Patents and the Internet

Guest Post by Professor Marketa Trimble (UNLV) (also posted at this blog).

Imagine that someone had a patent on the internet and only those who had a license from the patent holder could, for example, do business on the internet. This internet patent would not need to concern the internet protocol, the domain name system, or any other technical features of the network; the patent could, in fact, cover something else – a technology that everyone, or almost everyone, who wants to do business on the internet needs, a technology that is not, however, a technical standard. There might be one such patent application – the patent application discussed below – that could be approaching this scenario.

We must accept, however reluctantly, that activities on the internet will not be governed by a single internet-specific legal regime or by the legal regime of a single country. Although countries might agree on an internet-specific regime for the technical features of the internet, and might even adopt some uniform laws, countries want to maintain some of their country-specific national laws. People and nations around the world are different, and they will always have diverse views on a variety of matters – for example, online gambling. Online gambling might be completely acceptable in some countries, completely unacceptable in others, or somewhere in between; likewise, countries have different understandings of privacy and requirements for the protection of personal data. Therefore, countries now have and likely always will have different national laws on online gambling and different national laws on privacy and personal data protection. Compliance with multiple countries' laws regarding the internet is nonnegotiable, certainly for those private parties who wish to conduct their activities on the internet transnationally and legally. Nevertheless, in practice and for some matters, the number of countries whose laws are likely to be raised against an actor on the internet may be limited, as I discussed recently.

For some time the major excuse for noncompliance with the laws of multiple countries on the internet was the ubiquitousness of the network. The network's technical characteristics seemed to make it impossible for actors to both limit their activity on the internet territorially, and also to identify with a sufficient degree of reliability the location of parties and events on the internet, such as customers and their place of consumption. However, as geolocation and

geoblocking tools developed, location identification and territorial limitation of access became feasible. Of course the increase in the use of geolocation tools generated more interest in the evasion of geolocation, and increased evasion has prompted even further improvements of the tools. The argument that we cannot limit or target our activity territorially because we don't know where our content is accessed or consumed no longer seems valid. (Also – at least in some countries – courts and agencies have permitted internet actors to employ low-tech solutions as sufficient territorial barriers, for example, disclaimers and specific language versions.)

The multiplicity of applicable laws that originate in different countries and apply to activities on the internet is more troubling in some areas of law than in others. One area of law that permeates most internet activity is data privacy and personal data protection. Any internet actor who has customers and users (and therefore probably has user and traffic analytics) will likely encounter national data protection laws, which vary country-by-country (even in the EU countries, which have harmonized their personal data protection laws, national implementing regulations may impose country-specific obligations). Therefore, compliance with the varying national data protection laws will become one of the essential components of conducting business and other activities transnationally. If someone could patent a method for complying simultaneously with multiple countries' data privacy laws on the internet and claim the method broadly enough to cover all possible methods of achieving compliance with the national privacy laws, that patent owner might just as well own a patent on the internet, or at least on a very large percentage of internet activity.

A U.S. patent application that seeks a patent on simultaneous compliance with multiple countries' data privacy laws on the internet through broad method claims is application No. 14/266,525, which concerns "Systems and Methods of Automated Compliance with Data Privacy Laws," meaning "laws of varying jurisdictions" (the title and the "Abstract"). The invention is designed to facilitate an automatic method of complying with the data privacy laws of various jurisdictions, which are, as the "Introduction" notes, "complicated, diverse, and jurisdiction specific." The method envisions that once "person-related data" are requested from a data provider, a "filter is the [*sic*] automatically applied to the person-related data to restrict transfer of person-related data [that] does [*sic*] not meet the data privacy regulations applicable to the jurisdiction" (the

"Introduction"); the filter also checks for any consents by the data subject if the particular regulations require them. The method also foresees, for example, the possibility of "identif[ying] different origins of the person-related data sources" in terms of their geographical location ("Trust Object and Trust Data").

The patent application still must be prosecuted, and the – undeniably useful – invention will be subject to scrutiny as to its compliance with the requirements of statutory subject matter, novelty, and non-obviousness. A patent on the application may not issue at all, or the language of the application may be amended and the claims narrowed. Whatever the future might bring for the claimed invention, this patent application serves as a useful prompt for thinking about the components that have been or are becoming essential to conducting business and other activities on the internet.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 4/2015: Abstracts

The latest issue of the *"Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)"* features the following articles:

Holger Jacobs, **The necessity of choosing the law applicable to non-contractual claims in international commercial contracts**
International commercial contracts usually include choice-of-law clauses. These clauses are often drafted narrowly, such that they do not cover non-contractual obligations. This article illustrates that, as a result, contractual and non-contractual claims closely linked to the contract risk being governed by different laws. This fragmentation might lead to lengthy and expensive disputes and considerable legal uncertainty. It is therefore advisable to expressly include non-contractual claims within the scope of choice-of-law clauses in international commercial contracts.

