Symeonides on Codification and Flexibility in PIL

Dean Symeon C. Symeonides has posted Codification and Flexibility in Private International Law on SSRN. Here is the abstract:

> *The last fifty-year period has been one of the most productive in the history of private international law (PIL), having produced 61 PIL codifications and 101 international conventions, regulations and other similar instruments. This Article examines the way in which these codifications and other instruments confront the constant tension between the need for legal certainty and predictability, on the one hand, and the need for flexible, equitable, and individualized solutions, on the other. Among the advances of the art and science of codification during this period is the deployment of several new tools – such as alternative or soft connecting factors, escape clauses, or a combination of rules and residual "approaches" – which entrust judges with greater discretion than in the old codifications. These tools produce a new equilibrium and mutual accommodation between certainty and flexibility and suggest that codification need not be antithetical to flexibility.*

The paper is forthcoming in the GENERAL REPORTS OF THE XVIIITH CONGRESS OF THE INTERNATIONAL ACADEMY OF COMPARATIVE LAW, K.B. Brown and D.V. Snyder, eds., © Springer Science+Business Media, 2011.

International Workshop on "Private International Law in the

Context of Globalization”

On October 22 and 23 the China University of Political Science and Law (CUPL) will host an international workshop on “Private International Law in the Context of Globalization: Opportunities and Challenges“ in Beijing. The workshop will bring together leading conflict of laws scholars from Belgium, China, Germany, the Netherlands, Sweden, Switzerland and the United States. Here is the programme:

Saturday, October 22, 2011

Morning

8:15–8:30 Registration

8:30–9:50 Opening Ceremony

Chair: Prof. Xinli Du, Vice Dean of Faculty of International Law, CUPL; Director of the Organizing Committee of the Workshop

Opening Remarks:

- Prof. Jin Huang, President of Chinese Society of Private International Law & President of CUPL
- Prof. Zhongyi Fei, Honorary Chairman of Chinese Society of Private International Law
- Prof. Andrea Bonomi, Vice Dean of Law Faculty of University of Lausanne

9:50-10:10 Taking Group Photo, Tea & Coffee

10:10-12:00 Unification of Private International Law and Chinese Private International Law

Chair**:** Prof. Xianglin Zhao, Ex Vice President of CUP*L*

10:10-10:30 Shengming Wang, Vice Direct of Legislative Committee of National People’s Congress of PRR: *The Guiding Principle of the Enactment of the New Conflict of Laws Act of the PRC*

10:30-10:50 Laura E. Little, Professor at Temple University’s Beasley School of

Law: *Internet Choice of Law Governance: An Opportunity for Learning New Perspectives*

10:50-11:10 Prof. Jin Huang, President of Chinese Society of Private International Law: *The Present and Future of Chinese Legislation on Private International Law*

11:00-11:30 Prof. Andrea Bonomi, Vice Dean of Law Faculty of University of Lausanne: *Parallel Proceedings in International Litigation and Arbitration*

11:30-11:50 Judge Guixiang Liu, Chief Judge of the Fourth Civil Court of the Supreme Court of PRC: *Title to be confirmed*

11:50-12:10 Prof. Mel Kenny at University of Leicester and Prof. James Devenney at Durham University, U.K.: *The EU "Optional Instrument": bypassing Private International Law*

12:10-12:20 Discussion

12:20-14:00 Lunch Buffet at Siji (Four Seasons) Hall

Afternoon

14:00-16:00 New Development of Private International Law in the United States, Europe and Other Parts of the World

Chair: Zheng Tang, Professor at University of Aberdeen, U.K.

