First EAPIL (Virtual) Seminar on 11 December 2020: Brexit and Private International Law – What now?

On 11 December 2020, from 11 am to 1 pm (MET), the European Association of Private International Law will host the first EAPIL (Virtual) Seminar. Devoted to the impact of Brexit on Private International Law speakers from the United Kingdom and the European Continent will analyze the legal framework that will apply to cross-border cases in the short-term, i.e. as of 1 January 2021 when the transition period provided for in the Withdrawal Agreement has expired. In addition, they will discuss what the future relationship between the EU and the UK could and should look like. Special emphasis will be placed on the question of whether the EU and the UK should strive to adopt a new – bespoke – bilateral agreement (or whether it should simply join existing international conventions).

The speakers of the first session, on civil and commercial matters, will be:

- Alexander Layton (Twenty Essex Street Chambers, London)
- Eva Lein (University of Lausanne)
- Michiel Poesen (KU Leuven)

The second session, on family matters, will feature presentations by:

- Sir Andrew Moylan (Court of Appeal of England and Wales)
- Pietro Franzina (Catholic University of the Sacred Heart, Milan)
- Anatol Dutta (Ludwig Maximilian University Munich).

The Seminar will take place via Zoom. Information about how to register will be announced in due course.

If you have questions concerning the first EAPIL Seminar or the EAPIL Seminar Series as such please get in touch with the Secretary General of EAPIL, Giesela Rühl, at secretary.general@eapil.org.

Background:

The EAPIL (Virtual) Seminar Series was established in October 2020 to contribute to the study and development of (European) Private International Law through English-language seminars on topical issues. It will provide an easily accessible and informal platform for the exchange of ideas – outside the bi-annual EAPIL conferences. At the same time, it will serve as a means for EAPIL members to connect with other EAPIL members and non-members.

Brexit and the UK joining two HCCH Conventions – A convoluted and unorthodox process that has finally come to an end

As announced in a previous post, the UK has (again) joined the 2005 Choice of Court Convention and the 2007 Child Support Convention. On 2 October 2020, the Depositary has officially notified of the ***new*** UK instrument of accession to the Choice of Court Convention and of the ***new*** UK instrument of ratification of the Child Support Convention, including the new UK declarations and reservations. And yes both Conventions have been extended to Gibraltar from the outset.

As you may remember, the previous UK instruments of accession to and ratification of the above-mentioned Conventions were withdrawn because the United Kingdom and the European Union signed, ratified and approved a Withdrawal Agreement. Such an agreement entered into force on **1 February 2020**, and included a transition period that started on the date the Withdrawal Agreement entered into force and which will end on **31 December 2020**. In accordance with the Withdrawal Agreement, during the transition period, European Union law, including the HCCH Conventions, will continue to be applicable to and in the United Kingdom.

While from a public international law standpoint the UK has joined the HCCH Conventions above-mentioned ***three times*** (by EU approval, by accession/ratification – instruments that were later withdrawn, and by accession/ratification in September 2020), the view of the UK is that the HCCH Conventions have applied seamlessly since October 2015 regarding the HCCH Choice of Court Convention and since August 2014 regarding the HCCH Child Support Convention. In this regard, the UK declares:

With respect to the Choice of Court Convention: "Whilst acknowledging that the Instrument of Accession takes effect at 00:00 CET on **1 January 2021**, the United Kingdom considers that the 2005 Hague Convention entered into force for the United Kingdom on **1 October 2015** and that the United Kingdom is a Contracting State without interruption from that date."

With regard to the Child Support Convention: "Whilst acknowledging that the Instrument of Ratification takes effect at 00:00 CET on **1 January 2021**, the United Kingdom considers that the 2007 Hague Convention entered into force for the United Kingdom on **1 August 2014** and that the United Kingdom is a Contracting State without interruption from that date."

Before referring to the UK declarations and reservations, perhaps our readers may find it interesting to get a recap of the unorthodox process by which the UK joined the two HCCH Conventions.

