SIDIBlog's Symposium: Towards a EU PIL Codification?

SIDIBlog, the blog of the Italian Society of International Law (SIDI-ISIL), has launched an **online symposium on the codification of Private International Law at the EU level**. Here is the English presentation of the event:

> *Scholars have been wondering about the possibility of elaborating a legal instrument regulating the "general part" of European Private International Law (a hypothetical future – not yet scheduled – "Rome 0" Regulation). In the context of a sectorial progress of the legal instruments enacted so far on the basis of Article 81 of the TFEU, one wonders if civil and commercial matters could form the subject for such a codification in European private international law. In the context of the civil judicial cooperation of the European Union, the same term "codification" deserves a reflection.*
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> *Some of these questions have lastly been addressed in the volume Brauchen wir eine Rom 0- Verordnung?, which collects the contributions of distinguished Private International Law scholars who participated to the conference held in Bayreuth in June 2012, devoted to this topic (but it is worth mentioning also a previous book entitled Quelle architecture pour un code européen de droit international privé?, edited by M. Fallon, P. Lagarde and S. Poillot Peruzzetto, including an embryon de règlement portant Code europeén de droit international privé, drafted by Prof. Paul Lagarde and published also in RabelsZ, 2011, 673 ff.). Similarly, in December 2012, and following its previous resolution of 7 September 2010, the European Parliament published a document entitled Current gaps and future perspectives in European private international law: towards a code on private international law?*
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> *With the […] post of Prof. Francesco Salerno, the SIDIBlog intends to start a debate on the above mentioned issues, trusting to host, in the coming weeks, the contributions of other Italian and foreign scholars and practitioners, in order to discuss the matters raised by the hypothetical "Rome 0" Regulation.*

As mentioned in the presentation, the first post of the symposium (in Italian) is authored by Prof. *Francesco Salerno* (Univ. of Ferrara), and touches upon several

aspects of the envisaged codification, analysing it both under a general perspective and in the light of specific issues. Subsequent posts in different languages, written by scholars from various jurisdictions, will be published in the coming weeks. Interested readers may follow the debate on this page of SIDIBlog, which will collect all the contributions. Comments to the posts and additional proposals for contributions are most welcome: editors of SIDIBlog may be contacted here.

La responsabilidad de las multinacionales por violaciones de derechos humanos (book)

One of the most significant trends in the evolution of human rights protection is the increasing role of NGO´s, such as International Amnesty or Human Rights Watch, that have undertaken monitoring and evaluation tasks. Unfortunately, another trend has to do with private actors, specially multinational corporations, acting as agents or accomplices of violations of human rights and the environment. As a result, there is a remarkable extension of the already wide list of potential violators of human rights across the world. The fact that corporations are capable, as private individuals, of perpetrating serious violations of human rights, has attracted the attention of scholars, national and international public instances. Furthermore, many civil actors and individuals as global citizens feel the need to know more about the challenges of globalization and its threats, aiming to a better understanding of the world in where we live. Having this in mind and in order to contribute with some light on this new challenge in the history of human rights, the recently released volume of the collection "Human Rights and Democracy" (University of Alcala – Ombudsman, Spain) gathers essays of various specialists in Human Rights and International Law.

The initial chapter invites the reader to reflect on whether judicial actions lodged against corporations for human rights violations are an isolated phenomenon, or

rather they constitute an expression of a broader, more general trend pointing towards a social, juridical and political shift. The remaining chapters address several issues of interest in the effort to provide a better knowledge of the subject: the well- known Ruggie Principles, the access to remedy in the European setting, the fight against supply chains as new forms of slavery, the extraterritoriality question in Kiobel Case, the financial complicity and transitional justice in Brasil, the due diligence of enterprises in the field of human rights, the human right to a healthy environment, the right to water and the procedural ways to claim liability for environmental harm.

