Seminar on Private International Law: Programme

As already announced, the Facultad de Derecho of the Complutense University of Madrid is hosting a new edition of the International Seminar on Private International Law, organised bu Prof. Fernández Rozas and Prof. De Miguel Asensio, on March 2012, the 22 and 23. Prof. Fausto Pocar, Sabine Corneloup, Juan José Álvarez Rubio, Mark D. Rosen, Justyna Balcarczyk, Eva Inés Obergfell, Santiago Álvarez González, Bertrand Ancel, Constanza Honorati, Michael Wilderspin, Janeen M. Carruthers and Darío Moura Vicente, will be main speakers; each lecture will be followed by the presentation of papers on the same subject.

The full schedule is here. Registration is free; just send an email to seminariodiprucm@gmail.com before March, the 15.

Jurisdictional Immunities of the State: the ICJ to Deliver its Judgment in the Germany v. Italy Case

According to a press release, **on 3 February 2012 the International Court of Justice will deliver its judgment in the case concerning *Jurisdictional Immunities of the State*** (Germany v. Italy: Greece intervening) (see our previous post here).

A public sitting will take place at the Peace Palace in The Hague, during which the President of the Court, *Judge Hisashi Owada*, will read the judgment. The public sitting will be broadcast live and in full on the Court's website (see Multimedia, in the Press Room section), **from 10 a.m. local time**.

At the end of the sitting, a press release, the full text of the judgment and a summary of it will be distributed. All of these documents will be made available at the same time on the Court's website, where all the documentation relating to the proceedings is accessible.

Joint Conference European Commission- Hague Conference

At the meeting of the Council on General Affairs and Policy of the Hague Conference, 5-7 April 2011, the EU managed to keep on the agenda the project on accessing the content of foreign law; a joint conference with the Hague Conference was foreseen in February 2012. Latest news are that it will indeed be held in Brussels in two weeks (Wednesday 15-Friday 17, Borschette Conference Centre). The programme is not yet available on the official websites, but a draft has already been published by Prof. Garau here.

Anton's Private International Law – 3rd ed. by P. Beaumont and P.

McEleavy

Recently, the 3rd edition of Professor Anton's standard text on the Scottish rules of private international law has been published. The book has been completely revised by Professor Paul Beaumont (University of Aberdeen) and Professor Peter McEleavy (University of Dundee) paying regard to the fact that the subject area has been comprehensively restructured in recent years due to the process of Europeanisation. The Brussels I, Brussels IIa, Rome I, Rome II and Maintenance Regulations, as well as associated case law, are considered in detail with regard paid to their particular impact on Scots law. Further, the recent work of the Hague Conference on Private International Law is included, in particular the Conventions on Maintenance, Choice of Court, Protection of Adults, Protection of Children and Inter-country Adoption. In analysing European and global instruments the authors have drawn on their experience in participating in the negotiation processes in Brussels as well as from their work for the Hague Conference.

Here is the contents:

Introduction
Theories and methods
International and regional instruments: Implementation, integration and interpretation
Identification of the applicable law
Application of statutes and limits to the application of foreign law
State immunity
Connecting factors
Jurisdiction
External decrees: Recognition and enforcement
Choice of law in contractual obligations – Rome I regulation
Arbitration
Foreign money liabilities
Bills of exchange and letters of credit
Choice of law in noncontractual obligations
Marriage, civil partnership and cohabitation

Divorce and dissolution
Effects of marriage and divorce on property
Children
Maintenance
Adults with incapacity
Property
Trusts
Administration of estates of persons deceased
Succession
Companies, firms and associations
Bankruptcy
Procedure and evidence

More information can be found at the publisher's website.

Schooling in Cuba, Payment from Spain and the Helms Burton Act

The schooling of two children in the *École Française* of La Habana, Cuba, costs $ 1054 every three months; an amount that the father of the kids was willing to pay. However, the amount never reached destination. In September 2011, a Spanish national ordered payment by means of bank transfer from Novagalicia Banco in La Coruña (Spain), to an office in Paris, Crédit Mutuel-CIC. Unfortunately the operation was performed in dollars rather than euros: this caused the intervention of the Novagalicia Banco correspondent bank in the U.S., JPMorgan Chase Bank; and thereafter, of the US Treasury Department through the Office of Foreign Assets Control (OFAC). The OFAC is responsible for enforcing economic and trade sanctions of U.S. foreign policy, such as those prescribed by the Helms Burton Act of 1996.

The short term solution for the kids to remain enrolled was … paying again. This time in euros.

No Power to Issue Anti-Enforcement Injunctions in New York

On 26 January 2012, the U.S. Court of Appeals for the Second Circuit has issued its long-awaited opinion in the *Chevron* case on the power to issue anti-enforcement injunctions.

