Colangelo on International Law and False Conflicts

Anthony Colangelo (Southern Methodist University – Dedman School of Law) has posted International Law in U.S. State Courts: Extraterritoriality and "False Conflicts" of Law on SSRN.

> *With the U.S. Supreme Court recently cutting back the reach of federal jurisdiction over causes of action arising abroad for violations of international law, questions have arisen about the ability of state law to provide the vessel through which plaintiffs may bring suits alleging such violations. Here litigants and courts must address two key questions: First, to what extent may state law implement or incorporate international law as a rule of decision? And second, to what extent may state law incorporating international law authorize suits for causes of action arising abroad? The second question is both especially urgent because it involves a potential alternative avenue for litigating foreign human rights abuses in U.S. courts, and especially vexing because it juxtaposes different doctrinal and jurisprudential conceptualizations of the ability of forum law to reach inside foreign territory.*
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> *Against this backdrop, I want to make a few points. First, there is nothing wrong as a general matter with state law incorporating international law. Second, the idea of state law having broader extraterritorial reach than federal law is nonetheless in tension with federal foreign affairs preemption. And third, this tension basically disappears when the state law incorporating international law presents what's called a "false conflict" of laws among the relevant jurisdictions' laws. Here the fields of private international law and conflict of laws gain salience and supply a doctrinally and historically grounded mechanism for entertaining claims arising abroad in U.S. courts. More concretely, if state law incorporating international law is fundamentally the same law as that operative in the foreign jurisdiction, there is no conflict of laws and the sole applicable law applies.*
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> *In sum, ever-tightening constraints on federal extraterritoriality have generated multilayered tensions with traditional and contemporary fields of conflict of laws and private international law. At present, the flashpoint for these tensions promises to be claims alleging international human rights violations abroad in state court. The concept of "false conflicts" of law can remove the flashpoint's ignition source. False conflicts hold immense jurisprudential, doctrinal, and practical potential to handle these multilayered tensions with an equally multilayered concept capable of capturing principles not only of conflict of laws*

> *but also of federal extraterritoriality, foreign affairs, and due process. False conflicts should be the starting point for any evaluation of international human rights claims in state court under state law.*

The paper will be presented in the joint American Society of International Law Annual Meeting and International Law Association Biennial Meeting, and will be published in the *American Society of International Law Proceedings*.

Privatizing Delaware Courts

I was not aware of this development in Delaware, which was introduced by a statute of 2009.

For USD 6,000 a day and USD 12,000 filing fees, the prestigious Delaware court and judges can be rented for settling disputes above USD 1 million. One of the parties at least must be a Delaware business entity. The Delaware law maker called it “arbitration”, but the resulting decision is an “order of the Chancery Court”, not an arbitral award. The scheme is closer to litigation behind closed doors than to arbitration.

One of the goals is to compete to attract business disputes to Delaware by offering a *cheaper* mode of dispute resolution. As a US judge has recently emphasized:

> *The State of Delaware has become interested in sponsoring arbitration as a part of its efforts to preserve its position as the leading state for incorporations in the U.S. One of the reasons that Delaware has maintained this position is the Delaware Court of Chancery, where the judges are experienced in corporate and business law and readily available to resolve this type of dispute. Nevertheless, judicial proceedings in the Court of Chancery are more formal, time consuming and expensive than arbitration proceedings. For that reason, the Court of Chancery, as a formal adjudicator of disputes, may not be able to compete with the new arbitration systems being set up in other states and countries.*

The constitutionality of this law, however, has been challenged, and the Supreme Court may decide to hear the case. In Delaware Coalition for Open Government, Inc. v. Strine, the U.S. Court of Appeals for the Third Circuit found the Delaware law unconstitutional as the proceedings would not be open to the public:

> *Because there has been a tradition of accessibility to proceedings like Delaware's government-sponsored arbitration, and because access plays an important role in such proceedings, we find that there is a First Amendment right of access to Delaware's government-sponsored arbitrations*

See also this Op Ed of Judith Resnik in the *New York Times*.