14:00-14:20 Prof. Mathijs Huibert ten Wolde, Professor at University of Groningen: *Fundamental Questions Regarding Codification of Private International Law: Does Book 10 Civil Code on the Dutch Conflict of Laws Fit in a World Order*

14:20-14:40 Juan Shen, Professor at Institute of law of Chinese Academy of Social Sciences: *The Choice of Law in Succession? Scission System or Unitary System*

14:40-15:00 Volker Behr, Professor at Law Faculty of University of Augsburg: *Predictability and Flexibility in Choice of Law in Contracts and Torts – Chinese Conflicts Act, E.U. Regulations and U.S. Private International Law Evaluated*

15:00-15:20 Zhengxin Huo, Associate Professor of CUPL: *An Imperfect Improvement: The New Conflict of Laws Act Of The PRC*

15:20-15:40 Comments

- Commentator 1: Prof. Yongping Xiao, Dean of Wuhan University School of Law
- Commentator 2: Prof. Qingsen Xu, Professor at Renmin University School of Law

15:40-16:00 Discussion

16:00-16:15 Tea & Coffee

16:15-18:00 New Development in Contract and Torts Choice-of-law Rules

Chair: Prof. Han Wang, Vice President of Northwest University of Politics and Law

16:15-16:35 Prof. Dr. Jan von Hein, Professor at Law Faculty of University of Trier: *The European Private International Law on Investor Protection and its Impact on Relations with Third States*

16:35-16:55 Prof. Michael Bogdan, Professor at Law Faculty of Lund University Sweden: *Contracts and Torts in Cyberspace in View of the European Regulations Rome I and Rome II*

16:55-17:15 Prof. Xianbo Li, Dean of Law Faculty of Hunan Normal University**:** *Development of the Principle of Lex Loci delicti*

17:15-17:35 Associate Prof. Keyu Wang, Associate Professor at China Central University of Finance and Economics

17:35-18:05 Comments

- Commentator 1: Prof. Renshan Liu, Dean of Law Faculty of Zhongnan University of Economics and Law
- Commentator 2: Ms Jane Willems, Arbitrator of the CIETAC

18:05-18:30 Discussion

18:30-20:00 Banquet

Sunday, October 23, 2011

Morning

8:30-10:20 Judicial Assistance in Civil and Commercial Area in a Globalized World

Chair: Knut B. Pissler, Professor at Max Planck Institute for Comparative and International Private Law

8:30-8:50 Kwang Hyun SUK, Professor at Seoul National University: *Comparative Analysis of the Chinese Private International Law Act and the Taiwanese Private International Law Act: Korean Perspective.*

8:50-9:10 Johan Erauw, Professor at University of Ghent: *The Section On Goods And Property Rights In The Chinese Law On Private International Law of 28 October 2010 in Comparison With Other Codes*

9:10-9:30 Xiangquan Qi, Professor at School of International Law of CUPL: *The Latest Development of the Legislation regarding to the Application of Laws Concerning Foreign-related Marriage and Family Relations*

9:30-9:50 Xiao Song, Associate Professor at Nanjing University School of Law: *Party Autonomy and Conflicts Law in Property*

9:50-10:10 Comments

- Commentator 1: Mo Zhang, Professor at Temple University
- Commentator 2: Chen Weizuo, Associate Professor at Tsing Hua University

10:00-10:20 Discussion

10:20-10:35 Tea & Coffee

10:35-12:00 Resolutions to International Civil and Commercial Disputes (Litigation, Arbitration, and Negotiation)

Chair: Prof. Zengyi Xuan, Dean of College of International Students of CUPL

10:35-10:55 Assistant Prof. Kun Fan, Assistant Prof. at Chinese University of Hong Kong, Senior Consultant of Arbitration Asia: *Developments of the Enforcement of Foreign-related and Foreign Awards in China*

10:55-11:15 Lianbin Song, Professor at Wuhan University School of Law: *Development of China's Arbitration after the Establishment of Arbitration Law of the People's Republic of China*

11:15-11:30 Yongfu Chen, Beijing Arbitration Committee: *Topic to be confirmed*

11:30-11:45 Yun Zhao, Associate Professor at the Law Faculty of University of Hong Kong: *Discussions on Mediation Legislation in Hong Kong–Reflections from Mainland's People's Mediation Law*

11:45-12:05 Comments

- Commentator 1: Song Lu, Professor at China Foreign Affairs University
- Commentator 2: Hailing Shan, Professor at Shanghai University of Finance and Economics

12:05-12:30 Closing Ceremony & The Announcement of Beijing Declaration on Private International Law

Chair: Prof. Yongping Xiao, Dean of Wuhan University School of Law

The Announcement of Beijing Declaration on Private International Law

Closing Remarks:

- Prof. Jin Huang, President of Chinese Society of Private International Law
- Prof. Johan Erauw, Professor at University of Ghent
- Prof. Mathijs Huibert ten Wolde, Professor at University of Groningen

12:30-14:00 Lunch at Siji (Four Seasons) Hall

More information (mostly in Chinese) is available on the conference website.

