Opinion 1/13 of the ECJ (Grand Chamber)

As you might remember, the following request was submitted to the ECJ on June 2013:

'Does the exclusive competence of the [European] Union encompass the acceptance of the accession of a non-Union country to the Convention on the civil aspects of international child abduction [concluded in the Hague on] 25 October 1980 [("the 1980 Hague Convention" or "the Convention")]?'

The answer was given yesterday: "**The exclusive competence of the European Union encompasses the acceptance of the accession of a third State to the Convention on the civil aspects of international child abduction concluded in The Hague on 25 October 1980".**

For the whole document click here.

Dutch Private International Law journal, 2014 second and third issue published

The second issue of 2014 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht* (published in June) includes scholarly articles on the Unamar ruling of the European Court of Justice and the reform of the European Insolvency Regulation.

Jan-Jaap Kuipers & Jochem Vlek, 'Het Hof van Justitie en de bescherming van de handelsagent: over voorrangsregels, dwingende bepalingen en openbare orde', p. 198-206. The English abstract reads:

In Unamar, the Court of Justice of the European Union decided that national rules providing protection to commercial agents going beyond the mandatory floor laid down by the Agency Directive can be qualified as overriding mandatory provisions. This article discusses the decision of the CJEU and its articulation with another case involving the Agency Directive: Ingmar. Subsequently, the article addresses two wider issues relating to overriding mandatory provisions and the Agency Directive that, even after Unamar, remain to be resolved. The first is whether rules primarily protecting the weaker party, such as the agent, can at all be qualified as overriding mandatory provisions. The second is whether a choice of court or arbitration clause should be set aside or invalidated because of the applicability of an overriding mandatory provision.

Laura Carballo Piñeiro, 'Towards the reform of theEuropean InsolvencyRegulation: codification rather than modification', p. 207-215. The abstract reads:

The European Insolvency Regulation has largely succeeded in providing a framework for cross-border insolvency. But after serving for more than a decade, the time is ripe to give it 'a new facelift', as suggested by Mrs. Viviane Reding. This paper provides a critical overview of the Proposal amending the Regulation issued by the European Commission on 12 December 2012. While its inputs are backed up by a broad consensus as it mostly reflects developments in national insolvency laws and codifies the Court of Justice of the European Union's case law, the Proposal is a missed opportunity to modify some rules which do not properly contribute in their current wording to achieving the insolvency proceedings' goals. This is particularly remarkable in view of the extension of the Regulation's scope of application to include proceedings with reorganization, adjustment of debt or rescue purposes and hence, aiming to enhance their cross-border effects and ultimate goals.

The recently published third issue of 2014 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht* contains the following three articles on: the (English) court language in international litigation, the recognition and enforcement of provisional and protective measures and international matrimonial property law in Turkey.

Johanna L. Wauschkuhn, 'Babel of international litigation: Court language as leverage to attract international commercial disputes', p. 343-350. The abstract reads:

Ever since the disappearance of Latin from European courtrooms, it has been commonly understood that each nation would use its own language(s) in its own courts of law. However, in the last few years, discussions have arisen among politicians and legal scholars as to the possibility of introducing foreign languages as court languages. Whereas politicians are mostly driven by economic considerations, many academics are more reluctant as they fear an infringement of the principle of the publicity of proceedings and a contamination of the native legal system. The present article analyses whether offering the option of using a non-national language as court language in civil and commercial litigation is an effective, feasible and efficient leverage to make a jurisdiction (or court) more attractive for international commercial dispute resolution. The article therefore addresses, firstly, why and how lawmakers would try to attract legal disputes and, secondly, why and how parties to a dispute choose a particular jurisdiction. Here, special attention is paid to the role of language in the choice of court. Following this, the most prominent and most frequently expressed practical and constitutional objections regarding competition by means of court language are summarised. After this theoretical presentation, the jurisdictions of Germany and Switzerland are analysed, as examples, as to their standing in the present discussion and their role on the market for international dispute resolution. It is concluded that the objections against introducing a non-national court language outweigh the mostly economic arguments in favour, especially considering the only minimal positive effects.

