Advocate General opines on Article 15 (1) lit. c) Brussels I in Mühlleitner (C-190/11)

On 24 May 2012 Advocate General Villalón delivered his opinion in *Mühlleitner* (C-190/11) concerning the interpretation of Article 15 (1) lit. c) of the Brussels I-Regulation. The Austrian Supreme Court had referred the following question to the European Court of Justice: "Does the application of Article 15 (1) (c) 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 presuppose that the contract between the consumer and the undertaking has been concluded at a distance?" In his opinion Advocate General Villalón answers this question in the negative. Neither the history of the provision, nor its purpose nor the decision of the ECJ in *Pammer* and *Alpenhof* required that the contract be concluded at a distance.

The full opinion can be downloaded here, albeit not yet in English.

The Max Planck Institute Luxemburg for International, European and Regulatory Procedural Law

On June 1st, the Max Planck Society and the Government of the Grand Duchy of Luxemburg announced the foundation of a new Max Planck Institute for International, European and Regulatory Procedural Law (more information). Located at the Kirchberg Plateau, the Institute shall operate in three areas: the European law of civil procedure, international litigation and arbitration, financial

markets and listed corporations. Professor Burkhard Hess (University of Heidelberg) and Professor Marco Ventoruzzo (University Bocconi Milano) accepted calls to the directorship of the Institute. They intend to start work in Luxemburg before the end of this year. A third Scientific Member of the Board of Directors will be appointed in coordination with the two Founding Directors. Slovenian legal expert Verica Trstenjak, who has been Advocate General at the European Court of Justice since 2006, is an External Scientific Member of the Institute.

- The Luxembourg Institute shall comprehensively investigate modern civil procedural law, dispute resolution and different approaches to regulation. It focusses at European and international, at inter-disciplinary and comparative elements of dispute resolution and of regulation. Being the first Max Planck Institute on legal research located outside of Germany, it shall closely cooperate with the Faculty of Law, Economics and Finance of the Luxembourg University.

The Institute is seeking to hire senior and junior legal researchers either on a full time or temporary basis.

Several positions are available in the department for European and comparative procedural law. Interested candidates are kindly invited to send their applications to Professor Burkhard Hess. Please click here for further information.

Information regarding positions in the department of regulatory procedural law can be found here.

ATS and Extraterritoriality: A Point of View

Profs. Juan José Álvarez Rubio, Henry S. Dahl, José Luis Iriarte Ángel, Olga Martín-Ortega, Alberto Muñoz Fernández , Lorena Sales Pallarés, Nicolás

Zambrana Tévar and Francisco Javier Zamora Cabot (Reporter), are members of the *Grupo de Estudio Sobre el Derecho internacional privado y los Derechos Humanos (**Group Of Study On Private International Law And Human Rights**)*. The Group has recently produced some notes on *Kiobel* and the issue of extraterritoriality in response to several *Amicus Curiae*, especially those of Germany, the Netherlands and the UK. Main premise of the paper is that discussion of the ATS should steer clear of the debate on extraterritoriality – id. est., be kept apart from what the group consider a sterile, artificial inclusion in the debate, and go on being applied extraterritorial, as it has occured for many decades. Download here.

Liber Amicorum for Klaus Schurig

Ralf Michaels and *Dennis Solomon* have published a Festschrift to honor the work and life of Klaus Schurig, a leading German conflict of laws scholar. The Festschrift contains contributions by friends and colleagues dealing with current topics in German and European private international law.

More information (in German) is available here. The table of contents reads as follows:

- Der gutgläubige Zwischenerwerb am Beispiel des § 16 Abs. 3 GmbHG, *Holger Altmeppen*
- Die Liberalisierung der Strafaussetzung zur Bewährung im Jugendstrafrecht*, Werner Beulke*
- Rechtswahlmöglichkeiten im Europäischen Kollisionsrecht*, Dagmar Coester-Waltjen und Michael Coester*
- Fremdsprachengebrauch durch deutsche Zivilgerichte ? Vom Schutz legitimer Parteiinteressen zum Wettbewerb der Justizstandorte, *Wolfgang Hau*
- Vorfragen im Familien- und Erbrecht: eine unendliche Geschichte*, Dieter Henrich*
- Einverständliche Ehescheidung und Internationales Privatrecht*, Erik*

