Reminder: 2015 JPIL Conference at Cambridge: Booking Deadlines

The 10th Anniversary of the Journal of Private International Law Conference is being held at the Faculty of Law, Cambridge University on 3-5 September 2015. Booking for accommodation closes soon – on 15th July. Booking for the conference and dinner will close on 13th August.

The conference offers an excellent opportunity to hear and discuss many issues currently facing private international law.

More information and registration is here. A draft programme is available on the same web site.

Rauscher (ed.) on European Private International Law: 4th edition (2015) in progress

At the beginning of 2015, the publication of the 4th edition of *Thomas Rauscher's* commentary on European private international law (including international civil procedure), "Europäisches Zivilprozess- und Kollisionsrecht (EuZPR/EuIPR)", has started. So far, the volumes II (covering the EU Regulation on the European Order for Uncontested Claims, the Regulation on the European Order for Payment, the Small Claims Regulation, the Regulation on the European Account Preservation Order, the Service of Process and the Taking of Evidence Regulations as well as the Insolvency Regulation and the Hague Convention on Jurisdiction Agreements) and IV (covering, inter alia, Brussels II*bis*, the Maintenance Regulation and the new Regulation on mutual recognition of

protective measures in civil matters) have been published. The various Regulations have been commented on by *Marianne Andrae, Kathrin Binder, Urs Peter Gruber, Bettina Heiderhoff, Jan von Hein, Christoph A. Kern, Kathrin Kroll-Ludwigs, Gerald Mäsch, Steffen Pabst, Thomas Rauscher, Martin Schimrick, Istvan Varga, Matthias Weller* and *Denise Wiedemann*. Further volumes will cover Rome I and II as well as the Brussels I*bis* Regulation. This German-language commentary has established itself internationally as a leading, in-depth treatise on European private international law, dealing with the subject from a comprehensive, functional point of view and detached from domestic codifications. For more details, see here.

All Member States of the European Union to accept the accession of Singapore and Andorra to the Hague Child Abduction Convention

On 15 June 2015, the Council of the European Union adopted a decision authorising certain Member States to accept, in the interest of the European Union, the accession of Andorra to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and an analogous decision regarding the acceptance of the accession of Singapore to the same Convention (publication of both decisions in the Official Journal is pending).

The two decisions rest on Opinion 1/13 of 14 October 2014. In this Opinion, the ECJ — having regard to Regulation No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II*a*) — stated that the declarations of acceptance under the Hague Child

Abduction Convention fall within the exclusive external competence of the Union.

Before the ECJ rendered this Opinion, some Member States had already accepted the accession of Andorra and Singapore. Presumably, they did so on the assumption that the European Union was not vested with an exclusive competence in this respect and that, accordingly, each Member State was free to decide whether to become bound by the Convention *vis-à-vis* individual acceding third countries, as provided by Article 38(3) of the Convention itself (for an updated overview of the accessions to the Convention and the acceptances thereof, see this page in the website of the Hague Conference on Private International Law).

The two Council decisions of 15 June 2015 are addressed only to the Member States that have not already accepted the accession of Andorra and Singapore, respectively. In fact, the Council preferred not to question in light of Opinion 1/13 the legitimacy of 'old' declarations made by Member States, and noted, with pragmatism, that a decision regarding the acceptance of the two accessions was only needed with respect to the remaining Member States.

In two identical statements included in the minutes of the above Council decisions (see here and here), the European Commission regretted that the decisions "cover only the Member States which have not yet accepted Andorra and Singapore", so that "the Member States which proceeded to accept third States' accessions in the past are not covered by any authorisation by the Union, which is in principle necessary pursuant to Article 2(1) TFEU" (according to the latter provision, "when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts").

In its statements, the Commission also stressed "that any future acceptance by Member States of the accession of a third country must be covered by a prior authorisation".