Italo-German Cooperation in the Brussels I Recast: Conference in Milan (25-26 November 2011)

The University of Milan will host a **two-day conference on 25 and 26 November 2011 on the review of the Brussels I regulation**, organized with the University of Padova, the University of Heidelberg and the Ludwig-Maximilians-Universität München: "**Cooperazione Italo-Tedesca nella revisione del Regolamento Bruxelles I – Deutsch-Italienische Kooperation im Rahmen der Neufassung der Brüssel I-Verordnung**". The working languages will be English, Italian and German. Here's the programme (.pdf):

I Session: Friday 25 November 2011, 10h00

Saluti introduttivi – Grußworte*: Prof. Dr. Marino Regini* (Università degli Studi di Milano); *Prof. Dr. Angela Lupone* (Università degli Studi di Milano)

Chair: *Prof. Dr. Ilaria Viarengo* (University of Milan)

- *Prof. Dr. Rainer Hausmann* (Universität Konstanz): L'ambito di applicazione del regolamento – Der Anwendungsbereich der Verordnung;
- *Prof. Dr. Andrea Gattini* (Università degli Studi di Padova): I rapporti con le convenzioni internazionali – Das Verhältnis zu internationalen Abkommen;
- *Prof. Dr. Burkhard Hess* (Universität Heidelberg): La competenza in materia di liti patrimoniali- Die Gerichtsbarkeit für vermögensrechtliche Streitigkeiten;
- *Prof. Dr. Ruggiero Cafari Panico (*Università degli Studi di Milano): Il forum necessitatis – Die Notzuständigkeit (forum necessitatis).

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II session: Friday 25 November 2011, 14h00

Chair: *Prof. Dr. Peter Kindler* (Ludwig-Maximilians-Universität München)

- *Prof. Dr. Claudio Consolo* (Università degli Studi di Padova): La proposta di revisione del Regolamento Bruxelles I e l'arbitrato – Der Vorschlag zur Revision der Brüssel I-Verordnung und die Schiedsgerichtsbarkeit;
- *Prof. Dr. Christian Kohler* (Universität Saarbrücken) – *Prof. Dr. Ilaria Queirolo* (Università degli Studi di Genova): Gli accordi di proroga della giurisdizione nella proposta di revisione del regolamento Bruxelles I – Die Gerichtsstandsvereinbarung im Vorschlag zur Neufassung der Brüssel I-Verordnung;
- *Prof. Dr. Luigi Fumagalli* (Università degli Studi di Milano): La litispendenza – Die Rechtshängigkeit.

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III session: Saturday 26 November 2011, 9h00

Chair: *Prof. Dr. Kurt Siehr* (Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg)

- *Prof. Dr. Marco De Cristofaro* (Università degli Studi di Padova) – *Prof. Dr. Thomas Pfeiffer* (Universität Heidelberg): L'abolizione dell'exequatur – Die Abschaffung des Exequaturverfahrens;
- *Prof. Dr. Manlio Frigo* (Università degli Studi di Milano): Il riconoscimento e l'esecuzione delle decisioni in materia di diffamazione – Die Anerkennung und Vollstreckung von Entscheidungen bei Verleumdungsklagen;
- *Prof. Dr. Stefania Bariatti* (Università degli Studi di Milano): Il riconoscimento e l'esecuzione delle decisioni rese a seguito di class action – Die Anerkennung und Vollstreckung von Entscheidungen ergangen aufgrund einer Sammelklage (class action).

