The conclusions of the first meeting of the Hague Expert's Group on Parentage / Surrogacy

In 2015, the Council on General Affairs and Policy of the Hague Conference decided that an Experts' Group should be convened to explore the feasibility of advancing work on the private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements (for further information on the Parentage / Surrogacy project, see here).

The Experts' Group on Parentage / Surrogacy met from 15 to 18 February 2016 (the full report is available here). The discussion, based on a background note drawn up by the Permanent Bureau, revealed significant diversity in national approaches to parentage and surrogacy.

The Group noted that "the absence of uniform private international law rules or approaches with respect to the establishment and contestation of parentage can lead to conflicting legal statuses across borders and can create significant problems for children and families", including limping parental statuses, uncertain identity of the child, immigration problems, uncertain nationality or statelessness of the child, abandonment including the lack of maintenance. "Common solutions", the Group observed, "are needed to address these problems".

In particular, as regards the *status quo*, the Group noted the following.

(*a*) Most States do not have specific private international law rules regarding assisted reproductive technologies and surrogacy agreements.

(*b*) Regarding jurisdiction, issues mostly arise in the context of legal parentage being established by or arising from birth registration, voluntary acknowledgment of legal parentage or judicial proceedings. The experts reported, however, that jurisdiction issues tend to arise not as a stand-alone topic, but rather in connection with recognition.

(*c*) Regarding applicable law, there is a split between those States whose private

international law rules point to the application of the *lex fori* and those whose private international law rules may also lead to the application of foreign law.

(*d*) Regarding recognition, the Group acknowledged the diversity of approaches of States with respect to the recognition of foreign public documents such as birth certificates or voluntary acknowledgements of parentage, and noted that there is more congruity of practice with respect to the recognition of foreign judicial decisions.

Based on the foregoing, the Group determined that "definitive conclusions could not be reached at the meeting as to the feasibility of a possible work product in this area and its type or scope" and expressed the view that "work should continue" and that, at this stage, "consideration of the feasibility should focus primarily on recognition". The Group therefore recommended to Council, whose next meeting is scheduled to take place on 15 to 17 March 2016 (see here the draft agenda), that the Group's mandate be continued.

Preliminary Draft for a Reform of Swiss International Insolvency Law

Marjolaine Jakob, the author of this post, is a researcher at the University of Zurich, Faculty of Law.

In October 2015, the Swiss Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement) published a preliminary draft for the reform of the 11th title of the Swiss Private International Law Act (SPILA) on insolvency proceedings and compensation proceedings (Articles 166–175 rev-SPILA) along with an explanatory report. Simultaneously, the consultation procedure (Vernehmlassungsverfahren) was opened, which ended on February 5, 2016. The preliminary draft and the explanatory report are available here.

Summary of the content of the preliminary draft

The preliminary draft aims at improving the existing rules against the background of recent national and international developments in cross-border insolvency law. A complete revision is not intended. The new rules are supposed to facilitate the procedure and the requirements for the recognition of foreign bankruptcies.

Amongst other amendments, the proposal contains the following modifications:

- It is proposed to abandon the requirement of reciprocity, which is currently still a pre-requisite for the recognition of foreign bankruptcies (cf. art. 166 para 1. lit. c SPILA).
- Following international trends, indirect jurisdiction is to be extended. In future, not only bankruptcy orders rendered at the debtor's domicile but also those rendered in the state of the centre of main interests of the debtor (under the condition that the debtor was not resident in Switzerland at the time of the opening of the foreign bankruptcy proceedings) should be recognized (art. 166 para. 1 lit. c nr. 2 rev-SPILA).
- Currently, the recognition of a foreign bankruptcy order necessarily leads to the opening of secondary insolvency proceedings with regard to the debtor's assets located in Switzerland. Claims secured by pledge and privileged claims of creditors domiciled in Switzerland are satisfied in advance. The preliminary draft provides for a rule according to which a a waiver of secondary insolvency proceedings is possible where there is no need for a protection of claims secured by pledge and domestic creditors (art. 174a para. 1 rev-SPILA). In the event of the court approving the request for a waiver, the foreign bankruptcy administrator is supposed to have all powers that the debtor had before the foreign bankruptcy proceedings were opened. Accordingly, assets located in Switzerland would be at the disposal of the foreign bankruptcy administrator in this case (art. 174a para. 2 rev-SPILA).
- The draft also contains a rule according to which domestic authorities and institutions shall coordinate their actions with foreign authorities and institutions (art. 174b rev-SPILA).
- Furthermore, it is proposed that foreign judgments on avoidance claims and insolvency related claims are to be recognised by Swiss courts subject to certain prerequisites (art. 174c rev-SPILA).

Subsequent legislative process

As a next step, the Swiss Federal Office of Justice will prepare a report on the results of the consultation procedure. Based on this report, the Federal Council (Bundesrat), i.e. the Swiss government, will decide on the further procedure.

