# ArbitralWomen/TDM Special Issue and Event on Diversity in International Arbitration

ArbitralWomen, Transnational Dispute Management and Ashurst are hosting an event in London on 2 July 2015 for the launch of the TDM Special Issue on "Dealing with Diversity in International Arbitration." The event will be followed by a drinks reception.

This Special Issue will analyse discrimination and diversity in international arbitration. It will examine new trends, developments, and challenges in the use of practitioners from different geographical, ethnic/racial, religious backgrounds as well as of different genders in international arbitration, whether as counsel or tribunal members. The launch of the Special Issue will be followed by the launch of the AW New Website.

Download the brochure here.

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# OGEL and TDM Special Issue: Focus on Renewable Energy Disputes

With renewable energy disputes seemingly everywhere these days, OGEL and TDM have published a special joint issue focusing on these disputes at the level of international, European and national law. Below is the table of contents:

> *Introduction – Renewable Energy Disputes in the Europe and beyond: An Overview of Current Cases*, by K. Talus, University of Eastern Finland
>
> *Renewable Energy Disputes in the World Trade Organizatio*n, by R. Leal-

Arcas, Queen Mary University of London, and A. Filis

*Aggressive Legalism: China's Proactive Role in Renewable Energy Trade Disputes?*, by C. Wu, Academia Sinica, and K. Yang, Soochow University (Taipei)

*Mapping Emerging Countries' Role in Renewable Energy Trade Disputes*, by B. Olmos Giupponi, University of Stirling

*Green Energy Programs and the WTO Agreement on Subsidies and Countervailing Measures: A Good FIT?*, by D.P. Steger, University of Ottawa, Faculty of Law

*EU's Renewable Energy Directive saved by GATT Art. XX?*, by J. Grigorova, Paris 1 Pantheon Sorbonne University

*Retroactive Reduction of Support for Renewable Energy and Investment Treaty Protection from the Perspective of Shareholders and Lenders*, by A. Reuter, GÖRG Partnerschaft von Rechtsanwälten

*Renewable Energy Disputes Before International Economic Tribunals: A Case for Institutional 'Greening'?,* by A. Kent, University of East Anglia

*Renewable Energy Claims under the Energy Charter Treaty: An Overview,* by J.M. Tirado, Winston & Strawn LLP

*Non-Pecuniary Remedies Under the Energy Charter Treaty*, by A. De Luca, Università Commerciale Luigi Bocconi

*Joined Cases C-204/12 to C-208/12, Essent Belgium*, by H. Bjørnebye, University of Oslo, Faculty of Law

*Ålands Vindkraft AB v Energimyndigheten – The Free Movement Law Perspective*, by S.L. Penttinen, UEF Law School, University of Eastern Finland

*Recent Renewables Litigation in the UK: Some Interesting Cases,* by A. Johnston, Faculty of Law, University College (Oxford)

*The Rise and Fall of the Italian Scheme of Support for Renewable Energy From Photovoltaic Plants*, by Z. Brocka Balbi

*The Italian Photovoltaic sector in two practical cases: how to create an unfavorable investment climate in Renewables*, by S.F. Massari, Università degli Studi di Bologna

*Renewable Energy and Arbitration in Brazil: Some Topics*, by E. Silva da Silva, CCRD-CAM / Brazil-Canada Chamber of Commerce, and N. Sosa Rebelo, Norte Rebelo Law Firm

*Renewable Energy in the EU, the Energy Charter Treaty, and Italy's Withdrawal Therefrom*, by A. De Luca, Università Commerciale Luigi Bocconi

Excerpts of these articles are available here and here

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# New German Festschriften on private international law

A voluminous *Festschrift* in honour of Gerhard Wegen has recently been published: Christian Cascante, Andreas Spahlinger and Stephan Wilske (eds.), Global Wisdom on Business Transactions, International Law and Dispute Resolution, Festschrift für Gerhard Wegen zum 65. Geburtstag, Munich (CH Beck) 2015; XIII, 864 pp., 199 €. Gerhard Wegen is not only one of the leading German M & A lawyers and an internationally renowned expert on commercial arbitration, but also a honorary professor of international business law at the University of Tübingen (Germany) and a co-editor of a highly successful commentary on the German Civil Code (including private international law). This *liber amicorum* contains contributions both in English and in German on topics related to international business law, private international and comparative law as well as various aspects of international dispute resolution. For conflictoflaws.net readers, contributions on *Unamar* and mandatory rules (Gunther Kühne, p. 451), international labour law (Stefan Lingemann and Eva Maria Schweitzer, p. 463), problems of characterization in international

insolvency law (Andreas Spahlinger, p. 527) and marital property law in German-French relations (Gerd Weinreich, p. 557) may be of particular interest. Moreover, a large number of articles is devoted to international commercial arbitration (pp. 569 et seqq.). For the full table of contents, see here.