Carlijn van Rest, 'Erkenning en tenuitvoerlegging van (ex parte) voorlopige en bewarende maatregelen op grond van de EEX-Verordening en de Herschikking van de EEX-Verordening. Een analyse aan de hand van de Engelse Freezing Order', p. 351-356. The English abstract reads:

An English Freezing Order is an interim prohibitory injunction, which is almost invariably granted ex parte and which restrains a party from disposing or dealing with its assets. On the basis of the Brussels I Regulation it is possible to recognize and enforce an English Freezing Order in the Netherlands. This is

only possible if the Freezing Order has been granted on an inter partes basis, because ex parte decisions cannot generally be enforced. This article discusses what a (worldwide) Freezing Order exactly is and under what conditions it can be ordered by the English courts. A comparison will be made with the Dutch garnishee order (conservatoir derdenbeslag). Furthermore, this article discusses the problems with the recognition and enforcement of provisional and protective measures which have been granted ex parte under the Brussels I Regulation (Regulation No. 44/2001) and the consequences for the recognition and enforcement of ex parte decisions under the Recast of the Brussels I Regulation (Regulation No. 1215/2012).

Zeynep Derya Tarman & Ba?ak Ba?o?lu, 'Matrimonial property regime in Turkey', p. 357-363. The abstract reads:

As the number of marriages between spouses from different nations is increasing the issue of the matrimonial property regime has become significant. The aim of this article is to examine the possible problems when claims regarding the matrimonial property regime with a foreign element are brought before a Turkish court. In this regard, both the private international law and the substantive law aspects of the matrimonial property regime in Turkey will be explained: namely the jurisdiction issue in matrimonial property cases, the conflict of law rules regarding the applicable law in the matrimonial property regime before the competent Turkish courts and, finally, the matrimonial property regime under the Turkish Civil Code. Accordingly, both the legal matrimonial property regime and three contractual matrimonial property regimes that the spouses may choose under Turkish law will be described.

Ratification of The Choice of Court Agreements Convention

(Many thanks to François Mailhé, Associate Professor Paris 2, Panthéon-Assas, for the tip)

Last Friday (10.10.2014) the EU Justice Ministers approved a decision ratifying the Choice of Court Agreements Convention, 2005 (the Convention has been signed by the US, 19.1.2009, and by the EU, 1.4.2009; and ratified by Mexico, 26.9.2007). For those who are not familiar with it: The Convention is aimed at ensuring the effectiveness of choice of court agreements ("forum selection clauses") between parties to international commercial transactions. By doing so, the Convention provides greater certainty to businesses engaging in cross-border activities and therefore creates a legal environment more amenable to international trade and investment. In practice, ratifying the Convention will ensure that EU companies have more legal certainty when doing business with firms outside the EU: they will be able to trust that their choice of court to deal with a dispute will be respected by the courts of the countries that have ratified the Convention, and that the judgment given by the chosen court will be recognised and enforced in the countries which apply it.

Next steps: Following approval by Member States, the consent of the European Parliament will be asked. Once it gives its accord, the decision will be finally adopted by the Council and enter into force in the European Union.

Anuario Español de Derecho Internacional Privado, vol. XIII

The new volume of the AEDIPr is about to be published. It contains the usual sections: Estudios, Varia -actually, shorter studies-, Foros Internacionales -informing on the latest developments at international fora such

as The Hague Conference-, Textos Legales, Jurisprudencia- ECJ and Spanish case law, sometimes annotated-, Materiales de la Práctica – reports related to PIL from several institutions like the Consejo General del Poder Judicial-, Noticias, and Bibliografía – a thorough review of Spanish books and papers on PIL published in 2013, as well as a selection of foreign literature. Exceptionally, this volume also includes a especial section focused on PIL codification in Latin America, entitled "Nuevas perspectivas de la codificación del Derecho internacional privado en América Latina".

