Dicke on Capital Market related Transactions with Consumers under the Rome I Regulation

Andrea Isabell Dicke, attorney at law in Berlin, has authored a book on capital market related financial transactions with consumers under the Rome I Regulation (*"Kapitalmarktgeschäfte mit Verbrauchern unter der Rom I-VO*") Published by Mohr Siebeck the book provides a detailed and thorough analysis of Article 6(4) lit. d) and e) of the Rome I Regulation (in German). Further information is available on the publisher's website. The official (English) abstract reads as follows:

> *Article 6(4) lit. d) and e) of the Rome I Regulation establish various capital market-related categories which are excluded from the general consumer protection under the special conflict of laws rule for consumer contracts in Article 6 of the Rome I Regulation. Andrea Isabell Dicke examines the scope of application and practical relevance of this exemption provision.*

Travaux du Comité Français de Droit International Privé

The release of the latest volume of the Travaux du Comité Français de DIP, 2013-2014, has just been announced. These are the contributions therein:

Olivier CACHARD

Les conventions uniformes régissant les transports internationaux et les règles de droit international privé de l'Union européenne : symbiose, indifférence ou rejet ?

Table ronde sur les innovations du règlement Bruxelles I refondu :

Etienne PATAUT
Le domaine spatial des règles de compétence
Pascal de VAREILLES-SOMMIERES
Les conflits de procédures
Françoise MONEGER
La reconnaissance et l'exécution des jugements étrangers

Fabienne JAULT-SESEKE
L'appréhension de la responsabilité des groupes de sociétés par le droit international privé : l'exemple du droit du travail et du droit de l'insolvabilité

Maxi SCHERER
Les effets des jugements étrangers relatifs aux sentences arbitrales

Guido CARDUCCI
Acquisition *a non domino*, prescription acquisitive, possession vaut titre, conflit mobile et circulation d'une *res extra commercium*

Pierre VERON
Le brevet européen à effet unitaire et la Juridiction unifiée du brevet (aspects de droit international privé)

Sylvain BOLLEE
La gestation pour autrui en droit international privé

Stefania BARIATTI
Critères de compétence européens et domaine de la compétence territoriale des juridictions nationales

For more information click here.

Conference on Extraterritorial Application of EU Law 18-19 June (Vigo, Spain)

The Spanish Association of Professors of International Law and International Relations is hosting a conference on

The Extraterritorial Application of EU Law

in Vigo (Spain) the 18th and 19th of June 2015.

The conference is structured in 8 thematic panels entitled:

- EU, Values and Human Rights
- Extraterritorial Application of EU Law: Trade and Contracts
- The Fight against Corruption from an International Law Perspective
- The Extraterritorial Application of Intellectual Property Rights
- The Extraterritorial Application of Data Protection Legislation
- The Extraterritorial Application of EU Competition Law
- The Extraterritorial Application of Environmental Law
- Fishing Industries and the Changes in Maritime Areas

The entrance is free but prior registration is required by June, 17 via e-mail to: montserrat.abad@uc3m.es or laura.carballo@usc.es

Further information can be found here.

The conference is organized in the framework of the *Jean Monnet Project* EU Law between Universalism and Fragmentation: Exploring the Challenge of Promoting EU Values beyond its Border

2nd Yale-Humboldt Consumer Law Lecture and Kosmos-Dialogue

On June 1, 2015, the Yale – Humboldt Consumer Law Lecture will be held for the second time at Humboldt-University Berlin. In this annual lecture series, up to three scholars from Yale Law School and other leading US-Law Schools will be invited to spend two weeks in Berlin, at Humboldt Law School. During their stay, and as part of a variety of different events, the three visitors will interact with colleagues as well as doctoral candidates and students. The highlight of these series of events will be the Yale Humboldt Consumer Law Lecture, which will be open to all interested lawyers. The presentations will be followed by a discussion.

The event is aimed at encouraging the exchange between American and European lawyers in the field of Consumer Law, understood as an interdisciplinary field that affects many branches of law. Special emphasis will therefore be put on aspects and questions which have as yet received little or no attention in the European discourse.