The Federal Council has the option to submit a final draft to the Federal Parliament, which may either adhere to the preliminary draft or contain limited or extensive amendments. In either case, the final draft is issued a long with a dispatch (Botschaft). Subsequently, the final draft will be discussed in the Parliament.

The Federal Council might, however, also decide to no longer pursue the revision of the 11th title of SPILA or to instruct the Swiss Federal Office of Justice to undertake further clarifications regarding the revision project.

Parliaments Around the World, at the U.S. Library of Congress

The U.S. Library of Congress has just published its first multinational report which considers some fundamental questions underlying the practice of comparative law: who makes the laws, and how are the laws made? The report covers eleven diverse jurisdictions from Asia, North America and Europe, and discusses the constitutional status and role of the national parliament, its structure and composition, and the lawmaking process in each jurisdiction. For students and scholars of comparative law–and in particular the comparative lawmaking process–this report is a very useful reference tool.

“U.S. Discovery and Foreign Blocking Statues,” by Professor Vivian Curran

A new article titled “U.S. Discovery and Foreign Blocking Statues,” forthcoming in the Louisiana Law Review, has just been posted to SSRN by Professor Vivian Curran from the University of Pittsburgh. The article tackles the interaction between U.S. discovery and the foreign blocking statutes that impede it in France and other civil law states, and how to understand this interaction at a time when companies are multinational in composition as well as in their areas of commerce. To be sure, U.S. courts continue to grapple with the challenge of understanding why they should adhere to strictures that seem to compromise constitutional or quasi-constitutional rights of American plaintiffs, while French and German lawyers and judges struggle with the challenges U.S. discovery poses to values of privacy and fair trial procedure in their legal systems. Each of these issued is addressed in Professor Curran’s article.

Another Reminder: Early-Bird Registration for 77th ILA Conference Ends on 29 February

It has already been announced on this blog that the 77th Biennial Conference of the International Law Association will take place **from 7 to 11 August 2016** in Johannesburg, South Africa.

This year’s main topic will be **‘International Law and State Practice: Is there a North/South Divide?’**

Further information and programme details are available at the official

conference website.

This post is meant to remind our readers that early-bird registration ends on 29 February 2016. We are looking forward to seeing many of you in Johannesburg, so don't forget to register!

Reminder: Conference From Common Rules to Best Practices – Rotterdam-MPI

As announced earlier on this blog, on 25 and 26 February 2016 a conference will be held at Erasmus University Rotterdam (Netherlands) on the theme **From common rules to best practices in European Civil Procedure**, jointly organized by Erasmus School of Law and the Max Planck Institute in Luxembourg.

The conference brings together many distinguished academics, practitioners, EU and national legislators and policy makers, discussing in panels the need for common rules to facilitate judicial cooperation and mutual trust, procedural innovation and e-justice in the EU, alternative dispute resolution, and best practices on the operationalization of judicial cooperation in civil matters.

The updated program and more information is available here. Please register as soon as possible if you intend to come!

Out Now: New Expanded Edition of “Principles of European Insurance Contract Law (PEICL)”

Edited by Professors *Jürgen Basedow*, *John Birds*, *Malcolm A. Clarke*, *Herman Cousy*, *Helmut Heiss* and Dr. *Leander D. Loacker*, the second expanded edition of “Principles of European Insurance Contract Law (PEICL)” has just been released. The updated volume is based on no less than 15 years of cooperative research in the field of cross-border insurance law, which was initiated at the Max Planck Institute for Comparative and International Private Law (Hamburg) under the guidance of Director Prof. Dr. Dr. h.c. mult. *Jürgen Basedow*, LL.M. (Harvard), and involved legal scholars from 14 Member States of the European Union as well as Switzerland. In 2009, the Project Group “Restatement of European Insurance Contract Law” first published the Principles of European Insurance Contract Law (PEICL), which provided model rules for a common European insurance contract law in the form of an optional instrument.

While the first edition set out provisions regarding general insurance law, the new expanded volume also covers rules on liability insurance, life insurance and group insurance. In addition, the book contains translated versions of the PEICL rules in Chinese, Czech, Dutch, French, German, Greek, Hungarian, Italian, Japanese, Korean, Polish, Portuguese, Serbian, Slovak, Spanish, Swedish and Turkish.

For further information, please see the publisher’s website here.

Conference: EU Cross-Border

Succession Law (Milan, 4 March 2016)

The **University of Milan** will host on **4 March 2016** the final conference of a project co-funded by the Civil Justice Programme of the EU: "Towards the Entry into Force of the Succession Regulation: Building Future Uniformity upon Past Divergencies".

