in the 1995 Agreement. He concludes: 'Freedom of fishing is no longer the dominant community interest subject to certain other ill-defined environmental conditions; the conservation of marine ecosystems has now assumed independent status as a basic consideration in fishing operations' (p. 164).

Chapters by Alexander Yankov, Thomas Mensah, David Anderson examine marine pollution from sea-based and land-based sources. Magnus Göransson discusses the role of the International Maritime Organization in harmonizing international law in the field of liability for damage to the marine environment. Anderson's survey of the evolution of 'port state control' is particularly interesting. By port state control, states exercise enforcement jurisdiction vis-à-vis foreign ships in their ports that have violated international law, such as unlawful discharges of waste or illegal catches of living resources even beyond the limits of national jurisdiction. Port state control, once highly disputed, is now an effective tool to counterbalance ineffective flag state jurisdiction in controlling vessels.

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(1) 'Modern, systematic comparative law is a child of the nineteenth century and an adolescent of the twentieth'. This is the opening line of Esin Örüçü's important and highly interesting preadvies (preliminary report) for the Dutch Association of Comparative Law. If her sweeping statement on the present state of comparative law ('a sorry state', as she calls it) is correct, we should investigate how comparative law can 'grow up' in the 21st century. This is exactly what Örücü (professor at the Universities of Glasgow and Rotterdam) attempts to do in her extensive essay. She takes as a starting point the fact, often referred to by scholars, that there is still no consensus on the purposes and methodology of comparative law (pp. 4, 128). Over the last decade however, some new approaches to comparative law have been proposed that try to tackle this problem. After a short overview of these approaches, Örücü identifies what she regards to be the most promising comparative law method for the 21st century, to which she attributes the name of 'Critical Comparative Law'. The rest of her essay is an elaboration of this approach. In the following review, I will briefly discuss the modern approaches (2), the idea of Critical Comparative Law (3) and the views held by Örücü as to the contents of this critical approach (4-5). I will end with an overall assessment (6).
(2) Örüçü's viewpoints can only be understood against the background of the latest trends in the field of comparative law. These trends can be qualified as aiming at research in 'Comparative Law and . . .' studies. Their starting point usually is that since it has proven to be impossible to reach consensus on the purpose and methods of comparative law itself, we should turn to other disciplines to provide comparative law with a true scientific basis. In this context, Comparative Jurisprudence (as proposed by, inter alia, Ewald and Monateri) explicitly links comparative law to legal theory, while the movement of Comparative Law and Legal History asserts that comparing legal systems is actually a 'historical science concerned with what is real' (as Sacco has stated). Others have proposed a 'comparative law and culture' approach, discussing for example – as does Pierre Legrand – the relationship between (the imposition of) legal models and national culture. Perhaps even better known is the Comparative Law and Economics movement (led by Ugo Mattei) that uses economic models of competition to explain and predict the establishment of uniform law.

(3) Örüçü implicitly criticises these 'marriages' of comparative law and other disciplines as giving too little space to the former. On the other hand, she does regard it too narrow to stick to 'traditional comparative law', where it is sometimes indeed useful to build on the insights of other disciplines as well. She therefore proposes a 'Critical Comparative Law'. Under this title, 'the comparative lawyer understands comparative law to be a subject in its own right, as the only reliable way of accumulating knowledge of the reality of law and then assesses the problems that may arise out of the proposed marriages discussed above, giving warning signals where need be' (p. 13). Thus, if one is discussing the possibility of a new European jura commune, one should firstly turn to comparative law study itself, leaving out what Law and Economics may teach us on this point. I must admit that I would allow other disciplines to play a larger role than Örüçü appears to permit. Moreover, it has not become entirely clear to me to what extent Örüçü precisely wants to broaden the intellectual agenda of comparative law – as she claims she would like to do. I would have expected her to give a more explicit account of what she understands Critical Comparative Law to be, especially since the term itself seems to refer to the Critical Legal Studies movement, but this approach is not regarded by her as useful. Critical Comparative Law 'is about communication and it allows legal scholars to enter into holistic communication as it is the language of that communication' (p. 130), but that is so abstract that I do not see to what extent it differs exactly from the traditional approach.