Another recent *Festschrift* has been published in honour of Wulf-Henning Roth, professor emeritus at the University of Bonn: Thomas Ackermann/Johannes Köndgen (eds.), Privat- und Wirtschaftsrecht in Europa, Festschrift für Wulf-Henning Roth zum 70. Geburtstag, Munich (CH Beck) 2015; XIV, 744 pp., 199 €. Although Roth is generally recognized as one of the leading German conflicts scholars of his generation, this *liber amicorum* is focused mainly on substantive private and economic law, both from a German and a European perspective. Nevertheless, readers interested in choice of law may discover some gems that deserve close attention: Wolfgang Ernst deals with English judge-made case-law as the applicable foreign law (p. 83), Johannes Fetsch analyses Article 83(4) of the EU Succession Regulation (p. 107), Peter Mankowski looks at choice-of-law agreements in consumer contracts (p. 361), Heinz-Peter Mansel publishes a pioneering study on mandatory rules in international property law (p. 375), and Oliver Remien presents a survey on the application of the law of other Member States in the EU (p. 431). For the full table of contents, see here.

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# New Edition of the Séminaire de Droit Comparé et Européen, Urbino

The summer Séminaire de Droit Comparé et Européen is a common venture of Italian and French jurists taking place in Urbino (Italy) since 1959 – this edition makes therefore the number 57. The underlying idea is to provide for a place and time for the gathering of jurists, mainly, but not only, from European countries, and thus contribute to the development of knowledge of Comparative, International (both public and private) and European law.

This year's seminar will be held in August, 17th to 29th, counting with speakers from various countries and institutions, among which Prof. M.E. Ancel, C. Nourissat, A. Giussani, A.R. Markus, L. Mari or I. Pretelli. Practitioners -lawyers, mediators, arbitrators and notaries- are also involved. Presentations may be in French, English or Italian; a summarized translation may be asked for.

The whole program as well as email addresses for further information is downloadable here.

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# Interlocutory Injunction Upheld Against Non-Party (Google Inc.)

The British Columbia Court of Appeal has upheld an interlocutory injunction made against Google Inc., a non-party, in litigation between Equustek Solutions Inc. and Datalink Technologies Gateways Inc. The decision is available here.

The plaintiffs alleged that the defendants had counterfeited their product. In an effort to prevent the defendants from selling the counterfeit product, which was being done over the internet, the plaintiffs sought and obtained an interlocutory injunction against Google Inc., a Delaware corporation based in California, ordering it to exclude a list of certain web sites from search results. The aim was to stop customers from finding the defendants. Google Inc. appealed the injunction on several grounds.

The court concluded that it had *in personam* jurisdiction over Google Inc. because it conducted business in the province: it advertised to residents of British Columbia and it actively obtained data for use in its search engines in British Columbia. It held that the fact that Google Inc. was a non-party did not prevent the making of the injunction as against it. It also held that the fact that the

injunction had extraterritorial effects, requiring Google Inc. to take steps outside British Columbia, was not a valid objection. On these issues the court reviewed several leading United Kingdom cases, including *The Siskina*, *Channel Tunnel Group* and *South Carolina Insurance*. It also commented favourably on the recent decision in *Cartier International AG v British Sky Broadcasting Limited*, [2014] EWHC 3354 (Ch.). Key Canadian authorities relied on include *MacMillan Bloedel*, *BMWE* and *Minera Aquiline Argentina*.

The decision is likely to be important on the question of what it means to carry on business over the internet.

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# The Hague Choice of Court Convention to enter into force on 1 October 2015

On 11 June 2015, the European Union deposited its instrument of approval of the Hague Convention of 30 June 2005 on Choice of Court Agreements.

Two declarations are appended to the instrument of approval: a declaration under Article 30 (i.e. a declaration regarding the competences exercised by a Regional Economic Integration Organisation, to be made when such an Organisation accedes to the Convention without its Member States), and a declaration regarding the succession of the European Union to the European Community.

