International Seminar on Private International Law, Madrid 2015

The 9th International Seminar on Private International Law promoted by Professor Fernández Rozas and Professor De Miguel Asensio (University Complutense, Madrid), has been scheduled for May 22 next year.

This edition's speakers will be, among others, Prof. Burkhard Hess (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law), Bertrand Ancel (Université Paris II), Franco Ferrari (New York University) and Louis D'Avout (Université Paris II). Short contributions from academics and law professionals are welcome provided they are timely submitted. In this regard the organizers kindly request those intending to participate to send an email to Professor Patricia Orejudo (patricia.orejudo@der.ucm.es) as soon as possible, in any event not later than December 15, 2014, including the title of the proposal and a brief summary of its contents. Accepted papers will be eligible for publication in the *Anuario Español de Derecho Internacional Privado*, subject to prior scientific peer evaluation.

The definitive program, schedule of presentation, venue and further details on organization will be announced here as soon as they become available.

Commemorating Bernd von Hoffmann (1941-2011)

The University of Trier will hold an academic ceremony commemorating the late Professor Dr. Bernd von Hoffmann (1941-2011), on November 28, 2014. Bernd von Hoffmann held a Chair in Private Law, Comparative Law and Private International Law at the University of Trier from 1979 to 2007 and is recognized as one of the leading scholars of his generation, particularly in the fields of private international law and arbitration. The ceremony will be followed by a

symposium (in German) dealing with „Structural asymmetries in international dispute resolution“ on November 29, 2014. The ceremony and the symposium are organized by von Hoffmann’s academic pupils, Professor Dr. Herbert Kronke, LL.M., University of Heidelberg, who is currently serving as a judge with the Iran-United States Claims Tribunal in The Hague, and Professor Dr. Karsten Thorn, LL.M., Bucerius Law School, Hamburg, in close collaboration with the Institute for Legal Policy at the University of Trier and the University’s law faculty.

The program is as follows:

Friday, November 28, 2014 – 17.30

Welcome Addresses
Professor Dr. Mark A. Zöller, Dean, Faculty of Law, University of Trier
Professor Dr. Michael Jäckel, President, University of Trier

Zur Person Bernd von Hoffmann
Professor Dr. Herbert Kronke, LL.M., University of Heidelberg; Judge, Iran-United States Claims Tribunal, The Hague

Privatautonomie und Parteiautonomie: (familienrechtliche) Zukunftsperspektiven
Professor Dr. Dr. h.c. mult. Dieter Henrich, University of Regensburg

Saturday, November 29, 2014 – 9.00 – 14.00

Welcome Address
Professor Dr. Gerhard Robbers, Minister of Justice, Rhineland-Palatinate

Der Schutz des Geschädigten bei grenzüberschreitenden Delikten im europäischen Zivilprozessrecht
Professor Dr. Jan von Hein, University of Freiburg/Germany

Grenzüberschreitende Rechtsdurchsetzung und Gemeinsames Europäisches Kaufrecht
Professor Dr. Jens Kleinschmidt, LL.M., University of Trier

Schiedsvereinbarungen in Fällen struktureller Unterlegenheit – hinreichende Schutzmechanismen oder Regelungslücken?
Professor Dr. Karsten Thorn, LL.M., Bucerius Law School, Hamburg

Kollektiver Rechtsschutz im Schiedsverfahren
Professor Dr. Thomas Rüfner, University of Trier

Justice is open to all – like the Ritz Hotel: Schiedsvereinbarungen im Sport
Dr. Francesca Mazza, Deutsche Institution für Schiedsgerichtsbarkeit

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Convention on Taking Evidence in the EU

The Institute for Civil, Comparative and International Private Law of the Faculty of Law in Ljubljana is organising an international conference titled “European Dimension of Taking Evidence in Civil Procedure”. This conference is focused on one of the important topics in the EU law on civil procedure and its various aspects, including the principle of *audiatur et altera pars*, role of the judge in taking evidence, administration and integrity of evidence as well as function of the information technology in the process. This conference is one of the activities within the EU funded project Dimensions of Evidence in European Civil Procedure. More details are available in the program.