- On 1 October 2015, the UK was bound by the Choice of Court Convention by virtue of its membership of the European Union which approved the Convention on behalf of its Member States;
- On 1 August 2014, the UK was bound by the Child Support Convention by virtue of its membership of the European Union which approved the Convention on behalf of its Member States;
- On 28 December 2018, the UK deposited an instrument of accession to the Choice of Court Convention and an instrument of ratification of the Child Support Convention in the event the Withdrawal Agreement would not be ratified and approved by the UK and the European Union
- On several occasions, the UK suspended the legal effect of the accession/ratification, stating that as the European Council agreed a further extension of the period for withdrawal of the United Kingdom from the European Union under Article 50(3) of the Treaty on European

Union. During the Extension Period, the United Kingdom remains a Member State of the European Union. As a Member State, European Union law, including the Agreement, will remain applicable to and in the United Kingdom. See our previous posts part I, part III;

- The UK extended its accession/ratification to Gibraltar in the event the Withdrawal Agreement would not be ratified and approved by the UK and the European Union. See our previous post here;
- The Withdrawal Agreement between the UK and the European Union was signed and approved and entered into force on 1 February 2020:
- On 31 January 2020, the UK withdrew its instrument of accession to the Choice of Court Convention and its instrument of ratification of the Child Support Convention (incl. declarations and reservations and extension to Gibraltar). See our previous post here;
- On **28 September 2020,** the UK deposited a ***new*** instrument of accession to the Choice of Court Convention and a ***new*** instrument of ratification of the Child Support Convention, incl. declarations and reservations

While this process may seem to be undesirable from a legal standpoint (or just a legal nightmare!), the UK has acted in this way out of an abundance of caution and because of the lack of legal certainty surrounding Brexit.

With regard to the UK declarations, and in addition to the extension to Gibraltar, they seem to be exactly the same as those submitted previously, perhaps with some minor improvements.

The Depositary's notifications are available here for the Child Support Convention and here for the Choice of Court Convention.

Fortunately, the process of joining the above-mentioned Conventions by the UK has finally come to an end.

Lord Jonathan Mance on the future relationship between the United Kingdom and Europe after Brexit

Nicole Grohmann, a doctoral candidate at the Institute for Comparative and Private International Law, Dept. III, at the University of Freiburg, has kindly provided us with the following report on a recent speech by Lord Jonathan Mance.

On Wednesday, 15 July 2020, the former Deputy President of the Supreme Court of the United Kingdom (UKSC), Lord Jonathan Mance, presented his views on the future relationship between the United Kingdom and Europe after Brexit in an online event hosted by the *Juristische Studiengesellschaft Karlsruhe*. This venerable legal society was founded in 1951; its members are drawn from Germany's Federal Constitutional Court, the Federal Supreme Court, the office of the German Federal Prosecutor, from lawyers admitted to the Federal Supreme Court as well as judges of the Court of Appeals in Karlsruhe and the Administrative Court of Appeals in Mannheim. In addition, the law faculties of the state of Baden-Württemberg (Heidelberg, Freiburg, Tübingen, Mannheim, Konstanz) are corporate members. Due to Corona-induced restrictions, the event took place in the form of a videoconference attended by more than eighty participants.

After a warm welcome by the President of the *Juristische Studiengesellschaft*, Dr. Bettina Brückner (Federal Supreme Court), Lord Mance shared his assessment of Brexit, drawing on his experience as a highly renowned British and internationally active judge and arbitrator. In the virtual presence of judges from the highest German courts as well as numerous German law professors and scholars, Lord Mance elaborated – in impeccable German – on the past and continuing difficulties of English courts dealing with judgments of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR) and the future legal struggles caused by the end of the transition period on the withdrawal of the United Kingdom from the European Union on 31 December 2020. Lord Mance's speech was followed by an open discussion regarding the most uncertain political

and legal aspects of Brexit.