Jayme

- Kollisionsnorm und Sachrecht im IPR der unerlaubten Handlung, *Abbo Junker*
- Vertragsinhalt oder Geschäftsgrundlage? – BGH „3 cm geschätzt“ (30.6.2011, VII ZR 13 / 10), NZBau 2011, 553*, Klaus D. Kapellmann*
- Europa und Zivilrecht heute – Eine Skizze*, Ulrich Klinke*
- Einige Anmerkungen zum traditionellen islamischen Kollisionsrecht*, Hilmar Krüger*
- Methodeneinheit und Methodenvielfalt im Internationalen Privatrecht –Eine Generation nach „Kollisionsnorm und Sachrecht“*, Gunther Kühne*
- Ein Vollmachtsstatut für Europa*, Gerald Mäsch*
- Das Bündelungsmodell im Internationalen Privatrecht*, Peter Mankowski*
- Movables or immovables – Zur Qualifikation eines vererbten Miterbenanteils im deutsch-englischen Erbrechtsverkehr*, Heinz-Peter Mansel*
- Die Struktur der kollisionsrechtlichen Durchsetzung einfach zwingender Normen*, Ralf Michaels*
- Zur Nacherfüllung beim Kauf*, Hans-Joachim Musielak*
- Datumtheorie und „local data“ in der Rom II-VO – am Beispiel von Straßenverkehrsunfällen*, Thomas Pfeiffer*
- Die Renaissance des Renvoi im Europäischen Internationalen Privatrecht*, Dennis Solomon*
- Handeln unter fremdem Namen in England und Deutschland*, Ulrich Spellenberg*
- Zur Qualifikation der nichtehelichen Lebensgemeinschaft im Europäischen Zivilprozess- und Kollisionsrecht*, Andreas Spickhoff*
- Rückerstattung nach dem Draft Common Frame of Reference und den nachfolgenden Gesetzgebungsschritten zu einem einheitlichen Europäischen Privatrecht*, Jan Wilhelm*

Mills on Cosmopolitan Sovereignty

Alex Mills (University College London) has posted Normative Individualism and Jurisdiction in Public and Private International Law: Toward a 'Cosmopolitan Sovereignty'? on SSRN. The abstract reads:

This paper examines one aspect of the role of the individual in international law, through analysis of the increasing recognition of individual rights in the context of jurisdiction in both public and private international law. Jurisdiction has traditionally been considered in international law as a right or power of states. The challenge to this traditional approach has arisen both at the international level and also within states, through the rise in theory and practice of doctrines of 'denial of justice', 'access to justice' and 'party autonomy', which reflect the increasing treatment of jurisdiction as a matter of individual right rather than state power. These developments arguably signify a transformation in the status of individuals at both international and national levels, from the passive objects of jurisdictional regulation to active rights-holders.

The analysis in this paper therefore highlights a challenge which cuts across the dual aspects of sovereignty – as international law increasingly recognises the power of legal persons beyond the state, this also provides a challenge to the claims for exclusive legal authority within states. This can also be described as the recognition of the individual, alongside the state, as a 'sovereign' actor, or as the recognition of 'normative individualism' in international and domestic law. The increased recognition of the individual in international law is a key feature of the arguments of cosmopolitan legal theorists – the challenge of normative individualism may therefore further be described as the question of whether, or to what extent, there is an emerging idea of 'cosmopolitan sovereignty' which attempts to accommodate the normative value of both state and individual actors.

Chevron, Ecuador, Canada

Ecuadorian Plaintiffs are seeking to enforce the $18.2 Ecuadorian judgment against Chevron in Canada. This piece of news was published yesterday by Roger Alford (Opinio Iuris), with a link to a copy of the Statement of Claim and his own opinion on the chances of the claim for recognition. Worth reading for those interested in the fate of this unique case.

U.S. Symposium on Forum Non Conveniens and Enforcement of Foreign Judgments

Letters Blogatory is currently holding a very interesting online symposium on Forum Non Conveniens and Enforcement of Foreign Judgments.

Contributors include Ronald Brand, Cassandra Burke, Christopher Whythock, Douglas Cassel, Aaron Marr Page.

Smits on Party Choice and the Common European Sales Law

Jan M. Smits, Professor of European Private Law at Maastricht University Faculty of Law – Maastricht European Private Law Institute (M-EPLI) and Research Professor of Comparative Legal Studies at University of Helsinki – Center of Excellence in Foundations of European Law and Polity has posted **"Party Choice and the Common European Sales Law, or: How to Prevent the CESL from**

Becoming a Lemon on the Law Market" on SSRN. The paper can be downloaded here. The abstract reads as follows:

> *Optional legal regimes, such as the Proposal for a Regulation on a Common European Sales Law (CESL), must derive their success from being chosen by parties. This contribution asks on what conditions it is dependent whether parties will choose for an optional regime such as the CESL. This requires a clear view of the added value of so-called vertical jurisdictional competition, of the preferences of business and consumers, and of the choices available to contracting parties when designing their contractual relationship. It is argued that in order to be an attractive competitor on the law market, the proposed CESL must meet three requirements. First, it must be significantly different from existing options by offering more innovative solutions, reflecting an alternative view of contractual justice or offering a wider scope of application. Secondly, parties should be able to easily recognize the benefits of a choice for the CESL, calling for innovative ways of marketing such as user-based rankings. Thirdly, the costs of making the CESL applicable must be low compared to other available options. Only if these requirements are met – which is not the case with the present Proposal – it is avoided that CESL turns into a lemon on the European law market.*

Folkman on International Judicial Assistance

Theodore J. Folkman, who practices at Murphy & King, P.C. in Boston, has just published International Judicial Assistance for Massachusetts Lawyers. Many readers will know Ted's work from Letters Blogatory, the Blog of International Judicial Assistance and one of the great and most active blogs in North America on international civil procedure.