The programm reads as follows:

- 2.00 p.m.
  Welcome
  Professor Dr. Susanne Augenhofer, Humboldt University, and *Professor Dr. Peter A. Frensch,* Vice President for Research of Humboldt University
- 2.15 p.m.
  Knowledge in Law and Economics and the Information Fiduciary
  Professor Richard Brooks, Columbia Law School
- 3.15 p.m.
  Coffee break
- 3.45 p.m.
  Does Disclosure Work? Some Realities and Challenges in Consumer Markets
  Professor Florencia Marotta-Wurgler, NYU School of Law
- 4.45 p.m.

Break

- 5.00 p.m.
  The No Reading Problem in Consumer Contract Law
  Professor Alan Schwartz, Yale Law School

- 6.00 p.m.
  Panel Discussion

The event will be followed by a reception.

Further information is available here. Participation in the event is free of charge but binding
registration is required by online-registration.

Journal of Private International Law 10th Anniversary Conference: 3-5 September 2015

This conference, the next in a series that has featured Madrid (2013), Milan (2011), New York (2009), Birmingham (2007) and Aberdeen (2005), will be held in Cambridge, England at the University of Cambridge. As in the past, it features a diverse line-up of exciting speakers on interesting topics. All essential information can be found on the conference web site (http://www.pilconf15.law.cam.ac.uk/) which can be accessed here. In particular, the program and additional essential information can be obtained.

Accommodation is in Harvey Court, Gonville & Caius College, West Road. All rooms are ensuite and there are some doubles. It is very close to the Law Faculty. The conference dinner on Thursday evening is in Caius Old Hall. Both accommodation and dinner can be booked via the same link. The further information gives travel advice about coming to Cambridge.

The conference organizers are Richard Fentiman, Pippa Rogerson and Louise Merrett. The conference is supported by the Centre for Corporate and Commercial Law (3CL).

Registration is now open and so you are encouraged to book.

The ECJ on choice-of-court agreements relating to contracts concluded electronically

Under the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (and, today, under the recast Brussels I*a* Regulation), choice-of-court agreements must comply with certain formal requirements. These are set out in Article 23(1) of the Brussels I Regulation (corresponding to Article 25(1) of the recast). The agreement may either be "in writing" or "evidenced in writing", or be "in a form which accords with practices which the parties have established between themselves" or, in international trade, in a form which accords with a usage of which the parties are or ought to have been aware.

Article 23(2) of the Brussels I Regulation (Article 25(2) of the recast) adds that "[a]ny communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'".

In a judgment of 21 May 2015 (Case C-322/14, *Jaouad El Majdoub* v *CarsOnTheWeb*) the ECJ clarified the meaning of the latter provision.

The Court had been seised of a request for a preliminary ruling in the framework of a dispute regarding a contract for the sale of a car concluded by "click-wrapping" between parties none of which was a consumer.

In electronic contracts, click-wrapping occurs where the webpage containing the

general terms and conditions of the seller does not open automatically upon registration or in the process leading to the individual transaction. Rather, to view such general terms and conditions, the purchaser must click on a box bearing an indication such as to “click here to open the general conditions of sale in a new window” .

In the case at hand, the general conditions of the seller included a forum-selection clause providing for the jurisdiction of a court in Leuven. The purchaser, however, contended that the click-wrapping method of accepting such general terms did not fulfil the requirements laid down in Article 23(2) of the Brussels I Regulation. Consequently, the jurisdiction clause cannot, in his view, be invoked against him.

In its judgment, the ECJ held that the method of accepting the general terms and conditions of a contract by “click-wrapping” constitutes a communication by electronic means which provides a durable record of the agreement, within the meaning of Article 23(2) of the Brussels I Regulation, “where that method makes it possible to print and save the text of those terms and conditions before the conclusion of the contract”.

The reasoning of the Court may be summarised as follows.

The formal requirements in Article 23 of the Brussels I Regulation “must be strictly interpreted”, since a valid agreement excludes both the general jurisdiction of the courts of the State in which the defendant is domiciled and the special jurisdiction provided for in Articles 5 to 7 of that Regulation (Articles 7 to 9 of the recast).

The scope of Article 23 is limited to cases in which the parties have “agreed” on a court. It is that consensus between the parties which justifies the primacy granted, in the name of the principle of autonomy, to the choice of a court other than that which may have had jurisdiction under the Regulation.

