

PILAGG/LSE Round Table Seminar

PILAGG (SciencesPo) / Transnational Law Project (LSE)

Tuesday 19 November 2013

Private Citizens of the World. Citizenship beyond the State: Past, Present and Future.

Speaker:

Prof. Karen Knop, University of Toronto (Law)

Discussants:

Dr. Annabel Brett, University of Cambridge (History)

Dr. Floris De Witte, LSE (Law)

Date & time: Tuesday 19 November 2013, 16:00 – 18:00

Venue:

London School of Economics and Political Science

Old Building, Graham Wallas Room (5th floor)

Houghton Street, London, WC2A 2AE

All PILAGG / conflictolaws.net subscribers are very welcome to attend. Please contact the organizers – Jacco Bomhoff (j.a.bomhoff@lse.ac.uk) or Jan Kleinheisterkamp (j.kleinheisterkamp@lse.ac.uk) – beforehand. We will provide you with an invitation to show to LSE security staff upon your arrival, and with directions to the seminar room.

What Are the Most Influential English Language Journal Articles

or Papers in Private International Law?

As part of an ongoing research project, I am in the midst of compiling the most influential English language papers in the field of private international law. Given the expertise of our readership, I wanted to solicit your thoughts on this question. Please feel free to post responses in the comments or via email to me. I will happily share the compiled results in a future post. Many thanks!

On MNCs and Human Rights: an Overall Picture (Article)

“Las Empresas Multinacionales y Su Responsabilidad en Materia de Derechos Humanos: Una Visión de Conjunto” ([click here](#)) is the title of a new article by Professor Zamora Cabot, of the University of Castellón, on multinational corporations and human rights.

An Introductory Part (Part I), places this work in the field of governance of global public interests. In Part II the author critically reviews the recent decision of the USSC in *Kiobel* case, contesting the projection to the human rights ATCA litigation of the canon against the extraterritoriality of laws as applied in *Morrison*; the history-based interpretation made by Chief Justice Roberts is also contested in that it fossilizes the ATCA in its origins, thus difficulting a judicial reading of the Act adapted to our time. In Part (III), after having considered several cases in some European countries, the author evaluates critically the European legal framework, especially in relation to the jurisdiction of the Courts and the applicable law. In Part (IV) Professor Zamora Cabot studies a new interesting field: the Extraterritorial Obligations of States (ETOs) and how they operate as regard the responsibility of transnational corporations, either through international regulations or by national initiatives; among the latter the author highlights some Acts passed in the United States on trafficking of human beings

or on transparency in the supply chain. In Part (V), the author focuses on the extractive industry and its problems related to indigenous minorities, as well as on the implementation in Spain of the United Nations Guiding Principles by means of a National Plan on Business and Human Rights being currently developed. Professor Zamora Cabot finishes with a Part VI, where he recalls his view on the US *Kiobel* case as a step backward in the field of human rights protection; however, as a partial compensation to this judicial decision, he highlights the increasing awareness of the problem in many other countries, where public authorities and other stakeholders are advancing some proper solutions to the challenges posed by transnational corporations regarding the protection and development of human rights.

Ps: this article adds to one of the main lines of research of Prof. Zamora Cabot, focused on the liability of multinational enterprises as regards human rights. The work reflects a Report presented to the 25th Congress of the AEPDIRI, celebrated in September 2013 in the University Pompeu Fabra of Barcelona.

International Seminar on Private International Law, Madrid 2014. Call for Papers

A new edition of the International Seminar on Private International Law (Universidad Complutense de Madrid) organized by Prof. Fernández Rozas and Prof. de Miguel Asensio, will take place on the 8 and 9 May 2014, at the faculty of Law of the Universidad Complutense of Madrid - although some sessions may be held elsewhere in Madrid.