In his speech, Lord Mance highlighted the legal difficulties involved in the withdrawal of his country from the European Union. Since Lord Mance himself tends to picture the British as being traditional and generally pragmatic, he named Brexit as a rare example of a rather unpragmatic choice. Especially with regard to the role of the United Kingdom as a global and former naval power, Lord Mance considered Brexit a step backwards. Besides the strong English individualism, which has evolved over the past centuries, the United Kingdom did not only act as an essential balancing factor between the global players in the world, but also within the European Union. Insofar, the upcoming Brexit is a resignation of the United Kingdom from the latter position.

Subsequently, Lord Mance focussed on the role of the European courts, the European Court of Justice and the European Court of Human Rights and their judgments in the discussions leading to Brexit. Both European courts gained strong importance and influence in the UK within the first fifteen years of the 21st century. Especially, the ECtHR is of particular importance for the British legal system since the Human Rights Act 1998 incorporated the European Convention on Human Rights into British law. Lord Mance described the Human Rights Act 1998 as a novelty to the British legal system, which lacks a formal constitution and a designated constitutional court. Apart from the Magna Charta of 1215 and the Bill of Rights of 1689, the British constitutional law is mainly shaped by informal constitutional conventions instead of a written constitution such as the German Basic Law. Following the Human Rights Act 1998 and its fixed catalogue of human rights, the British courts suddenly exercised a stricter control over the British executive, which initially gave rise to criticism. Even though the British courts are not bound by the decisions of the ECtHR following the Human Rights Act 1998, the British participation in the Council of Europe soon started a dialogue between the British courts and the ECtHR on matters of subsidiary and the ECtHR's margin of appreciation. The UK did not regard the growing caseload of the ECtHR favourably. Simultaneously, the amount of law created by the institutions of the European Union increased. Lord Mance stressed the fact that in 1973, when the United Kingdom joined the European Economic Community, the impact of the ECJ's decision of 5 February 1963 in *Van Gend & Loos*, C-26/62, was not taken into account. Only in the 1990s, British lawyers discovered the full extent and the ramifications of the direct application of European Union law. The

binding nature of the ECJ's decisions substantiating said EU law made critics shift their attention from Strasbourg to Luxembourg.

In line with this development, Lord Mance assessed the lack of a constitutional court and a written constitution as the main factor for the British hesitance to accept the activist judicial approach of the ECJ, while pointing out that Brexit would not have been necessary in order to solve these contradictions. The EU's alleged extensive competences, the ECJ's legal activism and the inconsistency of the judgments soon became the primary legal arguments of the Brexiteers for the withdrawal from the EU. Especially the ECJ's teleological approach of reasoning and the political impact of the judgments were mentioned as conflicting with the British cornerstone principles of parliamentary sovereignty and due process. Lord Mance stressed that the so-called *Miller* decisions of the Supreme Court in *R (Miller) v Secretary of State* [2017] UKSC 5 and *R (Miller) v The Prime Minister, Cherry v Advocate General for Scotland* (Miller II) [2019] UKSC 41, dealing with the parliamentary procedure of the withdrawal from the EU, are extraordinary regarding the degree of judicial activism from a British point of view. In general, Lord Mance views British courts to be much more reluctant compared to the German Federal Constitutional Court in making a controversial decision and challenging the competences of the European Union. As a rare exception, Lord Mance named the decision in *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3, in which the UKSC defended the British constitutional instruments from being abrogated by European law. Indeed, Lord Mance also expressed scepticism towards the jurisprudential approach of the ECJ, because inconsistences and the need of political compromise could endanger the foreseeability and practicability of its decisions. Especially with regard to the recent decision of the German Constitutional Court of 5 May 2020 on the European Central Bank and the Court's approach to *ultra vires*, Lord Mance would have welcomed developing a closer cooperation between the national courts and the ECJ regarding a stricter control of the European institutions. Yet this important decision came too late to change Brexiteers' minds and to have a practical impact on the UK.