What is the main subject that Critical Comparative Law should address? Örüçü rightly identifies reciprocal influences (of which the most important examples are the so-called 'legal transplants') as dominating the 21st century. The development towards a uniform European private law (for example by way of European Directives or even by imposition of a European Civil Code), the transplanting of Western legal traditions to Eastern and Central Europe, the assessment of clashes between legal systems, the blurring of traditional demarcation lines (as the one between the civil law and the common law traditions), these are all related to this theme of 'transfrontier mobility of law'. Örüçü rightly stresses this phenomenon, that was in 1974 put on the scholarly agenda so brilliantly
by legal historian Alan Watson, was forgotten for some time, but that is now more alive than ever. The renewed interest in mixed legal systems is also part of this approach. It is indeed a fertile field of research, where one is able to discuss the reason for the legal transplant, the technique of migration of law, its outcome (mixed system or not) and its consequences for the idea of law, legal system, etc. as such. Because of the great success of legal transplants (Watson asserted that ‘most changes in most systems are the result of borrowing’), Örütçü is of course not able to discuss all the themes related to it. In her essay, she confines herself to three themes that she calls ‘convergence versus divergence’, ‘paradoxes for recipients’ and ‘models for law reform and mismatches’. In this sense, she is indeed concerned with the future of comparative law: I agree entirely with her that the taking place of reciprocal influences between the European legal systems is one of the most promising methods of creating a European ius commune. Here, I will go into some questions that are raised by Örütçü’s rich preadvises and the answers she provides these with, while leaving out many of the details that Örütçü discusses.

(4) The present discussion as to the possibility of a new ius commune is largely dominated by the discussion between the adherents of the convergence thesis and sceptics who deny that the imposing of a uniform text (e.g., by way of a European Code) would lead to uniform law. The latter scholars usually point at the cultural differences between the legal systems that stand in the way of attaining uniformity. The question as to the use of legal transplants in order to create uniform law is then whether it is necessary for these transplants to take place successfully that the exporting and importing system are similar in (legal) culture (mentality). Watson has denied this categorically: legal rules are equally at home in many places, surviving without any connection to a particular people. Legrand on the other hand has denied this, maintaining that law is inherently connected to a national mentality. Örütçü is standing midway between the two extremes where she introduces the concept of ‘harmony’: there is a place for divergence even in a scheme of convergence. Standardising of law should thus not be put to extremes: the concept of harmony enables us to preserve diversity of the individual components that however form together a new unity (p. 22). It is just a matter of policy whether you want to highlight the differences or the similarities within this harmony. A good comparatist should however do both.

To illustrate her idea of harmony, Örütçü then turns to some ‘paradoxes’ inherent in the process of legal borrowing. The first is why it would be beneficial to make use of foreign models when there is also a need to stress differences? Is there then no real need for uniformity to come about? The second paradox assumes that it is inevitable that a mismatch between a model and a recipient comes about because usually completely different socio-cultural circumstances in the system of the exporter and the importer exist. The question then is how to correct this mismatch. This question is of particular importance in the making of new law for states in transition: how can a Western Civil Code work in Uzbekistan? If there are even so many problems with the mixing of the civil law and the common law tradition (both Western conceptions of law) in the mixed legal systems, would it not even be more difficult in these newly emerged states? The third ‘paradox’ is that the present borrowing invokes the question of what the character of
the present import and export is, it is neither a traditional imposed borrowing, nor a voluntary reception of law since for many (developing) countries, there is a need to import Western models of law for the sake of enabling economic activities or even just to fulfill the demands of the World Bank or the EBRD.

(5) The main thesis of Örüci’s essay (that I describe as the usefulness – but also the difficulties invoked by it – of making use of legal borrowing) is of course rather abstract, but it is elaborated in the remainder of her essay. This is done in three – loosely related – case studies: the ‘classic’ case of legal borrowing by the English common law, the borrowing of the Western legal model in Turkey (where the Swiss Civil Code was introduced in 1926) and the recent import of legal models in Central and Eastern Europe (based on the idea that a Western Civil Code would promote economic activity). The latter two case studies give good descriptions of these processes – that as far as I know have not been described before in the English language in such detail. I will focus here on Örüci’s account of the common law – for the purpose of establishing a uniform private law for Europe the most interesting part of her essay.

The common law’s encounters with the civil law tradition are well known. These have outside of England led to the mixed legal systems (like the law of South Africa, Quebec and Scotland) and in England itself to a long tradition of sporadic but sometimes profound civil law influences through the activities of, inter alia, the Court of Admiralty, the Church and legal writers (Bracton, Blackstone). The assessment of these influences and the reaction of the English courts to them is highly interesting and shows us what it is exactly that Örüci means with the establishing of ‘harmony’ instead of harmonisation in a future Europe.

She speaks for example highly of the present approach of the Privy Council, that has begun to value differences between the various common law jurisdictions instead of promoting uniformity (pp. 36 et seq.). This is the most apparent from the case Invercargill City Council v. Hamlin, where the Privy Council maintained that ‘the ability of the common law to adapt itself to the differing circumstances of the countries in which it has taken root is not a weakness, but one of its strengths’. In that case the question of negligence was addressed, the question being whether the concept of negligence had to be the same in all common law jurisdictions. Not so, according to the Privy Council: that concept could in England very well be different from that in New Zealand, since a single monolithic solution would not do justice to both these countries’ legal systems. Örüci is right to praise this development and to look at it as a fertile example for a common European private law. But it is needless to say that this approach raises many problems as well. In my view, the major problem is to what extent this ‘harmony’ should be allowed and thus where it finds its borders. Should it for example also accommodate a great extent of multiculturalism? Örüci’s account is too abstract to draw any concrete conclusions from it on this point.