I have tremendous respect for Judith Resnik, who is a professor at Yale Law School and one of the leading US scholars on civil procedure. Readers unfamiliar with the US legal academy should know, however, that Resnik belongs to a school of thought which is highly critical of alternative dispute resolution. This is probably the result of the development of arbitration for consumer and labour disputes in the US. I am not sure, however, that this peculiarity of US law should impact our perception and analysis of commercial dispute resolution.

Athlete Trapped Between Arbitration and Courts

On February 26, 2014, the Regional Court of Munich rejected the lawsuit of the well known German speed skater Claudia Pechstein. Although the Regional Court decided that arbitration clauses for athletes are invalid because athletes are "forced" to sign them if they want to participate in sport competitions, she nonetheless dismissed the case on the merits, reasoning that the CAS award has *res judicata* effect.

A translation into English of the German press release concerning this interesting decision has been kindly provided by Franz Kaps, Research Fellow of the Max

Planck Institute Luxembourg.

Press Release 03 /14

Case law of the Regional Court of Munich I in Civil Matters

No compensation for speed skater after doping suspension

In today's decision the Regional Court of Munich I (Case Number 37 O 28331/12) rejected the suit of a well-known German speed skater. The claimant had requested the declaration that the doping suspension imposed on her was unlawful, as well as the payment of approximately € 3.5 million in damages, a reasonable compensation for personal suffering of € 400.000, and the acknowledgement to reimburse future damages. The defendants were the German (defendant 1) and the International Skating Union (defendant 2) .

The background:

In 2009 the claimant was suspended for 2 years by the Disciplinary Commission of the defendant 2, after discovering elevated reticulocyte counts in her blood. The claimant had signed with both defendants athlete's agreements in which an arbitration agreement was included. The claimant appealed to the Court of Arbitration for Sport (CAS) and the CAS confirmed the lawfulness of the suspension.

The reasoning of the court:

The appeal before the Regional Court of Munich was not prevented by the arbitration plea of the defendants based on the agreements signed by the athlete: the arbitration clauses concluded between the parties were considered to be invalid, as they had not been voluntarily accepted by the claimant. At the time of the conclusion of the arbitration agreements there was a structural imbalance between the claimant and the defendants; the latter being in a monopoly position, the claimant had no other choice than to sign the arbitration agreements – otherwise, she would not have been allowed to participate in competitions and would thus have been hampered in the exercise of her profession.

However, a decision of the court on the question whether the doping suspension was unlawful was prevented by the *res judicata* effect of the decision of the

International Court of Sport (CAS). The 37th Civil Chamber of the Regional Court could not and was not allowed to determine whether the doping suspension was lawful. The *res judicata* of the arbitration award had to be recognized, as at the time of the referral to the CAS there was no structural imbalance between the parties anymore. The competition was over and in the proceeding before the CAS the claimant was represented by lawyers. The alleged errors in the composition of the arbitral tribunal or the selection of the arbitrators were not raised in the proceedings before the CAS. A correlating complaint would have been required and reasonable. The invalidity of the arbitration agreement does therefore not preclude the recognition of the arbitral award: despite her knowledge about the lack of voluntary conclusion of the arbitration agreement, the claimant appealed to the CAS and did also not reprimand this defect. In addition, the decision by the CAS does not violate fundamental constitutional principles.

The alleged damages and pain and suffering claims were not subject in the proceedings before the CAS. To this extend the lawsuit was admissible. These claims were unfounded, because in order to determine whether such claims actually exist, it would be necessary to assess whether the doping suspension was justified, but with respect to this question the court is bound by the observations of the CAS and therefore had to assume that the suspension was lawful without any further inquiry.

(Judgment of the Regional Court of Munich I, Case Number: 37 O 28331/12; the decision is not final)

Author of the Press Release: Judge at the District Court of Munich I Dr. Stefanie Ruhwinkel – spokeswoman.

