

Conference Report: First German conference for Young Scholars in Private International Law

The following report has been kindly provided by Dr. Susanne Gössl, LL.M. (Tulane) and Daniela Schröder.

On April 6th and 7th, 2017, the first German conference for young scholars interested in Private International Law took place at the University of Bonn. The general topic was “Politics and Private International Law (?)”.

The conference was organized by Susanne Gössl, Bonn, and a group of doctoral or postdoctoral students from different universities. It was supported by the Institute for German, European and International Family Law, the Institute for Commercial and Economic Law and the Institute for Private International Law and Comparative Law of the University of Bonn the German Research Foundation (DFG), the German Society of International Law (DGIR), the Dr. Otto-Schmidt-Stiftung zur Förderung der Internationalisierung und der Europäisierung des Rechts, the Studienstiftung Ius Vivum, the Verein zur Förderung des Deutschen, Europäischen und Vergleichenden Wirtschaftsrechts e.V., and the publisher Mohr Siebeck.

Professor Dagmar Coester-Walten, LL.M. (Michigan), Göttingen, gave the opening speech. She emphasized that the relation between politics and conflict of laws has always been controversial. Even the “classic” conflict of laws approach (Savigny etc.) was never free from political and other substantive values, as seen in the discussion about international mandatory law and the use of the public policy exception. She outlined the controversy around the “political” Private International Law in the 20th century, resulting in new theories of Private International Law such as Currie’s “governmental interest analysis” and counter-reactions in continental Europe. Even after a review of the more political conflict of laws rules of the EU, Professor Coester-Waltjen came to the conclusion that the changes of the last decades were less a revolution than a careful reform in continuance of earlier tendencies.

The first day was devoted to international procedural law. First, **Iina Tornberg**,

Helsinki, evaluated more than 20 arbitration awards from the International Chamber of Commerce (ICC). Her focus was on the use of the concept *ordre public transnational*. She came to the result that there is no reference to truly transnational values. Instead, domestic values are read into the concept of the *ordre public transnational*. **Masut Ulfat, Marburg**, claimed that the Rome I Regulation should mandatorily determine the applicable law in arbitration proceedings to ensure a high level of consumer protection and enhance EU law harmonization. In his *responsio* **Reinmar Wolff, Marburg**, to the contrary, had the opinion that this last statement contradicts the fundamental principles of international arbitration as a private proceeding and its dogmatic basis in party autonomy. In addition, he did not regard the application of Rome I as necessary: the level of consumer protection could be reviewed at the stage of recognition and enforcement of the arbitration award.

In the second panel **Dominik Düsterhaus, Luxemburg**, dealt with the question to what extent EU law and the interpretation through the CJEU lead to a “constitutinalisation” of Private International Law and International Procedure Law. He showed clear tendencies of such a charge with legal policy considerations of apparently objective procedural regulations. He criticized the legal uncertainty, arising from the fact that the CJEU does not always disclose his political considerations. Furthermore, only 4% of the referred cases include questions of Private International Law. Thus, the CJEU has only few possibilities to concretize his considerations. **Jennifer Lee Antomo, Mainz**, dedicated herself to the question whether an agreement of exclusive international jurisdiction is also a contractual agreement with the effect that it is possible to claim compensation for breach of contract. She answered generally in the affirmative in the case a claimant brings a suit in a derogated court. Nevertheless, court authority to adjudicate can be limited, especially within the EU due to the EU concept of *res iudicata*.

The second day was dedicated to conflict of laws. **Friederike Pfortner, Konstanz**, analysed human rights abuses by companies in third countries. She objected a broad use of “escape devices” such as the public policy exception or *loi de police*. As exceptions they should be applied restrictively. **Reka Fuglinsky, Budapest**, investigated the problem of cross-border emissions with a focus on the CJEU case law and the new Hungarian Private International Law Act. She scrutinized, *inter alia*, under which conditions a foreign emission protection

permission has effects on the application or interpretation of national (tort) law. Another more factual problem is the later enforcement of domestic decisions in third countries.

Finally, **Martina Melcher, Graz**, analysed the relation between Private International Law and the EU General Data Protection Regulation, which is combining a private international law approach with a public international one. A separate conflict of laws rule should be introduced in the Rome II Regulation, following the *lex loci solutionis* instead of the territoriality principle. **Tamas Szabados, Budapest**, talked about the enforcement of economic sanctions by Private International Law. He characterized economic sanctions as overriding mandatory provisions (Article 9 (1) Rome I). In cases of third state (e.g. US) sanctions, an application was only possible as “being considered” in the sense of Article 9 (3) Rome I. A clear decision by the CJEU is necessary to ensure a transparent approach and a unitary EU foreign policy.

The conference concluded with the unanimous decision to organize further conferences for young scholars in Private International Law, probably every two years. The next conference will be held in Würzburg, Germany, in spring 2019.

The full texts of the presentations will be published in a forthcoming book by Mohr Siebeck. The presentations of the conference are available here (all in German).