The move of the European Union paves the way to the entry into force of the Convention. Pursuant to Article 31(1), the Convention shall in fact "enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession". The first of these instruments was the instrument of ratification deposited by Mexico in 2007.

The Convention will thus enter into force for Mexico and the European Union on 1

October 2015.

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# RECOVERY OF MAINTENANCE IN ASIA PACIFIC AND WORLDWIDE: NATIONAL AND REGIONAL SYSTEMS AND THE HAGUE 2007 CHILD SUPPORT CONVENTION AND PROTOCOL

The Permanent Bureau of the Hague Conference on Private International Law (HCCH), through its Asia Pacific Regional Office, will hold a global conference on the recovery of child support and family maintenance in Hong Kong from 9 to 11 November 2015.

Please Save the Date. A conference program and further details will be circulated in due course. Note that the conference will begin at approximately 1:00 pm on Monday 9 November, and finish by 1:00 pm on Wednesday 11 November 2015.

The event is jointly sponsored by the HCCH and the Department of Justice of the Hong Kong Special Administrative Region of the People's Republic of China, in collaboration with a number of other partners.

This international conference will provide an opportunity to discuss the dynamic development of family law and policy in the Asia Pacific region, and represents an excellent occasion for professionals working in this field from throughout the world to meet colleagues, make new contacts, expand networks and fill knowledge gaps. The meeting will allow for the further building of a global professional network in the child support / family maintenance field and for follow up on the 5-8 March 2013 Heidelberg Conference on the International Recovery

of Maintenance in the EU and Worldwide. It will include exciting academic and hands-on workshops and lectures.

CALL FOR PROPOSALS

The conference organisers invite the submission of conference presentation proposals. Please send abstracts of 200-300 words, along with a short bio of no longer than 200 words, to Ms Alix Ng (HCCH Asia Pacific Regional Office) at before 15 June 2015. Limited funding is available for speakers requiring assistance to attend.

Legal practitioners, caseworkers, judges, enforcement officers, academics, and others engaged in the child support / family maintenance field are invited to submit proposals. The organisers in particular invite presentation proposals on the following themes:

• Current regional and national challenges or developments in Asia Pacific in relation to the recovery of child support and family maintenance, both domestically and in the cross-border context; evolutions in national policies on child support and family maintenance, and descriptions of recent legal reform in this field (or suggestions for such reform);
• The benefits of the Hague 2007 Child Support Convention and perspectives on its adoption and implementation in the Asia Pacific region and worldwide;
• Research and statistics in relation to demographic and sociological shifts (e.g. prevalence of single parent families) and migration patterns in the Asia Pacific region and globally bearing on the national and cross-border recovery of child support and family maintenance;
• Enforcement challenges and best practices in the field of child support and family maintenance;
• Perspectives on high functioning administrative systems for the recovery of child support and family maintenance (e.g., Australia, Norway, U.S.A.) and their potential in the Asia Pacific region;
• The roles of various 'system actors' and their potential for collaboration in the field of child support and family maintenance, e.g., caseworkers, judges, enforcement officers, private practitioners, etc.;
• Lessons learned from existing systems (e.g., Canada, EU, U.S.A.) for the cross-border recovery of child support and family maintenance;
• Data protection, privacy laws and duty of information policies with respect to

income and assets of debtors in particular—developing best practices in the Asia Pacific region and globally;
• The use of information technology for the effective collection of child support and family maintenance at the national and international levels;
• The Hague 2007 Protocol on the Law Applicable to Maintenance Obligations;
• Economic and human rights dimensions (e.g., child poverty, UNCRC Art. 27, etc.) and issues of access to justice with respect to the national and cross-border recovery of child support and family maintenance;
• Other topics pertinent to the recovery of child support and family maintenance in the Asia Pacific region and worldwide.

For more information, please contact Ms Alix Ng (HCCH Asia Pacific Regional Office) at an@hcch.nl.

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# The European Private International Law of Employment (book)

"The European Private International Law of Employment" that has just been published by Cambridge University Press.