The conference will be held 15 and 16 January 2015 at the premises of the Faculty of Law in Ljubljana, Slovenia.

22nd Croatian Arbitration Days

An annual international arbitration conference with long tradition will gather for the 22nd time some of the leading arbitration experts from Croatia and abroad. This year’s topics deal with damages and expert vitnesses in arbitration, in addition to the overview of the recent arbitration developments in the South

East Europe. Among presenations which are mostly arbitration-orented, there are some which also have private International law character. The program of the conference is available here: 22nd CAD – Conference Program.

The conference is scheduled for 4-5 December 2014 and will take place in Zagreb at the Croatian Chamber of Economy. Further details may be found on the Chamber's webpage.

Kurt Lipstein: Collection of Essays

Peter Feuerstein and *Heinz-Peter Mansel* have edited a "Collection of Essays" by Kurt Lipstein, a German law professor who emigrated from Germany to England in 1934.

The English abstract reads as follows:

> *This collection contains a selection of essays by the late Professor Kurt Lipstein, who emigrated from Germany to Cambridge in 1934. It focuses on his central works on the general principles of private international law, which are characterized by his comparative approach and his attention to the many relationships between conflicts of law and questions of public international and European law. It includes Lipstein's first studies of the conflict of laws as well as his powerful Hague lecture on the basic principles of private international law and his influencing articles on the development of the conflict of laws through international courts and arbitral tribunals.*

More information is available on the publisher's website.

Save the date: 128th Conference of the Private International Law Association of Japan (2015)

The Private International Law Association of Japan was formed as an academic organization on November 4, 1949, for the purpose of enhancing the study of private international law and promoting cooperation with similar academic bodies overseas, as well as coordination among researchers of private international law. Its 128th conference will take place on Saturday, June 6, and Sunday, June 7, 2015, at the Campus of Waseda University, Shinjuku-Ward, Tokyo. One of the panels will deal with „Regional Economic Integration and Private International Law“ from a comparative perspective. Further information and programme details will follow as and when they become available here.

Bareiß on Conflicts of Obligations in the Transnational Taking of Evidence

Andreas Bareiß has authored a book on conflicts of obligations in the transnational taking of evidence (“Pflichtenkollisionen im transnationalen Beweisverkehr. Offenbarungspflichten im Zivilprozessrecht der USA und Offenbarungsverbote nach deutschem und europäischem Recht”). The book is in German. The English abstract reads as follows:

> *Andreas Bareiß studies the legal position of German companies involved in an American pretrial discovery which are caught in a dilemma between disclosure obligations in accordance with the American law of civil procedure and the prohibition of disclosure in accordance with German and European law.*

More information is available on the publisher's website.

English High Court Rules on Art. 4 Rome II Regulation

The English High Court has recently rendered an insightful and thought provoking decision on the application of Art. 4 II and III of the Rome II Regulation (Winrow v. Hemphill, [2014] EWHC 3164). The case revolved around a road traffic accident that had taken place in Germany in late 2009. The (first) defendant, a UK national, had driven the car, while the claimant, likewise a UK national, had been sitting in the rear. As a result of the accident, caused by the (first) defendant's negligence, the claimant suffered injury and initiated proceedings for damages in England.

The court had to determine the applicable law in accordance with Art. 4 of the Rome II Regulation. What made the choice of law analysis complicated were the following – undisputed – facts (quote from the judgment):

- At the time of the accident, 16 November 2009, the Claimant was living in Germany, having moved there in January 2001 with her husband who was a member of HM Armed Services. Germany was not the preferred posting of the Claimant's husband. It was his second choice. He had four separate three year postings in Germany.
- Since the Claimant's husband was due to leave the army in February 2014 after twenty-two years' service he would have returned to England one and a half to two years before that date to undertake re-settlement training. It was always their intention to return to live in England.
- Whilst in Germany, the Claimant and her family lived on a British Army base where schools provided an English education. The Claimant's eldest son remained in England at boarding school when the Claimant's husband was posted to Germany. Their three other children were at school in Germany.