Leonard Hübner, **Section 64 sentence 1 German Law on Limited Liability Companies in Conflict of Laws and European Union Law**

The article treats the application of the liability pursuant to § 64 sentence 1 GmbHG to European foreign companies having its centre of main interest in Germany. At the outset, it demonstrates that the rule belongs to the lex concursus in terms of Art. 4 EuInsVO. For the purposes of this examination, the article considers the case law of the ECJ as well as the legal consequences of the qualification. At the second stage, it illustrates that the application of the rule to foreign companies does not infringe the freedom of establishment according to Art. 49, 54 TFEU.

Felix Koechel, **Submission by appearance under the Brussels I Regulation and representation in absentia**

In response to two questions referred by the Austrian Supreme Court, the ECJ ruled that a court-appointed representative for the absent defendant (Abwesenheitskurator) cannot enter an appearance on behalf of the defendant for the purposes of Article 24 of the Brussels I Regulation. This solution seems convincing because the entering of an appearance by the representative would circumvent the court's obligation to examine its jurisdiction on its own motion under Article 26 para 1 of the Brussels I Regulation. Considering also the ECJ's decisions in cases C-78/95 (Hendrikman) and C-327/10 (Hypote?ní banka) it seems that the entering of an appearance within the meaning of the Brussels I Regulation is generally excluded in case of a representation in absentia. It is, however, doubtful whether the very specific solution adopted by the ECJ in the present case should be applied in other cases of representation in proceedings.

Peter Mankowski, **Tacit choice of law, more preferential law principle, and protection against unfair dismissal in the conflict of laws of employment agreements**

Labour contracts with a cross border element are a particular challenge. They call for a particularly sound administration of justice. Especially, the discharge of employees gives rise to manifold questions. The final decision of the Bundesarbeitsgericht in the case Mahamdia provides a fine example. It tempts to spend further and deepening thoughts on tacit choice of law (with a special focus on jurisdiction agreements rendered invalid by virtue of Art. 23 Brussels Ibis Regulation, Art. 21 Brussels I Regulation/revised Lugano Convention), the most favourable law principle under Art. 8 (2) Rome I Regulation, and whether the

general rules on discharge of employee might possibly fall under Art. 9 Rome I Regulation.

Christoph A. Kern, **Judicial protection against torpedo actions**
In the recent case Weber v. Weber, the ECJ had ruled that, contrary to the principle of priority provided for in the Brussels I Regulation, the court second seized must not stay the proceedings if it has exclusive jurisdiction. The German Federal Supreme Court (BGH) applies this ratio decidendi in a similar case. In its reasons, the BGH criticizes – and rightly so – the court of appeal which, in the face of a manifestly abusive action in Italy, had denied an identity of the claims and the parties by applying an "evaluative approach". Nevertheless, the repeated opposition of lower courts to apply the principle of priority is remarkable. The Brussels I recast, which corrects the ECJ's jurisprudence in the case Gasser v. Misat, would, however, allow for an approach based on forum selection: Whenever the parties have had no chance to protect themselves against torpedo actions by agreeing on the exclusive jurisdiction of a court or the courts of a Member State, the court second seized should be allowed to deviate from a strict application of the principle of priority.

Jörn Griebel, **The Need for Legal Relief Regarding Decisions of Jurisdiction Subject to Setting Aside Proceedings according to § 1040 of the German Code of Civil Procedure**
§ 1040 section 3 of the German Code of Civil Procedure prescribes that a so called "Zwischenentscheid", an arbitration tribunal's interim decision on its jurisdiction, can be challenged in national court proceedings. The decision of the German Federal Court of Justice (BGH) concerned the procedural question whether a need for legal relief exists in such setting aside proceedings concerning an investment award on jurisdiction, especially in situations where an award on the merits has in the meantime been rendered by the arbitration tribunal.

