Claims Against Corporate Defendant Founded on Customary International Law Can Proceed in Canada

By Stephen G.A. Pitel, Faculty of Law, Western University

Eritrean mine workers who fled from that country to British Columbia sued the mine's owner, Nevsun Resources Ltd. They sought damages for various torts including battery, false imprisonment and negligence. They also sought damages for breaches of customary international law. Their core allegation was that as conscripted labourers in Eritrea's National Service Program, they were forced to work in the mine in intolerable conditions and Nevsun was actively involved in this arrangement.

Nevsun moved to strike out all of the claims on the basis of the act of state doctrine. It also moved to strike out the proceedings based on violations of customary international law because they were bound to fail as a matter of law.

In its decision in *Nevsun Resources Ltd v Araya*, 2020 SCC 5, the Supreme Court of Canada has held (by a 7-2 decision) that the act of state doctrine is not part of Canadian law (para. 59) and so does not preclude any of the claims. It has also held (by a 5-4 decision) that the claims based on customary international law are not bound to fail (para. 132) and so can proceed.

Act of State Doctrine

Justice Abella, writing for five of the court's nine judges, noted that the act of state doctrine had been heavily criticized in England and Australia and had played no role in Canadian law (para 28). Instead, the principles that underlie the doctrine were subsumed within the jurisprudence on "conflict of laws and judicial restraint" (para 44).

In dissent, Justice Cote, joined by Justice Moldaver, held that the act of state doctrine is not subsumed by choice of law and judicial restraint jurisprudence

(para. 275). It is part of Canadian law. She applied the doctrine of justiciability to the claims, finding them not justiciable because they require the determination that the state of Eritrea has committed an internationally wrongful act (para. 273).

This division raises some concerns about nomenclature. How different is “judicial restraint” from “non-justiciability”? Is justiciability an aspect of an act of state doctrine or is it a more general doctrine (see para. 276)? Put differently, it appears that the same considerations could be deployed by the court either under an act of state doctrine or without one.

The real division on this point is that Justice Cote concluded that the court “should not entertain a claim, even one between private parties, if a central issue is whether a foreign state has violated its obligations under international law” (para. 286). She noted that the cases Justice Abella relied on in which Canadian courts have examined and criticized the acts of foreign states are ones in which that analysis was required to ensure that Canada comply with its own obligations as a state (para. 304). In contrast, in this case no conduct by Canada is being called into question.

In Justice Abella’s view, a Canadian court can indeed end up determining, as part of a private civil dispute, that Eritrea has engaged in human rights violations. She did not, however, respond to Justice Cote’s point that her authorities were primarily if not all drawn from the extradition and deportation contexts, both involving conduct by Canada as a state. She did not squarely explain why the issue of Eritrea’s conduct was justiciable or not covered by judicial restraint in this particular case. Having held that the act of state doctrine was not part of Canadian law appears to have been sufficient to resolve the issue (para. 59).

Claims Based on Violations of Customary International Law

The more significant split relates to the claims based on violations of customary international law. The majority concluded that under the “doctrine of adoption”, peremptory norms of customary international law are automatically adopted into Canadian domestic law (para. 86). So Canadian law precludes forced labour, slavery and crimes against humanity (paras. 100-102). Beyond that conclusion, the majority fell back on the hurdle for striking out claims, namely that they have to be bound (“plain and obvious”) to fail. If they have a prospect of success, they

should not be struck out. The majority found it an open question whether these peremptory norms bind corporations (para. 113) and can lead to a common law remedy of damages in a civil proceeding (para. 122). As a result the claims were allowed to proceed.

Four of the judges dissented on this point, in reasons written by Brown and Rowe JJ and supported by Cote and Moldaver JJ. These judges were critical of the majority's failure to actually decide the legal questions raised by the case, instead leaving them to a subsequent trial (paras. 145-147). In their view, the majority's approach "will encourage parties to draft pleadings in a vague and underspecified manner" which is "likely not to facilitate access to justice, but to frustrate it" (para. 261). The dissent was prepared to decide the legal questions and held that the claims based on violations of customary international law could not succeed (para. 148).

In the dissent's view, the adoption into Canadian law of rules prohibiting slavery, forced labour and crimes against humanity did not equate to mandating that victims have a civil claim for damages in response to such conduct (para. 172). The prohibitions, in themselves, simply did not include such a remedy (para. 153). The right to a remedy, the dissent pointed out, "does not necessarily mean a right to a particular form, or kind of remedy" (para. 214).