- The Claimant was employed while in Germany on a full-time basis as an Early Years Practitioner by Service Children's Education. This is a UK Government Agency.
- The Claimant and her husband returned to live in England in June 2011, earlier than planned. Her husband left the Army in August 2013.
- The First Defendant is a UK national. She was also an army wife. Her husband served with the Army in Germany. She had been in Germany for between eighteen months and two years before the accident. She returned to England soon afterwards.

Against this backdrop, the court had to decide whether to apply German law as law of the place of the tort (Art. 4 I Rome II) or English law as law of the common habitual residence of the parties (Art. 4 II Rome II) or as law of the manifestly more closer connection (Art. 4 III Rome II). After a detailed discussion of the matter Justice Slade DBE held that that German law applied because England was not the common habitual residence of the parties at the time of the accident. Nor was the case manifestly more closely connected with England than with Germany:

"41. The Claimant had been living and working in Germany for eight and a half years by the time of the accident. She was living there with her husband. Three of their children were at school in Germany. The family remained living in Germany for a further eighteen months after the accident. There was no evidence that during this time the family had a house in England. The residence of the Claimant in Germany was established for a considerable period of time. The fact that the Claimant and her family were living in Germany because the Army had posted her husband there and that it was not his first choice does not render her presence there involuntary. He and his family were living in Germany because of his job. The situation of the Claimant in Germany was similar to that of the spouses of other workers posted abroad. This is not an unusual situation. Having regard to the length of stay in the country, its purpose and the establishing of a life there – three children were in an army run school in Germany and the Claimant worked at an army base school – in my judgment the habitual residence of the Claimant at the time of her accident was Germany. When the Claimant came to live in England in 2011 her status changed and she became habitually resident here. However, the family's intention to return to live in England after the Claimant's husband's posting in Germany came to an end did not affect her status in November 2009. The Claimant has not established that the law of the tort

indicated by Article 4(1), German law, has been displaced by Article 4(2).

42. The burden is on the Claimant to establish that the effect of Article 4(1) is displaced by Article 4(3). The standard required to satisfy Article 4(3) is high. The party seeking to disapply Article 4(1) or 4(2) has to show that the tort is manifestly more closely connected with a country other than that indicated by Article 4(1) or 4(2).

43. The circumstances to be taken into account are not specified in Article 4(3). As does Miss Kinsler, I respectfully take issue with the exclusion by Mr Dickinson from the circumstances to be taken into account under Article 4(3) of the country in which the accident and damage occurred or the common habitual residence at the time of the accident of the Claimant and the person claimed to be liable. That these are determinative factors for the purposes of Articles 4(1) and 4(2) does not exclude them from consideration under 4(3). All the circumstances of the case are to be taken into account under Article 4(3). If the only relevant circumstance were the country where the damage occurred or the common habitual residence of the Claimant and the tortfeasor the issue of the proper law of the tort would be determined by Article 4(1) or 4(2). However, these factors are not excluded as being amongst others to be considered under Article 4(3). Further, under Article 4(2), habitual residence is to be considered at the time when the damage occurs. Preamble (17) to Rome II makes clear that the country in which damage occurs, which is the subject of Article 4(1), is the country where the injury was sustained. However, under Article 4(3), the habitual residence of the Claimant at the time when consequential loss is suffered may also be relevant.