*Abstract*:

The European Private International Law of Employment provides a descriptive and normative account of the European rules of jurisdiction and choice of law which frame international employment litigation in the courts of EU Member States. The author outlines the relevant rules of the Brussels I Regulation Recast, the Rome Regulations, the Posted Workers Directive and the draft of the Posting of Workers Enforcement Directive, and assesses those rules in light of the objective of protection of employees. By using the UK as a case study, he highlights the impact of the 'Europeanisation' of private international law on traditional perceptions and rules in this field of law in individual Member States.

The author shows how the goals and policies of the European Union, in particular the protection of employees, are fundamentally reshaping the regulation of transnational private relations. The book also provides for a separate examination of the choice-of-law treatment of claims based on breach of employment contract, statute and in tort, thus offering an accessible explanation of choice-of-law issues arising in connection with the three main types of employment claim. Finally, it presents new insights about the influence of EU private international law on the Member States' domestic private international law regimes, and offers recommendations for improving the existing rules of jurisdiction and choice of law.

*About the author:*

Uglješa Gruši is an assistant professor at the School of Law of the University of Nottingham, where he teaches commercial conflict of laws, arbitration and the law of torts.

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# Regulation on Insolvency Proceedings (Recast) Published in the OJ

The Regulation (EU) 2015/848 of the European Parliament and of the Council , of 20 May 2015, on insolvency proceedings (recast), has been published today, OJ L 141.

# La Ley Unión Europea, May 2015

The latest issue of the Spanish monthly journal *La Ley Unión Europea* has just been released. Besides the sections on case law and an update on on-going events and news at the EU level these are the main contents (with English abstract as provided by the authors):

Doctrina

Consuelo Alonso García, "La consideración de la variable ambiental en la contratación pública en la nueva Directiva europea 2014/24/UE". *This paper analyzes the changes introduced by the new European Directive 2014/24/EU in the Spanish legal system of green public procurement, particularly as regards the obligations that the contracting authorities have to meet when they intend to introduce environmental criteria in the processing of contracts.*

Pascual Martínez Espín, "Control de abusividad sobre cláusulas contractuales que se refieren a la definición del objeto principal del contrato o a la adecuación del precio". *The paper makes an analysis of the recent jurisprudence of the CJEU on the interpretation of article 4 (2) of Council Directive 93/13/EEC of 5 April 1993, on unfair terms in consumer contracts; specifically, on assessment of the unfairness of the contractual terms and the exclusion of terms relating to the main subject matter of the contract or the adequacy of the price and the remuneration provided they are drafted in plain intelligible language.*

Tribuna

Pedro A. de Miguel Asensio, "Impugnación de actos perjudiciales en procedimientos de insolvencia: cuestiones de Derecho aplicable". *Article 13 of the EU Insolvency Regulation is one of its most complex provisions in the field of applicable law. It establishes an exception with regard to the law applicable to avoidance actions concerning detrimental acts, leading to the application of the law that governs the challenged act and not the lex fori concursus. The recent*

*case law of the CJEU clarifies the scope of that provision, in particular with respect to the law applicable to issues such as the prescription and limitation of avoidance actions.*

Sentencia seleccionada

Pilar Concellón Fernández, "Derecho de acceso a los documentos y actividad judicial: la transparencia alcanza a los escritos de los Estados miembros". *The Court of Justice considers that the documents produced by the Member states within judicial proceeding do not belong to the Court but are ruled by Regulation no 1049/2001. This Judgment would guarantee open access to documents which belong to the institutions of the EU.*

José A. Fernández Amor, "El principio de libertad de establecimiento y la deducibilidad en el régimen de consolidación fiscal de las bases imponibles negativas de sociedades filiales no residentes". *The sentence of ECJ of February 2, 2015, analyzes if the British law about deduction of losses from no-residents companies under consolidation group tax regime is not contrary to the European right of establishment freedom. The Court completes its interpretation line exposed on sentence Marks&Spencer (C-446/03) about the states obligation of not restrict the mentioned freedom allowing the deduction of the non-resident subsidiary losses as long as they are definitive.*

Ricardo Pazos Castro, "El control judicial de las cláusulas abusivas existentes en los procesos de ejecución hipotecaria". *In proceedings for enforcement in which the sum of the order sought has already been fixed, the Spanish law concedes a period of ten days for the party seeking enforcement to recalculate that sum. The new calculation must comply with a limit of three times the statutory rate of interest, applied to the default interest on loans for the purchase of a habitual dwelling secured by a mortgage on that same dwelling. The ECJ analyzes if such legislation contravenes the Directive on unfair terms.*