Building the legal infrastructure of the Digital Single Market – A conference in Brussels

A conference organised by AIGA, the Italian Association of Young Lawyers, will take place on 2 July 2015 in Brussels, in the Paul-Henri Spaak building of the European Parliament, to discuss the legal aspects of the Digital Single Market (the creation of which is one of the ten priorities of the European Commission presided by Jean-Claude Juncker).

The conference, which is titled *Building the legal infrastructure of the Digital Single Market*, will consist of three sessions.

The first session, *Setting the policy framework,* will be chaired by Hans Schulte-Nölke of the University of Osnabrück. It will feature presentations by Gintare Surblyte of the Max Planck Institute for Innovation and Competition in Munich (*Internet and Regulation: the debate on Net Neutrality*) and Oreste Pollicino of the Bocconi University of Milan (*The sense of the Court of Justice of the European Union for digital privacy: interpretation or manipulation?*).

Michael Lehmann of the Max Planck Institute for Innovation and Competition will chair the second session, devoted to *A European law for digital contents: the challenge of harmonisation*. It will feature presentations by Johannes Druschel of the Ludwig Maximilian University of Munich (*Digital contents under the European Sales Law*) and Alberto De Franceschi of the University of Ferrara (*The issue of digital contents after the Consumer Rights Directive – The 'button solution' and the right of withdrawal*).

Under the title *Managing legal diversity within the Digital Single Market*, the third session, chaired by Francisco Garcimartín Alférez of the Universidad Autónoma of Madrid, will address some private international law issues relating to the functioning of the Digital Single Market. Presentations will be delivered by Lorna E. Gillies of the University of Leicester (*Cross-border online digital service contracts: Which court decides ? What law applies?*) and Pietro Franzina of the University of Ferrara (*Localising digital torts: settled and open issues*).

Admittance is free, but, for security reasons, those wishing to attend the conference must send an e-mail by Wednesday, 24 June 2015 to Mario Galluppi di Cirella, Vice-President of the AIGA Foundation, at *mariodicirella@hotmail.com*. The seating capacity of the conference room is limited. Successful applicants will receive a confirmation by 27 June 2015.

The poster of the conference may be downloaded here.

Harmonization of Private International Law in the Caribbean (book)

It is my pleasure to announce the release of this work aiming at the preparation of a Model Law OHADAC of private international law. The project has been carried out thanks to the cooperation between ACP Legal, based in Guadeloupe (France), and the entity Iprolex, SL, Madrid, financed by European funds from the INTERREG project for actions in the field of harmonization of business law in the Caribbean.

The initiative began with the establishment of a team led by experts from Spain, France and Cuba: Prof. Dr. Santiago Álvarez González (Santiago de Compostela), Prof. Dr. Bertrand Ancel (Paris II), Prof. Dr. Pedro A. de Miguel Asensio (Complutense, Madrid), Prof. Dr. Rodolfo Dávalos Fernández (La Habana), and Prof. Dr. José Carlos Fernandez Rozas, (Complutense, Madrid). In carrying out this ambitious project Iprolex, SL has also benefited from the support of a large group of specialists who have worked along three distinct stages for a period of over a year.

In the book the preparatory works in view of the Model Law are preceded by in-depth studies on the various systems involved: Jose Maria DEL RIO VILLO, Rhonson SALIM and James WHITE*:* "Private International Law in the Commonwealth Caribbean and British Overseas Territories"*;* Bertrand ANCEL**,**

“Départements et collectivités territoriales françaises dans l’espace caraïbe**”;** Lukas RASS–MASSON**, “**Enquête sur le droit international privé des territoires de l’Ohadac – l’héritage des Pays–Bas**”;** José Luis MARÍN FUENTES**, “**Caracteres generales del sistema de Derecho internacional privado colombiano**”,** Patricia OREJUDO PRIETO DE LOS MOZOS, “Le droit international privé colombien et le projet de Loi modèle de l’Ohadac”; José Carlos FERNÁNDEZ ROZAS y Rodolfo DÁVALOS FERNÁNDEZ, “El Derecho internacional privado de Cuba”; Enrique LINARES RODRÍGUEZ, “Le droit international prive du Nicaragua et le projet de loi modèle de l’Ohadac”; Ana FERNÁNDEZ PÉREZ, “El Derecho internacional privado de Puerto Rico: un modelo de americanización malgré lui”; José Carlos FERNÁNDEZ ROZAS, “Pourquoi la République Dominicaine a–t–elle besoin d’une loi de droit international prive ?”; Claudia MADRID MARTÍNEZ, “Características generales del sistema de Derecho internacional privado venezolano”.