Greek Commentary on the Rome II

Regulation

The first Greek Commentary on the Rome II Regulation edited by Prof. Dr. Angelos Bolos (Panteion University) and Dr. Dimitrios-Panagiotis Tzakas was just published.

This collective work undertakes an in-depth analysis on the specific provisions of Regulation No 864/2007 (Rome II) and scrutinizes its doctrinal implications with regard to the existing CJEU case law, especially on the Brussels I Regulation. Furthermore, attention is paid to the impact of the Rome II Regulation on sectors characterized by specificities which are not addressed by specific choice-of-law rules (i.e. traffic accidents, capital markets law etc.).

The contributors (V. Athanassopoulou, A. Emilianides, Th. Katsas, V. Koumpli, E. Liaskos, A. Metallinos, A. Bolos, K. Noussia, A. Papadelli, E. Spinellis, T.-E. Synodinou, D.P. Tzakas) give particular consideration to the ongoing Europeanization in the fields of the Private International Law and highlight its implications for the jurisprudence of the Hellenic courts after the enactment of a new set of choice-of-law rules.

European Parliament adopts Legislative Resolution on the Common European Sales Law

On 26 February 2014 the European Parliament adopted a legislative resolution on the Proposal for a Common European Sales Law. The full text is not yet available. However, you can find a comment on the plenary debate on “European Private Law News”.

Further information on the procedure is available in the Procedure File 2011/0284(COD) on the website of the European Parliament.

The UNCITRAL Rules on Transparency in Investor-State Treaty-based Arbitration

Many thanks to Ana Koprivica, research fellow of the MPI Luxembourg

In July 2013 the United Nations Commission on International Trade Law (UNCITRAL) adopted the Rules on Transparency in Investor-State Arbitration.

The Rules shall enter into force on 1st April 2014 and apply to all investor-state disputes initiated under UNCITRAL Arbitration Rules pursuant to international investment agreements concluded prior to or after this date.

At the outset it should be noted that the range of potentially applicable rules in international investment arbitration today is extremely wide and provides the parties with a lot of room to tailor their procedure in accordance with their specific needs. Consequently, they also make it possible for the parties to limit or constrain transparency in the dispute between them. This triggers the concerns of not having a proper mechanism to safeguard transparency. To that end, the UNCITRAL Working Group II (Arbitration and Conciliation) adopted two approaches when drafting the Rules: one would be the possibility for States to offer to arbitrate disputes under those arbitration rules that *require* transparency (which has so far only been a theoretical possibility) and the other, the option for States to conclude a new treaty which would supplement or replace the already existing investment treaties and require arbitration pursuant to rules requiring transparency. The first approach is reflected in the newly adopted Transparency Rules, whilst the second will possibly result in the adoption of the Transparency Convention, the second reading of which took place two weeks ago in New York at the 60th UNCITRAL session.

Main Features

The New Transparency Rules have become an integral part of the UNCITRAL

Arbitration Rules, but they are also made available as a stand-alone instrument for application in disputes that are governed by other arbitral rules. The main aim of the Rules is to make proceedings transparent. In that respect, the provisions mandating disclosure and openness (Articles 2, 3, 6 and 7) and those that govern participation by non-disputing parties (Articles 4 and 5) appear to be the most important features of the Rules.

Access to Documents

As soon as the arbitral proceedings commence, i.e., once there is evidence respondent has received the notice of arbitration (which itself is subject to automatic mandatory disclosure), a basic set of facts will be disclosed: names of the parties, economic sector involved and the underlying treaty (Art.2). The Rules further distinguish between the mandatory automatic disclosure that certain documents are subject to (all statements and submissions by the disputing parties and non-disputing State parties or third persons; transcripts of hearings; and orders, decisions and awards of the arbitral tribunal); mandatory disclosure on request of any person (witness statements and expert reports), and the disclosure of other documents (such as exhibits) which depend on the exercise of the particular tribunal's discretion (Article 3). To balance the Transparency Rules' provisions on disclosure, Article 7 specifies that disclosure is subject to exceptions for confidential or protected information. It further lists four categories of such information. Whether and what information will fall under the exceptions will be an issue to be decided on a case-by-case basis. Tribunals are also permitted to restrain or limit disclosure when necessary to protect the "integrity of the process", which is only intended to *restrain* or *delay* disclosure in exceptional circumstances.