44. Mr Chapman rightly acknowledged that one system of law governs the entire tortious claim. Different systems do not govern liability and quantum. In Harding v Wealands [2005] 1 WLR 1539, the issue was whether damages for personal injury caused by negligent driving in New South Wales Australia should be calculated according to the law applicable in accordance with the Private International Law (Miscellaneous Provisions) Act 1995 ('the 1995 Act') or whether it is a question of procedure which fell to be determined in accordance with the *lex fori*, English law. Considering factors which connect the tort with respective countries, in section 12(1)(b) of the 1995 Act, a provision similar to Article 4(3), Waller LJ in observed at paragraph 12:

"…the identification is of factors that connect the *tort* with the respective

countries, not the *issue or issues* with the respective countries."

The majority judgment of the Court of Appeal, Waller LJ dissenting, was overruled in the House of Lords. The *obiter* observations of Waller LJ on the factors which connect the *tort* rather than separate *issues* with a particular country were undisturbed on appeal.

45. I do not accept the contention by Mr Chapman that the circumstances to be taken into account in considering Article 4(3) will vary depending upon the issues to be determined and, as I understood his argument, the stage reached in the proceedings. Nor do I accept the submission that "the centre of gravity" of the tort when liability was conceded and only damages were to be considered depended upon circumstances relevant to or more weighted towards that issue. As was held by Owen J at paragraph 46 of Jacobs:

"…the question under Art 4(3) is not whether the right to compensation is manifestly more connected to England and Wales, but whether the tort/delict has such a connection."

The "centre of gravity" referred to in the Commission Proposal for Rome II and by Flaux J in Fortress Value in considering Article 4(3) is the centre of gravity of the *tort* not of the *damage and consequential loss*caused by the tort.

46. Whilst I do not accept the argument advanced by Mr Chapman that different weight is to be attributed to relevant factors depending on the stage reached in the litigation, since there is no temporal limitation on these factors, a court will make an assessment on the relevant facts as they stand at the date of their decision. The balance of factors pointing to country A rather than country B may change depending upon the time but not the stage in the proceedings at which the court makes its assessment. At the time of the accident both the claimant and the defendants may be habitually resident in country A and by the time of the court's decision, in country B. At the time of the accident it may have been anticipated that all loss would be suffered in country A but by the date of the assessment it is known that current and future loss will be suffered in country B.

47. There is some difference of opinion as to whether the circumstances to be taken into account in considering Article 4(3) are limited to those connected with the tort and do not include those connected with the consequences of the tort. It may also be said that the tort and the consequences of the tort are treated as

distinct in Article 4. Article 4(1) refers separately to the tort, to damage and to the indirect consequences of the "event". Article 4(2) refers to "damage". Accordingly it could be said that the reference in Article 4(3) to *tort* but not also to *damage* or *indirect consequences* indicates that it is only factors showing a manifestly closer connection of the tort, but not the damage direct or indirect, caused by or consequential on it, which are relevant.

48. Section 12 of the 1995 Act considered in Harding, whilst differing from Article 4(3) by including reference to the law applicable to *issues* in the case was otherwise to similar effect in material respects to Article 4(3). Section 12(2) provides:

> *"The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question, or to any of the circumstances or consequences of those events."*

Applying section 12, Elias J, as he then was, in deciding whether the law of the place of the motor vehicle accident should be displaced, took into account "the fact that the consequences of the accident will be felt in England" [34]. This approach was not doubted on appeal CA [17]. In Stylianou, Sir Robert Nelson adopted a similar approach when considering Article 4(3) which does not expressly include the consequences of the tortious events as a relevant factor in determining whether the general rules as to the applicable law of the tort are displaced. The Judge observed that there are powerful reasons for saying that the Claimant's condition in England is a strong connecting factor with this country. [83].

49. Including the consequences of a tort as a factor to be taken into account in considering Article 4(3) has received endorsement from writers on the subject. Mr Dickinson writes in *The Rome II Regulation* at paragraph 4.86:

"The reference in Article 4(3) to 'the tort/delict' (in the French text, '*fait dommageable*') should be taken to refer in combination to the event giving rise to the damage and all of the consequences of that event, including indirect consequences."