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Round Table: Saturday 26 November 2011, 11h15

Tavola rotonda sull'impatto della revisione del Regolamento sull'ordinamento italiano e sull'ordinamento tedesco – Podiumsdiskussion

zu den Auswirkungen der Revision der Verordnung auf das italienische und das deutsche Recht

Chair: *Prof. Dr. Fausto Pocar* (Università degli Studi di Milano)

- *Prof. Stefano Azzali* (Camera Arbitrale di Milano)
- *Prof. Dr. Sergio M. Carbone* (Università degli Studi di Genova)
- *Prof. Dr. Herbert Kronke* (Universität Heidelberg)
- *Prof. Dr. Riccardo Luzzatto* (Università degli Studi di Milano)
- *Prof. Dr. Alexander R. Markus* (Universität Bern)
- *Prof. Dr. Marco Ricolfi* (Università degli Studi di Torino – Studio Tosetto, Weigmann & Associati)

The event is organized under the patronage of the Italo-German Chamber of Commerce and Chamber of arbitration of Milan, and with the financial support of: Ateneo Italo-Tedesco; Law firm *Gebhard* (Milan, Stuttgart); Law firm *Tosetto, Weigmann & Associati* (Turin, Milan, Rome); "Associazione per gli scambi culturali tra giuristi italiani e tedeschi".

For further information and registration, see the programme and the conference's webpage.

(Many thanks to Prof. Francesca Villata, University of Milan, for the tip-off)

ECJ Rules on the Enforcement of Fines under Brussels I

On October 18th, 2011, the Grand Chamber of the European Court of Justice held in Realchemie Nederland BV v Bayer CropScience AG (Case C 406/09) that the Brussels I Regulation applies to fines ordered to ensure compliance with jugdments given in civil and commercial matters.

Facts

In 2005, German firm Bayer initiated proceedings in Germany against Dutch firm Realchemie for alleged patent infringement. On December 19, 2005, a German Court issued an interim order prohibiting Realchemie from importing into, possessing or marketing certain pesticides in Germany. The Order was issued on pain of a fine. The Court also ordered the Dutch defendant to provide details of its commercial transactions involving the pesticides and to transfer its stock into the custody of the courts

In 2006, the German Court found that Realchemie had not complied with the order. On August 17, 2006, it thus ordered Realchemie to pay a fine of Euro 20,000 (*Ordnungsgeld*) pursuant to Article 890 of the German Code of civil procedure (*ZPO*), to be paid to the Court. In October 2006, the Court also ordered a periodic payment of Euro 15,000 (*Zwangsgeld*) pursuant to Article 888 of the German Code of civil procedure to encourage it to provide details of the commercial transactions concerning the pesticides in question. Each time, the Court ordered the Dutch defendant to pay the costs of the proceedings.

In 2007, Bayer sought to enforce the orders in the Netherlands.

Judgment

The Brussels I Regulation only applies to Civil and Commercial Matters. The obvious question was whether a fine ordered to ensure compliance of judgments falls within that category and can thus be enforced under the Regulation.

The Court reiterated that such issues of characterization were to be addressed by looking at the subject matter of the legal relationship between the parties rather than the nature of the particular remedy. It thus held:

> *41 In the present case, even if, according to Paragraph 890 of the ZPO, the fine at issue in the main proceedings is punitive and the reasoning in the order imposing it explicitly mentions the penal nature of that fine, the fact remains that, in those proceedings, there is a dispute between two private persons, the object of which is the authorisation of enforcement in the Netherlands of six orders from the Landgericht Düsseldorf, by which the latter, hearing an application lodged by Bayer and based on an allegation of patent infringement, prohibited Realchimie from importing into, possessing and marketing certain pesticides in Germany. The action brought is intended to protect private rights and does not involve the exercise of public powers by one of the parties to the*

dispute. In other words, the legal relationship between Bayer and Realchimie must be classified as 'a private law relationship' and is therefore covered by the concept of 'civil and commercial matters' within the meaning of Regulation No 44/2001.