You will find below the table of contents of the section Estudios; for the whole ToC of vol. XIII click here. All contributions are in Spanish, with an English abstract.

Hans van Loon, *El derecho internacional privado ante la corte internacional de justicia: mirando hacia atrás y mirando hacia adelante*; **Dário Moura Vicente**, *La culpa in contrahendo en el derecho internacional privado europeo*; **Pedro Alberto de Miguel Asensio**, *Tribunal unificado de patentes: competencia judicial y reconocimiento de resoluciones*; **Johan Erauw**, *Relación entre el acuerdo sobre el tribunal de la patente unificada europea y el nuevo reglamento de Bruselas I sobre competencia y reconocimiento*; **Matthias Lehmann**, *Los tratados sobre libre comercio e inversiones transfronterizas y el conflicto de leyes*; **Nuria Marchal Escalona**, *Sobre la sumisión tácita en el reglamento Bruselas I bis*; **Antonia Durán Ayago**, *Procesos pendientes ante órganos jurisdiccionales de terceros estados y reglamento (UE) nº 1215/2012: ¿brindis al sol?*; **Marta Requejo Isidro**, *La cooperación judicial en materia de insolvencia transfronteriza en la propuesta de reglamento del Parlamento Europeo y del Consejo por el que se modifica el reglamento (CE) nº 1346/2000 sobre procedimientos de insolvencia*; **Nicolò Nisi**, *La refundición del reglamento de insolvencia europeo y los grupos de empresas de terceros estados*; **Emmanuel Guinchard**, *¿Hacia una reforma falsamente técnica del reglamento sobre el proceso europeo de escasa cuantía y superficial del reglamento sobre el proceso monitorio europeo?*; **Eva de Götzen**, *Cobro transfronterizo de deudas en materia civil y mercantil: ¿dónde estamos y hacia dónde nos dirigimos?*; **José Ignacio Paredes Pérez**, *La responsabilidad civil del prestador y la obligación general de no discriminación del artículo 20.2º de la directiva 2006/123/ce relativa a los servicios en el mercado interior*; **Eduardo Álvarez Armas**, *La aplicabilidad espacial del derecho medioambiental europeo, su interacción con la norma de*

conflicto europea en materia de daños al medioambiente: apuntes preliminares; **Angel Espiniella Menéndez**, *Las operaciones de compraventa en la distribución comercial internacional*; **Ivana Kunda**, *Competencia judicial internacional sobre violaciones de derechos de autor y derechos conexos en internet*; **Thomas Thiede**, *Obituario al libel tourism*; **Pablo Quinzá Redondo y Jacqueline Gray**, *La (des) coordinación entre la propuesta de reglamento de régimen económico matrimonial y los reglamentos en materia de divorcio y sucesiones*

Vacancy at the Permannt Bureau of the Hague Conference on Private International Law

The Permanent Bureau of the Hague Conference on Private International Law (HCCH) is seeking a

TEMPORARY LEGAL OFFICER (full-time, until 30 June 2015).

The ideal candidate will possess the following qualifications:

- A law degree (Master of Laws, J.D., or equivalent);
- Very good knowledge of private international law as well as familiarity with comparative and civil law;
- Excellent command, preferably as native language and both spoken and written, of English or French; good command of the other official language and knowledge of other languages desirable;
- Sensitivity to different legal cultures;
- Experience in publishing / editing is a plus.

He or she should work well in a team, be able to work in more than one area of law, and respond well to time-critical requests. Additional legal or academic work experience would be an advantage.

The successful candidate will work primarily in the areas of international family

law and child protection. He or she will also be required to carry out work in other fields (international legal co-operation and litigation / international commercial and finance law) depending on the needs of the Permanent Bureau.