Further, as to whether these rules can be directly enforced against corporations, the dissent was critical of the complete lack of support for the majority's position: "[i]t cites no cases where a corporation has been held civilly liable for breaches of customary international law anywhere in the world" (para. 188). As Justice Cote added, the "widespread, representative and consistent state practice and *opinio juris* required to establish a customary rule do not presently exist to support the proposition that international human rights norms have horizontal application between individuals and corporations" (para. 269).

On this issue, one might wonder how much of a victory the plaintiffs have achieved. While the claims can now go forward, only a very brave trial judge would hold that a corporation can be sued for a violation of customary international law given the comments of the dissenting judges as to the lack of support for that position. As Justices Brown and Rowe put it, the sole authority relied on by the majority "is a single law review essay" (para. 188). Slender foundations indeed.

Same-sex parentage and surrogacy and their practical implications in Poland

Written by Anna Wysocka-Bar, Senior Lecturer at Jagiellonian University (Poland)

On 2 December 2019 Supreme Administrative Court of Poland (*Naczelny S?d Administracyjny*) adopted a resolution of seven judges (signature: II OPS 1/19), in which it stated that it is not possible – due to public policy – to transcribe into the domestic register of civil status a foreign birth certificate indicating two persons of the same sex as parents. The Ombudsman joined arguing that the refusal of transcription infringes the child's right to nationality and identity, and as a result may lead to infringement of the right to protection of health, the right to education, the right to personal security and the right to free movement and choice of place of residence. Interestingly, the Ombudsman for Children and public prosecutor suggested non-transcription. The background of the case concerns a child whose birth certificate indicated two women of Polish nationality as parents, a biological mother and her partner to a *de facto* union. Parents applied for such transcription in order to apply subsequently for the issuance of the passport for the child.

The Supreme Administrative Court stated that in accordance with the law on civil status register, the transcription must be refused if contrary to *ordre public* in Poland. The public policy clause protects the domestic legal order against its violation. Such violation would result from the "recognition" of a birth certificate irreconcilable with fundamental principles of public policy. It was underlined that in accordance with Article 18 of the Constitution of Poland marriage is understood as a union between a man and a woman; family, motherhood and parenthood are under protection and guardianship of the State. In accordance with those principles and the whole system of family law, only one mother and one father might be treated as parents of a child. Any other category of "parent" is unknown. The Court underlined, at the same time, that transcription of the

birth certificate into the domestic register should not be indispensable for a child to obtain a passport, as the child has, by operation of law, already acquired Polish nationality as inherited from the mother. However, in practical terms this would require challenging administrative authorities' approach (requesting domestic birth certificate) in another court procedure.

It should be explained here that the resolution was taken on the request of the panel of judges of the Supreme Administrative Court reviewing the cassation appeal brought by the parents, and therefore, in this particular case is binding. In other, similar cases panels of judges should, in general, follow the standpoint presented in such resolution. If the panel of judges is of a different view, it should request another resolution, instead of presenting a view contrary to the previous one. As a result, it might happen that there are two resolutions of seven judges presenting different views. Given the above, it can be said that the question of transcription is not as definitively answered as might seem at first glance.

A similar justification based on the public policy clause in conjunction with Article 18 of the Constitution has already been presented before in other cases, for example one concerning children born in the US out of surrogacy arrangements with a married woman, whose birth certificates indicated two men as parents, a (biological) father and his partner (identical judgments of 6 May 2015, signature: II OSK 2372/13 and II OSK 2419/13). The implications of these judgments were quite different as the Court refused to confirm that children acquired Polish nationality by birth from their father. In the eyes of the Court and according to fundamental principles of Polish family law, children born out of surrogacy (which is not regulated in Poland) by operation of law have filiation links only with the (biological, surrogate) mother and her husband. The paternity of the biological father (only) might be (at least theoretically) established, once the paternity of the surrogate mother's husband is successfully disavowed in a court proceeding.

Here it should be added that opposite views were presented by the Supreme Administrative Court in other judgments. One of the cases concerned transcription of the birth certificate of a child born in India out of surrogacy arrangement. Such birth certificate indicates only the father (in this case a biological father) and do not contain any information about the (surrogate) mother. This was perceived as contrary to public policy by the administrative authorities, which underlined that in the Polish legal order establishing paternity is always dependent on the establishment of maternity. As a result, the lack of

information about the mother raises doubts as to paternity of the man indicated on the birth certificate as father. Interestingly, based on the same birth certificate the acquisition of Polish nationality of the child was earlier confirmed by administrative authorities. In its judgment of 29 August 2018 (signature: II OSK 2129/16), Supreme Administrative Court criticized the way the public policy clause was so far understood. The Court (which hears the case after the refusal of administrative authorities of two instances and administrative court of the first instance – just as in all of the mentioned cases) underlined that this clause must be interpreted having regard to a broader context of the legal issue at hand, in particular it should take into account constitutional values (always prevailing best interest of a child) and international standards on protection of children's rights and human rights. This allows for the transcription of the birth certificate into civil status records in Poland.