Amicus Curiae and Submissions from non-disputing Parties

In line with standard practices by tribunals, the Transparency Rules now expressly affirm the authority of investment tribunals to accept submissions from *amicus curiae*, while incorporating detailed rules and guidelines under Article 4. This however concerns "written submissions" and does not address other forms of participation, such as statements at hearings. The Transparency Rules also require that tribunals accept submissions on issues of treaty interpretation from non-disputing State parties to the relevant treaty, provided that the submission does not "disrupt or unduly burden the arbitral proceedings, or unfairly prejudice

any disputing party" (Article 5). In addition to this, the tribunal may accept submissions on other matters relevant to the dispute from non-disputing State parties to the underlying treaty.

Open hearings

The most noteworthy feature of the Transparency Rules is contained in Article 6 and concerns the openness of the hearings. The tribunal is granted authority to determine how to make hearings open, including the option of facilitating public access through online tools. The disputing parties—alone or together—**cannot veto** open hearings. There are, however, three limitations to this: (1) protection of confidential information; (2) protection of the "integrity of the arbitral process"; and (3) logistical reasons.

Significance of the Rules and Open Questions

In what seems to be a great struggle to achieve full transparency for investor–State treaty-based arbitration, the UNCITRAL Transparency Rules represent a huge and important contribution, by making openness a rule rather than an exception and shifting the presumption of confidentiality, much more suitable for commercial arbitration, towards transparency. It seems that the Rules should in the first place bring some advantage to investors by enabling them to assess the risk to their investments in different host States to a more accurate extent, as their application would introduce more consistency and more cohesion, which is something that international investment arbitration still lacks. On the other hand, there is also a fear of the so-called "re-politicisation" of the investor-State disputes as well as the possibility that the investors would rather have their disputes resolved in private. It remains to be seen how this would affect the attractiveness of the UNCITRAL Rules.

Further, granting the right of public access to hearings and documents is important for the institutions' perceived legitimacy. By having more consistent decisions and therefore forming more consistent reasoning in arbitral awards, the whole arbitration system would ensure legal certainty, promotion of effective democratic participation, good governance, accountability, predictability and the rule of law which investors and host States would consequently benefit from. This is of the utmost importance when vital public concerns are involved such as environmental issues or human rights. Under previous versions of the UNCITRAL

Arbitration Rules, disputes between investors and States were often not made public, even where vital public concerns were involved or illegal or corrupt business practices were uncovered. In other settings, this level of transparency may also be used as a "scare technique" and a means to extract a settlement from another party.

In relation to this, it will be exciting to see some practical developments, more precisely: the potential change in the way parties draft their pleadings as a consequence of the higher level transparency imposed on them, or the limitation concerning the number or types of documents parties may submit and refer to, resulting from the intention to avoid potential disclosure requests.

In terms of the applicability of the Rules, it should be noted that even though they apply automatically to claims brought under a treaty concluded after 1st April 2014, parties will still have the possibility to opt out from transparency provisions. It will be interesting to see what the outcome of discussions on the Transparency Convention draft will be, since the impact of the Transparency Rules still largely hinges on the political outcome. It is also not certain what kind of an impact this will have on the attractiveness of investment arbitration under UNCITRAL Arbitration Rules and on arbitration under treaties which contain a reference to UNCITRAL Transparency Rules as opposed to those initiated under contracts that contain no such disclosure requirements.

It is further submitted that the Rules leave less room for the abuse of proceedings by reducing the scope of procedural arguments surrounding access to documents. Indeed, by providing a detailed list of documents subject to disclosure, the Transparency Rules will undoubtedly diminish the possibility for such arguments. Nevertheless, the Rules still leave open the likelihood for such discussion in relation to witness statements, expert reports and exhibits, as these are not to be automatically disclosed. Needless to say, when there is discretionary power of tribunals to restrict disclosure in order to protect confidential or protected documents and the integrity of the arbitral process the potential abuse of such powers is often an issue. In any case, it remains to be seen how frequently and in what circumstances the tribunals will exercise this power.