The fact that the fine was to be paid to the German state was not regarded as decisive:

42 It is true, as is apparent from the order for reference, that the fine imposed on Realchimie pursuant to Paragraph 890 of the ZPO, by order of the Landgericht Düsseldorf must be paid, when it is enforced, not to a private party but to the German State, that the fine is not recovered by the private party or on its behalf but automatically, and that the actual recovery is made by the German judicial authorities. Those specific aspects of the German enforcement procedure cannot however be regarded as decisive as regards the nature of the right to enforcement. The nature of that right depends on the nature of the subjective right, pursuant to the infringement of which enforcement was ordered, that is, in the present case, Bayer's right to exclusively exploit the invention protected by its patent which is clearly covered by civil and commercial matters within the meaning of Article 1 of Regulation No 44/2001.

The Court therefore concluded:

1. The concept of 'civil and commercial matters' in Article 1 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 must be interpreted as meaning that that regulation applies to the recognition and enforcement of a decision of a court or tribunal that contains an order to pay a fine in order to ensure compliance with a judgment given in a civil and commercial matter.

The Court was also asked to characterize the costs of the proceedings to determine whether they were governed by Article 14 of the Directive on the enforcement of IP rights, which provides that they should be borne by the unsuccessful party. It held:

2. The costs relating to an exequatur procedure brought in a Member State, in

the course of which the recognition and enforcement is sought of a judgment given in another Member State in proceedings seeking to enforce an intellectual property right, fall within Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

Many thanks to Maja Brkan for the tip-off.

Cachia on the Brussels I Recast

Paul Cachia, who practises and lectures in Malta, has published an article on the Brussels I Recast in the last issue of the ELSA Malta Law Review.

Nearly eight years after its entry into force, the European Commission published a Proposal for a recast of the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Proposal identifies a number of shortcomings in the Regulation's operation and proposes a number of amendments to improve its operation with the ultimate objective of facilitating cross-border litigation and removing the remaining obstacles to the free movement of judgments. This paper examines the proposed amendments in the jurisdictional sphere, their objective, and the manner in which they are supposed to change the existing rules. Particular emphasis is given to the proposed extension of the Regulation to jurisdiction over defendants not domiciled in a Member State which, if adopted, would have the effect of wiping out the national jurisdictional rules of the Member States in disputes falling within the domain of the Regulation. This paper also considers the Commission's proposed amendments to enhance the effectiveness of choice of court agreements together with the other proposed amendments in the jurisdictional sphere. If adopted by Parliament and Council, the new legislation would certainly lead to a more complete European codification of the rules on international jurisdiction in civil and commercial matters.

The article can be freely downloaded here.

United States Supreme Court to Again Consider the Alien Tort Statute

Today, the United States Supreme Court granted certiorari in the case of Kiobel v. Royal Dutch Petroleum to consider the following questions: (1) Whether the issue of corporate civil tort liability under the Alien Tort Statute, 28 U.S.C. § 1350, is a merits question or instead an issue of subject matter jurisdiction; and (2) whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide or may instead be sued in the same manner as any other private party defendant under the ATS for such egregious violations. In addition to Kiobel, the Court also granted cert. in Mahamad v. Rajoub to consider whether whether the Torture Victim Protection Act of 1991 permits actions against defendants that are not natural persons.

In *Kiobel*, 12 Nigerian nationals claimed human rights violations by oil companies, alleging that the oil companies enlisted the Nigerian government to use its armed forces to suppress resistance to oil exploration in the Niger Delta. In *Mohamad*, the family of a U.S. citizen claimed torture by officers of the Palestianian Authority and the Palestine Liberation Organization. The cases present the question whether the ATS and the TVPA apply to entities other than natural persons–corporiations in *Kiobel* and other organizations in *Mohamad*.

What makes the *Kiobel* grant interesting, besides it being only the second time the US Supreme Court will hear an ATS case, is that the Court granted the case without soliciting the views of the United States. Given that cases raised under the ATS implicate in many cases foreign policy concerns of the Executive Branch, the considered views of the Executive would have advanced the Court's consideration of the case, even at the cert. stage. Whether the Solicitor General

will file a brief *amius curiae* and request oral argument time will tell one a great deal about how the Obama Administration responds to the tensions created in ATS cases–at best, the ATS seeks to support human rights throughout the world and, at worst, imposes United States legal views on acts or omissions occurring within the sovereign territory of another country.