Another interesting case concerned again the question of confirmation that the children acquired Polish nationality by birth after their father (four identical judgments of 30 October 2018, signatures: II OSK 1868/16, II OSK 1869/16, II OSK 1870/16, II OSK 1871/16). Four girls were born in US through surrogacy. The US birth certificates indicated two men as parents, one of them being a Polish national. The Supreme Administrative Court underlined that for the legal status of a child, including the possibility of confirming acquisition of Polish nationality, it should not matter that the child was born to a surrogate mother. What should matter is that a human being with inherent and inalienable dignity was born and this human being has a right to Polish nationality, as long as one of the parents is a Polish national.

The above mentioned cases, where the Supreme Administrative Court presented a conservative approach and approved the refusal of the confirmation that children born out of surrogacy acquired Polish nationality by birth is now pending before European Court of Human Rights (Schlittner-Hay v. Poland). The applications raise violation by Poland of Article 8 (respect for private and family life) and Article 14 (discrimination on grounds of parents' sexual orientation) of the European Convention on Human Rights.

This shows that practical implications for children to same-sex parents and from surrogacy arrangements are of growing interest and importance also in Poland. The approaches of domestic authorities and courts seems to be evolving, but are still quite divergent. The view on the issue from the European Court of Human

Rights is awaited.

Trending topics in international and EU law

Maria Caterina Baruffi (University of Verona) and Matteo Ortino (University of Verona) have edited the book «*Trending topics in international and EU law: legal and economic perspectives*». It collects the proceedings of the conference «#TILT Young Academic Colloquium», held in Verona on 23-24 May 2019 and organized by the Law Department of the University of Verona in collaboration with the Ph.D. School of Legal and Economic Studies and the European Documentation Centre.

The event fell within the activities of the research project «Trending International Law Topics – #TILT» supervised by Maria Caterina Baruffi and funded by the programme «Ricerca di base 2015» promoted by the University of Verona. It was specifically targeted to Ph.D. students and early career scholars, selected through a Call for Papers. The book publishes the results of their research with the aim of fostering the scientific debate on trending topics in international and EU law and their impact on domestic legal systems.

The volume is divided into four parts, respectively devoted to public international law, including papers on human rights, international criminal law and investment law; private international law; EU law, addressing both general aspects and policies; and law and economics.

With specific regard to private international law (Part II of the volume), contributions deal with family, civil and commercial matters. For the former aspect, the volume collects papers on topics such as the EU Regulations on property relationships of international couples, recognition of adoptions, free movement of same-sex registered partners and cross-border surrogacy; for the latter, the volume includes contributions on topics such as choice-of-court agreements in the EU in the light of Brexit, insolvency, service of process and counter-claims in the Brussels regime.

More information about the book and the complete table of contents are available here.

‘Reasonableness’ Limits in Extraterritorial Regulation: A Public Lecture by Hannah Buxbaum at LSE, 30 January 2020

The Law Department at the London School of Economics and Political Science (LSE) is pleased to host a Public Lecture by Visiting Professor Hannah Buxbaum, on ”Reasonableness’ Limits in Extraterritorial Regulation’.

About the topic:
Extraterritorial regulation has become commonplace. States frequently apply their laws to foreign conduct in order to protect local economic interests—and sometimes to advance shared interests, such as the protection of human rights. Are there limits to these exercises of state authority? If so, what is the source and content of those limits? This lecture will investigate the role of “reasonableness” as a limitation on extraterritorial regulation. It will focus in particular on developments in the United States, where the recently adopted Restatement (Fourth) of Foreign Relations Law has reframed the role of international law in limiting the reach of national legislation.

About the speaker:
Professor Hannah Buxbaum is Vice President for International Affairs, the John E. Schiller Chair in Legal Ethics and a Professor of Law at Indiana University. Professor Buxbaum is an expert on cross-border regulatory litigation and extraterritoriality, U.S. securities and competition law, and foreign relations law.