Finally, Lord Mance turned to the legal challenges resulting from the upcoming end of the transition period regarding Brexit. The European Union (Withdrawal) Acts 2018 and 2020 lay down the most important rules regarding the application of EU instruments after the exit day on 31 December 2020. In general, most

instruments, such as the Rome Regulations, will be transposed into English domestic law. Yet, Lord Mance detected several discrepancies and uncertainties regarding the scope of application of the interim rules, which he described as excellent bait for lawyers. Especially two aspects mentioned by Lord Mance will be of great importance, even for the remaining Member States: Firstly, the British courts will have the competence to interpret European law, which continues to exist as English domestic law, without the obligation to ask the ECJ for a preliminary ruling according to Art. 267 TFEU. In this regard, Lord Mance pointed out the prospective opportunity to compare the parallel development and interpretation of EU law by the ECJ and the UKSC. Secondly, Lord Mance named the loss of reciprocity guaranteed between the Member States as a significant obstacle to overcome. Today, the United Kingdom has to face the allegation of 'cherry picking' when it comes to the implementation of existing EU instruments and the ratification of new instruments in order to replace EU law, which will no longer be applied due to Brexit. Especially with regard to the judicial cooperation in civil and commercial matters and the recast of the Brussels I Regulation, the United Kingdom is at the verge of forfeiting the benefit of the harmonized recognition and enforcement of the decisions by its courts in other Member States. In this regard, Lord Mance pointed out the drawbacks of the current suggestion for the United Kingdom to join the Lugano Convention, mainly because it offers no protection against so-called torpedo claims, which had been effectively disarmed by the recast of the Brussels I Regulation – a benefit particularly cherished by the UK. Instead, Lord Mance highlighted the option to sign the Hague Convention of 30 June 2005 on Choice of Court Agreements which would allow the simplified enforcement of British decisions in the European Union in the case of a choice of court agreement. Alternatively, Lord Mance proposed the ratification of the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments. So far, only Uruguay and Ukraine have signed this new convention. Nevertheless, Lord Mance considers it as a valuable option for the United Kingdom as well, not only due to the alphabetical proximity to the other signatories.

Following his speech, the event concluded with a lively discussion about the problematic legal areas and consequences of Brexit, which shall be summarised briefly. Firstly, the President of the German Supreme Court Bettina Limperg joined Lord Mance in his assessment regarding the problem of jurisprudential inconsistency of the ECJ's decisions. However, like Lord Mance she concluded

that the Brexit could not be justified with this argument. Lord Mance pointed out that in his view the ECJ was used as a pawn in the discussions surrounding the referendum, since the Brexiteers were unable to find any real proof of an overarching competence of the European Union. Secondly, elaborating on the issue of enforceability, Lord Mance added that he considers the need for an alternative to the recast of the Brussels I Regulation for an internationally prominent British court, such as the London Commercial Court, not utterly urgent. From his practical experience, London is chosen as a forum mainly for its legal expertise, as in most cases enforceable assets are either located in London directly or in a third state not governed by EU law. Hence, Brexit does not affect the issue of enforceability either way. Finally, questions from a constitutional perspective were raised regarding the future role of the UKSC and its approach concerning cases touching on former EU law. Lord Mance was certain that the UKSC's role would stay the same regarding its own methodological approach of legal reasoning. Due to the long-standing legal relationship, Lord Mance anticipated that the legal exchange between the European courts, UK courts and other national courts would still be essential and take place in the future.

In sum, the event showed that even though Brexit will legally separate the United Kingdom from the European Union, both will still be closely linked for economic and historical reasons. As Lord Mance emphasized, the UK will continue to work with the remaining EU countries in the Council of Europe, the Hague Conference on PIL and other institutions. Further, the discrepancies in the Withdrawal Acts will occupy lawyers, judges and scholars from all European countries, irrespective of their membership in the European Union. Lastly, the event proved what Lord Mance was hoping to expect: The long-lasting cooperation and friendship between practitioners and academics in the UK and in other Member States, such as Germany, is strong and will not cease after Brexit.

Brexit and Cross-Border

Insolvency

The latest issue of the Italian Journal *Diritto del commercio internazionale* (34.1/2020) features an article (in English) on "*Brexit and Cross-Border Insolvency Looking Beyond the Withdrawal Agreement*" written by Antonio Leandro (University of Bari).