For international law scholars, the current Supreme Court term just became a great deal more interesting!

ECJ Rules on Set-Off and Exequatur

On October 13th, 2011, the European Court of Justice held in Prism Investments BV v. Jaap Anne van der Meer (Case C-139/10) that enforcing courts may not deny exequatur to foreign judgments on the ground that they were already paid by way of set-off.

Facts

In a nutshell, a Dutch company, Arilco Holland, had transfered monies (Euro 1 million) to a Dutch investment company, Prism Investment BV. Several companies of the Arilco group had originally received the monies from a Finish bank. When they were sued in Belgium to reimburse the monies, Arilco asked in turn Prism Investment to return the million it had received.

In 2006, the Court of appeal of Brussels ordered Prism to pay Arilco Holland the said million. In August 2007, Arilco Holland was declared isolvent. In September 2007, the trustee sought and obtained that the Belgian judgment be declared enforceable in Holland. Prism appealed the declaration of enforceablity on the ground that it had already paid the jugdment by way of set-off in Belgium.

The ECJ's Decision

The ECJ held that declarations of enforceability may only be challenged on the

grounds provided by the Brussels I Regulation.

> *Article 45 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 must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.*

Payment of the judgment in the state of origin is not one of those grounds:

> *34 In the present case, it is apparent from the order for reference that the ground for revocation of the declaration of enforceability relied upon by the appellant in the main proceedings and relating to compliance with the judgment in the Member State of origin – that is to say, Belgium – is not one of those grounds which the court or tribunal of the Member State in which enforcement is sought – in the present case, the Kingdom of the Netherlands – has jurisdiction to review. The fact that that ground was not raised before the Belgian court is irrelevant in that regard.*

Although this does not seem to have been central to the decision, the court found interesting to underscore that the set-off was actually disputed:

> *35 Furthermore, as the Advocate General has noted in point 47 of her Opinion, the argument of the appellant in the main proceedings against the declaration of enforceability is derived from the alleged satisfaction of the claim at issue by means of a financial settlement. However, in his written observations, Mr van der Meer, acting in his capacity as receiver in the liquidation of Arilco Holland, challenges that financial settlement in detail. The answer to the question whether or not the requirements of that financial settlement were fulfilled will therefore be neither straightforward nor swift and could require an extensive examination of the facts regarding the claim in relation to which that financial settlement may have been reached and would thus be difficult to reconcile with the objectives pursued by Regulation No 44/2001.*

It was thus for the courts of the enforcing state to rule, at a a later stage, on the

issue:

> *40 Such a ground may, by contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts (see Case 148/84 Deutsche Genossenschaftsbank [1985] ECR 1981, paragraph 18; Case 119/84 Capelloni and Aquilini [1985] ECR 3147, paragraph 16; and Hoffmann, paragraph 27).*

Clearer Patrimonial Regimes for International Couples: Joint Conference of the European Commission and CNUE

On Monday 17 October 2011 **the Council of the Notariats of the European Union (CNUE)** is organising, **jointly with the EU Commission**, a conference in Brussels on the proposals for two regulations on property rights of "international" married couples and registered partnerships: **"Clearer Patrimonial Regimes for International Couples"**. A dedicated section of the CNUE website has been set up for the event, for further information and registration (there are still some places left to attend the conference). Here's the programme (interpretation will be available in English, French, German, Italian, Polish, Romanian and Spanish):

9.30 – 9.40 Opening: *Rudolf Kaindl*, CNUE President

9.40 – 10.20 Keynote speeches:

- *Viviane Reding*, Vice-President of the European Commission
- *Frank Molitor*, President of the Luxembourg Chamber of Notaries

10.20 – 10.40 Proposals for Regulations on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and regarding the property consequences of registered partnerships: *Salla Saastamoinen*, Head of Unit, DG Justice, European Commission