Therefore, the UNCITRAL Arbitration Rules represent a big step in the direction of increasing transparency. Their biggest achievement seems to be the shift in the underlying presumption toward openness, whereas in other terms they do not

seem to introduce much novelty compared to some other international investment arbitration rules. The question that is yet to be answered in the future is if by balancing the public interest and the principle of confidentiality in arbitration we have gone one step too far and have let the former prevail over the latter to a too great an extent.

French Conference on Parallel Proceedings and Decisions in International Arbitration

The students and alumni in International Law of the University Panthéon-Assas will organize a conference on Parallel Proceedings and Contradictory Decisions in International Arbitration on March 21st, 2014 in the premises of the International Chamber of Commerce in Paris.

The morning will be dedicated to Investment Arbitration. The afternoon will focus on Commercial Arbitration and International Private Law. Speeches will be in French.

This event is organized by three students associations of the masters' degree in International Private Law and International Business Law, International (Droit International Privé et Droit du Commerce International), in International Relations and Trade Law (Droit des Relations Economiques Internationales) and of the Institut des Hautes Etudes Internationales of the University Panthéon-Assas, in collaboration with two research centers, namely the Centre de Recherche de Droit International (CRDI) and l'Institut des Hautes Etudes Internationales (IHEI).

Matinée : Droit des Investissements (9h45-12h30)

– Développement des procédures parallèles et facteurs de désordres procéduraux en arbitrage d'investissement: Walid BEN HAMIDA (Université d'Evry Val-Essonne)

– La contrariété de décisions en arbitrage d'investissement, risques et conséquences: Fernando MANTILLA SERRANO (Shearman & Sterling LLP Paris)

– Retour sur la pertinence de la distinction « contract claims » et « treaty claims » : Ibrahim FADLALLAH (Université Paris-Ouest Nanterre la Défense)

– Procédures Parallèles : aspects procéduraux et solutions institutionnelles : Eloïse OBADIA (Derains & Gharavi Washington D.C.)

– La concurrence des instances arbitrales : que disent les principes du contentieux international ? Yves NOUVEL (Université Panthéon-Assas)

Après-midi : Arbitrage Commercial International

– Propos introductifs : M. Philippe LEBOULANGER (Leboulanger & Associés)

– La prévention des contrariétés de décisions arbitrale et étatique : Claire DEBOURG (Université Paris-Ouest Nanterre la Défense)

– De l'utilisation des « anti-suit injunctions » par le juge et l'arbitre : Jacob GRIERSON (McDermott Will & Emery Londres et Paris)

– L'exclusion de l'arbitrage dans le Règlement Bruxelles I refondu : Laurence USUNIER (Université Paris XIII Nord)

– Les contrariétés de décisions dans le contrôle des sentences arbitrales : Sylvain BOLLEE (Université Paris 1)

– Une illustration récente : l'affaire Planor Afrique : Alexandre REYNAUD (Betto Seraglini)

– Les procédures parallèles dans le règlement d'arbitrage et de médiation de la Chambre de Commerce Internationale : Thomas GRANIER (Cour internationale d'arbitrage de la CCI)

– Un remède, la concentration du contentieux devant l'arbitre (extension et transmission de la convention d'arbitrage) : Jean-Pierre ANCEL (Président de chambre honoraire à la Cour de cassation)

– Propos conclusifs : Daniel COHEN (Université Panthéon-Assas)

Venue : ICC, 33/43, Avenue du Président Wilson, 75116 Paris

Admission is free. Registration is possible by sending an email at : elise.grandgeorge@u-paris2.fr , message in which you should indicate your presence for the morning, the afternoon or the day and your name and phone number.