Bettina Heiderhoff, **No retroactive effect of Article 16 sec. 3 Hague Convention on child protection**
Under Article 21 German EGBGB it was possible that a father who had parental responsibility for his child under the law of its former habitual residence lost this right when the child moved to Germany. This was caused by the fact that Article 21 EGBGB connected the law governing parental custody to the place of habitual residence of the child.
Article 16 sec. 1 Hague Convention on child protection (1996) also connects the

parental custody to the habitual residence. However, in Article 16 sec. 3 it has a different rule for the above described cases, stating that parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.
The author is critical towards the common understanding of Article 21 EGBGB. The courts should always have interpreted this rule in the manner that is now explicitly fixed in Article 16 sec. 3 Hague Convention. As the rule has been virtually out of force for many years due to the overriding applicability of the Hague Convention, a retroactive change in its interpretation would cause great insecurity.
The essay also deals with various transitional problems. It supports the view of the OLG Karlsruhe, that the Hague Convention cannot be applied retroactively when a child moved to Germany before January 2011.

Herbert Roth, **Rechtskrafterstreckung auf Vorfragen im internationalen Zuständigkeitsrecht**
The European procedure law (Brussels I Regulation) does not make any statement concerning the scope of substantive res judicata of national judgments. However, the European Court of Justice extends the effects of res judicata to prejudicial questions of the validity of a choice-of-forum clause, in this respect it approves a European conception of substantive res judicata (ECJ, 15.11.2012 – Case C 456/11 – Gothaer Allgemeine Versicherung AG ./. Samskip GmbH, IPRax 2014, p. 163 Nr. 10, with annotation H. Roth, p. 136). The verdict of the higher regional court of Bremen as appellate court had to consider the precedent of the ECJ. It is the final decision after the case was referred back from the ECJ. The international jurisdiction of German courts was rejected in favour of the Icelandic courts, in spite of the defendant's domicile in Bremen.

Martin Gebauer, **Partial subrogation of the insurer to the insured's rights and the incidental question of a non-contractual claim**
The decision, rendered by the local court of Cologne, illustrates some of the problems that arise when the injured party of a car accident brings an action as a creditor of a non-contractual claim against the debtor's insurer, despite the injured party having already been partially satisfied by his insurer as a consequence of a comprehensive insurance policy. The partial subrogation leads to separate claims of the injured party, on the one hand, and its insurer on the other. According to Article 19 of the Rome II Regulation, the subrogation, and its

scope, is governed by the same law that governs the insurance contract between the injured party and its insurer. The non-contractual claim, however, which is the object of the subrogation, is governed by a different law and presents an incidental question within the subrogation. The injured party, as claimant, can sue the debtor's insurer in the courts of the place where the injured party is domiciled. The injured party's insurer, however, may not sue the debtor's insurer in the courts of the place where the injured party is domiciled, but is rather forced to bring the action at the defendant's domicile. This may lead to parallel proceedings in different states and runs the risk of uncoordinated decisions being made by the different courts regarding the extent of the subrogation.

Apostolos Anthimos, **On the remaining value of the 1961 German-Greek Convention on recognition and enforcement**

Since the late 1950s, Greece has established strong commercial ties with Germany. At the same time, many Greek citizens from the North of the country immigrated to Germany in pursuit of a better future. The need to regulate the recognition and enforcement of judgments led to the 1961 bilateral convention, which predominated for nearly 30 years in the field. Following the 1968 Brussels Convention, and the ensuing pertinent EC Regulations, its importance has been reduced gradually. That being the case though, the bilateral convention is still applied in regards to cases not covered by EC law and/or multilateral conventions. What is more interesting, is that the convention still applies for the majority of German judgments seeking recognition in Greece, namely cases concerning divorce decrees rendered before 2001, as well as adoption, affiliation, guardianship, and other family and personal status matters. The purpose of this paper is to highlight the significance of the bilateral convention from the Greek point of view, and to report briefly on its field of application and its interpretation by Greek courts.