The project, lasting from April 2014 to March 2016, focuses on the impact of Regulation 650/2012 on national legal systems and the related national and European case law with the aim of assessing the changes that it introduces to legal practice, arising awareness within the legal professionals (notaries, lawyers and court judges), providing training and disseminating information in order to promote future uniformity in the application of its provisions. Video footage of the conferences and seminars organized in the frame of the project are available on its website, as well as a database of caselaw and legislation related to succession matters.

The sessions of the final conference will be held in English and Italian (with simultaneous interpreting). Here's the programme (available as a .pdf file):

Welcome addresses – Presentation of the Project

- *Stefania Bariatti* (Univ. of Milan)
- *Domenico Cambareri* (Notary in Milan)
- *Petra Jeney* (EIPA, Luxembourg)

SESSION 1: Scope and definitions. Chair: *Alegría Borrás* (Univ. of Barcelona)

- Introduction to the Regulation and to Its Scope, *Domenico Damascelli* (Notary in Turi and Univ. of Salento)
- The Definition of "Succession" and Habitual Residence Within the Meaning of the Regulation (EU) 650/2012, *Peter Kindler* (Ludwig-Maximilians-Universität München)

SESSION 2: Applicable law. Chair: *Roberta Clerici* (Univ. of Milan)

- Applicable Law: Choice of Law, *Ilaria Viarengo* (Univ. of Milan)

- Agreements as to Successions, *Jacopo Re* (Univ. of Milan)
- Public Policy and Overriding Mandatory Rules, *Francesca C. Villata* (Univ. of Milan)
- Renvoi, *Luigi Fumagalli* (Univ. of Milan)
- Practice Paper, *Daniele Muritano* (Notary in Empoli)

SESSION 3: Jurisdiction and recognition. Chair: *Alexandra Irina Danila* (Notary in Romania)

- Jurisdiction: General Rules and Choice of Court, *Ilaria Queirolo* (Univ. of Genoa)
- Jurisdiction: Other Grounds, *Stefania Bariatti* (Univ. of Milan)
- Recognition of Judgments, *Stefano Dominelli / Francesco Pesce* (Univ. of Genoa)
- European Certificate of Succession: First Remarks concerning its Application, *Carlo Alberto Marcoz* (Notary in Turin)

SESSION 4: Round Table: The Impact on Member States and Third Countries. Chair: *Stefania Bariatti* (Univ. of Milan)

- *Isidoro Calvo Vidal* (Notary in Coruña)
- *Cyril Nourissat* (Univ. Jean Moulin Lyon 3)
- *Peter Kindler* (Ludwig-Maximilians-Universität München)
- *Andrew Godfrey* (Russell-Cooke, London)
- *Paul Beaumont/Jayne Holliday* (Univ. of Aberdeen)

Further information and the registration form are available on the conference's webpage.

Now hiring: Assistant in Private International Law in Freiburg

(Germany)

At the Institute for Foreign and Private International Law of the **Albert-Ludwigs-University Freiburg im Breisgau** (Germany), **a vacancy** has to be filled at the chair for **private law, private international law and comparative law (chairholder: Prof. Dr. Jan von Hein)**, from 1 April, 2016 with

a legal research assistant (salary scale E 13 TV-L, personnel quota 50%) limited for 2 years.

The assistant is supposed to support the organizational and educational work of the chairholder, to participate in research projects of the chair as well as to teach his or her own courses (students' exercise). Applicants are offered the opportunity to obtain a doctorate.

Applicants are expected to be interested in the chair's main areas of research. They should possess an above-average German First State Examination (at least "vollbefriedigend") or a foreign equivalent degree and be fluent in German. In addition, a thorough knowledge of German civil law as well as conflict of laws, comparative law and/or international procedural law is a necessity. Severely handicapped persons will be preferred provided that their qualification is equal.

Please send your application (curriculum vitae, certificates and, if available, further proofs of talent) to Prof. Dr. Jan von Hein, Institut für ausländisches und internationales Privatrecht, Abt. III, Peterhof, Niemensstr. 10, D-79098 Freiburg (Germany) no later than 1 March, 2016.

As the application documents will not be returned, applicants are kindly requested to submit only unauthenticated copies. Alternatively, the documents may be sent as a pdf-file via e-mail to ipr3@jura.uni-freiburg.de.

New Publication by Mirela Župan (ed): Family at Focus

A collection of papers from the 11th Regional Private International Law Conference held in Osijek, Croatia, on 11-12 June 2014 is out now. The book, edited by Professor Mirela Župan, contains scientiffic contributions by prominent authors on topics ranging from analysing the role and/or meaning of different connecting factors (habitual residence, nationality, party autonomy) to commenting on the effects which ECtHR case law may have on the interpretation of the Hague Abduction Convention. In addition, the book contains six national reports on the operation of the Hague Abduction Convention in the region.
The links to the books in .pdf and .epub formats are available here.