The judgment offers an interesting analysis of the power of U.S. Courts to issue such novel and radical injunctions. The Court finds that the issue is controlled by its (New York) *Uniform Foreign Country Money-Judgments Recognition Act*, and not by its precedents on anti-suit injunctions. The Court also discusses briefly comity, and declines Chevron's invitation to be "*a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs*".

Recognition Act

> *Whatever the merits of Chevron's complaints about the Ecuadorian courts, however, the procedural device it has chosen to present those claims is simply unavailable: The Recognition Act nowhere authorizes a court to declare a foreign judgment unenforceable on the preemptive suit of a putative judgment-debtor. The structure of the Act is clear. The sections on which Chevron relies provide exceptions from the circumstances in which a holder of a foreign judgment can obtain enforcement of that judgment in New York; they do not create an affirmative cause of action to declare foreign judgments void and enjoin their enforcement. (…)*
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> *These procedural requirements exist for good reason. The Recognition Act and the common-law principles it encapsulates are motivated by an interest to provide for the enforcement of foreign judgments, not to prevent them. The Act "was designed to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive*

streamlined enforcement" in New York. The exceptions to that rule – such as the mandatory nonrecognition of judgments procured without due process or personal jurisdiction – serve the same purpose: to facilitate trust among nations and their judicial systems by preventing one jurisdiction from using the trappings of sovereignty to engage in a sort of seignorage by which easy judgments are minted and sold to any plaintiff willing to pay for them. Accordingly, a jurisdiction such as New York that requires foreign judgments to comport with certain basic requirements of fairness and legitimacy instills trust in the overall enforcement-facilitation framework.

Chevron would turn that framework on its head and render a law designed to facilitate "generous" judgment enforcement into a regime by which such enforcement could be preemptively avoided.

Comity

Considerations of international comity provide additional reasons to conclude that the Recognition Act cannot support the broad injunctive remedy granted by the district court. As noted above, the New York legislature, in enacting the Recognition Act, sought to provide a ready means for foreign judgment-creditors to secure routine enforcement of their rights in the New York courts, while reserving New York's right to decline to participate in the enforcement of fraudulent "judgments" obtained in corrupt legal systems whose courts failed to provide the basic rudiments of fair adjudication. In doing so, New York undertook to act as a responsible participant in an international system of justice – not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs. The exceptions to New York's general policy of enforcing foreign judgments are exactly that: exceptions that permit New York courts, under specified
circumstances, to decline efforts to take advantage of New York's policy of liberally enforcing such judgments. Nothing in the language, history, or purposes of the Act suggests that it creates causes of action by which disappointed litigants in foreign cases can ask a New York court to restrain efforts to enforce those foreign judgments against them, or to preempt the courts of other countries from making their own decisions about the enforceability of such judgments. (…)

> *We need not address here whether and how international comity concerns would affect a hypothetical effort by a state to vest its courts with the authority to issue so radical an injunction. There is no such statutory authorization, for New York has authorized no such relief. To resolve the dispute before us, we need only address whether the statutory scheme announced by New York's Recognition Act allows the district court to declare the Ecuadorian judgment non-recognizable, or to enjoin plaintiffs from seeking to enforce that judgment. Because we find that it does not, the injunction collapses before we reach issues of international comity.*

Centre for Private International Law at the University of Aberdeen

On 1 January 2012, the Law School of the University of Aberdeen launched the Centre for Private International Law. The Centre has grown out of a long and distinguished tradition of private international law scholarship at the Law School and is led by Professor Paul Beaumont FRSE. It seeks to promote the development of private international law, and to provide a platform for discussion of current issues in private international law. The Centre advances this mission through high quality research and publications, teaching (excellent undergraduate courses and a specialised masters programme in private international law), research, and through events such as conferences, workshops and seminars aimed at fostering scholarship and encouraging international networking. The Centre prides itself on a well-established track record in private international law reform. The Centre has a close working relationship with Hart Publishing. Professor Beaumont is one of two editors who created and still run the Journal of Private International Law that is the leading English language journal on the subject. He is also one of two Series Editors for Hart publishing's Studies in Private International Law.

For more information see: http://www.abdn.ac.uk/law/private-international-law

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Issue 2011.4 Nederlands Internationaal Privaatrecht

The fourth issue of 2011 of the Dutch journal on Private International Law, Nederlands Internationaal Privaatrecht includes the following articles on Brussels I and abolition of exequatur, the proposal European Arrest Preservation Order, Service of Documents and Intercountry surrogacy:

Xandra Kramer, Abolition of exequatur under the Brussels I Regulation: effecting and protecting rights in the European judicial area, p. 633-641. The abstract reads:

As a consequence of the policy to gradually abolish the exequatur in the EU, the Commission proposal on the Recast of Brussels I envisages the abolition of intermediate proceedings. In line with previous instruments that abolish the exequatur for specific matters or in relation to specific proceedings, the proposal at the same time intends to abolish most grounds to challenge the enforcement. It is submitted that recent instruments and proposals in the area of European civil procedure, including the Brussels I proposal, primarily focus on obtaining and effecting rights by the claimant, sometimes at the expense of the protection of the right to effectively defend oneself. As a way forward, it is viable to abolish the formality of the ex ante declaration of enforceability, while retaining the grounds to challenge the enforcement in the Member State of enforcement.