Duties will include comparative law research, preparation of research papers and other documentation, organisation and preparation of materials for publication, including *The Judges' Newsletter on International Child Protection*, assistance in the preparation of and participation in conferences, seminars and training programmes, and such other work as may be required by the Secretary General from time to time.

Type of appointment and duration: short-term contract until 30 June 2015.

Starting date: October / November 2014.

Grade (Hague Conference adaptation of Co-ordinated Organisations scale): A/1 subject to relevant experience.

Deadline for applications: 15 October 2014.

Applications: written applications should be made by e-mail, with *Curriculum Vitae,* letter of motivation and at least two references, to be addressed to the Secretary General, at <applications@hcch.nl>.

Conference on International Child Abduction and Human Rights, 16 October

The University of Antwerp (Research Group Personal Rights and Real Rights) and the British Institute of International and Comparative Law are organising a conference on **International Child Abduction and Human Rights: A Critical Assessment of the Status Quo**.

The confernce will take place in **Antwerp** – Stadscampus – R.212 – Rodestraat- on **16 October 2014.**

Register through http://www.biicl.org/event/1061

Programme:

10.00-10.30 Registration and coffee

10.30-10.45 Welcome (Thalia Kruger and Eva Lein)

Chair: Maarit Jänterä-Jareborg, Uppsala University

10.45-11.45 Panel on recent case law (Karin Verbist and Carolina Marín Pedreño)

11.45-12.15 United States Supreme Court Hague Abduction Decisions: Developing a Global Jurisprudence (Linda Silberman)

12.15-12.45 The Role of Central Authorities (Andrea Schulz)

12.45-14.00 Lunch??

Chair: Frederik Swennen, University of Antwerp

14.00-14.30 Keynote Address, Permanent Bureau of the Hague Conference: ?"Quo vadis 1980 Convention" (Marta Pertegas)

14.30-15.00 Keynote Address, European Commission: "Quo vadis Brussels IIbis" ?(Michael Wilderspin)

15.00-15.30 Children's Rights and Children's Interests: (Helen Stalford)

15.30-16.00 Is Harmonised Case Law Possible? (Paul Beaumont)

16.00-16.30 The Concerns of Children's Organisations: (Hilde Demarré and Alison Shalaby)

16.30-17.00 Debate

Save the Date: The Hague Service Convention Turns 50

On February 19, 2015, the Center for Transnational Business and the Law at Georgetown University Law Center will host an event in Washington DC to celebrate the fiftieth anniversary of the conclusion of the Hague Service Convention.

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, concluded in 1965, has become one of the most useful tools for the simplification of procedure in cross-border disputes. In the beginning, just a handful of Western states were parties, but over time, the acceptance of the Convention has grown; it is now in effect in 68 states, representing every continent and every major legal tradition. Alongside the New York Convention, accession to the Hague Service Convention is now considered one of the benchmarks of a state that aspires to provide access to the rule of law and transnational justice.

The event will feature panel discussions featuring practitioners, academics, representatives of the Hague Conference on Private International Law, and the central authorities of several states. The discussions will look back at the successes of the Convention over the past half-century, as well as look ahead to new challenges (whether it be unforeseen technologies, non-uniform interpretations of the Convention, and inadvertent failures to understand the Convention by the bench and the bar.) Of course, the event will also feature an opportunity for informal discussions among colleagues and friends.

To RSVP, see this link on Letters Blogatory

Survey on Perceptions and Use of International Commercial Mediation and Conciliation

Professor Stacie Strong from the University of Missouri School of Law is conducting a survey regarding international commercial mediation and conciliation. As many of our readers may know, this issue has recently made the news as a result of a decision by the United Nations Commission on International Trade Law (UNCITRAL) to give further consideration to a proposal from the U.S. Department of State regarding an international convention on international commercial mediation and conciliation. This survey aims to inform the discussion about an international treaty in this field and further the debate about the viability of mediation and conciliation in the international commercial context.