The abstract of the article reads as follows: "*The UK and the EU have concluded the Withdrawal Agreement which officially triggers the so-called Brexit. However, the real effects of the Brexit still are unclear, at least as regards the future following the end of the transition period provided for by the Withdrawal Agreement during which the UK will be treated as if it were a Member State. After the transition period, mini hard Brexit(s) are in fact likely for matters currently governed by the EU Law that the Parties will not want to relocate in new legal frameworks, such as bilateral treaties. The paper addresses the consequences of a mini hard Brexit for cross-border insolvency proceedings involving the UK and the Member States with the aim to explain why this specter should be avoided*".

Brexit & Lugano

Written by Jonathan Fitchen

The UK's intention to attempt to accede to the 2007 Lugano Convention is apparently proceeding apace. Though the events leading up to Friday 31st January, when the UK left the EU, rather overshadowed this fact, the UK Government had already announced that its intention to accede by a posting on 28th January 2020 that may be found here https://www.gov.uk/government/news/support-for-the-uks-intent-to-accede-to-the-lugano-convention-2007 As will be remembered, the 2007 Lugano Convention is open to non-EU third States if the consent of all the existing Convention parties can be first secured. The UK Gov posting records that the UK has secured

statements in support of it joining the 2007 Convention from the Swiss, the Norwegians and Iceland. So now all that is required is to secure the consent of the EU to this course of action. Assuming that such consent can be secured, the UK Gov posting records that it is the intention of the UK Government to accede to the 2007 Convention at the end of the transition period (currently scheduled / assumed for 23.00 GMT on 31st December 2020).

Brexit – no need to panic: The UK intends to deposit new instruments of ratification of the HCCH Child Support Convention and accession to the HCCH Choice of Court Convention prior to the termination of the transition period (ending on 31 December 2020). In the meantime, it's business as usual.

In an unprecedented manner, the UK has dealt with its problems around Brexit and its relations with the Contracting States to two HCCH Conventions on the international plane. The Depositary (*i.e.* the Ministry of Foreign Affairs of the Kingdom of the Netherlands) has just announced that the UK has withdrawn its instruments of ratification of the HCCH Child Support Convention and instrument of accession to the HCCH Choice of Court Convention, together with its

declarations and extension to Gibraltar, which actually never came into effect and were apparently only a backup option to a no-deal Brexit; see our previous posts ("some Brexit news" part 1, part 2 and part 3 and the more recent post "Brexit: No need to stop all the clocks" here).

As stated in the notification, the reason for the withdrawal of the instruments is the following: "Since the deposit of the Instrument of [Ratification and Accession], the United Kingdom and the European Union have signed, ratified and approved a Withdrawal Agreement, which will enter into force on 1 February 2020 (the "Withdrawal Agreement"). The Withdrawal Agreement includes provisions for a transition period to start on the date the Withdrawal Agreement enters into force and end on 31 December 2020 (the "transition period"*). In accordance with the Withdrawal Agreement, during the transition period, European Union law, including the Agreement, will continue to be applicable to and in the United Kingdom*" (our emphasis).

In its Note, the UK adds that it intends to deposit ***new*** **instruments of ratification of and accession to the above-mentioned Conventions** prior to the termination of the transition period. It remains to be seen whether the UK will submit the same declarations and whether it will extend those Conventions to Gibraltar.

The Depositary's notifications are available here
for the Child Support Convention and here
for the Choice of Court Convention.

Brexit: No need to stop all the clocks.

Written by Jonathan Fitchen.

'The time has come'; a common enough phrase which may, depending on the reader's mood and temperament, be attributed variously to Lewis Carroll's

discursive Walrus, to Richard Wagner's villainous Klingsor, or to the conclusion of Victor Hugo's epigrammatic comment to the effect that nothing is as powerful as an idea whose time has come. In the present context however 'the time has come' refers more prosaically to another step in the process described as 'Brexit' by which the UK continues to disentangle itself from the EU.