The volume, written in Spanish, French and English and conceived as a combination of structured reflections and general proposals at a time, aims to achieve two main objectives. The first one is to consistently gather quantitative data and qualitative information in view of an assessment of already existing instruments that may be useful for optimizing the codification of private international law in the Caribbean geographical context. The second objective is to identify the need, social or institutional demands that must be met by a regulation, evaluating its legal and substantive feasibility and setting up the materials, steps and reports which are deemed appropriate to reach the final aim.

The great political and economic importance of the proposed Model Law, together with the fact that the regulation is complex and very broad, suggests that the involvement of stakeholders (through lobbies or directly), being crucial, may prove insufficient or incomplete. For this reason, public dissemination of the Draft is essential in order to make it known and to invite all agents or individuals interested in participating to express their views, opinions or propositions about a possible adjustment of the work while in progress. The following email address has been set for this purposes: iprolex@iprolex.com.

The deliberations that will start after the release of Draft will be vital: they will provide a sufficient perspective of the views and concerns expressed, thus allowing moving on to elaborate a final proposal, which will then be submitted to the corresponding legislative process.

Armonización del Derecho Internacional Privado en el Caribe. L'harmonisation du Droit International Privé dans le Caraïbe – Harmonization of Private International Law in the Caribbean. Estudios y materiales preparatorios y proyecto de Ley Modelo OHADAC de derecho internacional privado de 2014, Madrid, Iprolex, 20015, 687 pp. ISBN: 978-84-941055-2-4.

ILA French Branch/Swiss Ministry of Foreign Affairs/ERA Conference: "INTERNATIONAL LAW AND EUROPEAN UNION LAW – Harmony and Dissonance in International and European Business Law Practice"

Professor *Catherine Kessedjian*, President of the French Branch of the International Law Association (ILA), is organising an international conference on "INTERNATIONAL LAW AND EUROPEAN UNION LAW – Harmony and Dissonance in International and European Business Law Practice" in conjunction with the Swiss Ministry of Foreign Affairs and the Academy of European Law (ERA) which will take place on 24 and 25 September 2015 in Trier (Germany).

The *aim of this conference* is to provide legal practitioners with a comprehensive overview and high-level discussions on key topics and recent developments affecting their daily practice at the crossroads of international law and EU law.

Key topics include:

– EU/Member States and international law: who does what? Issues relating to international negotiations, international responsibility, representation in international litigation, international law as a standard of review in CJEU case-

law;
– The international dispute resolution mechanism jigsaw: Litigation before European courts: private parties' access to the ECtHR and the CJEU, equivalent protection system;
– Brussels I and the arbitration exception, primacy of the New York Convention, parallel proceedings and conflicting court and arbitral decisions, recent EU case-law (C-536/13, Gazprom and C-352/13, CDC), 2015 entry into force of the Hague Convention on Choice of Court Agreements: changes and coordination;
– Relationship between ISDS and national judicial systems, protection of the State's right to regulate and legitimate public policy objectives, establishment and functioning of arbitral tribunals, review of ISDS decisions by bilateral or multilateral appellate mechanisms;
– UN, EU and State sanctions: role and effectiveness, (extra-)territorial scope, impact on fundamental rights and judicial review by the ECtHR (Nada and Al Dulimi) and by the CJEU (Kadi and recent cases), impact on international sales contracts.

It should be noted that the conference fee for members of the ILA is reduced to **100 €**.