Weidemaier on Sovereign Immunity and Sovereign Debt

Mark Weidemaier (University of North Carolina) has published Sovereign Immunity and Sovereign Debt in the latest issue of the *University of Illinois Law Review*.

> *The law of foreign sovereign immunity changed dramatically over the course of the 20th century. The United States abandoned the doctrine of absolute immunity and opened its courts to lawsuits by private claimants against foreign governments. It also pursued a range of other policies designed to shift such disputes into litigation or arbitration (and thus relieve political actors of pressure to intervene on behalf of disappointed creditors). This Article uses a unique data set of sovereign bonds to explore how international financial contracts responded to these legal and policy initiatives.*
>
> *The Article makes three novel empirical and analytical contributions. The first*

two relate to the law of sovereign immunity and to the role of legal enforcement in the sovereign debt markets. First, although the decision to abandon the absolute immunity rule was a major legal and policy shift, this article demonstrates that investors dismissed their new enforcement rights as irrelevant to the prospect of repayment. Second, the ongoing Eurozone debt crisis has prompted fears that private investors will use litigation to prevent debt restructurings necessary to revive European economies. This Article shows that such fears may be overblown and, in the process, informs the broader empirical and theoretical debate about the role of legal enforcement in the sovereign debt markets.

Finally, the Article exposes a gap in contract theory as it pertains to boilerplate contracts such as sovereign bonds. Boilerplate presents a puzzle of intense interest to contracts scholars. It is drafted to serve the interests of sophisticated, well-resourced players, yet it often remains static in the face of new risks. To explain this inertia, contract theory posits that major shifts in boilerplate financial contracts require a financial crisis or other exogenous shock that substantially alters investors' risk perceptions. This Article, however, demonstrates that the Foreign Sovereign Immunities Act of 1976 prompted a major shift in contracting practices despite investors' continued indifference to legal enforcement and argues that contract theory must recognize that a wider range of forces may prompt boilerplate to change.

Liber Amicorum Bernard Audit

A Liber Amicorum to French leading PIL scholar Bernard Audit (Mélanges en l'honneur du Professeur Bernard Audit) will be published in the coming months. It will include the following contributions:

Bertrand ANCEL (Université Paris II)
Exequatur et prescription

Louis d'AVOUT (Université Paris II)
La lex personalis *entre nationalité, domicile et résidence habituelle*

Tristan AZZI (Université Paris Descartes)
La Cour de justice et le droit international privé ou l'art de dire parfois tout et son contraire

Jean-Sylvestre BERGé (Université Lyon 3)
Droit international privé et approche contextualisée des cas de pluralisme juridique mondial

George A. BERMANN (Columbia Law School)
The European Law Institute : a Transatlantic Perspective

Nicolas BINCTIN (Université de Poitiers)
Les apports de la propriété intellectuelle à l'analyse d'un ordre public « transnational » ou « réellement international »

Sylvain BOLLÉE (Université Paris I)
La responsabilité extracontractuelle du cocontractant en droit international privé

Béatrice BOURDELOIS (Université du Havre)
Relations familiales internationales et professio juris

Dominique BUREAU (Université Paris II)
Le mariage international pour tous à l'aune de la diversité

Olivier CACHARD (Université de Nancy)
Regards transatlantiques sur le forum non conveniens : *la jurisprudence en matière aérienne et nautique*

Muriel CHAGNY (Université de Versailles St-Quentin en Yvelines) et Valérie PIRONON (Université de Nantes)
Les recours collectifs en droit du marché

Daniel COHEN (Université Paris II)
Sur l'émanation d'État

Gilles CUNIBERTI (Université du Luxembourg)
La faible attractivité internationale du droit français des contrats

Bénédicte FAUVARQUE-COSSON (Université Paris II)
Le droit international privé des contrats en marche vers l'universalité ?