La responsabilidad de las multinacionales por violaciones de derechos humanos has been edited by Francisco J. Zamora and Jesus Garcia Civico (Professors of the Universitat Jaume I, researchers of the Human Rights Effectiveness Research Center, HURIERC), and Dr. Lorena Sales, from the University of Castilla-La Mancha .

> VVAA, *La responsabilidad de las multinacionales por violaciones de derechos humanos*, Francisco J. Zamora, Jesús García Cívico, Lorena Sales (eds.). Cuadernos de la Cátedra de Democracia y Derechos Humanos, nº 9, Universidad de Alcalá-Defensor del Pueblo, 2013, 245 pp. ISBN: 978-84-15834-25-0.

Tribunal Constitucional, 27 January 2014: Joinder of Claims and Fundamental Right of Citizens to Effective Judicial Protection

On the 27 January 2014 the Spanish Constitutional Court (*Tribunal Constitucional*) has issued an important decision in the context of collective proceedings brought before the *Audiencia Nacional* regarding the liability of the

Spanish public administration (AENA and Ministerio de Fomento) in the air traffic controllers' case in 2010- The *Tribunal Constitucional* has upheld the appeal for *amparo*– protection of constitutional rights- declaring null and void two decisions of the *Audiencia Nacional* which considered that the conditions established in arts 34 ff. of the Act on the Jurisdiction for judicial review were not met – i.e. claims referring to several acts, provisions or actions shall be joined when some claims are a reproduction, confirmation or execution of other or some other direct connection exists between the claims. When those requisites are met, the court may at any point rule for joinder on an *ex officio* basis or at the request of any party.

Briefly, in its *auto* of 17 September 2012 and *providencia* of 19 June 2012, the *Audiencia Nacional* had denied the request for joinder of claims lodged by hundreds of passengers affected by the airspace closure following the air traffic controllers' strike in December 2010. Nevertheless, the *Audiencia Nacional* had allowed individual air passenger claims against the Public administration as a means of guaranteeing the fundamental right to obtain effective protection from the courts -granted by art 24 of the Spanish Constitution.

Abdelkader Castellanos and others filed the aforementioned appeal for the protection of constitutional rights before the Constitutional Court in 2012. They alleged mainly a violation of their right to obtain effective protection from the judges and courts and their right of access to justice (art. 24 Spanish Constitution). Those violations were allegedly caused by the rejection of the joinder and that the rulings under appeal contravened the duty to state the reasons on which a decision is based- art. 24. 1 of the Spanish Constitution, lack of *motivación*.

After reviewing the *Audiencia Nacional* legal reasoning, the Constitutional Court concluded that when the *Audiencia* denied the joinder it did not provide the grounds for rejecting that claim, so the fundamental right of citizens to obtain effective judicial protection was effectively violated. Accordingly, it has declared null and void both *Audiencia Nacional* decisions and requested the Court to re evaluate the case and either provide detailed grounds for its initial findings or admit the joinder of claims.

The full Constitutional Court decision is downloadable by clicking here (in Spanish).

LSE/PILAGG Conference on the Idea of Arbitration

On 13 February, the London School of Economics and Sciences Po PILAGG will host a common conference in London at the occasion of the publication of *The Idea of Arbitration* (OUP 2013) by **Jan Paulsson** (U Miami / LSE)

Debating Jan Paulsson's Idea of Arbitration

5:40 pm Welcome

5:50 pm Panel 1
Should arbitrators be allowed to apply the law and decide issues of public policy? Discussants: **Horatia Muir Watt** (Science Po) and **Jan Kleinheisterkamp** (LSE)

6:40 pm Panel 2
Jurisdictional contests: Who decides them? When? And with what degree of finality? Discussants: **Bernard Rix** (20 Essex Street) and **Charles Poncet** (CMS); moderator: **Tariq Baloch** (3VB)

7:30 pm Panel 3
Images in a Crystal Ball Discussants: **VV Veeder** (Essex Court Chambers) and **Derek Roebuck** (IALS); moderator: **Catherine Rogers** (U Penn)

8:20 – 8:30 – Closing remarks by Jan Paulsson

To register, please email to Law.TL.Project@lse.ac.uk

Slovenia: Conference on Evidence in European Civil Law

International scientific conference "**Dimensions of evidence in European civil procedure law**" is scheduled for 20-22 March 2014 in Maribor, Slovenia. The conference will provide an opportunity to review 28 national reports on the issue, and to share and discusse new unifying tendencies in EU law on civil procedure. It is aimed at approving and extending the Report on application of the Council Regulation (EC) 1206/2001, providing additional guidelines for better and swifter implementation of the Regulation, along with conclusions on its possible modernisation.