The seminar will combine a general approach focusing on recent developments and future prospects in various fields of private international law, and a specific one, meaning that special attention is to be paid to issues which are currently

being discussed, or which are in need of particular study. In this edition special attention will be given to the legislative process of revision affecting the EU insolvency regulation, to the unification of private international law in matrimonial matters, to and the forthcoming implementation of the Brussels I bis Regulation. New trends outside Europe, with special attention to projects identified in America, will also be addressed.

As in previous editions the main lectures of the seminar will be in charge of well-known scholars, such as Stefania Bariatti (Milano), Dário Moura Vicente (Lisbon), Hans Van Loon (former General Secretary of the Hague Conference), Bertrand Ancel (Paris II) and Johan Erauw (Gent). Nonetheless, the seminar is open to all scholars, either Spanish or foreigners, willing to participate with brief presentations. Papers can be presented in Spanish, English or French. Proposals including both the title and a brief summary are to be sent as soon as possible, and at any rate no later than the 2nd December, to Patricia Orejudo Prieto (patricia.orejudo@der.ucm.es). Subject to prior scientific evaluation, papers will be included in volume XIII (2013) of the *Anuario Español de Derecho Internacional Privado*. The final version of the accepted presentations is to be submitted before 14 April, 2014.

The registration deadline to attend the seminar will be announced in due time.

For more information see [here](#).

Anuario Español de Derecho Internacional Privado (2012)

The last volume of the *Anuario Español de Derecho Internacional Privado* (2012), has just been released: for the table of contents [click here](#).

Backed by the most prominent Spanish scholars on private international law, by lawyers, practitioners from the judiciary and other bodies of the State administration, the purpose of this volumen of the *Anuario* is to provide the

Spanish legal community with a theoretical and a practical overview of the legal phenomena, related to cross-border situations linked to our country, that have taken place in 2012 in the fields of commercial arbitration, business law, labor law, social security law, criminal law, procedural law, nationality, immigration, family and inheritance law, foreign investment and exchange control regulations. This outline is aimed to work as point of reference for the doctrinal and practical Spanish developments to be presented to foreign academia.

With this aim the publication is divided into different sections, starting with an ambitious doctrinal one gathering the most important scientific contributions from Spanish and foreign authors, published after a prior comprehensive control by the members of the Editorial Board specialized therein. Also, the volume highlights the most interesting Spanish decisions, legislative reforms and international agreements signed by Spain in 2012, all of them accompanied by a deep and critical comment. News are given about the work of various international forums, such as the Hague Conference. A systematized set of the several hundred decisions delivered by the Spanish courts last year, as well as a comprehensive chronicle of the Spanish literature in the field of private international law (in a broad sense) completes the Yearbook.

El Derecho Inglés y los Contratos Internacionales (book)


Sixto Sánchez Lorenzo is Professor of Private International Law at the University of Granada (Spain) and member of the International Academy of Comparative Law.

English Law is the preferred legal system in international contracts. Uniform texts as those proposed by UNIDROIT or the European Union have not managed to supersede a leadership grounded on cosmopolitanism and liberalism that characterize English Law. However, the rules and principles of English Law often remain distant and enigmatic for civil lawyers. This book is oriented to Spanish-

speaking lawyers and intends to provide a synthesis of English Contract Law, emphasizing its particular rules with comparative references to civil law systems. At the same time, it deals with English case-law on international contracts. Even though English courts make use of the same tool that others European judges (the Rome I Regulation), the analysis of the influence of English Private International Law on European rules facilitates the interpretation of these rules in other European countries, but also reveals some idiosyncratic particularities in its application by English courts. Finally, substantive and conflict-of-law rules can be hardly separated. For English lawyers who are able to read Spanish, the book provides, paraphrasing H.L.A. Hart, an “external statement” about both English Contract Law and Private International Law of Contracts.

[Click here to access the table of contents.](#)

Explanatory Report on the 2007 Hague Child Support Convention

The Hague Conference on Private International Law has announced that the  Explanatory Report on the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, drawn up by Alegría Borrás and Jennifer Degeling, with the assistance of William Duncan and Philippe Lortie, is now available.