Anyone who works in the field of international commercial dispute resolution–either as private practitioners, in-house counsel, legal academics or neutrals–are invited to participate by clicking on this link. The survey is comprised of thirty-four questions, although not all participants will answer all questions. The survey should take approximately ten minutes to complete, and participation is entirely anonymous. The survey will remain open until 11:59 p.m. Central Daylight Time (CDT) on October 31, 2014.

A Conference to Celebrate the 50th Anniversary of the Rivista di diritto internazionale privato e

processuale

(I am grateful to Prof. Francesca C. Villata – University of Milan – for the tip)

On October 23, 2014, the University of Milan will celebrate the Rivista's 50th anniversary by hosting a conference addressing the prospective reform of the Italian private international law system.
With some exceptions, the conference language will be Italian.

The conference program reads as follows:

9:00-9:30 Welcoming remarks
Provost of the University of Milan
Director of the Department of International, Legal, Historical and Political Studies
Director of the Department of Italian and Supranational Public Law

9:30-11:00 I Session – Law No 218/1995: Defining Features and General Problems
Chair: **Fausto Pocar** (University of Milan)
Roberto Baratta (University of Macerata), **Marc Fallon** (Université catholique de Louvain), **Hans van Loon** (Former Secretary-General, Hague Conference on Private International Law)
Concluding Remarks: **Tullio Treves** (University of Milan)

11:00-12:30 II Session – Personal Status
Chair: **Roberta Clerici** (University of Milan)
Alegría Borrás (Universitat de Barcelona), **Luigi Fumagalli** (University of Milan), **Costanza Honorati** (University of Milan-Bicocca), **Carlo Rimini** (University of Milan), **Ilaria Viarengo** (University of Milan)
Discussion and Concluding Remarks: **Franco Mosconi** (University of Pavia)

14:30-16:00 III Session – Corporations, Contractual and Non-Contractual Obligations
Chair: **Riccardo Luzzatto** (University of Milan)
Ruggiero Cafari Panico (University of Milan), **Cristina Campiglio** (University of Pavia), **Domenico Damascelli** (University of Salento), **Paola Ivaldi** (University of Genoa), **Peter Kindler** (Universität München)
Discussion and Concluding Remarks: **Andrea Giardina** (University of Rome "La

Sapienza”)

16:30-18:00 IV Session – International Civil Procedure Law
Chair: **Sergio Maria Carbone** (University of Genoa)
Mario Dusi (President CRINT), **Alberto Malatesta** (University Carlo cattaneo-LIUC), Francesco Salerno (University of Ferrara), **Lidia Sandrini** (University of Milan), **Francesca C. Villata** (University of Milan)
Discussion and Concluding Remarks: **Stefania Bariatti** (University of Milan)

Final Remarks: **Fausto Pocar** (University of Milan)

Registration is open here.

Call for Papers: ‘Privacy under International and European Law’

Utrecht Journal of International and European Law is issuing a call for papers in relation to its forthcoming 80th edition on ‘Privacy under International and European Law’.

With information gathering and sharing techniques becoming ever more advanced, States are being forced to take a stand on their permissible cost for individual privacy. As the international legal system struggles to keep up with the irreversible process of globalisation, its role in regulating these competing interests is coming under increasing discussion. That’s why the Board of Editors are inviting scholars to submit papers addressing any legal issues relating to privacy and international law from an international or European law perspective. While this edition is primarily concerned with privacy and international law, relevant issues may have broader implications, including: the responsibility of private actors under international law; privacy as a human right; the conflict between State interests and individual rights; the internet and territorial limits; data protection; diverging national approaches to the protection of privacy and the rise of cybercrime. All types of manuscripts, from socio-legal to legal-technical

to comparative will be considered.

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 and conform to the journal style guide. For further information please consult the website, or send an email to utrechtjournal@urios.org.

(Deadline for Submissions: 14 November 2014)