction, its content and its object (the settlement of the issues and conflicts of everyday life). But it was not always so. From the middle ages until the end of the 18th century, there existed a common law based on custom, which had developed along convergent lines across the whole of western Europe. Thereafter, it was the rise of codified systems of law in the various nations that accentuated and crystallized the differences.

It is freely admitted, however, that certain domains of law are already unified. In fact, all are so to a partial degree; but those that are wholly unified across the continent are rare. Certain areas are more amenable than others to a shared commonality. This is the case, for example, (if we restrict ourselves to private law which governs the relationships between individuals), with international transport law (whether by air, land or sea), intellectual property law (patents and copyright) and, more generally, commercial law (for example, that covering the international sale of goods), which since the 19th century have been the object of attempts towards achieving international codification. On the other hand, those branches which constitute the core of civil law – contract law, torts, property, persons and family law – still remain principally national in origin. In many places, the texts of the Civil Code have remained unchanged since 1804, though this does not mean that these areas of law have not evolved in the meantime. Profound transformations have in fact taken place, whether legislative in origin (where special laws and codes have proliferated) or jurisprudential (through, in the first place, decisions of the French Supreme Court [*Cour de Cassation*], then through those of European jurisdictions such as the Court of Justice of the European communities, and the European Court of Human Rights). In addition, private initiatives arising out of practice or initiatives of international organizations, have contributed to the establishment of an over-arching legal framework for international relations.

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The age-old desire of humankind for ever-greater mobility and for transcending narrow frontiers finds its expression today in the general movement towards globalization. The international coming together of societies goes hand in hand with a certain loss of national identity. This phenomenon, which is often the subject of enquiry by contemporary sociologists and philosophers, obviously has an effect on the legal sciences.[1] It shows up as a quest for universality, which often takes the form of supranational unification.

The mobility of individuals, the globalization of the economy, the development of international organizations and their associated activities constitute a concomitant number of factors contributing to the internationalization of law as well as to its modernization. Arising from this comes a certain renewed questioning of the authority of the internal legal system, particularly, in the case of France, of the Civil Code which, even quite recently, was considered as France's 'true constitution' (Carbonnier, 1986), but which now presents such an incomplete and deceptive image of civil law that it runs the risk of being 'reduced to the rank of a mere compendium of civil legislation' (Gaudemet, 2004: 299).

In France, the phenomena of internationalization and especially of Europeanization of law are often sharply criticized (Carbonnier, 2004a: 1045). Numerous jurists who specialize in civil law regret the loss of sovereignty of the French legislator, deplore the poor outcomes provided by the international conventions (often founded on compromise and the lowest common denominator) and are particularly scathing about the 'legal Volapuk' now prevalent in Europe (Lequette, 2004: 34; 2005: 171). In the last few years, the following two processes have incited the most spirited criticism: the 'communitarization of law' and its 'fundamentalization', itself linked to the expansion of fundamental rights, notably as a result of the constant growth in the purview of the European Convention on Human Rights and Fundamental Liberties (ECHR).

Whether one welcomes or deplores this, one thing is certain: the multiplication of the sources of law – whether international, regional or national – is obliging jurists to abandon the law-centred positivism of the 19th century that was still dominant during a good part of the 20th century, and to recognize the existence of a legal pluralism in all of its forms. There is the pluralism of source: European directives, international conventions, general principles of law, fundamental human rights (ECHR), European and international judicial decisions, *lex mercatoria*, international custom and practice, doctrinal codifications (Unilaw Principles, European Principles of Contract Law), model laws, standardized contracts, codes of proper conduct . . . . There is equally a pluralism of values, objects and methods. Furthermore, a pluralism of institutions, starting with the judicial institutions themselves, whether national, European or international, as the case may be. Out of this arises a fundamental shift in the very concept of the juridical order itself, which has become a 'plurality of normative spaces, including within international law which is itself no longer homogeneous' (Delmas-Marty, 2004: 10).

Seen from the outside, this transformation provides the often disagreeable impression of a veritable invasion of law into our society, to the extent that there seem to be too many laws, too much legalism. Perceived from the inside, by jurists themselves, this phenomenon tends rather to suggest a weakening of the system of

law due to the multiple overlaying of different legal strata and a potential for conflict between the various rules of law. Yet the more their activity becomes international in reach (for issues involving the law are more and more frequently presenting 'elements of extra-territoriality'), the more must jurists be precisely sure of which rules of law should be applied. The task is all the more arduous due to the fact that in practice there has been a huge rise in deregulation and, more generally, an increase in the flexible application of law, but whose positivity is not distinctly affirmed and whose authority depends particularly on those who have progressively elaborated it, as well as on the quality of its derived norms (Thibierge, 2003).