On the 31st of January 2020 at 24.00 CET (23.00 UK time) the UK ceases to be an EU Member State. This event is one that some plan to celebrate and other to mourn. For those interested in private international law and the conflict of laws in the EU or in the legal systems of the UK, celebration is unlikely to seem apt. Whether for the mundane reason that the transition period of the Withdrawal Agreement preserves the practical application and operation of most EU law concerning our subject in the UK and within the EU27 until the projected end point of 31st December 2020, or for deeper reasons connected with the losses to the subject that the EU and the UK must each experience due to the departure of the UK from the EU. If celebration is not appropriate must we therefore opt to mourn? This post suggests that mourning is not the only option (nor if overindulged is it a useful option) and sets out some thoughts on the wider implications for the private international laws of the UK's legal systems and the legal systems that will comprise the EU27 consequent on the UK's departure.

This exercise is necessarily speculative and very much a matter of what one wishes to include in or omit from the equation under construction. If too little is included, the result may be of only abstract relevance; if too much is included, the equation may be incapable of solution and hence useless for the intended purpose of calculation. Such difficulties, albeit expressed in a non-mathematical form, are familiar to private international lawyers who while engaging with their subject routinely consider the macroscopic, the microscopic and many points in between. In what remains of this post I will offer some thoughts that hopefully will provoke further thoughts while avoiding useless abstraction and (at least for present purposes) 'useless' incalculability.

The loudest calls for the UK to leave the EU did not arise from UK private international

law, nor from its practitioners; few UK private international lawyers appear to have wished for Brexit as a means of reforming private international law. Whatever appeals to nostalgia may have swayed opinions in other sectors of the UK
and may have induced those within them to vote to leave, they were not expressed with reference to matters of private international law. Few who remember or know the law as it stood in any of the UK's legal systems prior to the implementation of the UK's accession to the Brussels Convention of 1968 would willingly journey back to the law as it then stood and regard it as an upgrade. Mercifully, aspects of this view are, at present, apparently shared by the UK Government and account for its wish, after 'copying and pasting' most EU law and private international law into the novel domestic category of 'retained EU Law', to then amend and allow that which does not depend on reciprocity to be
re-presented as a domestic private international law to be applied within and by the UK's legal systems: thus the Rome I and Rome II Regulations will be eventually
so 'imitated' within the legal systems of the UK. Unfortunately, many other EU provisions do require reciprocity, and thus cannot be 'saved' in this manner; for these provisions the news in the UK is less good.

There are however
other available means of salvage. Because the UK will no longer be an EU Member
State at 24.00 Brussels Time it may, but for the Withdrawal Agreement, thereafter participate more fully in proceedings and projects at the Hague Conference on Private International Law. The UK plans to domestically clarify the domestic understanding of certain existing Hague conventions, e.g. 1996 Parental Responsibility Convention, via the recently announced Private International Law (Implementation of Agreements) Bill 2019. Earlier in 2018 the UK deposited instruments of accession concerning conventions it plans to ratify at the end of the Withdrawal Agreement's transition period to attempt to retain prospectively the salvageable aspects of certain reciprocity requiring EU private international law Regulations lost via Brexit: thus, the UK plans to ratify the 2005 Choice of Court Convention and the 2007 Maintenance Convention.
After these ratifications it may be that the UK will also consider the

ratification of the 2019 judgment enforcement convention, particularly it the EU takes this option too. In the medium and long term however, the UK, assuming it wishes to participate in an active sense, will have to accept the practical limitations of the HCCH as it (the UK) becomes accustomed to the differences, difficulties and frustrations of private international law reform via optional instruments that *all* the intended parties are entitled to refuse to opt-in to or ratify.