Thursday 30 January 2020 6:30pm to 8:00pm
Hosted by the LSE Department of Law

Chair: Dr. Jan Kleinheisterkamp (LSE)SUMEET VALRANI LECTURE THEATRE LSE Centre Buildings (CBG.1.01)

The Lecture is open to all; there is no need to register. For more information, please contact Jan Kleinheisterkamp (LSE) or Jacco Bomhoff (LSE).

The SHAPE v Supreme Litigation: The Interaction of Public and Private International Law Jurisdictional Rules

Written by Dr Rishi Gulati, Barrister, Victorian Bar, Australia; LSE Fellow in Law, London School of Economics

The interaction between public and private international law is becoming more and more manifest. There is no better example of this interaction than the Shape v Supreme litigation ongoing before Dutch courts, with the most recent decision in this dispute rendered in December 2019 in *Supreme Headquarters Allied Powers Europe ("SHAPE") et al v Supreme Site Service GmbH et al (Supreme)*, COURT OF APPEAL OF 's-HERTOGENBOSCH, Case No. 200/216/570/01, Ruling of 10 December 2019 (the 'CoA Decision'). I first provide a summary of the relevant facts. Second, a brief outline of the current status of the litigation is provided. Third, I make some observations on how public and private international law interact in this dispute.

1 Background to the litigation

In 2015, the Supreme group of entities (a private actor) brought proceedings (the 'Main Proceedings') against two entities belonging to the North Atlantic Treaty Organisation ('NATO') (a public international organisation) before a Dutch district court for alleged non-payments under certain contracts entered into between the

parties for the supply of fuel (CoA Decision, para 6.1.12). The NATO entities against whom the claims were brought in question were Shape (headquartered in Belgium) and Allied Joint Force Command Headquarters Brunssum (JFCB) (having its registered office in the Netherlands). JFCB was acting on behalf of Shape and concluded certain contracts (called BOAs) with Supreme regarding the supply of fuel to SHAPE for NATO's mission in Afghanistan carried out for the International Security Assistance Force (ISAF) created pursuant to a Chapter VII Security Council Resolution following the September 11 terrorist attacks in the United States (CoA Decision, para 6.1.8). While the payment for the fuels supplied by Supreme on the basis of the BOAs was made subsequently by the individual states involved in the operations in Afghanistan, 'JFCB itself also purchased from Supreme. JFCB paid Supreme from a joint NATO budget. The prices of fuel were variable. Monitoring by JFCB took place…' (CoA Decision, para 6.1.9. The applicable law of the BOAs was Dutch law but no choice of forum clause was included (CoA Decision, para 6.1.9). There was no provision for arbitration made in the BoAs (CoA Decision, para 6.1.14.1). However, pursuant to a later Escrow Agreement concluded between the parties, upon the expiry of the BoAs, Supreme could submit any residual claim it had on the basis of the BOAs to a mechanism known as the Release of Funds Working Group ('RFWG'). Pursuant to that agreement, an escro account was also created in Belgium. The RFWG comprises of persons affiliated with JFCB and SHAPE, in other words, NATO's representatives (CoA Decision, para 6.1.10). Supreme invoked the jurisdiction of Dutch courts for alleged non-payment under the BOAs. The NATO entities asserted immunities based on their status as international organisations ('IOs') and succeeded before the CoA meaning that the merits of Supreme's claims has not been tested before an independent arbiter yet (more on this at 2).

In a second procedure, presumably to protect its interests, Supreme also levied an interim garnishee order targeting Shape's escrow account in Belgium (the 'Attachment Proceedings') against which Shape appealed (see here for a comment on this issue). The Attachment Proceedings are presently before the Dutch Supreme Court where Shape argued amongst other things, that Dutch courts did not possess the jurisdiction to determine the Attachment Proceedings asserting immunities from execution as an IO (see an automated translation of the Supreme Court's decision here (of course, no guarantees of accuracy of translation can be made)). The Dutch Supreme Court made a reference for a preliminary ruling to the European Court of Justice ('CJEU') (case C-186/19). It is this case where

questions of European private international law have become immediately relevant. Amongst other issues referred, the threshold question before the CJEU is:

> *Must Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (OJ 2012 L 351, p. 1 [Brussels Recast] be interpreted as meaning that a matter such as that at issue in the present case, in which an international organisation brings an action to (i) lift an interim garnishee order levied in another Member State by the opposing party, and (ii) prohibit the opposing party from levying, on the same grounds, an interim garnishee order in the future and from basing those actions on immunity of execution, must be wholly or partially considered to be a civil or commercial matter as referred to in Article 1(1) of the Brussels I Regulation (recast)?*

Whether the claims pertinent to the Attachment Proceedings constitute civil and commercial matters within the meaning of Article 1 of the Brussels Recast is a question of much importance. If it cannot be characterised as civil and commercial, then the Brussels regime cannot be applied and civil jurisdiction will not exist. If jurisdiction under the Brussels Recast does not exist, then questions of IO immunities from enforcement become irrelevant at least in an EU member state. The CJEU has not yet ruled on this reference.