In law, the quest for universality is expressed most manifestly through the initiatives undertaken towards bringing about unification, both on international and European levels. Nevertheless, this quest also implies taking over the accumulated wealth of individual legal systems, which therefore demands a knowledge of and a respect for these other systems themselves. Hence, not yielding to the temptation to eradicate diversity, but, rather, seeking methods of managing it so that the legal processes of individual nations can harmoniously coexist within a more and more internationalized world are the challenges of the present day.

In responding to these challenges, the traditional methods turn out to be mutually opposed. (I) Thus, to advance along the road to a 'renewed universality', new strategies have to be defined (II).

I. Mutually opposite methods

How can diversity in law be managed? Two methods stand in opposition one to the other. The first, the more ambitious, consists of unifying the law; the second, of seeking ways of co-ordinating those legal codes likely to be conflictual.

a) Unifying law

In 1900, at a major comparative law conference held in Paris under the auspices of the *Société de législation comparée* [Society of Comparative Legislation], Raymond Saleilles and Edouard Lambert put up a case for strengthening the status of comparative law, whose primary role would be the eradication of the diversity of laws (Lambert, 1905; Saleilles, 1905a, 1905b). They looked forward to the advent of a 'legislative common law', justified historically by the former *ius commune*, and they urged the judges of each nation, when facing gaps within their own particular legal systems, to draw relevant solutions directly from comparable systems elsewhere.[2]

From the end of the 19th century and the first half of the 20th century, international organizations made up of political delegations and jurists specializing in comparative law devoted a great deal of energy to the project of unifying law. It is not always easy for non-specialists to appreciate the breadth of the phenomenon. Indeed, when the internationally derived norm becomes integrated into the internal national legal order, its international origin becomes lost to view, because, when a state ratifies an international convention, it is obliged to modify its own national

rules, although nevertheless with a certain margin for manoeuvre.[3] Above all, this classic process for the internationalization of law permits nation-states to retain operational initiative since it is they, through their representatives, who negotiate and ratify the treaties.

This method has met with great successes, but equally has known failures. Compromise solutions have had to be accommodated: circumstances where nations have reserved their positions, exceptions foreseen in the texts, a progressively narrowed domain of application, insufficient number of ratifications. Furthermore, the method itself has become a victim of its success. In the 19th century, the number of participating nations – then characterized as 'civilized nations' – was limited, with large parts of the world falling under colonial dependence. Any agreement reached in the course of an international conference was the result of very intensive negotiations in which all the governments had participated, with the result that they felt bound by these and undertook in a durable way to ensure that the treaty was ratified by their national legislative organs. After the Second World War, the number of sovereign states passed from a little more than one hundred to almost two hundred. Diplomatic conferences, attended by hundreds of representatives, no longer allow this direct exchange of ideas and hence the essential decisions are often taken by small working groups which, by necessity, must exclude representatives of the majority of states. As a result, there are many member states that do not end up ratifying these texts.

For all these reasons, and because international regional organizations have grown considerably, unification on the regional level today seems a more effective alternative, because it is engaged between countries whose legal traditions are often relatively close to one another. It is also quicker to effect, especially in Europe, where it is carried along by a veritable political and normative power-base. Hence, in certain domains of law, for example in relation to transport and the environment but also in civil law, we are witnessing a shift of the supranational locus for the generation of law from the international to the regional.

