

Van Den Eeckhout on Transnational Corporate Social Responsibility

Veerle Van Den Eeckhout, who is professor of private international law at Leiden university (the Netherlands) and the University of Antwerp (Belgium), has posted International Environment Pollution and some other PIL-Issues of Transnational Corporate Social Responsibility on RefGov and on SSRN. The Article is in Dutch. The English abstract reads:

A case-study of the instrumentalisation of Private International Law in the year 2010: developments at the beginning of a new decade

On the 30th of December 2009, the court of The Hague accepted international competence in the case “Shell/Shell Nigeria”. As the jurisdiction issues have been solved, legal proceedings can actually start.

During these legal proceedings it is possible that issues about applicable law will come forward. In this article, the author focuses on Private International Law Issues as related to cases like Shell, without focusing however on the PIL-issues of the specific Shell case itself.

The article focuses on the Rome II Regulation - the new European PIL-source including rules of applicable law on torts. The crucial question is the following: in how far does the Rome II regulation allow to declare applicable - if desired by the victims - Dutch tort law in cases of “Transnational Corporate Social Responsibility” as they might be brought in future against parent companies holding their seat in the Netherlands, either before the Dutch judge or before another European judge, especially if the claim of the victims concerns Parent Corporation liability for damages occurred in developing countries.

In her attempt to answer this question, the author gives some comments on the impact of national PIL-rules of EU-Member States - e.g. national rules about “surrogate law” - and the interaction of these rules with European interference in PIL, as well as on the impact of the way issues of “qualification” are solved by the EU-Member States - e.g. the complication of the delimitation between

“tort law issues” and “corporate law issues” - and the interaction thereof with European interference.

In this analysis, issues about respect for Fundamental Rights as related to Transnational Corporate Social Responsibility come forward. Particularly, the case of Transnational Corporate Social Responsibility shows how national practices of EU-Member States could lead to more - or less - respect for Fundamental Rights and, more in general, more - or less - protection of “victims”, interrelating with European interference in PIL.

It can be freely downloaded here (extensive version) and here.