Can a Court Sit Outside its Territorial Jurisdiction?

In *Parsons v The Canadian Red Cross Society*, 2013 ONSC 3053 (available here), Winkler CJ (of the Court of Appeal, here sitting down in the Superior Court of Justice) has held that a judge of the SCJ can sit as such outside Ontario. No authority, it seems, requires the SCJ to sit only in Ontario.

The decision seems to me, at least on an initial reading, largely based on pragmatism. It seems efficient to so allow and so the court does. But I have some preliminary sense that there are some larger concerns here that are not being fully thought through. The place where a court sits seems awfully fundamental to its existence and authority as a court. In addition, the brushing aside of concerns about the open court principle (see paras 48-50) seems too minimal.

Part of the decision is based on *Morguard* and the federal nature of Canada (see para 25), so maybe the judge could not so sit outside Canada?

For news coverage of the decision, see this story.

Could this idea get pushed beyond the fairly narrow bounds of this case? Say a case is started in Ontario and the defendant seeks a stay in favour of Alberta because of all the factual connections to that province. Could the plaintiff, if otherwise likely to see the proceedings in Ontario get stayed, ask the court to have one of its judges hear the case in Alberta, sitting as a judge of the Ontario court? That way the plaintiff gets an Ontario judgment and the defendant gets the case heard in Alberta…

Seminari estensi di diritto

internazionale privato (Ferrara Workshops on Private International Law) – Summer 2013

A very interesting series of workshops on Private International Law has been **launched by the Department of Law of the University of Ferrara: *Seminari estensi di diritto internazionale privato* (Ferrara Workshops on Private International Law)**. The first two events, which will be hosted in the coming weeks, will take the form of a colloquium (in English) between an invited speaker and a discussant, ended by concluding remarks by a third scholar. Here's the programme:

Friday 28 June 2013 – 11h00
Taking evidence abroad in civil matters – Open issues regarding Regulation (EC) No 1206/2001 (.pdf)

Invited speaker: *Jorg Sladic* (University of Maribor);
Discussant: *Pietro Franzina* (University of Ferrara);
Concluding remarks: *Elena D'Alessandro* (University of Turin).

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Friday 5 July 2013 – 10h30
The individual in the prism of private international law – Subject, Citizen, Person, Body (.pdf)

Invited speaker: *Chris Thomale* (University of Freiburg im Breisgau);
Discussant: *Pietro Franzina* (University of Ferrara);
Concluding remarks: *Alessandro Somma* (University of Ferrara).

Venue (for both seminars): Dipartimento di Giurisprudenza, Sala consiliare – Corso Ercole I d'Este, 44 – Ferrara.

For further information: pilworkshops [at] unife.it.

New Model Clauses for Use of UNIDROIT Principles

At its 92nd session (8 – 10 May 2013) the UNIDROIT Governing Council has adopted the Model Clauses for Use of UNIDROIT Principles of International Commercial Contracts

The Model Clauses were prepared by a restricted Working Group. Details on the "legislative" process are available here.

Recent Canadian Conflicts Scholarship

The following articles about conflict of laws in Canada were published over the past year or so:

Brandon Kain, "Solicitor-Client Privilege and the Conflict of Laws" (2012) 90 Can Bar Rev 243-99

Christina Porretta, "Assessing Tort Damages in the Conflict of Laws: *Loci, Fori, Illogical*" (2012) 91 Can Bar Rev 97-134

Matthew E Castel, "Anti-Foreign Suit Injunctions in Common Law Canada and Quebec Revisited" (2012) 40 Adv Q 195-212

Nicholas Pengelley, "'We all have too much Invested to Stop': Enforcing Chevron in Canada" (2012) 40 Adv Q 213-32

These are in addition to the several articles, mentioned in an earlier post, about

the Supreme Court of Canada's decision in Club Resorts.

Electronic access to these articles depends on the nature of the subscriptions. Some journals are available immediately through aggregate providers like HeinOnline while others delay access for a period of months or years.

Italian Society of International Law's XVIII Annual Meeting (Naples, 13-14 June 2013)

On 13 and 14 June 2013, the **Italian Society of International Law** (Società Italiana di Diritto Internazionale – SIDI) will hold **its XVIII Annual Meeting at the University of Naples "L'Orientale"**. The conference is dedicated to **"Diritto internazionale e pluralità delle culture"** (International Law and Plurality of Cultures) (see the complete programme here).