In other branches of law, globalization is still happening outside the jurisdiction of nation-states. This process particularly concerns transactions and goods which traverse frontiers. As a consequence of practice, it is therefore often still marked by the dominance of the model imposed by the law of the economically strongest. It is for this reason that we have witnessed over the last few decades a certain Americanization of business law; American law is exported at the same time as American products, as a sort of concomitant accessory.[4] More fundamentally, a shift in values becomes operant, for the law evolves according to the needs of the market. For a long time already in the United States, the powerful so-called *Law and Economics* school has linked the law to the economy: the pursuit of economic efficiency, which is seen as primordial, relegates to the background other values which are more representative of the civil law tradition (such as, for example, that of good faith) (Association Henri Capitant, 2006). As for international contract law, it has become more and more detached from national jurisprudences and become a sort of *ius gentium*, made up of rules held in common by operators throughout the world, reproduced in standard contracts or contractual clauses which are adopted by the contracting parties. As well, in the case of disputes, judges from the legal system are

often replaced by arbitrators whose authority is not derived from a state but from the parties involved. Consequently, the place where these arbitrators sit has only a very secondary importance and the assessments they hand down, if and when they are published, go towards the development of a transnational public order which may potentially have as its object the defence of the general interests of humanity: human rights, environment, health, elimination of corruption etc.

Hence it may be seen that, far from leading to unification, the globalization of law in its most diverse forms tends to nourish legal pluralism and so reinforces the need for co-ordination.

b) Co-ordination of law

The proliferation of new sources of law requires that the object of comparative law be broadened: comparativity needs now to be made no longer only between the internal national law and that of foreign countries but also between national, regional and international law codes, between positive law and law whose authority is only persuasive or is still in the state of gestation. Thus, in any given domain, it is firstly necessary to identify all the norms which may potentially conflict with one another, then to strive to find new methods of resolving such conflicts, which sometimes emerge even within the heart of a particular juridical order. The hierarchical criterion, which is simple because it removes the necessity to examine the essence of the other systems of law involved, often yields ground to other approaches. Thus, in a particular sector, notably in international trade law, the rules of the *lex mercatoria* will be applied because they are specific to this precise area; or, to take another example, when several fundamental law principles are in contention (say a conflict between freedom of expression and the respect for privacy), an appreciation will be made of the respective values of the principles concerned and the extent to which these have been damaged (Gaudemet-Tallon, 2005: 141).

To solve such conflicts as these, the presently-applied techniques of private international law are useful but insufficient. The jurisprudence relating to conflict of laws, a central branch of private international law, allows, as its name indicates, to solve conflicts between laws of individual states. To this effect it promulgates rules which generally prescribe the application of that law which most closely applies to the given situation. For example, in the case of a road accident happening in France, the French law should be applied on the basis of being the 'law of the place of the offence'. In terms of issues affecting the person, nationality and normal place of residence constitute the classic factors determining the legal attribution. Under contract law, however, it is in principle the law chosen by the parties, called the 'law of autonomy'.

But these techniques, however functionally proven they might be, are henceforth unsuitable for resolving all the situations linked to juridical pluralism.

To advance further down the path towards a 'renewed universalism', a relief map must first be drawn up of the legal universe, identifying all the European and international currents that traverse the national juridical order, followed by the elaboration of new methods founded on comparison. These methods are based on the

coexistence, co-ordination and combination, and not only on the resolution of conflicts of laws. They imply the integration of new strategies and above all, they necessitate a profound change of mentality.

II. Towards new strategies

Within the perspective of the theme under consideration, we will begin by firstly re-traversing the main points of a debate particular to private international law, a discipline whose essential object is the resolution of the difficulties derived from the pluralism of jurisprudence (a). Out of this debate, we will then seek to discern the appropriate paths to follow (b).

a) Universalism versus particularism in international private law

In the area of private international law, supporters of universalism have confronted defenders of particularism, with the dominant tendency swinging back and forth between the two positions, before finally settling on a renewed form of universalism.

At the end of the 19th century, the dominant current of thought was largely universalist. It urged the bringing together of the various national rules relating to conflict of laws and even their merger into a unitary code through the process of international conventions, which presupposed the elaboration of a veritable overarching doctrine capable of dealing with the divergences resulting from individual national codifications. But just when such a doctrine was beginning to emerge, other authors, convinced that the diversity of rules systems for resolving conflicts of laws was unavoidable, came out strongly against any movement towards unifying the domain. These authors, who were labelled as 'particularists', perceived conflicts of laws as conflicts of sovereignties, whereas the rules for dealing with conflicts of laws concerned above all relations between individuals. In the process of condemning the unification of the rules systems covering conflicts of laws, they over-valued the links of dependency existing between such rules and those of internal law, neglecting the fact that the object of the rule covering conflicts was to find solutions to problems affecting private relations on the international level, not the internal. During the 20th century, a new form of universalism came to the fore, initiated by the idea that the rapprochement of the diverse systems should occur progressively, in partial stages, after thorough studies of comparative law. Rather than propounding the dogmatic elaboration of uniform rules, the authors privileged the search for real points of convergence, taking their inspiration for this from comparative law and the history of law.