Over the medium term and longer term, it should additionally be noted that though the UK has left the EU it has not cast-off and sailed away from continental Europe at a speed in excess of normal tectonic progress: there may therefore eventually be further developments between the two. It may be that the UK can be induced at some point in the future, when Brexit has become more mundane and less politically volatile within the UK, to cooperate in relation to private international law in a deeper sense with the EU27; whether by negotiating to join the 2007 Lugano Convention or a new convention pertaining to aspects of private international law. If this last idea seems too controversial then maybe it would be possible for the UK to eventually negotiate with an existing EU Member State as a third country via Regulation 664/2009 or Regulation 662/2009 or perhaps via another yet to be produced Regulation with a somewhat analogous effect? Brexit, considered in terms of private international law, may well re-focus a number of existing questions for the EU27 pertaining to the interaction of its private international law with third States, whether former Member States or not.

What is however unavoidably lost by Brexit is the UK's direct influence on the development and particularly the periodic recasting of the EU's private international law: this loss cuts both ways. For the EU27 the UK will no longer be at the negotiating table to offer suggestions, criticisms and improvements to the texts of new and recast Regulations. For the EU27 this loss is somewhat greater than it might appear from the list of Regulations that the UK did not opt-in to as the terms of the UK's involvement in these matters permitted it to so participate without having opted-in to the draft Regulation.

The suggested loss of influence will however probably be felt most acutely by the private

international
lawyers in the UK. Despite the momentary impetus and excitement of salvaging that which may be salvaged and ratifying that which may be ratified to mitigate the effect of Brexit on private international law, the reality is that we in the UK will have lost two of the motive forces that have seen our subject develop and flourish over decades: viz. the European Commission and the domestic political reaction thereunto. Post-Brexit, once the salvaging (etc.) is done, it seems unlikely that the UK Government will continue to regard a private international law now no longer affected by Commission initiatives or re-casting procedures as retaining its former importance or meriting any greater legislative relevance than other areas of potential law reform. The position may be otherwise in Scotland as private international law is a devolved competence that devolution entrusted to the Scottish Government. It may be that once the dust has settled and the returning UK competence related reforms have been applied that the comparatively EU-friendly Scottish Government may seek to domestically align aspects of Scots private international law with EU law equivalents.

For he who would
mourn for the effect of Brexit on the subject of private international law, it is the abovementioned loss of influence of the subject at both the EU level and particularly at the domestic level that most merits a brief period of mourning. After this, the natural but presently unanswerable question of, ‘What now?’ occurs.
Though speculation is offered above, all in the short term will depend on the progress
in negotiations over an unfortunately already shortened but technically still extendable transition period during which the EU and UK are to attempt to negotiate a Free Trade Agreement: thereafter for the medium term and long term all
depends on the future political relationship of the EU and the UK.

Development of Private International Law in the UK post Brexit.

The event is **free to attend**. The following URL provides full information and registration details: https://www.eventbrite.com/e/the-development-of-private-international-law-in-the-uk-post-brexit-tickets-89779245139

Date: Friday 28th February 2020, 9am-5pm.

Location: Queen Mary
University of London, 67-69 Lincoln's Inn Fields, Room 3.1, London, WC2A 3JB

This is the first of four public AHRC
workshops on Private International Law after Brexit from global, European,
Commonwealth and intra-UK perspectives.

About the event

With Brexit having taken place on 31 January
2020 this workshop comes at an ideal time to focus on how private international law in the UK should develop once the implementation period for the UK leaving the EU has finished (which under UK law should be on 31 December 2020). Several
eminent speakers will address the issue from four key perspectives:

- **Global – Professor**
  Trevor Hartley LSE
- **Commonwealth –**
  Professor David McClean, University of Sheffield
- **EU/EEA – Michael**
  Wilderspin – Commission Legal Service
- **Intra-UK – Dr Kirsty**
  Hood QC, Faculty of Advocates, Scotland

There will be a discussant for each perspective and then plenty of time for questions and comments after each main speaker.

The workshop will also hear from the organisers of this AHRC Research Network:

- Professor Paul Beaumont, University of Stirling
- Dr Mihail Danov, University of Exeter (who will report on his English pilot study)

Furthermore some empirical research findings will be shared by:

- Professor Sophia Tang, University of Newcastle
- Dr Jayne Holliday, University of Stirling

Those interested in advising on the development of this Research Network are welcome to stay for an informal meeting to be held at the end of the workshop between 5.10 and 6pm.