Diego P. FERNANDEZ-ARROYO (Sciences Po)
La tendance à la limitation de la compétence judiciaire à l'épreuve du droit d'accès à la justice

Estelle FOHRER-DEDEURWARDER (Université Paris II)
Le principe prior tempore dans la résolution des conflits de procédures en droit commun (après l'abandon de l'exclusivisme des privilèges de juridiction)

Jacques FOYER (Université Paris II)
Lois de police et principe de souveraineté

Hugues FULCHIRON (Université Lyon 3)
La reconnaissance au service de la libre circulation des personnes et de leur statut familial dans l'espace européen

Hélène GAUDEMET-TALLON (Université Paris II)
De l'abus de droit en droit international privé

Pierre-Yves GAUTIER (Université Paris II)
Convaincre l'arbitre

Bernard HAFTEL (Université d'Orleans)
Pour en finir avec le cercle vicieux du principe d'autonomie (ou presque)

Jeremy HEYMANN (Université Paris I)
De la mobilité des sociétés dans l'Union. Réflexions sur le droit d'établissement

Laurence IDOT (Université Paris II)
Réflexions sur les limites du modèle américain en droit de la concurrence… L'exemple du private enforcement

Charles JARROSSON (Université Paris II)
Le compromis, convention d'arbitrage d'avenir ?

Catherine KESSEDJIAN (Université Paris II)
Quel juge est compétent pour décider de la validité et de l'applicabilité d'une convention d'arbitrage ?

Georges KHAIRALLAH (Université Paris II)
Le statut personnel à la recherche de son rattachement. Propos autour de la loi

du 17 mai 2013 sur le mariage de couples de même sexe

Malik LAAZOUZI (Université Lyon 3)
La limitation internationale indirecte de for. Réflexions à propos du contrat d'assurance

Paul LAGARDE (Université Paris I)
La fraude en matière de nationalité

Pierre MAYER (Université Paris I)
Le poids des témoignages dans l'arbitrage international

Horatia MUIR WATT (Sciences Po)
L'émergence du réseau et le droit international privé

Marie-Laure NIBOYET (Université Paris Ouest Nanterre la Défense)
Les remèdes à la fragmentation des instruments européens de droit international privé (à la lumière de la porosité des catégories « alimony » et « matrimonial property » en droit anglais)

Cyril NOURISSAT (Université Lyon 3)
L'avenir des clauses attributives de juridiction d'après le règlement « Bruxelles I bis »

William W. PARK (Boston University)
The Deontology of Arbitration's Discontents : Between the Pernicious and the Precarious

Louis PERREAU-SAUSSINE (Université Paris-Dauphine)
Le conflit entre clause compromissoire et clause attributive de juridiction

Gérard PLUYETTE (Cour de cassation)
Actualités du droit de l'arbitrage : l'obligation de révélation des arbitres et le contrôle de l'ordre public de fond par la Cour de cassation

Anne SINAY-CYTERMANN (Université Paris Descartes)
Les tendances actuelles de l'ordre public international

Édouard TREPPOZ (Université Lyon 3)
L'extraterritorialité des injonctions portant sur internet

Laurence USUNIER (Université Paris 13)
Droit d'agir en justice et actions de groupe transnationales

Thierry VIGNAL, (Université de Cergy-Pontoise)
Sur quelques paradoxes contemporains de la territorialité

The book can be ordered in advance by filling this form. Early buyers will be mentionned as such in the book.

Audit on Sovereign Bonds and National Relativism

Mathias Audit (University Paris Ouest Nanterre la Defense) has posted Sovereign Bonds and National Relativism: Can New York Law Contracts Safely Cross the Atlantic? on SSRN.

> *Based on an overview of European cases related to the NML vs Argentina litigation saga, this article aims to show that the crossing of the Atlantic is perilous travel for sovereign bonds contracts terms. Normally, the choice of New York as providing governing law and as the competent court would ensure a certain degree of uniformity of interpretation and application of those contracts terms. However, it appears that some European countries' rules might interfere with this goal of uniformity, particularly in the context of two clauses: the waiver of immunity from attachment and execution and the pari passu clause.*

The paper is forthcoming in *The Capital Markets Law Journal (2014)*