11.00 – 12.40 Panel discussion: Session 1 – The applicable law

Moderator: *Prof. Katharina Boele-Woelki*, University of Utrecht

Speakers:

- *Prof. Paul Lagarde*, University of Paris I "Panthéon Sorbonne"
- *Prof. Brigitta Lurger*, University of Graz
- *Prof. Barbara Reinhartz*, University of Amsterdam
- *Franco Salerno Cardillo*, Civil Law Notary in Palermo
- *Alexandra Thein*, Member of the European Parliament
- *Richard Frimston*, STEP, Solicitor and Notary Public in London

14.00 – 15-15 Panel discussion: Session 2 – The competent court

Moderator: *Sjef van Erp*, Maastricht University, Deputy-Justice, Court of Appeal, 's-Hertogenbosch

Speakers:

- *Ulf Bergquist*, Lawyer in Stockholm
- *Prof. Patrick Wautelet*, University of Liège
- *Katarzyna Lis*, Judge, Polish Ministry of Justice

15.15 – 16.30 Panel discussion: Session 3 – Recognition and enforcement in cross-border cases

Moderator: *Pedro Carrión García de Parada*, Chair of the CNUE's Family Law Working Group

Speakers:

- *Matthias Neumayr*, Judge at the Austrian Supreme Court
- *Prof. Philippe De Page*, Université Libre de Bruxelles
- *Prof. Dieter Martiny*, European University Viadrina
- *Edmond Jacoby*, Civil Law Notary in Forbach

16.30 – 17.00 Information session – More information and services for European citizens

- The patrimonial property regimes website project, *Harald Steinwendter*, University of Graz
- The European Directory of Notaries, *Thomas Diehn*, Federal Council of the German Notariat

17.00 – 17.30 Closing speech: *Paraskevi Michou*, Director, DG Justice, European Commission.

Weber on Creditor Protection in International Civil Procedure

Johannes Weber, a research fellow at the Max Planck Institute for Comparative and International Law in Hamburg, has written a book on "Gesellschaftsrecht und Gläubigerschutz im Internationalen Zivilverfahrensrecht. Die Internationale Zuständigkeit bei Klagen gegen Gesellschafter und Gesellschaftsorgane vor und in der Insolvenz" [Corporate Law and Creditor Protection in International Civil Procedure. The International Jurisdiction for Actions against Shareholders and Directors before and during Insolvency]. Here is an English abstract:

> *Creditor protection in respect of limited liability corporations is a topic assuming an increasingly central role in corporate law and private international law. Whereas the scholarly discussion has primarily focused on substantive law issues and the appropriate connecting factors from a private international law perspective, the question of international civil procedure has thus far received*

relatively little attention. In his work "Gesellschaftsrecht und Gläubigerschutz im Internationalen Zivilverfahrensrecht" (Corporate Law and Creditor Protection in International Civil Procedure), Dr. Johannes Weber, research fellow at the Max Planck Institute for Comparative and International Private Law, addresses the question of which court may claim international jurisdiction when it comes to the enforcement of creditor protection in respect of corporations. Analyzing the question in the context of EU international civil procedure, Weber's analysis offers in particular a comparison of German and English substantive law. Revealing a number of significant substantive contrasts between the two distinct legal traditions, the inquiry is also of considerable relevance in light of the number of business entities incorporated under British law. Each chapter of the work concludes with a discussion on the perspectives for future legal reform.

More information is available on the publisher's website.

French Conference on Arbitration and EU Law

A conference on Arbitration and European Union Law (*Arbitrage et droit de l'Union europeenne*) will be held in Paris on November 4th, 2011.