Further information is available here and here.

Two New Papers on Business and Human Rights

A short piece on two recently released papers, both accessible in pdf format (first one in Spanish, second in English). Just click on the title.

I reproduce the abstracts by the authors.

F. J. ZAMORA CABOT, Chair Professor of Private International Law, UJI of Castellon, Spain

Sustainable Development and Multinational Enterprises: A Study of Land Grabbings from a Responsibility Viewpoint

The international community has adopted sustainable development as one of its priority issues. Multinational corporations can however interfere or render it impossible through land grabbings, a complex phenomenon because on many occasions they reach a prominent role that can be seen, among their different appearances, as a real pathology of the above mentioned development.

After having been previously scrutinized with relation to a comment on the case Mubende-Neuman I entertain no doubt at all that such grabbings more often than not turn out to be diametrically opposed to the various targets that outline sustainable development, as have already been revealed, for instance, by Secretary General of the United Nations Ban Ki- Moon, along his consolidated report over the agenda in this regard after 2015.

I propose in here, then, after an **Introductory Section,** a presentation of the problem following recent cases, showing different conflict situations in selected sectors, **Section 2,** and others under which collective efforts have achieved or are in the process of attaining remedies in terms of justice, **Section 3.** I will put an end to my survey with some final reflections, **Section 4,** within which **I** will raise the relevant activity carried out by the human rights defenders, in this particular case deeply rooted in the communities and the land where they live and the great credit that deserves to us their continued and brave fight all around the world.

N. ZAMBRANA TÉVAR LLM (LSE), PhD (Navarra) Assistant Professor, KIMEP University (Almaty, Kazakhstan)

Can arbitration become the preferred grievance mechanism in conflicts related to business and human rights?

International law demands that States provide victims of human rights violations with a right to remedy, also in the case of violations of human rights by legal entities. International law also provides some indications as to how State and non-State based dispute resolution mechanisms should be like, in order to fulfil the human rights standards of the right to remedy. Dispute resolution mechanisms of an initially commercial nature, such as arbitration

or mediation, could become very useful grievance mechanisms to provide redress for victims of human rights abuses committed by multinational corporations. Still, there are problems to be solved, such as obtaining consent from the parties involved in the arbitration process. Such consent may be obtained by imitating other dispute resolution mechanisms such as ICSID arbitration.

First Issue of 2015'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 first issue of 2015 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) was just released. It features three articles, two comments, and three reports.

Sergio M. Carbone, Professor Emeritus at the University of Genoa and *Chiara E. Tuo*, Associate Professor at the University of Genoa, examine the issue of third-state defendants and the revised Brussels I Regulation in **"Non-EU States and Brussels I: New Rules and Some Solutions for Old Problems"** (in English).

> *The central purpose of this article is to critically assess the changes brought about by the new Brussels I Regulation as regards its scope of application vis-à-vis disputes connected with non-EU countries. Therefore, following an initial outline of the relevant amendments in the Recast, a critical evaluation of the latter against the background of both the ECJ case-law and national practice is presented. The reform is then assessed in the context of the original 2010 recast proposal presented by the EU Commission as well as of the views expressed in literature in relation thereto. The paper maintains that the Recast regime should undergo further revision with a view to implementing cross-*

border business transactions in the global economy and to satisfying the concomitant demand for greater certainty in international commercial litigation.

Stefania Bariatti, Professor at the University of Milan, analyses the compatibility of recent Italian legislation aimed at the efficiency of the judiciary with the Brussels I and the Brussels Ia Regulations in **"I nuovi criteri di competenza per le società estere e la loro incidenza sull'applicazione dei regolamenti europei n. 44/2001 e n. 1215/2012"** (The New Jurisdiction Criteria for Foreign Companies and Their Impact on the Application of EU Regulations No 44/2001 and No 1215/2012; in Italian).