Thus, as the Court itself already observed with reference to the predecessor of the Brussels I Regulation, *i.e.* the Brussels Convention of 27 September 1968, the rule in question, by making the validity of a jurisdiction clause subject to the existence of an “agreement” between the parties, “imposes on the court before which the matter is brought the duty of examining … whether the clause conferring jurisdiction upon it was in fact the subject of consensus between the parties, which must be clearly and precisely demonstrated”.

Under Article 23(2) of the Brussels I Regulation, the validity of a forum-selection agreement involving communication by electronic means depends, *inter alia*, on the possibility of providing a durable record of the agreement of the parties.

Literally, this provision requires there to be the "possibility" of providing such a durable record, "regardless of whether the text of the general terms and conditions has actually been durably recorded by the purchaser before or after he clicks the box indicating that he accepts those conditions".

Furthermore, the Explanatory Report of the Lugano Convention of 30 October 2007, by Professor Fausto Pocar, suggests that the test of whether the formal requirement in that provision is met is "whether it is possible to create a durable record of an electronic communication by printing it out or saving it to a backup tape or disk or storing it in some other way", and that that is the case "even if no such durable record has actually been made", meaning that "the record is not required as a condition of the formal validity or existence of the clause".

As a matter of fact, the purpose of Article 23(2) is "to treat certain forms of electronic communications in the same way as written communications in order to simplify the conclusion of contracts by electronic means, since the information concerned is also communicated if it is accessible on screen". For electronic communication to offer the same guarantees, in particular as regards evidence, "it is sufficient that it is 'possible' to save and print the information before the conclusion of the contract".

The Court noted that, in *Content Services*, a judgment of 2012, it held that "a business practice consisting of making information accessible only via a hyperlink on a website does not meet the requirements" set out by Article 5(1) of Directive 97/7/EC on the protection of consumers in respect of distance contracts, pursuant to which the consumer must receive "written confirmation" of certain information to be provided prior to the conclusion of the contract, or "confirmation in another durable medium available and accessible to him".

However, the Court explained, that interpretation cannot be applied to Article 23(2) of the Brussels I Regulation, "since both the wording of Article 5(1) of Directive 97/7 … and the objective of that provision, which is specifically consumer protection, differ from those of Article 23(2)".

Jurisdiction in cartel damage claims: CJEU-Ruling in CDC-Proceedings

Today, the long-awaited ruling of the CJEU in the CDC-proceedings has been delivered. It is the first time that the issue of jurisdiction in cartel damage claim-cases according to the Brussels I Regulation is dealt with by the CJEU.

The decision can be accessed here.

Publications on PIL issues in JIPLP Vol. 10, No. 6 (2015)

An article and a case note on international jurisdiction in intellectual property disputes are published in Journal of Intellectual Property Law & Practice, Volume 10, Issue 6, 2015.

Annette Kur is the author of article **Enforcement of unitary intellectual property rights: international jurisdiction and applicable law** (pp. 468-480), a translation from German of the previously reported publication. The abstract reads:

> *Proprietors of Community trade mark and design rights have several advantages over national right holders. In case of cross-border infringements, the claims are based on uniform law and decisions rendered by Community Trade Mark and Design Courts with central competence have immediate legal effect throughout the Community. Nevertheless several issues remain unclear,*

and where such issues arise, they were not always resolved satisfactorily by the CJEU. The pertinent case-law demonstrates that the CJEU fails to appreciate the particularities of intellectual property law that accrue from the principle of territoriality. Another problem is that the CJEU uses the terms "place of infringement" and "place where the event causing damage occurred" synonymously, yet the meaningful use of these terms in industrial and intellectual property law requires a clear-cut conceptual distinction.

Kevin Bercimuelle-Chamot wrote a case note **Accessibility is the relevant criterion to determine jurisdiction in online copyright infringement cases** (pp. 406-407). The abstract reads:

The Court of Justice of the European Union (CJEU) held that in online copyright infringement cases the special rule of jurisdiction in Article 5(3) of Regulation 44/2001 (the 'Brussels I Regulation') must be interpreted as giving jurisdiction to the courts located in the member state where the allegedly infringing content is accessible and that, in compliance with the principle of territoriality of copyright, those courts have competence only to determine the damages that have occurred therein.