An electronic copy of the Report can be downloaded [here](#). Paper copies can also be ordered from the Permanent Bureau at a cost.

Latest issue Netherlands Internationaal Privaatrecht (2013/3)

The third issue of 2013 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht*, includes the usual overview of important Dutch and European case law, as well as three articles on the following topics: The functioning of the European Small Claims Procedure in the Netherlands; the EU Regulation on Succession and Wills; and Child Protection Measures against the background of Article 8 ECHR.

X.E. Kramer & E.A. Ontanu, The functioning of the European Small Claims Procedure in the Netherlands: normative and empirical reflections, p. 319-328. The abstract reads:

The European small claims procedure was the first uniform adversarial procedure in the EU, introduced to increase the efficiency and to reduce the costs of cross-border small claims litigation in the Member States. The European Commission regards this procedure as an important potential contribution to access to justice in order to resolve small claims disputes. However, there are clear signs that this procedure is seldom used and the Commission seeks to improve its attractiveness. This paper focuses on the implementation and application of this European procedure in the Netherlands. Normative and empirical research has been conducted to assess how this procedure is embedded in the Dutch legal order and how it actually functions in practice and is perceived by the judiciary. The question is whether, from the Dutch perspective, this procedure meets the objectives of providing a simple, fast and low-cost alternative to existing national procedures, while respecting the right to a fair trial. The paper concludes with several recommendations for improvement.

P. Lokin, De Erfrechtverordening, p. 329-337. The English abstract reads:

This article focuses on (EU) Regulation No. 650/2012 dealing with the jurisdiction, applicable law, recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in matters of succession and the creation of a European Certificate of Succession. Is this Regulation, which

shall be applicable to the succession of persons dying on or after 17 August 2015, a step forward for the Netherlands? In light of its application in the near future, the article gives a first introduction into the new rules and concentrates on some aspects of the Regulation which require more attention, such as the determination of one's last habitual residence and the transitional provisions when the deceased has made a choice for the applicable law prior to 17 August 2015.

R. Blauwhoff, Kinderbeschermingsmaatregelen in de Nederlandse IPR-rechtspraak in het licht van artikel 8 EVRM, p. 338-345. The English abstract reads:

Both private international law and human rights instruments may affect parental and children's rights in cross-border situations, yet reference to both types of instrument is seldom made in Dutch legal decisions regarding parental responsibilities. Accordingly, the aim of this article is foremost to explore the relationship between both types of instruments in cases other than child abduction cases on the basis of an analysis of (Dutch) case-law, since the entry into force of the 1996 Convention on the International Protection of Children (1st of May 2011) and under reference to developments in case-law of the European Court of Human Rights (ECtHR) with regard to Article 8 ECHR. It is ventured that courts should have greater regard for the human rights dimension underpinning private international law decisions, especially in cases where tension arises between the law of the state of the child's present and former habitual residence. At the same time, the classic focus of the ECtHR on the accountability of national states sometimes falls short of taking into account the progress made in the field of cross-border co-operation in the ambit of the 1996 Hague Convention, especially in the area of cross-border contact arrangements.

Issue Dutch Commercial Law

journal on international financing

For our readers who are able to read Dutch: The second issue of 2013 of the Dutch journal on Commercial Law, *Nederlands Tijdschrift voor Handelsrecht* (NTHR), is an interesting issue dedicated to developments in international financing. It includes the following five contributions:

- J. Diamant, 'Macht', 'bezit' en 'controle': gedachten over het controlevereiste in de Collateral Richtlijn, p. 60-67.
- R.M. Wibier, Financiering op basis van vorderingen: de positie van het vorderingsrecht in het Burgerlijk Wetboek, p. 68-74.
- T.H.D. Struycken, Zekerheidsrechten in het internationale handelsverkeer, p. 75-87.
- P.M. Veder, Zekerheidsrechten en de Insolventieverordening: op zoek naar balans, p. 88-93.
- R.D. Vriesendorp & R. van den Sigtenhorst, Herstructureringspraktijk: Nederland vs. de V.S., p. 94-101.