Since 2012, the Italian legislature has adopted several statutes aimed at reducing the costs and enhancing the efficiency of the judiciary also through the reduction of the number of courts competent to hear cases where one of the parties is a company having its seat abroad. The latest version of such provisions has been adopted with Decree-Law No 145 of 2013 that centralises these cases at eleven courts. This approach has been taken by other Member States in several fields, mainly invoking the goal of increasing consistency and uniformity of judgments and the specialization of judges to the benefit of all parties. These provisions raise significant questions of compliance with the principles enshrined in the Constitution and they do not seem to attain the goal of uniformity since they provide a double track for purely internal vs cross-border cases. But they appear to be also contrary to some provisions of the Brussels Ia Regulation, in particular where the Regulation directly designates the competent court within a Member State. Hence the question of whether EU law establishes any limits to the power of the Member States to determine the territorial extension of the competence of national courts. The Court of Justice has provided some guidance on these issues in Sanders and Bradbrooke, where the protection of a maintenance creditor and of a minor were at stake. According to the Court, national legislatures should assure the effet utile of EU provisions, while at the same time ensure effective proceedings in cross-border situations, preserve the interests of the weaker party and promote the proper administration of justice. Within the "Brussels I system" such guidance may apply in cases where the position of the parties is unbalanced and the Regulation provides special fora in favour of the weaker party that are based upon proximity. Yet, one may ask whether the solution may differ according to

the subject matter of the dispute. Moreover, the fact that the Italian legislature has declared that the fora established under Decree-Law No 145 of 2013 may not be derogated raises the further issue of their compatibility with Article 25 of the Brussels Ia Regulation.

Alfonso-Luis Calvo Caravaca, Professor at the University Carlo III of Madrid and *Javier Carrascosa González*, Professor at the University of Murcia, provide an assessment of interim and provisional measures under the Brussels Ia Regulation in **"Medidas provisionales y cautelares y reglamento Bruselas I-bis"** (Interim and Provisional Measures and the Brussels Ia Regulation; in Spanish).

This paper addresses the impact of Council Regulation No 1215/2012 on provisional and protective measures in civil and commercial matters. The paper shows that this Regulation definitively enhances the recognition and enforcement of those measures in the European Union. Provisional and protective measures attempt to reduce the risks of litigation when the debtor tries to hide or sell his assets, which is relatively easy in a globalized international society where free movement of goods and capitals is assured. Hence, Art 42(2) of Regulation No 1215/2012 provides that enforcement in a Member State of a judgment given in another Member State ordering a provisional or protective measure is possible only if the applicant provides the competent authority proof of service of the judgment ordering that provisional measure, in the case that provisional or protective measure was ordered without the defendant being summoned to appear. The new Regulation gives those measures wider possibilities of recognition and enforcement in the EU even if they were adopted inaudita parte debitoris.

In addition to the foregoing, two comments are featured:

Francesca Capotorti, PhD candidate at the University of Milan, **"La nuova direttiva sul riconoscimento delle qualifiche professionali tra liberalizzazione e trasparenza"** (The New Directive on the Recognition of Professional Qualifications between Deregulation and Transparency; in Italian).

This article focuses on the most innovative features of Directive 2013/55/EU amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012. After having outlined the path that led to

the adoption of the Directive and showed the need to modernise Union law in this area, this article analyses a) the European Professional Card; b) partial access; c) professional traineeship; d) common training principles; and e) the further most important revisions of Directive 2005/36/EC aiming at promoting the free movement of professionals. This paper also addresses the novelties introduced by Directive 2013/55/EU to ensure consumer protection and to increase transparency and administrative cooperation. Finally, this article shows that in most cases the European Court of Justice anticipated the results of the new Directive. Still, a Directive is deemed as necessary to clearly and completely regulate the efforts of modernisation in this area, which hopefully will be shared by the European Commission and Member States.

Petr Dobiáš, Senior fellow at the Charles University in Prague, **"The New Czech Private International Law"** (in English).

