Brekoulakis on International Arbitration Scholarship and the Concept of Arbitration Law

Stavros Brekoulakis (Queen Mary University of London) has posted International Arbitration Scholarship and the Concept of Arbitration Law on SSRN.

> *This article is about the concept of arbitration law and its relationship with international arbitration scholarship. It argues that the field of international arbitration scholarship has developed in isolation and never fully engaged with the crucial movements of international legal scholarship that advanced a more progressive and humanitarian concept of international law. The dearth of interdisciplinary scholarship in arbitration has had two undesirable implications. First, it has had a negative impact on how non-arbitration scholars and the public perceive arbitration. Secondly, and more importantly for the purposes of this article, it has crucially impaired the concept and autonomy of arbitration law. By remaining adherent to an old-fashioned version of positivism that accepts state regulation only, arbitration scholarship has failed to develop an account of international arbitration as a non-state community that has the capacity to produce legal rules. Eventually, it has failed to advance persuasive claims of normativity and autonomy of international arbitration. The article revisits the concept of arbitration law and advances the thesis that arbitration community has the normative potency to generate procedural practices and standards that guide the conduct of arbitration and breed expectations of compliance.*

The paper is forthcoming in the *Fordham International Law Journal*.

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