On the basis of this renewed universalism, national codifications of private international law multiplied in Europe. Grounded in a significant comparative process, the effect was not, however, to crystallize the differences between systems. Quite to the contrary, it illustrated the idea that, far from sealing the defeat of an international common law, the codification of the law within each nation could constitute 'the point of departure for the constitution of a legislative common law, in the same way as the encapsulation in texts of our customs was the point of departure for the

formulation of a customary common law' (Saleilles, 1905b: 42). However, at the end of the 20th century, the 'communitarization' of private international law, that is to say the substitution of rules originating from European law for those of individual nations, has come in part to upset this equilibrium. On the one hand, regionality has taken precedence over universality. On the other, the quest for unification no longer relies as much on the search for convergences arising out of comparative assessments as it does on other driving forces which are proper to the European Union. Examples of these latter are the elaboration and proper functioning of the internal market; free circulation of people, goods and judicial decisions; development of a space governed by freedom, security and justice. For a number of years now, European authorities have been readjusting their methods, notably the European Commission which has become much more open to consultation with the whole legal community, to the bringing together of contrasting ideas and, thereby, to comparative analysis. A new form of transnational democratic consultation and participation is beginning to take shape. Such a process is indispensable for the 'European democratic project' (Beck, 1995). But the horizon should not be limited just to Europe.

b) Paths to follow

For further progress to be made down the path towards a 'renewed universalism', the pursuit of the comparative approach is indispensable. Nevertheless, if comparison can open the way towards unification, it must also at times close it off, in order to preserve the irreducible diversity of law.

The comparative imperative

There exists, in law as in sociology, a veritable 'comparative imperative' (Fauvarque-Cosson, 2005: 81 s), of which jurists have not yet taken full measure, to the extent that comparative law remains an auxiliary discipline, one whose character is eminently scientific (in the same way as is, for example, the history of law), which is perceived rather as a weakness within the prevailing climate of juridical positivism. Traditionally, comparative law is classified among the 'classical collateral sciences' and defined as 'the application of the comparative method to systems of law practised in the different countries of the contemporary era' (Carbonnier, 2004b: 60). One is obliged, however, to observe that jurists often give little attention to methodological issues; there is little knowledge of what is designated by the 'comparative method', or what is included within that branch of law labelled 'comparative law', whose boundaries are impossible to ascribe with precision.

That said, the process of making comparison, which is a fundamental operation of the human mind, is an elementary phenomenon pertaining to states of consciousness. Furthermore, when erected on the great division between private law and public law, a legal structure lends itself particularly well to internal processes of comparison: hence, for example, one can compare civil contracts with administrative contracts.

At the close of the 20th century, the purely scientific conception of a comparative law has yielded ground to another, more pragmatic approach, which asserts the place of the multiple functions of comparative law; the access it provides to knowledge, certainly, but also the assistance it gives to the legislator, the interpretative tool it constitutes, the basis for academic teaching, its contribution to the systematic unification of law, and the development of a common private law in Europe. But this approach is far from achieving unanimous approval. However, the recourse to comparative methods within the internal or international legislative process would constitute, for some, a distortion of comparative law, a pathological process even, for comparison would then tend to prescription. Beyond the domain of law (in particular in linguistics, anthropology, sociology and political science) comparison shrinks from prescription. In truth, the singular posture of comparison in this instance derives from its object: the domain of law, which is by essence normative. It is necessary therefore to distinguish two functional categories. The first, by far the most frequently applied, is where comparison precedes the elaboration of the norm, without directing it. Intended to assist in giving orientation to the legislator, it is in itself not normative. The second category, strongly advocated by Saleilles and Lambert in 1900, is in practice quite rare: in order to fill in any apparent gaps in his own nation's law, a judge might turn to the solutions commonly accepted by foreign jurisdictions which effectively constitute the 'legislative common law' (Lambert, 1905; Saleilles, 1905a, 1905b). It must be admitted that this project was based on the idea, effectively false, that comparative law could constitute a transnational system of law. There is no principle of law, even be it universal, which can draw its authority from the sole fact of that universality.