Further the authors of *Dicey* write at paragraph 35-032:

> *"Thus it would seem that the event or events which give rise to damage, whether direct or indirect, could be circumstances relevantly considered under Art 4(3), as could factors relating to the parties, and possibly also factors relating to the consequences of the event or events."*

50. Whilst the answer to the question is by no means clear, I will adopt the approach suggested as possible in Dicey, as correct by Mr Dickinson and adopted by Sir Robert Nelson. Accordingly the link of the consequences of the tort to a particular country will be considered as a relevant factor for the purposes of Article 4(3).

51. Unlike Articles 4(1) and 4(2), Article 4(3) contains no temporal limitation on the factors to be taken into account. If, as in this case, the claimant and the defendant were habitually resident in country A at the time of the accident but in country B at the time the issue of whether the exception provided by Article 4(3) applied, in my judgment both circumstances may be taken into account. Similarly, if at the time of the accident it was anticipated that the Claimant would remain in country A and all her consequential loss would be incurred there, but by the time the issue of whether the exception provided by Article 4(3) applied, she had moved to country B and was incurring loss there, in my judgment both circumstances may be taken into account in deciding whether in all the circumstances the tort is manifestly more closely connected with country B than with country A.

52. The European Commission recognised in their proposal for Rome II that the "escape clause" now in Article 4(3) would generate a degree of unforeseeability as to the applicable law. In my judgment that unforeseeability includes not only the factors taken into account but also that the nature and importance of those factors may depend upon the time at which a court makes an assessment under Article 4(3) in deciding whether there is a "manifestly closer connection" of the tort with country B rather than country A. The court making a decision under Article 4(3) undertakes a balancing exercise, weighing factors to determine whether there is a manifestly closer connection between the tort and country B rather than country A whose law would otherwise apply by reason of Article 4(1) or 4(2).

53. Whilst Mr Chapman relied principally on the country where consequential loss

is being suffered and the current habitual residence of the Claimant and the First Defendant, I also consider other factors raised by counsel in determining whether, in all the circumstances of the case, the tort is manifestly more closely connected with England than with Germany.

54. In my judgment the common United Kingdom nationality of the Claimant and the First Defendant is a relevant consideration. Waller LJ at paragraph 18 of Harding considered the nationality of the Defendant to a road traffic accident claim to be relevant to determining the applicable law of the tort under the similar provisions of section 12 of the 1995 Act.

55. Although there is no United Kingdom law or English nationality in my judgment that does not, as was contended by Miss Kinsler, prevent the United Kingdom nationality of those involved in the tort being relevant to whether English law applies. For example the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 implementing Directive 2000/26/EC of 16 May 2000, the Fourth Motor Insurance Directive, referred in Regulation 13(1)(i) to the United Kingdom as "an EEA state". Regulation 12(4) specified the law applicable to loss and damage as that "under the law applying in that part of the United Kingdom in which the injured party resided at the date of the accident". Article 25 of Rome II provides that:

> *"Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation."*

I take into account the United Kingdom nationality of the Claimant and the First Defendant at the time of the accident and now, when the issue is being determined, as a factor indicating a connection of the tort with English law.

56. That the Claimant and the First Defendant are now habitually resident in England is, in my judgment in the circumstances of this case, relevant to determining the system of law to which the tort has a greater connection. However, I view the weight to be given to this factor in the light of the Claimant's habitual residence in Germany for about eight and a half years by the time of the accident. The Claimant was not a short-term visitor to Germany. She had

established a life there with her husband for the time being.

57. I take account of the fact that the Claimant remained in Germany for a further eighteen months after the accident during which time she received a significant amount of medical treatment for her injuries including, in June 2010, an operation to remove a prolapsed disc. The Claimant states that between 15 and 25 March 2011 she spent just under two weeks in a German hospital for pain management. In April and May 2011 she had further treatment in Germany for the pain. Some of the injuries she suffered after the accident, neck and shoulder pains and pain in her stomach, resolved whilst she was in Germany.