David B. Adler, **Step towards the accommodation of the German-American judicial dispute? – The planned restriction of Germany's blocking statute regarding US discovery requests.**

Until today, US and German jurisprudence argue whether US courts are allowed to base discovery orders on the Federal Rules of Civil Procedure instead of the Hague Evidence Convention, despite the fact that evidence (e.g. documents) is located outside the US but in one of the signatory states. While the one side argues that the Hague Convention trumps the Federal Rules and has to be

primarily, if not exclusively, utilized in those circumstances, the other side, especially many US courts, constantly resisted interpreting the Hague Evidence Convention as providing an exclusive mechanism for obtaining evidence. Instead, they have viewed the Convention as offering discretionary procedures that a US court may disregard in favor of the information gathering mechanisms laid out in the federal discovery rules. The Hague Evidence Convention has therefore, at least for requests from US courts, become less important over time.
The German Federal Ministry of Justice and Consumer Protection intends to put this debate to an end and to reconcile the differing legal philosophies of Civil Law and Common Law with regard to the collecting of evidence. It plans to alter the wording of the German blocking statute which, up to this date, does not allow US litigants to obtain pretrial discovery in the form of documents which are located in Germany at all. Instead of the overall prohibition of such requests, the altered statute is intended to allow the gathering of information located in Germany if the strict requirements of the statute, especially the substantiation requirements towards the description of the documents, are fulfilled. By changing the statute, Germany plans to revive the mechanisms of the Hague Evidence Convention with the goal of convincing the US courts to place future exterritorial evidence requests on those mechanisms rather than on the Federal Rules.
The article critically analyses the planned statutory changes, especially with regard to the strict specification and substantiation requirements concerning the documents requested. The author finally discusses whether the planned statutory changes will in all likelihood encourage US courts to make increased usage of the information gathering mechanisms under the Hague Evidence Convention with regards to documents located in Germany, notwithstanding the effective information gathering tools under the Federal Rules of Civil Procedure.

Steffen Leithold/Stuyvesant Wainwright, **Joint Tenancy in the U.S.**
Joint tenancy is a special form of ownership with widespread usage in the USA, which involves the ownership by two or more persons of the same property. These individuals, known as joint tenants, share an equal, undivided ownership interest in the property. A chief characteristic of joint tenancy is the creation of a “Right of Survivorship”. This right provides that upon the death of a joint tenant, his or her ownership interest in the property transfers automatically to the surviving joint tenant(s) by operation of law, regardless of any testamentary intent to the contrary; and joint tenants are prohibited from excluding this right by will. Joint tenancies can be created either through inter vivos transactions or testamentary

bequests, and for the most part any asset can be owned in joint tenancy. A frequent reason for owning property in joint tenancy is to facilitate the transfer of a decedent's ownership interest in an asset by minimizing the expense and time-constraints involved with the administration of a probate proceeding. Additional advantages of owning property in joint tenancy include potential protections against a creditor's claims or against assertions by a spouse or minor children of homestead rights. Lastly, owning property in joint tenancy can result in inheritance, gift, property and income tax consequences.

Tobias Lutzi, **France's New Conflict-of-Laws Rule Regarding Same-Sex Marriage and the French ordre public international**
On 28 January, the French Cour de cassation confirmed a highly debated decision of the Cour d'appel de Chambéry, according to which the equal access to marriage for homosexual couples is part of France's ordre public international, allowing the court to disregard the Moroccan prohibition of same-sex marriage in spite of the Franco-Moroccan Agreement of 10 August 1981 and to apply Art. 202-1(2) of the French Code civil to the wedding of a homosexual Franco-Moroccan couple. The court expressly upheld the decision but indicated some possible limitations of its judgment in a concurrent press release.

Study on the Service of Documents

I have been asked by Giacomo Pailli, Università degli Studi, Florence, to spread the word about this study on the service of documents. Good luck with it!

The EU Commission has recently launched a European-wide study on the service of documents in EU Member States, which is being carried out by a consortium composed by the University of Florence, the University of Uppsala and DMI, a French consulting firm.

The Commission is particularly interested in understanding the existing disparities between the national regimes on service of documents that might constitute an obstacle to the proper functioning of Regulation 1393/2007 on the service of documents. The focus of the study is on domestic service of documents.

Anyone who works in the field of civil procedure, private international law and international litigation in general–either as private practitioners, in-house counsel, legal academics or neutrals– and has knowledge of how service of documents works in a EU Member State is invited to participate to the study by answering to an online questionnaire. On the website of the project you may also find the questionnaire translated in almost all languages of EU Member States.

The questionnaire is complex and articulated, but participants are free to answer only some of the sections, especially those that relate more closely to their direct experience or knowledge. The answers are all collected anonymously, unless the participant wish to be included in the public list of contributors to the study and answers question no. 1.5.

The survey will remain open until July 7th, 2015.

We warmly thank anyone who will take the time to ensure the success of this study.

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.

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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.