The conference program and other details, including the EU project within which the conference is taking place, are available at the conference official website.

Michaels on Non State Law in the Hague Principles

Ralf Michaels (Duke Law School) has posted Non-State Law in the Hague Principles on Choice of Law in International Contracts on SSRN.

> *Article 3 of the Hague Principles on Choice of Law in International Contracts is the first quasi-legislative text on choice of law to allow explicitly for the choice of non-state law also before state courts. This paper, forthcoming in a Festschrift, puts the provision into a broader context, discusses their drafting history and particular issues involved in their interpretation. It also provides a critical evaluation. Article 3 does not respond to an existing need, and its formulation, the fruit of a compromise between supporters and opponents of choosing non-state law, makes the provision unsuccessful for state courts and arbitrators alike.*

TDM 1 (2014) – Reform of Investor-State Dispute Settlement: In Search of a Roadmap

Edited by Jean E. Kalicki and Anna Joubin-Bret, this TDM special issue has close to 70 papers making it the largest TDM Special Issue to date. The interest in this topic, and the breadth of proposals offered by our contributors, demonstrates both the importance of holding this dialogue and the creativity of astute users and observers of the present system. It should be of interest to all international disputes lawyers. This Special Issue is particularly timely in light of the European Union public consultation on investor-state dispute settlement and the Transatlantic Trade and Investment Partnership just begun by EU Trade Commissioner Karel De Gucht.

The Table of Contents is available here.

New Book on European Insolvency Law

The evaluation on the application of the European Insolvency Regulation in the 27 Member States conducted by the Universities of Heidleberg and Vienna was just published.

The book is called European Insolvency Law – The Heidelberg-Luxembourg-Vienna Report. It is presented by the authors of the general report: B. Hess, P.

Oberhammer and T. Pfeiffer, in cooperation with A. Piekenbrock and C. Seagon.

> *This book presents the results of the External Evaluation of Regulation No. 1346/2000/EC on Insolvency Proceedings (JUST/2011/JCIV/PR/0049/A4) which was commissioned by the EU-Commission in March 2012 as a basis for the pending reform of the European Insolvency Regulation. Most of it was prepared within a period of about half a year in which the editors were in constant contact with the EU-Commission and participated in the process that led to the presentation of the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings (COM[2012] 744 final) dated 12 December 2012. Therefore, we believe that it is fair to say that both our initial approach to the relevant reform tools and issues and the findings in the course of the preparation of this study had a significant impact on the reform process which in turn of course also influenced the outcome of the study.*
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> *The book contains the document generally known as the Heidelberg-Luxembourg-Vienna Report on the reform of the European Insolvency Regulation and two other documents which served as a basis for this report, i. e. a detailed systematic summary of the national reports based on extracts from the original text and a systematic compilation of the relevant case-law. Unfortunately, it would have gone far beyond the limits of this book to publish all national reports, although most of them were indeed worth publishing. However, these reports are available online at: http://www.ipr.uniheidelberg.de/InsReg/Study_Annex_II.html.*

The full table of content is available here.