The meeting will be opened by a general report by *Franco Mazzei* (Univ. of Naples "L'Orientale"): "Gestione della diversità culturale, sfida geopolitica del XXI secolo". The first session, in the afternoon of Thursday 13 June, will be devoted to cultural aspects in international law of the sea ("Pluralità e unità culturale dei popoli dei 'mari tra le terre'"). In the morning of Friday, 14 June, the meeting will be structured in two parallel sessions, respectively dealing with private international law ("**Diritto internazionale privato e diversità culturale**") and international economic law ("Diritto dell'economia, commercio internazionale e diversità culturale"). The final session (Friday 14 June, afternoon) will take the form of a round table and will analyse the international protection of cultural diversities ("La tutela internazionale delle diversità culturali").

Here's the programme of the parallel sessions:

Friday, 14 June 2013 (parallel sessions: 9h30 – 13h30)

Diritto internazionale privato e diversità culturale

Chair: *C. Campiglio* (Univ. of Pavia)

- *Jean-Yves Carlier* (Univ. de Louvain et de Liège): Diversité culturelle et droit international privé: de l'ordre public aux accommodements réciproques;
- *Pasquale Pirrone* (Univ. of Catania): "Ordine pubblico di prossimità" tra tutela dell'identità culturale e diritti umani;
- *Pietro Franzina* (Univ. of Ferrara): Né cosa né persona: lo statuto giuridico del corpo nel diritto internazionale privato, tra identità culturale, autonomia e responsabilità;
- *Chiara E. Tuo* (Univ. of Genova): Il rispetto delle diversità culturali e il riconoscimento degli effetti delle adozioni straniere.

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Diritto dell'economia, commercio internazionale e diversità culturale

Chair: *P. Picone* (Univ. of Rome "La Sapienza"; Accademia dei Lincei)

- *Pierre-Marie Dupuy* (Graduate Institute of International and Development Studies of Geneva): Arbitrato tra Stati e investitori privati stranieri e diversità culturale. Alcune osservazioni;
- *Valentina Grado* (Univ. of Naples "L'Orientale"): Unità e diversità d'approcci sulla responsabilità sociale d'impresa: il caso dei c.d. "conflict minerals";
- *Flavia Zorzi Giustiniani* (Univ. Telematica Internazionale Uninettuno): Protezione delle conoscenze e pratiche tradizionali dalla biopirateria: quali prospettive dopo l'adozione del Protocollo di Nagoya?;
- *Federica Mucci* (Univ. of Rome "Tor Vergata"): La Convenzione UNESCO del 2005 sulla diversità delle espressioni culturali: dall'"eccezione culturale" alla declinazione della dimensione culturale dello sviluppo sostenibile.

ECJ Refuses to Extend the Scope of Article 5 (3) Brussels I to Coperpetrator

Vincent Richard is a Research Fellow at the Max Planck Institute Luxembourg.

On May 16th, the Court of Justice of the European Union rendered its judgment in Melzer v. MF Global UK ltd (C-228/11) in which the judges refused the extension of the scope of article 5 (3) suggested by the Landgericht Düsseldorf.

A German individual residing in Berlin was solicited by telephone by a German company (WWH) based in Düsseldorf which opened an account for him in an English brokerage company (MF Global UK) trading in futures in return for remuneration. The investment did not go as planned; the German client lost almost all of his initial investment and decided to go to Court in order to obtain compensation for his loss.

Oddly enough, the plaintiff decided to sue only the English company in Düsseldorf and to base his claim on tortious liability. Thus, the Court in Düsseldorf needed to assess its jurisdiction in regard to article 5 (3) of Brussels I. In this case, the German court considered that the damage occurred in Berlin where the plaintiff had his assets and that the harmful events occurred in London where the English company conducted its business, and in Düsseldorf where the German company is based. But as the German company was not a party to the litigation, the court explored whether it could apply the national principle of "reciprocal attribution of the place where the event occurred".

This principle, as understood by the CJEU, is derived from provisions of the German Civil Code (§830) and the German Code of Civil Procedure (§32). It allows a Court to retain jurisdiction insofar as it is the place where the event giving rise to the damage has been caused by a presumed joint participant or accomplice, even though this accomplice is not himself a defendant.