Örüci also identifies some trends toward convergence of the common law and the civil law. She mentions for example statutory interpretation. As it is well known, English courts traditionally emphasise the literal meaning of words and abstain from looking at the purpose or the spirit of the provision. Under the influence of the case law of the
European Court of Justice however, English courts are more and more inclined to a purposive construction of (also national) statutes, even looking at the travaux préparatoires of an Act. Örüçü regards this to be a good sign for the future of a pan-European codification.

Her belief is even reinforced by the second trend toward convergence that she identifies: codification in the common law. If there would be a possibility of making a European Civil Code, it is important that the common law does accept the idea of a codification as such. Legrand has called it an ‘arrogant’ mentality of the representatives of the civilian tradition to think that it would be possible to come to a Code for the whole of Europe since according to him a codification ‘suggests that the civilian representation of the world is . . . so superior that it deserves to supersede the common law’s world view’. Örüçü replies that a Civil Code is indeed a prominent sign of the civilian tradition, but that there are signs toward a new English perspective on codification. In this context, she mentions the establishment in 1965 of the English Law Commission (having, inter alia, as a task to investigate the possibility of codification of the law), the existence of Civil Codes in several states of the US, activities for the drafting of a Commercial Code and a Criminal Code in England and the existence of a British Contract Code that was drafted by Law Commissioner McGregor in the 1960s and beginning of the 1970s as a project to codify the contract law of England and Scotland. The project itself was abandoned by the Law Commission, but the draft Code was published in Italy in 1993. This Code is especially of interest since it contains a considerable amount of civil law influence (like abolition of the doctrines of privity of contract and consideration and acceptance of specific performance as a common law remedy).

In my view however, these two signs do not as such imply that the English mentality does come any closer to the civil law one since these signs are merely ‘academic’ and do not so much represent English legal practice. I would have found it interesting to read about Örüçü’s view on the developments she describes with a view to the making of a European Civil Code, but she deliberately abstains from that (p. 76). It is inevitable to say something on this point if you look at codes in the common law context from a perspective of developing a new ius commune – as Örüçü claims that she does. This is one of the points where Örüçü could have made her idea of ‘harmony’ or ‘diversity in convergence’ more concrete to the reader.

(6) How to assess Örüçü’s essay? I find her idea of ‘harmony’ intriguing. It implies that there is a possibility of creating ‘diversity in convergence’ instead of sameness. That is an important insight for the development of European ius commune. Applied to legal borrowing, it means that imported norms can cause a ‘healthy infusion’ where imported norms become internalised in the importing legal system, even if that legal system is irritated at first. ‘Grafts can produce plants bearing delicious fruits’, says Örüçü. As the French and the Dutch interpretation of the ‘same’ rules can be divergent, so can the common law interpretation of the same rule still be part of a converging legal system (p. 79).

At the 1999 annual conference of the Dutch Association of Comparative Law, Örüçü’s essay was therefore rightly praised. It is a good overview of one of the most interesting
developments in comparative law of the last decade. The importance of legal borrowing leads away from the traditional legal families approach and enables us to make use of the insights of other disciplines than comparative law itself. Of course, the case studies that Örüç presents, are deliberately chosen examples to illustrate transfrontier mobility of law. There are other examples – that may become important in the future as well – where legal borrowing is not the key to legal change. Nationalism may – unfortunately – be one of these tendencies. The few points of criticism I have expressed above (to which I could add the sometimes careless use of names – Poitier and Steenoff instead of Poitier and Steenhoff, pp. 57 and 130) do not in any way alter my final judgment that Örüç has provided us with not only an excellent survey of developments not described in such detail before, but also with an intriguing and thought-provoking view of the future of comparative law.

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2. *Idem*, at p. 94.
3. For Watson’s reply to Legrand on this point see A. Watson, *Legal Transplants and European Private Law* (Maastricht, Metro 2000).
4. [1996] 2 *WLR* 367
7. For a report of the discussion see D. Busch, in *Geschrissen Nederlandse Vereniging voor Rechtsvergelijking*, No. 60 (Deventer, Kluwer 2900) pp. 213 et seq.


There have long been numerous (national) yearbooks on (mainly public) international law, as well as several (national) journals dealing mostly or entirely with private international law. Yet, there has not yet been a yearbook dedicated specifically to private international law; and, in fact, there is not even any prominent periodical in English devoted exclusively to the field. In this respect the *Yearbook of Private International Law* represents something new. Its first volume encompasses several sections. Under the caption ‘doctrine’, topics are dealt with from a universal or comparative perspective, while ‘National Reports’ is mostly that – reports on more or less recent national developments. In ‘News from The Hague’, Hans van Loon, Secretary General at the Hague Conference on Private International Law, reports on work in progress and finishes with