Conference: Provisional Measures in European Civil Litigation

The renowned German legal periodical „Recht der Internationalen Wirtschaft" (RIW; International Business Law Review) will host a conference on „Provisional Measures in European Civil Litigation" in Frankfurt/Main on Wednesday, 17 June 2015. This event is the second in a series of workshops that was successfully launched in 2014 and that aims at bringing together high-level academics and practitioners. The conference language is German. Registration is still possible. Further information is available here. The programme will be as follows:

10.30–10.35 Welcoming the participants

Dr. Roland Abele

10.35–10.45 Introduction

Prof. Dr. Jan von Hein, University of Freiburg (Germany)

10.45–11.30 Provisional Measures under Article 35 Brussels I*bis*

Prof. Dr. Jan von Hein, University of Freiburg (Germany)

11.30–11.45 Coffee Break

11.45–12.30 The European Account Preservation Order

Prof. Dr. Tanja Domej, University of Zurich

12.30–13.15 Discussion

13.15–14.15 Lunch

14.15–15.00 Provisional Measures concerning Intellectual Property Rights

Prof. Dr. Christian Heinze, LL.M. (Cambridge), University of Hanover

15.00–15.20 Discussion

15.20–15.45 Coffee Break

15.45–16.30 Provisional Measures and Arbitration

Prof. Dr. Jens Adolphsen, University of Gießen

16.30–16.50 Discussion

16.50–17.00 Conclusion

Prof. Dr. Jan von Hein, University of Freiburg (Germany)

17.00 End of Conference

Latest Issue of RabelsZ: Vol. 79 No 2 (2015)

The latest issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law" (RabelsZ) has recently been released. It contains the following articles:

Jürgen Basedow: *Das Zeitelement in der richterlichen Rechtsfortbildung – Einleitung zum Symposium* (The Time Dimension in Judicial Law-Making – Introduction to the Symposium)

> *Wherever the law changes it must be determined which fact situations and disputes are still governed by the old law and which are covered by the new. Legislation often deals with this question in transitional provisions of a new statute which may be very detailed. Where the change in the law is due to new orientations of judicial practice, the answer must be given by the courts. National traditions and the procedural framework may have an impact on the respective answers. The overall question splits into several sub-questions: Will a court confine the effect of its new case law to future cases, excepting the pending case from its judgment? Has the new orientation of the court a retroactive effect on analogous cases? To what extent will courts explain the change in jurisprudence by reference to statutes which have been adopted but not yet taken effect? This and the following papers dealing with these questions were presented and discussed at a comparative law conference held at the Institute on 14 June 2014.*

Hannes Rösler, *Die Rechtsprechungsänderung im US-amerikanischen Privatrecht – Aufgezeigt anhand des prospective overruling* (Case Law Changes in U.S. Private Law – Prospective Overruling)

> *The article deals with the practice of prospective overruling, an innovative method of U.S. law whereby a judgment does not have retrospective effect, but – like statutory law – only applies to future events. This doctrine was declared*

constitutionally unobjectionable in the Sunburst Oil decision of the U.S. Supreme Court in 1923, which explains why state courts continued with the practice of prospective overruling. On the federal level, prospective overruling was used for the first time in the 1954 Brown v. Board of Education case ending school desegregation. The next step was the U.S. Supreme Court's test developed in Chevron Oil in 1971. According to the test, courts have to consider three factors: First, whether the decision to be applied non-retroactively establishes a genuinely new rule, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed; second, whether retrospective application would further or retard the operation of that rule; and third, whether retroactivity could produce substantially inequitable results. Many state courts still apply the Chevron Oil test regarding their own state laws. However, the U.S. Supreme Court abandoned the Chevron Oil test in Harper in 1987. The ambiguities and uncertainties that exist with prospective overruling can be explained by the not entirely clear Leitbild of the judge, who when deciding in favour of a solely future application of law acts like a legislator. The article evaluates these developments in the context of the jurisprudential views on the role of a judge in the U.S. legal system and compares them with German law.

