Third Issue of 2017's Rivista di diritto internazionale privato e processuale

(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issue of the RDIPP)

The third issue of 2017 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released.

It features two articles and three comments.

Manlio Frigo, Professor at the University of Milan, **'Methods and Techniques of Dispute Settlement in the International Practice of the Restitution and Return of Cultural Property'** (in English)

This article focuses on the international practice in the field of cultural property disputes and examines the most effective and reliable dispute resolution methods in restitution and return of cultural property. Particularly in cases of disputes between Governmental authorities and foreign museums concerning the return or restitution of cultural property, one of the privileged solutions may consist in negotiating contractual agreements. The recent international and Italian practice have proved that these agreements may either prevent any judicial steps, or lead to a conclusion of pending administrative or judicial proceedings and have been successfully tested in recent years, more frequently within a wider frame of agreements of cultural cooperation. These agreements provide new forms of cooperation between the parties involved in such disputes and represent a mutually beneficial way out with a view to a future of collaboration.

Paolo Bertoli, Associate Professor at the University of Insubria, **'La «Brexit» e il diritto internazionale privato e processuale'** ('"Brexit" and Private International and Procedural Law'; in Italian)

This article discusses the implications of the forthcoming withdrawal of the United Kingdom from the European Union on the private international law rules applicable in the relationships between the EU Member States and the UK.

Traditionally, the UK has been skeptic vis-à-vis the EU policy in the area of judicial cooperation in civil matters, as demonstrated, inter alia, by the opt-in regime provided for by the EU Treaties in respect of the UK's participation to such policy and by the hostile reactions against the ECJ case law holding certain procedural norms eradicated in the UK tradition as conflicting with EU law. In the absence of any agreement between the EU and the UK, "Brexit" will imply that virtually all of the EU *acquis* in the field of private international law will cease to apply in the relationships between the EU Member States and the UK. Notwithstanding its historical skepticism vis-à-vis the EU policy in the field of private international law, the UK seems to be the party more interested in maintaining such rules to the greatest possible extent, in order not to jeopardize the attractiveness of its Courts and to protect its businesses.

In addition to the foregoing, the following comments are featured:

Zeno Crespi Reghizzi, Associate Professor at the University of Milan, **'Succession and Property Rights in EU Regulation No 650/2012'** (in English)

In modern systems of private international law, "succession" and "property rights" form the subject matter of distinct conflict-of-laws provisions, with different connecting factors. Drawing the line between these two categories implies a delicate characterisation problem, which now has to be solved in a uniform manner in all the Member States, by interpreting the scope of Regulation No 650/2012. Compared to the solutions traditionally adopted by the national systems of private international law, Regulation No 650/ 2012 has increased the role of the *lex successionis*, which now governs not only the determination of the heirs and their shares in the estate, but also the transfer of the assets forming part of the succession estate. This solution gives rise to several coordination issues which are examined in the present paper.

Federica Falconi, Researcher at the University of Pavia, **'Il trasferimento di competenza nell'interesse del minore alla luce dell'interpretazione della Corte di giustizia** ('Transfer of Jurisdiction in the Child's Best Interests in Light of the Interpretation by the Court of Justice'; in Italian)

By way of exception, Article 15 of Regulation (EC) No 2201/2003 allows the court having jurisdiction to transfer the case, or a specific part thereof, to a court of another Member State, with which the child has a particular connection, provided

that this latter is better placed to hear the case in the light of the best interests of the child. Based on the *forum non conveniens* doctrine, such a provision confers judges with significant discretion, with a view to ensure the best interests of the child in line with Article 24 of the EU Charter of Fundamental Rights. The aim of this paper is to illustrate the main features of this original mechanism, by looking firstly to its effects on the general grounds of jurisdiction established by the Regulation and then focusing on the strict conditions set out for its application. Particular attention is paid to the assessment of the child's best interests, which appears most problematic as the relevant factors will in fact vary depending on the circumstances of the case. In this regard, some guidance has been recently provided by the Court of Justice, that has pointed out that the court having jurisdiction may take into account, among other factors, the rules of procedure in the other Member State, such as those applicable to the taking of evidence required for dealing with the case, while the court should not take into consideration the substantive law of that other Member State, which might be applicable if the case were transferred to it. The Court of Justice has further clarified that the court must be satisfied, having regard to the specific circumstances of the case, that the envisaged transfer of the case is not liable to be detrimental to the situation of the child concerned.

Sondra Faccio, Doctor of Law, **'Trattati internazionali in materia di investimenti e condizione di reciprocità'** ('International Investment Treaties and the Reciprocity Requirement'; in Italian)

This paper discusses the interaction between international investment agreements and the condition of reciprocity set forth by Article 16 of the Preliminary provisions to the Italian civil code. It aims to assess whether investment agreements in force for the Italian State prevail over the application of the condition of reciprocity, in relation to the governance of the investment established in Italy by a foreign investor coming from a country outside the European Union. The analysis highlights that the fair and equitable treatment, the most favored nation treatment and the national treatment standards, included in most of the Italian investment agreements, protect foreign investors against unreasonable or discriminatory measures which could affect the management of their investments and therefore their application should prevail over the application of the condition of reciprocity in relation to the governance of the investment. This interpretation reflects the object and purpose of investment

agreements, which is to promote and protect foreign direct investments and to develop international economic relations between States.

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