Bart-Jan van het Kaar, Het Europees bankbeslag en het Nederlands conservatoire derdenbeslag in Europees verband, p. 642-651. The English abstract reads:

This article deals with the international scope of a Dutch third party garnishment order. The scope of a third party garnishment order is in the current situation limited to the territory of the court granting this order (territorial effect). It is not possible to recognise and enforce such an order in accordance with the rules of

the Brussels I Regulation. The judgment of the European Court of Justice in the Denilauler case (ECJ 21 May 1980, C-125/79) is a barrier against enforcement. It prevents granting any cross-border effect to a judgment delivered in ex parte proceedings, without the defendant being summoned to appear and the opportunity to be heard on the merits of the case. In most cases garnishment orders are given on a purely ex parte basis, and therefore are barred from enforcement in another member state. There are two recent developments that might change this current situation. Firstly, the European Commission published a Proposal for a European Account Preservation Order ('EAPO') to facilitate cross-border debt recovery in civil and commercial matters (COM (2011) 445 final). This proposal introduces harmonised European proceedings through which a claimant can request the issuance of an EAPO with the aim of preserving and attaching bank accounts held in other member states. Secondly, there is the proposal by the European Commission to change or revise the Brussels I Regulation. In this proposal the Denilauler restriction is removed for ex parte decisions. This is the case for decisions granted by a court having jurisdiction on the substance of the matter (Arts. 2 and 5-23). Both developments put the international scope of a Dutch third party garnishment order into a different light. This paper discusses both proposals in depth and investigates if and to which extent this new set of rules will result in the future possibility for a Dutch court to grant cross-border effect to a garnishment order.

Chr.F. Kroes, Deformalisering van de internationale betekening in een drieslag. The English abstract reads:

In less than two years, the Dutch Supreme Court has handed down four decisions on the service of documents abroad in civil and commercial matters. The first decision concerns the Service Regulation. The Supreme Court finds that the Service Regulation does not apply if, under local rules, service may take place at the offices of the lawyer who was most recently instructed by the defendant. Such service is allowed in the case of opposition and an appeal, both to the Court of Appeal and the Supreme Court. In its second and third judgment, the Supreme Court extended this rule to the Hague Convention on Service. In its fourth judgment, the Supreme Court found that, in the case of service on a foreign defendant at the offices of his (former) lawyer, only the short-term service needs to be observed that applies to domestic service and which is a week, instead of the four weeks that must be observed in case of the application of the Service

Regulation or the Hague Convention. These decisions of the Supreme Court certainly make the practitioner's life somewhat easier, but they are not entirely free of any risks. It remains to be seen whether the judgments of the Supreme Court will stand up to the scrutiny of the European Court of Justice if recognition and enforcement pursuant to the Brussels Regulation would be challenged in a judgment by default against a foreign defendant where service has only taken place in accordance with local rules.

Jinske Verhellen, Intercountry surrogacy: a comment on recent Belgian cases. The abstract reads:

This article has the modest goal of examining five recent Belgian judgments on cross-border surrogacy. In four cases Belgian commissioning parents approached a surrogate mother abroad (California, India and Ukraine) and subsequently asked for recognition of the foreign birth certificates in Belgium. The other case concerned a child that was born in Belgium and thereafter transferred to the Netherlands. On the basis of these cases the article elaborates on the Belgian rules of private international law and the current case-by-case approach of the Belgian judges. It becomes clear that cross-border surrogacy raises complex issues of private international law and child protection. Therefore, there is a pressing need for a more global approach.

Fourth Issue of 2011's Belgian PIL E-Journal

The fourth issue of the Belgian bilingual (French/Dutch) e-journal on private international law *Tijdschrift@ipr.be / Revue@dipr.be* for 2011 was just released.

The journal essentially reports on European and Belgian cases addressing issues of private international law. This issue does not include articles.

Rühl on Choice of Law by the Parties in European PIL

Giesela Rühl (Jena University) has posted Choice of Law by the Parties in European Private International Law on SSRN.

> *The article provides an overview of choice of law in European Private International Law. It explores the function, the historical development as well as the current scope and design of party choice under the pertaining European Union provisions.*

The paper is forthcoming in the *Max Planck Encyclopedia of European Private Law*.