Another form of criticism consists of decrying the divergence of the comparative method from its proper domain, arguing that when it is put to serving normative ends, its sphere of application becomes narrowed, thus leaving on the outer edges the aspirations of interdisciplinary and geographic expansion entertained by numerous contemporary comparatists. In such circumstances, the number of legal processes that are compared is determined in relation to the object pursued and the domain to be unified: the distinct legal processes, which often come down to few in number, tend to be typologically associated. In actual fact, things are not so sharply distinguished; indeed, the more the internationalization of law picks up speed, the more a new phenomenon comes to the fore: after having given impetus to international codifications, national legislators of countries with the most diverse juridical traditions take inspiration themselves from those international models that are currently in circulation, whether in the form of conventions, or instruments which have no binding force but which may be instilled with great persuasive value (such as model laws, doctrinal codifications like the Principles of European Contract Law and the Unidroit Principles). Thanks to the ongoing development of the comparative method, the phenomena of straight imitation or borrowing are less frequent than in the past: what is witnessed today is made-to-measure integration; a 'hybridization' of models and systems.

Finally, comparatists have been criticized for their paradoxical attitude: members of a discipline which thrives on diversity, they often commit themselves to the enterprise of law unification. But in reality, this paradox is merely an apparent one. Even

should the unificatory enterprise be successful, it still leaves plenty of room for diversity. Most often, this diversity is not intentional but inevitable: as already seen, it is due to the weaknesses that are inherent in the system (gaps, reservations, application of indistinct concepts which allow for a diversity of interpretations, etc.). Sometimes, even, this diversity is raised to the status of a governing principle of the particular system of law.

Diversity as a governing principle for law

In order to make progress down the road towards a renewed universalism, there must be integration of the advances achieved by international and European law, encouragement for their continuation and, at the same time, development of new forms of universalism, based on the coexistence of systems of law, both on the horizontal scale (different national legal systems) and on the vertical (international, regional and national laws). This supposes admitting the coexistence of separate norms, and the search for ways of co-ordinating them, without necessarily always ranking them hierarchically (Gaudemet-Tallon, 2005).

The elaboration of a supranational law, brought together by way of international conventions (with more or less restricted material and geographic ranges), or by that of various regional instruments, is pursuing its course. But the drawing together of distinct laws, the convergence of legal systems, could become an end in itself without any unification necessarily coming about. And de facto, more and more, the objective of achieving 'unification' is yielding ground to that of 'harmonization' (in European community law, the governing directives are instruments for the harmonization of law).

On the practical level, this translates as an ever-larger place being left for the application of new methods, based on imitation (through the circulation of model laws) and especially on openness and dialogue (widespread distribution of consultative documents, such as the Communications or Green Papers of the European Commission).

The example of the unification of European contract law allows an illustration of this process. There was much debate a few years ago on the highly contested plan for a European civil code or a European code of obligations (Fauvarque-Cosson and Mazeaud, 2003). Since that time, the idea is no longer to impose a uniform code (an undertaking often denounced as impossible and without legitimacy because European court systems are not competent to oversee such), but rather a 'common frame of reference' in the area of contract law, a sort of 'common core' arising out of comparative endeavour (Berger, 2001), having common governing principles, common definitions and, if need be, model rules.[5] This model, originally intended for legislators within the European Parliament, would subsequently be proposed to member-states and even to contractual parties who could make reference to it, and even designate it as the law applicable to their particular contract.

Still in the case of contract law, but this time outside of Europe, a similar phenomenon may be observed: the various other codification initiatives happening internationally are henceforth perceived as being 'the expression of a common fund of juridical systems' (Fontaine, 2005: 8a).[6] More specifically, the Vienna Convention

on the International Sale of Goods, ratified by more than 60 states, the Unidroit Principles (2004), established by academics and high-level judges, and the Principles of European Contract Law drawn up by the Lando Commission (Rouhette, 2003) constitute the new troika. This troika, already an integral part of the *lex mercatoria* (or Merchant Law governing international trade) could act as the basis for a global commercial code to regulate international contracts, whereas, for their part, within-border contractual relationships[7] would continue to be regulated by national legal codes, themselves already influenced by these new models.