Conference: The Implementation of the UN Guiding Principles on Business and Human Rights in Spain (Sevilla, 4-6 November 2013)

The University of Sevilla will host on 4-6 November an international conference on the responsibility of transnational corporations with regard to human rights, focusing on the UN Guiding Principles on Business and Human Rights: **"The Implementation of the UN Guiding Principles on Business and Human**

Rights in Spain". Here's an excerpt from the conference's website:

Recent years have witnessed the crystallisation of the social expectation that business enterprises, and transnational corporations in particular, have a responsibility to respect the human rights of the people and communities that may be adversely affected by their activities.

The unanimous endorsement of the Guiding Principles on Business and Human Rights by the UN Human Rights Council has helped clarifying the scope of corporate responsibility to respect human rights, in interaction with the state's duty to protect those rights. The conceptual framework "Protect, Respect and Remedy" has contributed to a rapid development of policy and regulatory standards worldwide, as evidenced by the OECD revised guidelines on multinational enterprises, the review of IFC's social and sustainability framework, or ISO 26000 (Social Responsibility), among others.

The UN Guiding Principles are not a point of arrival, but a starting point for future developments. Implementation of the new UN business and human rights framework simultaneously requires the review of existing State regulatory frameworks; the establishment or improvement of the corporate human rights policies and due diligence mechanisms; and the opening of new avenues of dialogue and responsibility between duty-bearers, rights-holders and other stakeholders. In the development of this complex program, there is an urgent need for academic reflection and political innovation.

The expansion of Spanish foreign direct investment in recent decades and the growing presence of Spanish transnational corporations in various countries have given rise to growing concern and pressure from civil society concerning the human rights impacts of their operations. Allegations of human rights violations have been particularly significant in relation to extractive industries and renewable energy projects in Latin America, including in relation to the rights of indigenous peoples. However, despite an important number of CSR initiatives in the past, the business and human rights agenda in Spain remains yet to be explored. The ongoing elaboration of the Spanish National Plan on business and human rights adds timeliness for this exploration.

The following is a synopsis of the main sections of the very rich programme of the conference (the detailed content of each panel, including the full list of speakers

and paper presentations, is available on the conference's website and as a .pdf file):

Monday 4 November – The UN Guiding Principles of Business and Human Rights: Prospects and Challenges

Keynote Address: “Assessing the UN Framework for Business and Human Rights. An International Human Rights Perspective” (*Prof. James Anaya*, Univ. of Arizona and United Nations Special Rapporteur on the rights of indigenous peoples)

- Panel 1: “Implementing Pillar I under UN and EU Law: The State Duty to Protect Human Rights”;
- Panel 2: “Implementing Pillar II Business Responsibility to Respect Human Rights”;
- Panel 3: “Implementing Pillar III. The Obligation to Remedy: Judicial and Non-Judicial Mechanisms”.

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Tuesday 5 November – Spain and the Implementation of the UN Guiding Principles

“Spain and the implementation of the Guiding Principles: The drafting and content of the National Action Plan on Business and Human Rights” (*Ms. Cristina Fraile*, Director of the Human Rights Office, Ministry of Foreign Affairs and Cooperation of Spain)

- Panel 4: “The implementation of Spain's obligations in the area of business and human rights”;
- Panel 5: “The Implementation of the Responsibility to Respect by Spanish Companies”;
- Panel 6: “Remedies for Alleged Human Rights Violations by Spanish Companies”.

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Wednesday 6 November – Business, Human Rights, and Vulnerable Groups

- Panel 7: “Business Enterprises and the Rights of Vulnerable Persons and Groups”;

- Panel 8: “Business Enterprises and Human Rights in Conflict Situations”.

(Many thanks to Prof. Fabrizio Marrella, Univ. of Venice, for the tip-off)