The new Act No 91/2012 Coll. on Private International Law was adopted in the Czech Republic on 25 January 2012 and came into force on 1 January 2014. The Act on Private International Law, which takes into consideration the developments in Czech, European and international legislation, was also created with the aim of removing deficiencies and obsolete elements of legislation contained in Act No 97/1963 Coll. on Private and Procedural International Law. In terms of its internal structure, the Act on Private International Law is divided into a total of nine parts which regulate the content of private international law and procedural international law. This article presents and analyses this new legislation, taking into consideration the provisions of the relevant international conventions and secondary law of the European Union. Indeed, the new Act on Private International Law is a response to the new trends in private international law that stem as a result of the current and ongoing developments in international economic relations and in social relationships. As a result of such developments, further flexibility is asked of the domestic provisions of private international law, which must take into account the development of EU Regulations in this area of the law. As this article illustrates, the response to this demand is reflected in several of the provisions laid down in the Act on Private International Law, which emphasize the primacy of EU Regulations and international conventions.

Finally, this issue of the *Rivista di diritto internazionale privato e processuale* features three reports; one on restitution of cultural objects and two on recent German case-law on private international and procedural issues:

Sebastian Seeger, Assistant at the University of Heidelberg, **"Restitution of Nazi-Looted Art in International Law. Some Thoughts on *Marei von Saher v. Norton Simon Museum of Art at Pasadena*"** (in English).

Georgia Koutsoukou, Research Fellow at the Max Planck Institute Luxembourg, **"Report on Recent German Case-Law Relating to Private International Law in Civil and Commercial Matters"** (in English).

Stefanie Spancken, PhD Candidate at the University of Heidelberg, **"Report on Recent German Case-Law Relating to Private International Law in Family Law Matters"** (in English).

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale. This issue is available for download on the publisher's website.

Intellectual Property in International and European Law (call for papers)

Utrecht Journal of International and European Law is issuing a Call for Papers for its upcoming Special Issue (82nd edition) on 'Intellectual Property in International and European Law'. With technological advancement and innovative practices occurring ever more frequently, individuals and undertakings often turn to intellectual property law to protect their ideas and seek remedies where appropriate (e.g. the recent *Apple v Samsung* design dispute). Recent developments in intellectual property are now a regular feature in popular media and a much-discussed topic amongst the general public. As such, the Utrecht

Journal will be dedicating its 2016 Special Issue to 'Intellectual Property in International and European Law'.

The Board of Editors invites submissions addressing legal issues relating to intellectual property law from an international or European law perspective. Topics may include, but are not limited to: the influence of patenting on the competitive process; the use of IP holding companies to take advantage of favourable tax regimes; patent-trolls; copyright infringements; trademark protection; the ethics of IP (e.g. GMOs), etc. All types of manuscripts, from socio-legal to legal-technical to comparative will be considered. However, please note that any analysis solely limited to a national legal system will fall outside the scope of the Journal. An international or European legal dimension is imperative.

The Board of Editors will select articles based on quality of research and writing, diversity and relevance of topic. The novelty of the academic contribution is also an essential requirement. Prospective articles should be submitted online via the Journal's website (www.utrechtjournal.org/about/submissions) and should conform to the Journal style guide. Utrecht Journal has a word limit of 15,000 words including footnotes. For further information please consult our website or email the Editor-in-Chief at utrechtjournal@urios.org.

Deadline for submissions: **15 October 2015**

International Labour Law (paper)

A new working paper of Veerle Van Den Eeckhout on international labour law has been published on SSRN, entitled "The "Right" Way to Go in International Labour Law – and Beyond."

The abstract reads as follows: The path to follow in (cases of) International Labour Law should be trodden with caution. In this paper, the author highlights several points of attention and issues in the current debate of international labour law. The author also positions some of the issues that are currently being raised in international labour law in similar and broader debates about future

developments in Private International Law.

The paper is the written version of a contribution to the expert-meeting “Where do I belong? EU law and adjudication on the link between individuals and Member States”, organized in Antwerp on 7-8 May 2015.