This event is free and open to all but registration is required because spaces are limited.

Professor Paul Beaumont and Dr Mihail Danov would like to thank Queen Mary University of London for their wonderful support by hosting the first three workshops and also AHRC for funding the Research Network.

Future Events

The second and third workshop of this series will be held on Wednesday 1st and Thursday 2nd April 2020 in the same location, Queen Mary University of London, Room 3.1, 67-69 Lincoln's Inn Field, London and will focus on the future development of private international law in the UK in relation to commercial law (April 1) and family law (April 2).

The final workshop will be held on Thursday

2nd July 2020. This will be held as a joint venture with the Journal of Private International Law and will be held at Reed Smith, Broadgate Tower, 20 Primrose Street, EC2A 2RS

Tickets for these events will be available shortly.

Some Brexit news (part III): The UK ratification of the HCCH Child Support Convention and the UK accession to the HCCH Choice of Court Convention remain suspended until 1 February 2020

This week the Depositary of the HCCH Conventions informed all Contracting Parties that the UK ratification of the HCCH Child Support Convention and the UK accession to the HCCH Choice of Court Convention, including the UK extension to Gibraltar under both Conventions, remain suspended until **1 February 2020**.

The above is pursuant to the declaration made by the United Kingdom on 30 October 2019, which informed the Depositary that "the European Council has agreed a further extension of the period for the withdrawal of the United Kingdom from the European Union under Article 50(3) of the Treaty on the European Union (the "Extension Period") which would last until 31 January 2020, or any of the earlier specified dates on which the Withdrawal Agreement enters into force."

This of course comes as no surprise to many of us. Nevertheless, it is important to bear in mind the new date specified by the Depositary, which seems to cope with

a no-deal Brexit scenario and can have important practical consequences (*e.g.* applicable declarations, temporal scope of application). Importantly, and as indicated in the relevant notifications, in the event that a Withdrawal Agreement is signed, ratified and approved by the United Kingdom and the European Union and enters into force prior to or on 1 February 2020, *the United Kingdom will* ***withdraw*** *the Instrument of Ratification and the Instrument of Accession (including the extension to Gibraltar) to the above-mentioned Conventions.*

Our previous posts on this matter are available here (part I) and here (part II).

The notifications of the Depositary are available here (Child Support Convention) and here (Choice of Court Convention).

The European Union, as a Regional Economic Integration Organisation, approved both the Child Support Convention and the Choice of Court Convention on 9 April 2014 and 11 June 2015, respectively.

Some Brexit news: The UK has extended the Hague Child Support Convention and the Hague Choice of Court Convention to Gibraltar in the event the Withdrawal Agreement is not approved

On 31 July 2019, the United Kingdom of Great Britain and Northern Ireland (UK) extended the *HCCH Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (Child Support Convention) and the *HCCH Convention of 30 June 2005 on Choice of Court Agreements* (Choice of Court Convention) to Gibraltar in the event the

Withdrawal Agreement is not ratified and approved.

As indicated in the UK Notes: "[t]he United Kingdom is responsible for the international relations of Gibraltar and wishes to ensure that Gibraltar continues to be covered by the Agreement[s] in the event that the Withdrawal Agreement is not approved." If the Withdrawal Agreement is indeed signed, ratified and approved by the UK and the European Union, the UK will withdraw its instrument of ratification to the Child Support Convention and its instrument of accession to the Choice of Court Convention and its declarations of territorial extent (incl. reservations) to Gibraltar. The Depositary of the HCCH Conventions is the Ministry of Foreign Affairs of the Netherlands.

The UK has made a number of declarations and reservations under these Conventions for Gibraltar. For more information, please click here (Child Support Convention) and here (Choice of Court Convention).

The European Union, as a Regional Economic Integration Organisation, approved both the Child Support Convention and the Choice of Court Convention on 9 April 2014 and 11 June 2015, respectively.