Unsurprisingly, the CJEU answered negatively to the question asked by the German Court and held that as an exception to article 2, article 5 (3) has to be interpreted restrictively. In the present case, it found that there was no connecting factor between the English defendant and the Court of Düsseldorf. Moreover, the CJEU ruled that the use of national legal concepts to interpret Brussels I regulation would lead to different outcomes among the Member States and thus be contrary to the objective of legal certainty.

Finally, the Court mentioned that several others possibilities could have been used by the plaintiff who could have based his claim on contractual liability or could have sued both companies in Düsseldorf under article 6(1) of the Regulation.

Ruling:

> *Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2001 must be interpreted as meaning that it does not allow jurisdiction to be established on the ground of a harmful event imputed to one of the presumed perpetrators of damage, who is not a party to the dispute, over another presumed perpetrator of that damage who has not acted within the jurisdiction of the court seised.*

First Issue of 2013's Revue Critique de Droit International Privé

The last issue of the *Revue critique de droit international privé* was just released. It contains four articles and several casenotes.

The first article is a survey of the Brussels I Recast (*La refonte du Règlement Bruxelles I*) by Arnaud Nuyts (Université Libre de Bruxelles).

In the second article, Urs Peter Gruber (Mainz University) discusses gay mariage from the perspective of German private international law (*Le mariage homosexuel et le droit international privé*). The English abstract reads:

> *In German civil law, homosexual couples are almost given the same rights as heterosexual couples. In 2001, Germany introduced a law on a registered partnership for same sex couples; it contains rules which in most fields are similar to the rules applicable to married heterosexual couples.*
>
> *However, in private international law, Germany adopts a rather restrictive solution. In a first step, pursuant to a majority opinion, a homosexual marriage is governed by the law of the state where it was celebrated.; however, in a second step, it is held that the effect of such a marriage cannot exceed the effects of a registered partnership concluded under German law. This was, a homosexual marriage, which was effectively concluded abroad, is downgraded and converted into a registered partnership.*
>
> *It seems doubtful whether the German law is in conformity with EC law, especially the right to move and reside freely within the territory of the Member states guaranteed by Art. 21 of the TFUE. The author proposes to abolish the current German provision leading to the downgrading of homosexual marriages. Furthermore, he advocates the implementation of a real*

homosexual marriage in German law.

In the third article, Yasser Oman Amine discusses the international dimension of Egyptian copyright law (*Le droit international privé du droit d'auteur en Egypte : à la croisée des chemins*).

Finally, in the last article, Hans Jürgen Sonnenberger (Professor Emeritus, Munich University) discusses the democratic foundation of European rules of private international law of the field of company law (*Etat de droit, construction européenne et droit des sociétés*).

Symposium on EU Regulation on Succession

On Friday, 11 October 2013 a symposium organised by the German Notary Institute on the EU Regulation on Succession and Wills will take place in Würzburg/Germany.

Here is the programme:

09.00 Uhr **Begrüßung,** Notar a. D. Sebastian ***Herrler***, Geschäftsführer des Deutschen Notarinstituts

Grußwort, Notar a. D. Prof. Dr. Rainer ***Kanzleiter,*** Vorsitzender der NotRV

09.10 Uhr **Die Entwicklung der Erbrechtsverordnung – Eine Einführung zum Gesetzgebungsverfahren**

Notar a. D. Kurt ***Lechner***, ehem. Mitglied des Europäischen

Parlaments, Kaiserslautern

Block I: Grundlagen des neuen Erbkollisionsrechts

09.30 Uhr **Die allgemeine Kollisionsnorm (Art. 21, 22 EuErbVO)**

Prof. Dr. Dennis ***Solomon***, Universität Passau

09.50 Uhr **Das Statut der Verfügung von Todes wegen (Art. 24 ff. EuErbVO)**

Prof. Dr. Andrea ***Bonomi,*** Universität Lausanne

10.10 Uhr *Diskussion, anschließend Kaffeepause*

Block II: Ausgewählte Probleme des neuen Erbkollisionsrechts

11.00 Uhr **Die Abgrenzung des Erbstatuts vom Güterstatut**

Prof. Dr. Heinrich ***Dörner,*** Universität Münster

11.30 Uhr **Die Abgrenzung des Erbstatuts vom Sachenrechtsstatut und vom Gesellschaftsstatut**

Notar Christian ***Hertel,*** Weilheim

11.50 Uhr **Probleme des allgemeinen Teils des Internationalen Privatrechts**

Prof. Dr. Michael ***Hellner***, Universität Stockholm

12.10 Uhr **Internationaler Pflichtteilsschutz und Reaktionen des Erbstatuts auf lebzeitige Zuwendungen**

Prof. Dr. Stephan ***Lorenz***, Ludwig-Maximilians-Universität München, Mitglied des BayVerfGH

12.30 Uhr *Diskussion, anschließend Mittagessen*

Block III: Das neue internationale Erbverfahrensrecht

14.00 Uhr **Die internationale Zuständigkeit in Erbsachen**

Prof. Dr. Burkhard ***Hess***, Max-Planck-Institute Luxembourg for International,

European und Regulatory Procedural Law

14.30 Uhr **Die „Annahme“ ausländischer öffentlicher Urkunden**

Notar a. D. Prof. Dr. Dr. h. c. (Aristoteles Universität zu Thessaloniki) Reinhold ***Geimer***, München

14.50 Uhr **Das Europäische Nachlasszeugnis – Fokus „gutgläubiger Erwerb“**

Prof. Dr. Knut Werner ***Lange***, Universität Bayreuth

15.10 Uhr *Diskussion, anschließend Kaffeepause*

Block IV: Das Verhältnis zu Drittstaaten

16.10 Uhr **Vorrang bestehender bilateraler Abkommen der Mitgliedsstaaten**

Dr. Rembert ***Süß,*** Deutsches Notarinstitut Würzburg

16.30 Uhr **Die Erbrechtsverordnung aus Sicht der Drittstaaten**

Dr. Eva ***Lein***, British Institute of International and Comparative Law, London

16.50 Uhr *Diskussion*

17.30 Uhr **Schlusswort,** PD Dr. Anatol ***Dutta,*** Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg

Tagungsbeitrag inkl. Verköstigung und Tagungsband: 170 € für Nichtmitglieder/**120 €** für NotRV-Mitglieder/**70 €** für NotRV-Mitglied Notarassessoren/Notare a. D., **frei** für Universitätsangehörige (ohne Tagungsband)

Anmeldung: Deutsches Notarinstitut, Gerberstr. 19, 97070 Würzburg, Tel. 0931/355760, Fax: 0931/53376225, www.dnoti.de,

email: r.lehrieder@dnoti.de

The study can be found here.

Science Po PILAGG Workshop Series Final Conference 2013

The Law School of the Paris Institute of Political Science (*Sciences Po*) will hold the final meeting of its workshop series for this academic year on Private International Law as Global Governance on May 31st, 2013.

This day long conference will include three round tables.

Private Post-National Law Making and Enforcement

Table I, 9:00 – 10:45 – *Manufacturing private norms (Junior stream)*

- Caroline DEVAUX
- Anna ASSEVA
- Catherine TITI
- Charles GOSME

Table II, 11:00 – 12:45 – *Around legitimacy and enforcement*

- Sergio PUIG (*Stanford University*)
- Robert WAI (*York University*)
- Diego P. FERNÁNDEZ ARROYO (*SPLS*)

Table III, 2:30 – 4:00 – *Revisiting party autonomy*

- Giuditta CORDERO MOSS (*Universitetet i Oslo*)
- Gian Paolo ROMANO (*Université de Genève*)

Concluding remarks, 4:00 – 4:15

- Horatia MUIR WATT (*SPLS*)

Location: 199 Boulevard Saint Germain, 75007 Paris

First Issue of 2013'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 first issue of 2013 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features two articles and two comments.

In her article *Costanza Honorati*, Professor of European Union Law at the University of Milano-Bicocca, addresses the issue of International Child Abduction and Fundamental Rights ("Sottrazione internazionale dei minori e diritti fondamentali"; in Italian).