> *In a global economy, litigators are increasingly dealing with foreign parties, witnesses, evidence, and judgments in the course of representing their clients.*

International Judicial Assistance offers clear, practical guidance on the law, procedure, and best practices for accomplishing a number of essential actions requiring international judicial assistance: serving process, obtaining depositions and documentary evidence, and enforcing foreign judgments and arbitration awards. With frequent practice notes, sample forms, and concrete explanations, International Judicial Assistance is an indispensable resource for any litigator.

I think that one of the great advantages of Folkman's book is that it does not only deal with issues which are common to all U.S. states (either because they are governed by federal law, or by an international convention), but it also presents in details the particular rules of one state (Massachusetts) for other issues. Many readers outside of the United States will appreciate to get clear answers on all issues, even when they are governed by state law.

More details on the book can be found here.

Italian Society of International Law's XVII Annual Meeting (Genova, 31 May – 1 June 2012)

On 31 May – 1 June 2012, the **Italian Society of International Law** (Società Italiana di Diritto Internazionale – SIDI) will hold its **XVII Annual Meeting at the University of Genova**. The conference is dedicated to "L'Unione europea a vent'anni da Maastricht: verso nuove regole" (European Union 20 Years After the Maastricht Treaty: Towards New Rules) (see the complete programme here).

The opening session, in the afternoon of Thursday 31 May, will be devoted to international economic law, focusing on the euro crisis ("Diritto internazionale dell'economia e crisi dell'euro"). In the morning of Friday, 1 June, the meeting

will be structured in two parallel sessions, respectively dealing with international trade law ("Unione europea e diritto del commercio internazionale") and private international law ("Le nuove sfide del diritto internazionale privato e processuale europeo"). The final session (Friday 1 June, afternoon) will analyse the effects of EU Law on national procedural law of the Member States ("Gli effetti del diritto dell'Unione europea sul diritto processuale nazionale").

Here's the programme of sessions 2-4:

Friday, 1 June 2012 (parallel sessions: 9h00 – 13h00)

Unione europea e diritto del commercio internazionale (venue: Facoltà di Giurisprudenza, Aula Magna)

Chair: *A. Mazzoni* (Univ. of Milan)

- *F. Marrella* (Univ. of Venice and EIUC): Unione europea e investimenti esteri;
- *P. Kindler* (Univ. of Munich): Crisi dell'impresa e insolvenza transnazionale;
- *L. Radicati di Brozolo* (Catholic University of Milan): *Corporate governance* tra autonomia privata, norme e *best practices*;
- *D. Gallo* (Univ. LUISS – Guido Carli of Rome): *Golden shares* e diritto dell'Unione europea: sviluppi e prospettive tra mercato interno ed investimenti extracomunitari;
- *G. Peroni* (Univ. of Milan): Gli aiuti di stato alle imprese in tempo di crisi e loro compatibilità rispetto alle regole del commercio europeo ed internazionale.

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Le nuove sfide del diritto internazionale privato e processuale "europeo" (venue: Facoltà di Giurisprudenza, Aula Meridiana)

Chair: *F. Pocar* (Univ. of Milan)

- *H. Kronke* (Univ. of Heidelberg): La legge applicabile alla responsabilità e alla disciplina delle *intermediated securities*;
- *S. Bariatti* (Univ. of Milan): Abuso del diritto, conflitti di leggi e diritto del commercio internazionale;

- *B. Nascimbene* (Univ. of Milan): Operatività e limiti del mutuo riconoscimento nella circolazione delle sentenze e degli atti;
- *A. Leandro* (Univ. of Bari): Verso il futuro sequestro europeo su conti bancari nel bilanciamento tra tutela del creditore e tutela dei diritti fondamentali del debitore;
- *M. Maltese* (Univ. of Rome "Tor Vergata"): Le forme di cooperazione internazionale nelle procedure di insolvenza transfrontaliere.

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Friday, 1 June 2012 (final session: 14h30 – 19h00)

Gli effetti del diritto dell'Unione europea sul diritto processuale nazionale (venue: Facoltà di Giurisprudenza, Aula Magna)

Chair: *C. Consolo* (Univ. of Padova)

- *E. Cannizzaro* (Univ. of Rome "La Sapienza"): Diritto dell'Unione europea e processo civile;
- *R. Mastroianni* (Univ. of Naples "Federico II"): Diritto dell'Unione europea e processo penale;
- *L. Daniele* (Univ. of Rome "Tor Vergata"): Diritto dell'Unione europea e processo amministrativo;
- *P. De Pasquale* (University LUM "Jean Monnet"): Diritto dell'Unione europea e procedimenti davanti alle autorità indipendenti;
- *P. Ivaldi* (Univ. of Genova): Diritto dell'Unione europea e processo costituzionale.

Final Report: *S.M. Carbone* (Univ. of Genova).