58. Article 15 of Rome II makes it clear that the applicable law determined by its provisions applies not only to liability but also to:

> *"15(c) the existence, the nature and the assessment of damage or the remedy claimed."*

Whilst recital (33) states that when quantifying damages for personal injury in road traffic accident cases all the relevant actual circumstances of the Claimant including actual losses and costs of after-care should be taken into account by the court determining the claim of a person who suffered the accident in a State other than that where they were habitually resident, as Sir Robert Nelson observed at paragraph 78 of **Stylianou**, the recital cannot override the terms of Article 4.

59. In my judgment "all the circumstances" of the case relevant to determining whether a tort is manifestly more closely connected with country B than country A can include where the greater part of loss and damage is suffered. Where, as in this case, causation and quantum of loss are in issue, at this stage the location of the preponderance of loss may be difficult to ascertain. However, weight is to be given to the assertion by the Claimant that she continued to suffer pain after she and her husband returned to England in June 2011. She attended a pain clinic in Oxford and received treatment. She states that as a result of her pain and the effects of the accident she had become depressed. The continuing pain and suffering and medical treatment is a factor connecting the tort with England. So is the contention that loss of earnings has been and will be suffered in England.

60. The vehicle driven by the First Defendant was insured and registered in England. Whilst a factor to be taken into account, as was observed in Harding at

paragraph 18, where the motor vehicle involved in the accident was insured is not a strong connecting factor. Nor is where the vehicle was registered.

61. In Stylianou, Sir Robert Nelson considered that the continued and active pursuit of proceedings in Western Australia was an important factor to take into consideration under Article 4(3). The pursuit of proceedings by the Claimant in the English courts is taken into account in this case, however it is not a strong connecting factor. The choice of forum does not determine the law of the tort.

62. Factors weighing against displacement of German law as the applicable law of the tort by reason of Article 4(1) are that the road traffic accident caused by the negligence of the First Defendant took place in Germany. The Claimant sustained her injury in Germany. At the time of the accident both the Claimant and the First Defendant were habitually resident there. The Claimant had lived in Germany for about eight and a half years and remained living there for eighteen months after the accident.

63. Under Article 4(3) the court must be satisfied that the tort is manifestly more closely connected with English law than German law. Article 4(3) places a high hurdle in the path of a party seeking to displace the law indicated by Article 4(1) or 4(2). Taking into account all the circumstances, the relevant factors do not indicate a manifestly closer connection of the tort with England than with Germany. The law indicated by Article 4(1) is not displaced by Article 4(3). The law applicable to the claim in tort is therefore German law."

A discussion of the case can be found here.

TDM Special Issue on the CETA – Call for Papers

The **Comprehensive Economic and Trade Agreement between the European Union and Canada,** CETA, is one of the three landmark agreements – the others are the Trans-Pacific Partnership Agreement (TPP) and the

Transatlantic Trade and Investment Partnership (TTIP) – that will shape world trade and investment in the XXI century. Negotiations were launched in 2009 and a political agreement between the EU and Canada was reached on the key elements of CETA on October 18, 2013. The signing of the agreement took place in Ottawa at end of September 2014.

CETA is characterized by the further codification of international standards of investment protection by the Contracting Parties, and the introduction of new topics in international trade in goods and services, such as the efforts to remove regulatory divergence, which has been considered as the most prominent obstacle to trade and which should considerably increase economic growth for the citizens of both parties. This objective is to be achieved through Regulatory Cooperation and the establishment of a Regulatory Co-operation Fórum.

Herfried Wöss, Fabien Gélinas, Andrea Bjorklund, and John Gaffney will be editing a TDM Special Issue on the CETA. The four co-editors invite you to contribute to the special edition on CETA with unpublished or previously published articles, conference papers, research papers and case studies dealing with the Agreement and the issues raised by any of its chapters. Of particular interest in the investment chapter are:

- clarifications brought to key substantive provisions such as fair and equitable treatment;
- the definition of investment, which refers to "income generating assets" in the sense used by economists;
- the fair and equitable standard, including manifest arbitrariness, targeted discrimination on manifestly wrongful grounds and abusive treatment of investors, and its interpretation by the Contracting Parties;
- the definition of acts *de jure imperii*, and CETA's detailed language on what constitutes *indirect expropriation*.