> *In several recent decisions on cases concerning the international abduction of minors the European Court of Human Rights set the requirement of an "in-depth examination of the entire family situation" in order to comply with Article 8 ECHR. The present article considers the effects of such principle on the role and on the proceedings of both the court of the State of the child's habitual residence and of the court of the State of his refuge after abduction, especially when acting in the frame of Brussels II Regulation. While the requirement of «in-depth examination» seems overall synergetic to the role of the court of habitual residence, also when such court is judging on the return of the abducted minor pursuant to Article 11(8) Reg. 2201/2003, deeper concerns arise with reference to the role of the court of the State of refuge. When such a court is asked to enforce a decision for the return of the abducted child, the possible violation of the child's fundamental right in the State of origin might raise the question of opposition to recognition and enforcement. The article thus endeavours to find a solution balancing the child's fundamental rights and EU general finality to strengthen the area of freedom, security and justice.*

In their article *Paolo Bertoli* and *Zeno Crespi Reghizzi*, respectively Associate Professor at the University of Insubria and Associate Professor at University of Milan, provide an assessment of "Regulatory Measures, Standards of Treatment and the Law Applicable to Investment Disputes" (in English).

> *The relationship between State regulatory measures and the international standards of protection for foreign investments has proved to be a critical issue in investor-State arbitration. Normally, two legal systems are involved: the legal order of the State hosting the investment is competent to govern economic activities (including those of foreign investors) carried out on its territory, and the international legal order sets forth the duties of States in respect of foreign investors. After having discussed the basis for, and the law applicable to, investment claims (both in treaty and in contract claims), this article examines the interplay between regulatory measures and the international standards of protection for foreign investments, i.e., indirect expropriation and fair and equitable treatment. The authors also analyse the influence on the arbitrator's evaluation of the presence of a stabilization clause in the agreement between the State and the investor.*

In addition to the foregoing, the following comments are also featured:

Fabrizio Vismara (Associate Professor at the University of Insubria), "Assistenza amministrativa tra Stati membri dell'Unione europea e titolo esecutivo in materia fiscale" (Administrative Assistance between EU Member States and Enforcement Order in Fiscal Matters; in Italian)

> *The Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, issued under Articles 113 and 115 of the TFEU, was implemented in Italy by Legislative Decree No 149 of 14 August 2012. The Directive introduces a uniform instrument to be used for enforcement measures to recover claims in another Member State, and realizes a system of implementing decisions in tax matters typically excluded from judicial cooperation on civil matters. Directive 2010/24/EU provides that enforcement in other Member States is permitted by means of a uniform instrument which is automatically valid in the requested Member State. The automatic recognition provided for by Directive 2010/24/EU is different from the abolition of exequatur in the field of judicial cooperation in*

civil matters provided by, respectively, Regulation No 805/2004, Regulation No 1896/2006, Regulation No 861/2007, and Regulation No 1215/2012. Directive 2010/24/EU sets out a new instrument, named uniform instrument, which is subject to automatic recognition and it is formally distinct from the initial instrument permitting enforcement issued in the applicant Member State.

Lidia Sandrini (Researcher at the University of Milan), "La compatibilità del regolamento (CE) n. 261/2004 con la convenzione di Montreal del 1999 in una recente pronuncia della Corte di giustizia" (Compatibility of Regulation (EC) No 261/2004 with the 1999 Montreal Convention in a Recent Judgment by the Court of Justice of the European Union; in Italian)

This article addresses Regulation (EC) No 261/2004 in so far as it deals with delay in the carriage of passengers by air, as interpreted by the Court of Justice of the European Union in the joined cases Nelson and TUI Travel. It considers whether this recent judgment is consistent with the Montreal Convention of 1999 reaching the overall conclusion that it is not. This unsatisfactory result is due to purpose of ensuring a level of protection for passenger higher than that provided by the international uniform rules. This aim has been achieved affirming the interpretation of the Regulation provided in the Sturgeon case, in which the Court went far beyond the wording of the Regulation, and in the IATA case, in which the Court advanced an untenable and ambiguous construction of the relationship between the Montreal Convention and Regulation No 261/2004. Conversely, in deciding the joined cases, the Court neglected its duty to interpret according to the proper criteria provided by international law the treaties ratified by the EU, and failed to ensure that the EU respect its duty as contracting party.

Indexes and archives of the RDIPP since its establishment (1965) are available on the website of the Department of Italian and Supranational Public Law of the University of Milan.