Helge Dedek, *Rumblings from Olympus: Das Zeitelement in der (Fort-)Bildung des englischen common law*
(Rumblings from Olympus: Adjudication and Time in the English Common Law)

In this article, I endeavour to render an account of various temporal aspects of judicial decision making: the judicial anticipation of future statutory reform, the retrospective effects of judicial decisions, and the possibility of rulings that have exclusively prospective effects (so-called "prospective overruling"). All three aspects are interconnected through their respective links to the same theoretical and constitutional themes – most importantly, the problem of reconciling the function of adjudication first with the constitutional principle of parliamentary sovereignty in a common law system, and second with the theoretical explanation of the decision-making process as the creation of law within the boundaries of precedent and legal principle. Since the days of Bentham's polemics, the specifically temporal implications of these classic problems of common law theory have been discussed. However, unlike some

Continental jurisdictions, as Lord Rodger of Earlsferry pointed out, England and Wales never developed a comprehensive discourse on matters concerning the relationship between law and time; instead, temporal aspects have, in a more pointillist and haphazard fashion, been treated in the context of the various discussions surrounding the abovementioned fundamental problems. Different aspects have received different degrees of attention: whereas the anticipation of statutes through judge-made law has been discussed only rarely, a much larger number of judicial and scholarly comments exist with regard to the questions of adjudicatory retrospectivity and the possibility of prospective overruling. While traditionally the retrospective effects of judgements have been accepted and explained as being inherent in the nature of the adjudicative process, only recently, in 2005, did the House of Lords make clear that it lays claim to the constitutional power to issue non-retrospective rulings, and that neither the nature of judicial decision making nor the principle of parliamentary sovereignty would stand in the way of thus employing the technique of prospective overruling.

Felix Maultzsch, *Das Zeitelement in der richterlichen Fortbildung des deutschen Rechts* (The Time Dimension in Judicial Law-Making in Germany)

The anticipated application of legal norms which are not yet in force and the retroactive effect of changes in case law receive increasing attention in recent German legal discourse. Both phenomena pose the question of whether a solution that is considered to be normatively appropriate for the future can be applied to past facts already. This concern has to be balanced with aspects of legal certainty and the protection of legitimate expectations. Furthermore, the rule of law principle may militate against the anticipated application of legal norms and, reciprocally, in favor of a retroactive effect of changes in case law. Against this background, anticipated application and retroactive effect seem to be defensible, if the respective legal norm or the new line of case law do not, by themselves, change the pertinent normative assessment, but merely trace a factual or normative change that has already taken place in society. In addition, both the problem of anticipated application and of retroactive effect may be approached by identical doctrinal means. A so called substantive law approach (sachrechtliche Lösung) addresses the anticipated application and the protection against retroactive effect within the framework of substantive

private law. This approach accords well with the role of the judiciary in the German legal system and is therefore applied rather frequently. In contrast, the so called conflict of laws approach (intertemporalrechtliche Lösung) comprises a self-contained anticipated application of legal norms which are not yet in force or a self-contained protection against retroactive effects of changes in case law. This approach is at odds with the orthodox view of the judiciary in Germany and, therefore, is practiced only cautiously.

Notwithstanding these common principles, the current doctrine of retroactive effect of changes in case law does not seem to be fully convincing. It rests on the assumption that a retroactive effect is typically necessary because the courts do merely articulate the best picture of the law based on arguments and principles. However, private law is deployed to an increasing extent to shape society and the courts assume an active part in this transformative process. In that course, the idea of a mere improved legal judgment is threatened to become a fiction. Therefore, the German Federal Supreme Court should be more attentive to the risks that are inherent to far-reaching changes in case law. This could be achieved, primarily, by a strengthened judicial self-restraint, especially with regard to changes in case law. If this solution is discarded as unrealistic, one should, alternatively, consider a better protection against retroactive effects which could be achieved, inter alia, by the means of prospective overruling.

Susan Emmenegger, *Das Zeitelement in der richterlichen Fortbildung des schweizerischen Rechts* (The Time Dimension in Judicial Law-Making in Switzerland)

"Law must be stable and yet it cannot stand still."106 In both the common law and the civil law systems courts are faced with the challenge to reconcile the principle of legal certainty, including the reasonable reliance on the existing state of the law, and the principle of legal rightness which requires a correct application of the law in an ever changing world. This article explores two areas of judicial decision-making in which this challenge arises:
(1) The role of new statutes which have not entered into force at the time of the judicial decision, and (2) the effect of a decision to overrule a precedent on pending cases.

The first question regards judicial rulings in cases where a new (statutory) law is in the making but has not yet been formally enacted. Should the judges take these developments into account and if so, under what conditions? The answer of the Swiss Supreme Court and the Swiss scholarly writing is that future law is to be considered in the judicial interpretation and gap-filling if the future law does not contain a fundamental change but rather stays in line with the legislative perspective of the existing law. It is also unanimously held that the principle of legality bars the courts from a direct and formal application of the future law before its formal entry into force.