The internationalization of law, the burgeoning pluralism of sources and models, the retreat of imitation or reception phenomena in favour of 'crossed fertilizations' or 'multiple interactions' (Delmas-Marty, 2006), the considerable freedom accorded to parties to choose the appropriate form of law applicable to their contract, including ones outside of the sphere of nation-states, constitute just some of the factors which are shaking up traditional modes of reasoning. In such an environment, a comparative process is clearly indispensable; above all, comparative law can no longer be dissociated from the phenomenon of the internationalization of law. 'Comparative legal studies and internationalization of law' are even henceforth closely interlocked, as shown by the title given to the academic chair in the Collège de France, awarded to Professor Mireille Delmas-Marty, as well as by the title, and more particularly the content, of her inaugural lecture where the author develops, among other ideas, that of the pluralism of internationalization and of harmonization centred around common principles, but applied with 'a margin of appreciation by individual nations' (Delmas-Marty, 2003: 32).

Acceptance of diversity and skill in its management, notably by recourse to the comparative method, is in no way incompatible with the internationalization of law, which is not the same as uniformization. Quite the contrary, it constitutes its very substantive marrow. There exist, in law as in other disciplines, diverse forms of universalism, each of which must be located appropriately within its own context.

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Notes

1. Basedow (2005: 223, 225). This article examines the causes of globalization as well as the responses to this of the legal system. It is positioned, within the area of economic and social sciences, as part of the trend of certain contemporary studies into globalization, and notably with those of the sociologist Ulrich Beck (1998: 44 ff.). These propound that we must be prepared to give up one of the essential premises on which contemporary societies are based, 'that is, the concept of living and acting within the fixed and clearly delimited frontiers of Nation-States (and of their national societies). Globalization draws attention to the perceptible fact that daily activity crosses borders all the time, bringing about . . . the demise of distance; the fact of being thrust into transnational ways of living which are often neither consented to nor understood' (Beck,1998: 44 ff.). In an interview with D. Zolo (Beck, 1995), Beck insisted on the existence of not one but numerous universalisms; it is no doubt there

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that, in relation to law, the key to a renewed universalism may be found (on this point see below, in the second part of this article).

2. *Addendum*, Saleilles (1902: 111): 'Comparative law, through the bringing together of diverse jurisprudences on the terrain of a transformed natural law, and reduced to concrete formulae of juridical application, will broadly tend to become the common law of civilized humanity, and consequently the universal subsidiary law which, transcending individual national laws, will establish a united set of principles, while retaining for each country the absolute independence of its own vital sphere and the distinct and variable adaptation of concrete applications in each particular jurisprudence'. For a close analysis of this 'methodological aspiration towards a renewal of the doctrine of civil law', see Jamin (2000: 741) and Carbonnier (1969: 75).
3. For example, the option granted under the Protocol of Signature attached to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 1924 (The Hague Rules) permitted states to incorporate this treaty in different ways into their internal legislation.
4. For example, the purchase of stocks and shares brings along with it certain legal accessories – rights of information and control – the domain of *'corporate governance'*.
5. 'A more coherent European contract law. Action plan' (COM, 2003: 68 final of 12.2.2003); for a later source see the Commission Communication to the European Parliament and European Council, dated 11 October 2004, entitled 'European contract law and revision of the *acquis*: the way ahead' (COM, 2004: 651 final).
6. Fontaine (2005) explains how a sort of *ius commune* comes about as a downstream consequence 'if one means by that a set of rules on which an agreement can be achieved' (§ 23, p. 84). He asserts, furthermore, that the Principles 'do not provide a codification of a pre-existing common fund of law, but they result from doctrinal work which is often eclectic or innovative' (§ 36, p. 90).
7. Lando (2005, 2006); Bonell (2000). For an in-depth analysis of these models in respect of contract formation, see Fontaine (2002). Compare the approach adopted by Berger (1999): his publication establishes the list of the 78 Principles, rules and standards of the *lex mercatoria* which have been brought forward into the uniform law, including the Vienna Convention, the Unidroit Principles, and the Principles of European Contract Law. The author prefers this informal method to that of the Unidroit Principles or the Principles of European Contract Law (which he labels as the 'Restatement method'), which he fears will lead to rigidity, whereas open and flexible rules can be put into operation without the need for a formal procedure of codification, or re-codification, at the international level, a process which is likely to be slow and difficult. This idea of a '*creeping codification*' has given rise to the establishment of a list of principles and rules in the CENTRAL Transnational Database http://www.tldb.de.

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