Also of interest are CETA reaffirmation of the right of the EU and Canada to regulate to pursue legitimate public policy objectives such as the protection of health, safety, or the environment and a number of procedural changes designed notably to respond to criticisms levelled at investment treaties over the past decade.

Proposals or papers should be submitted directly to the co-editors **by January 15,**

2015 hwoess@woessetpartners.com, fabien.gelinas@mcgill.ca, andrea.bjorklund@mcgill.ca and j.gaffney@tamimi.com – please CC info@transnational-dispute-management.com when submitting your materials. You can find the call for papers on the TDM website as well as here.

Third Issue of 2014's Rivista di diritto internazionale privato e processuale

(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issue of the RDIPP)

The third issue of 2014 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) was just released. It features one article, the transcript of a public interview celebrating the 120th Anniversary of The Hague Conference on Private International Law, and three comments.

Cristina Campiglio, Professor at the University of Pavia, examines the issue of assisted procreation and recent jurisprudence in **"Norme italiane sulla procreazione assistita e parametri internazionali: il ruolo creativo della giurisprudenza"** (Italian Provisions on Assisted Procreation and International Parameters: The Creative Role of the Courts).

> *Law No 40/2004 on medically assisted conception was adopted to fill-in a major gap in the Italian legal system, putting an end to the so-called "procreative wild west". However, its provisions had left the majority's expectations largely unfulfilled. The decade following the entry into force of the law was marked by a number of – national and international – judicial decisions which produced a progressive attrition of the law's prohibitions. The interaction between the Italian Constitutional Court and the European Court of Human Rights has thus made it possible for judges to consent – in part and as a matter of urgency – to requests of couples who, being carrier of a genetic disease, are willing to have*

children while avoiding to incur into the risk of transmitting the disorder. Pivotal was certainly decision No 151/2009 whence the Constitutional Court relativized the protection of the embryo. For their part, in 2012 the European Court judges emphasized the disproportion in the Italian legislation of the protection of the embryo, as compared to the other interests at stake. This creative case-law, by assimilating supranational principles, sacrifices the certainty of the law in the name of equitable justice, overcoming the inaction of the Italian Parliament.

Fausto Pocar, Professor Emeritus at the University of Milan and Editor in Chief of the *Rivista* and *Hans van Loon*, Secretary General of the Hague Conference, in the transcript of a public interview walk us through the many and significant achievements of The Hague Conference on Private International Law in **"The 120th Anniversary of The Hague Conference on Private International Law"** (in French and English).

On the occasion of a workshop convened for the celebration of the 120th Anniversary of the Hague Conference on Private International Law, the Editor in Chief of the Rivista Fausto Pocar and the Secretary General of the Hague Conference Hans van Loon held a public interview on the achievements of the Conference – from its foundation, to the establishment of the Permanent Secretariat in 1955, to modern days – as well as its future goals. The detailed report of the interactive and captivating dialogue that ensued to this encounter spans from the efforts and challenges of transforming the Conference into a global organization, to the Conference's achievements in the unification of conflict of law rules and in the effective enhancement of inter-State cooperation in civil procedure matters as well as in judicial and administrative assistance. Providing valuable examples of the Conference's tangible impact on the States' effort to establish and achieve common goals in private international law matters, this interview provides a precious and rare insight on the Conference's activity and mechanisms shared by two of the most significant contributors to the Conference's activity in modern times.

In addition to the foregoing, three comments are featured:

Eva De Götzen, PhD at the University of Milan, addresses cross-border employment contracts and relevant connecting factors in light of the ECJ's recent

case-law in **“Contratto di lavoro, criteri di collegamento e legge applicabile: luci e ombre del regolamento (CE) n. 593/2008”** (Employment Contract, Connecting Factors and Applicable Law: Lights and Shadows of Regulation (EC) No 593/2008).