Vacancies at the Hague

Conference

The Permanent Bureau of the Hague Conference is seeking to fill two positions

1

Diplomat Lawyer, with excellent knowledge of private international law

The ideal candidate will possess the following qualifications:

- Excellent law school education in private law, including all aspects of conflicts of laws, preferably in the common law tradition; familiarity with comparative law (substantive and procedural law); good knowledge of public international law (in particular, the law of treaties and human rights law).
- Excellent drafting capabilities (*e.g.*, dissertation, law review or other publication experience will be taken into account).
- At least 10 to 15 years experience (in practice of law, academia, or an international organisation); experience with international negotiations an advantage.
- Excellent command, preferably as native language and both spoken and written, of English; good command of French and knowledge of other languages desirable.
- Personal qualities to contribute to:
    - good, pleasant and co-operative working atmosphere both within the Permanent Bureau and with representatives of Members, non-Member States and other Organisations;
    - the effective administration of the Permanent Bureau;
    - the proper representation of the Hague Conference to other international organisations.

The person appointed will be expected to take a leadership role in respect of particular areas of work within the Permanent Bureau, most likely in the field of family law and child protection (in particular the*Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the*Hague*

Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children).

Requirements:

- While the job is located in The Hague, it requires regular travel to both near and distant countries.
- Medical clearance is required.
- Finalists will be required to undergo a professional assessment administered by an external consultant.
- For more information on the process of appointment for a diplomat lawyer (Secretary) see Article 5 of the Statute of the Organisation.

Duration of the appointment: initially three years (with a six-month probationary period).

Salary: The position contemplated for the staff member corresponding to the profile would be either grade A3 or A4 of the Co-ordinated Organisations scale for the Netherlands, depending on qualifications and experience.

Entry on duty: between July and September 2014.

Applications: Written applications with a *curriculum vitae*, including publications and contact information for three references, should be addressed by email (secretariat@hcch.net) to the Secretary General of the Hague Conference on Private International Law, **before 1 April 2014**.

2

Legal Officer (full-time)

He or she will work mainly in the area of international legal and administrative co-operation and be part of a small team, under the direction of the Secretary General. The Legal Officer will primarily carry out work relating to the relevant Hague Conventions (in particular the Apostille, Service, Evidence, and Access to Justice Conventions).

Duties will include comparative research, preparation of research papers and other documentation, assistance in the preparation (including proof-reading) of

materials for publication (in particular Practical Handbooks), assistance in answering requests from States for information relating to the relevant Conventions, assistance in the preparation of meetings (including Special Commission meetings), assistance in the preparation of and participation in conferences, seminars and training programmes, and such other work as may be required by the Secretary General from time to time.

The successful applicant will possess the following qualifications:

- a good knowledge of private international law, particularly in the areas of legal and administrative co-operation and international civil procedure, familiarity with comparative law and public international law is desirable;
- excellent language skills (oral and drafting) in at least one official language of the Hague Conference (English or French), as well as a good working knowledge of the other (knowledge of a third language is an asset);
- sensitivity with regard to different legal cultures;
- two to four years of relevant subject-matter experience in private practice, public service or academia.

Starting date: May 2014.

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

Deadline for applications: 15 March 2014.

Applications should be made by e-mail, with Curriculum Vitae, letter of motivation and contact details for at least two references, to be addressed to the Secretary General, at: secretariat@hcch.net.

French Supreme Court Rules in

Pinckney

On 22 January 2014, the French supreme court for civil and criminal matters (*Cour de cassation*) delivered its decision after the *Pinckney* ruling of the Court of Justice of the European Union.

The claim before French courts was one of copyright infringement against an Austrian company for manufacturing CDs which were later sold on the internet by an English company.

The French supreme court held that the accessibility of the website of the English company in France suffices to found the jurisdiction of French courts over the Austrian company as the alleged loss was suffered in France:

> *l'accessibilité, dans le ressort de la juridiction saisie, d'un site Internet commercialisant le CD argué de contrefaçon est de nature à justifier la compétence de cette juridiction, prise comme celle du lieu de la matérialisation du dommage allégué.*

For years, the Court had ruled that mere accessibility of a website in France was not enough to grant jurisdiction to French courts, and that directed activity had to be demonstrated. Time will tell whether the Court will also give up the directed activity test under the French common law of international jurisdiction.