8h30 – Accueil et inscription des participants

9h00 – Allocution introductive
M Philippe LEBOULANGER
Président du Comité français de l'arbitrage
Avocat au Barreau de Paris

PREMIERE PARTIE – L'EXCLUSION DE L'ARBITRAGE DU DOMAINE DU REGLEMENT BRUXELLES 1 ET SON EVENTUELLE SUPPRESSION
9H10

Président de séance
M Gérard PLUYETTE
Conseiller Doyen à la première Chambre civile de la Cour de cassation

Les questions liées à l'appréciation et aux effets de la convention d'arbitrage
M Sylvain BOLLEE
Professeur à l'Ecole de droit de la Sorbonne (Paris I)

Les questions liées au déroulement de la procédure arbitrale et à l'efficacité de la sentence
M Cyril NOURISSAT
Recteur de l'Université de Bourgogne

Table ronde et discussion générale
Mme Sandrine CLAVEL
Professeur à l'Université Versailles Saint Quentin,
M Laurent JAEGER
Avocat au Barreau de Paris, Associé, Orrick
Philippe PINSOLLE
Avocat au Barreau de Paris, Associé Shearman & Sterling
François-Xavier TRAIN
Professeur à l'Université Paris-Ouest.

11h15 : Pause-café

DEUXIEME PARTIE – ARBITRAGE ET DROIT MATERIEL EUROPEEN
11H45

Président de séance :
M Guy CANIVET
Président honoraire de la Cour de cassation
Membre à la Cour de cassation

L'application du droit européen de la concurrence par l'arbitre
M Olivier CAPRASSE
Doyen de la Faculté de droit de Liège
Professeur à l'Université de Bruxelles
Avocat au Barreau de Bruxelles, Cabinet Hanotiau & Van Den Berg

Le contrôle judiciaire sur le respect du droit européen de la concurrence par l'arbitre
M Matthieu DE BOISSESON
Avocat au Barreau de Paris, Associé, Darrois Villey Maillot Brochier

12h45 – Déjeuner

DEUXIEME PARTIE (SUITE) – ARBITRAGE ET DROIT MATERIEL EUROPEEN (suite)
14H15

Arbitrage et droit européen de la consommation
M Christophe SERAGLINI,
Professeur à l'Université Jean Monnet (Paris XI)

Table ronde et discussion générale
M Santiago MARTINEZ LAGE
Avocat au Barreau de Madrid, Associé Howrey LLP
M Pierre MAYER
Professeur à l'Ecole de droit de la Sorbonne (Paris I)
Avocat au Barreau de Paris, Associé, Dechert LLP
M Jean-Baptiste RACINE
Professeur à l'Université de Nice-Sophia Antipolis
M Luca RADICATI DI BROZOLO
Professeur à l'Université Catholique de Milan
Avocat associé, Bonelli Erede Pappalardo

15h45 : Pause

TROISIEME PARTIE – L'ARBITRAGE ET LE CONTROLE DES ENGAGEMENTS EN DROIT DE LA CONCURRENCE (PRATIQUES ANTICONCURRENTIELLES ET CONTROLE DES CONCENTRATIONS)
16H00

Président de séance :
Mme Catherine KESSEDJIAN
Professeur à l'Université Panthéon- Assas (Paris II)
Membre du Collège européen de Paris

Description du système, objectifs et bilan
Mme Ana GARCIA CASTILLO
Direction Générale de la Concurrence
Membre de la Commission européenne

Analyse du système
Mme Laurence IDOT
Professeur à l'Université Panthéon-Assas (Paris II)
Membre du Collège européen de Paris

Discussion générale

QUATRIEME PARTIE – LE ROLE DE LA COMMISSION DE L'UNION EUROPEENNE DANS LA NEGOCIATION DES TRAITES COMPORTANT DES CLAUSES RELATIVES A L'ARBITRAGE
17H00

Président de séance :
Mme Catherine KESSEDJIAN
Professeur à l'Université Panthéon- Assas (Paris II)
Membre du Collège européen de Paris

Exposé
M Eric LOQUIN
Professeur à l'Université de Bourgogne
Doyen honoraire de la Faculté de droit
Directeur du CREDIMI
Sébastien MANCIAUX
Maître de Conférences à l'Université de Bourgogne

Discussion générale

18h00 – Clôture du colloque

The conference will be held at the *Maison du Barreau* on the *Ile de la Cite*. Speeches will be delivered in French without translation.

More information is available here.