The article faces several issues concerning the choice-of-law rules, provided for by the Rome Convention and the Rome I Regulation, in employment matters. In the first place, an overview of the special connecting factors devoted to employment contracts set forth by the abovementioned uniform instruments is given and their current interpretation (see the Koelzsch, Voogsgeerd and Schlecker cases) is analyzed. In this respect, the article focuses on the relationship between the connecting factors of the locus laboris and the engaging place of business as well as on the interpretational difficulties arising from the application of the so-called escape clause. Moreover, the issue concerning the role played by some Recitals of the Rome I Regulation and by collective agreements in determining the law applicable to relationships between private parties in addition to the rules at hand will be addressed as well. The final question the article refers to is to assess whether the application of the conflict-of-laws rules in employment matters restricts the fundamental freedoms provided for by the EU Treaties or whether it strikes a balance between the free movement of workers and services in the EU internal market and the protection of the weaker party.

Giovanni Zarra, PhD candidate at the University of Naples “Federico II”, analyses anti-suit injunctions in jurisdictional conflicts within the European boarders and in the international context in **“Il ricorso alle anti-suit injunction per risolvere i conflitti internazionali di giurisdizione e il ruolo dell’international comity”** (Recourse to Anti-Suit Injunctions to Solve Conflicts on Jurisdiction and the Role of International Comity).

This article analyses the anti-suit injunction, an equitable tool used by common law courts in order to restrain a party from commencing or continuing a national judgement or an arbitral proceeding abroad, the issuance of which is seen by many foreign courts as an offence and an attempt to their sovereignty. After having described the development and the main features of the anti-suit injunction, this article focuses on the possibility and the opportunity for English courts to issue anti-suit injunctions in jurisdictional conflicts within the

European boarders and in the international context. With particular regard to intra-EU conflicts of jurisdiction, this article mainly focuses on the effects of the new Regulation (EU) No 1215/2012, whose Recital 12, according to certain scholars, might be interpreted as recognising again the power of English courts to issue anti-suit injunctions after the Court of Justice of the European Union forbade the use of such orders under Regulation (EC) No 44/2001. This article argues that, in a context of global economy, anti-suit injunctions should be used only in exceptional circumstances, in particular when their issuance is in accordance with the principle of international comity, which is proposed as the criterion that should usually guide common law judges when considering issuing an anti-suit injunction. In light of the above, the article eventually tries to make a practical assessment of the situations in which the use of anti-suit injunctions is permitted by the principle of international comity.

Cristina Grieco, PhD Candidate at the University of Macerata, addresses the new Italian legislation on e-proceedings in **"Il processo telematico italiano e il regolamento (CE) n. 1393/2007 sulle notifiche transfrontaliere"** (Italian E-Proceedings and Regulation (EC) No 1393/2007 on the Service in the Member States of Documents in Civil and Commercial Matters).

This paper analyzes the new Italian legislation on e-proceedings and the admissibility of the use of electronic instruments for the transmission of judicial documents in compliance with European requirements. The enquiry starts from the scope of application of Regulation No 1393/2007, as outlined by the ECJ in its Alder judgment. First, this paper provides an overview of the rules laid down by the Italian Code of Civil Procedure concerning cross-border notifications, in order to analyze the impact of the legislation on e-proceedings on existing domestic legislation. Then, this study attempts a brief overview of the level of computerization of justice achieved by the Member States and of the initiatives undertaken by the European institutions in this respect. Lastly, the present work explores the possibility of encompassing the tools of electronic communication within the scope of application of Regulation No 1393/2007, with regard to a literal and a systematic interpretation of the relevant provisions. The enquiry focuses particularly on the possibility, at present, to use the tools available for the computerized transmission of judicial documents within the European judicial area and on whether any obstacles to such use are attributable to legal grounds rather than to purely technical considerations.

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