There is less unanimity between the Swiss Supreme Court and the Swiss doctrine with regard to the second question, namely, the effects of an overruling of judicial precedents. When the Supreme Court overturns a precedent, it will generally apply its new reasoning to the case at hand, thus accepting the retroactive nature of its ruling. The balancing of the principle of legal certainty against the principle of legal rightness is a process which precedes the court's decision regarding the alteration of its current case law. If the principle of legal certainty is considered to be of prevailing weight, the Supreme Court will abstain from an overruling. Instead, it will announce its doubts with regard to the existing case law, thereby proceeding to a sort of informal prospective overruling. A considerable part of the Swiss scholarly writing is critical of the Supreme Court's stance. It proposes a set of intertemporal rules which turn on the reliance of the parties in the stability of the existing case law. Whenever a court reaches a "better understanding" of the law, it should proceed to an overruling. However, the retroactive effect would be mitigated if the reasonable reliance of the parties warrants protection – which is almost always true for the party in the pending case. As a result, the intertemporal rules lead to a formal prospective overruling, at least concerning the party which is taking part in the proceeding.

Both the judicial and the scholarly model require the balancing of contradictory interests, and in both cases this balancing allows the court to take the intertemporal dimension of judicial decision-making into account. Therefore, the principal challenge is not so much to determine which model should be applied, but rather to ensure that the two interests in question are balanced in an adequate manner. Having said this, one should keep in mind that – just as in the case of a judicial overruling – the model of judicial intertemporal rules

proposed by the doctrine would have to be substantially more adequate than the model favoured by the Swiss Supreme Court to address the issue of contradictory interests arising in connection with a judicial overruling.

Bertrand Fages, *Das Zeitelement in der richterlichen Fortbildung des französischen Rechts*
(The Time Dimension in Judicial Law-Making in France)

Under French law, the principle of legal certainty operates both against the anticipated application of legal norms and in favor of the retroactive effect of changes in case law. Although exceptions to these two positions are occurring more frequently, they still remain largely unpredictable.

Imen Gallala-Arndt, *Die Einwirkung der Europäischen Konvention für Menschenrechte auf das Internationale Privatrecht am Beispiel der Rezeption der Kafala in Europa – Besprechung der EGMR-Entscheidung Nr. 43631/09 vom 4.10.2012, Harroudj ./. Frankreich* (The Impact of the European Convention on Human Rights on Private International Law as Illustrated by the Reception of Kafala in Europe – Reflections on ECHR, Harroudj v. France (No. 43631/09, 4 October 2012))

On 4 October 2012, the European Court of Human Rights (ECHR) rendered a decision dealing with Kafala. This Islamic law-based institution is an undertaking of an adult person to support and educate a minor without creating a formal parent-child relationship. Since adoption, as understood in western legal systems, is prohibited in most Muslim jurisdictions, Kafala is employed as a substitute. The Court considered the French conflicts-of-law rule (Art. 370-3 para. 2 of the Civil Code) prohibiting adoption of foreign children whose national laws prohibit the institution as compatible with Article 8 of the European Convention on Human Rights.

This essay considers the decision of the Court as a positive contribution to the issue of the impact of Human Rights on private international law. After recalling briefly the general terms of the relationship between human rights and private international law, the essay examines the status of Kafala outside and inside the European context. It also deals with the reception of Kafala in France.

The Court considered that a relationship founded on the Kafala may be protected under Article 8 of the Convention if requirements of continuity and stability are met. Nevertheless it recalled that Article 8 contains no right to adoption. This position of the Court is in line with its case-law on similar issues: given relationships should be protected as part of the respect of family life. The court however did not recognize any right of the applicant to convert the relationship in question into a determined legal relationship such as a parent-child-relationship. Two arguments were decisive for the decision of the court: lack of consensus among state-parties concerning the reception or the status of Kafala and recognition of Kafala by the relevant international instruments as a suitable alternative to adoption. As far as the first point is concerned the essay contends that the Court was mistaken in its appraisal of other state-parties regulations on Kafala as only France specifically prohibits the conversion of Kafala to adoption.