2 The outcome so far

Thus far, the dispute has focused on questions of jurisdiction and IO immunities. These issues arise in somewhat different senses in both sets of proceedings.

The Main Proceedings

Shape and JFCB argue that Dutch courts lack the jurisdiction in public international law to determine the claims brought by Supreme as NATO possesses immunities given its status as an IO (CoA Decision, para 6.1.13). The rules and problems with the law on IO immunities have been much discussed, including by this author in this very forum. Two things need noting. First, in theory at least, the immunities of IOs such as NATO are delimited by the concept of ‘functionalism’ – IOs can only possess those immunities that are necessary to

protect its functional independence. And second, if an IO does not provide for a 'reasonable alternative means' of dispute resolution, then national courts can breach IO immunities to ensure access to justice. According to the district court, as the NATO entities had not provided a reasonable alternative means of dispute resolution to Supreme, the former's immunities could be breached. The CoA summarised the district court's decision on this point as follows (CoA Decision, para 6.1.14):

> *[T]he lack of a dispute settlement mechanism in the BOAs, while a petition to the International Chamber of Commerce was agreed in a similar BOA agreed with another supplier, makes the claim of an impermissible violation of the right to a fair trial justified. The above applies unless it must be ruled that the alternatives available to Supreme comply with the standard in the Waite and Kennedy judgments: there must be "reasonable means to protest effectively rights". The District Court concludes that on the basis of the arguments put forward by the parties and on the basis of the documents submitted, it cannot be ruled that a reasonable alternative judicial process is available.*

The CoA disagreed with the district court. It said that this was not the type of case where Shape and JFCB's immunities could be breached even if there was a complete lack of a 'reasonable alternative means' available to Supreme (CoA Decision, para 6.7.8 and 6.7.9.1). This aspect of the CoA's Decision was made possible because of the convoluted jurisprudence of the European Court of Human rights where that court has failed to provide precise guidance as to when exactly IO immunities can be breached for the lack of a 'reasonable alternative means', thereby giving national courts considerable leeway. The CoA went on to further find that in any event, Supreme had alternative remedies: it could bring suit against the individual states part of the ISAF action to recover its alleged outstanding payments (CoA Decision, para 6.8.1); and could have recourse to the RFWG (CoA Decision, para 6.8.4). This can hardly be said to constitute a 'reasonable alternative means' for Supreme would have to raise claims before the courts of multiple states in question creating a risk of parallel and inconsistent judgments; the claims against a key defendant (the NATO entities) remain unaddressed; and the RFWG comprises representatives of the defendant completely lacking in objective independence. Perhaps the CoA's decision was driven by the fact that Supreme is a sophisticated commercial party who had voluntarily entered into the BOAs where the standards of a fair trial in the

circumstances can be arguably less exacting (CoA Decision, para 6.8.3).

On the scope of Shape's and JFCB's functional immunities, the CoA said that 'if immunity is claimed by SHAPE and JFCB in respect of (their) official activities, that immunity must be granted to them in absolute terms' (CoA Decision, para 6.7.9.1). It went on to find:

> *The purchase of fuels in relation to the ISAF activities, to be supplied in the relevant area of operations in Afghanistan and elsewhere, is directly related to the fulfilment of the task of SHAPE and JFCB within the framework of ISAF, so full functional immunity exists. The fact that Supreme had and has a commercial contract does not change the context of the supplies. The same applies to the position that individual countries could not invoke immunity from jurisdiction in the context of purchasing fuel. What's more, even if individual countries – as the Court of Appeal understands for the time being before their own national courts – could not invoke immunity, this does not prevent the adoption of immunity from jurisdiction by SHAPE and JFCB as international organisations that, in concrete terms, are carrying out an operation on the basis of a resolution of the United Nations Security Council CoA Decision, para 6.7.9.2).*

Acknowledging that determining the scope of an IO's functional immunity is no easy task, the CoA's reasoning is somewhat surprising. The dispute at hand is a contractual dispute pertaining to alleged non-payment under the BOAs. One may ask the question as to why a classical commercial transaction should attract functional immunity? Indeed, other IOs (international financial institutions) have included express waiver provisions in their treaty arrangements where no immunities exist in respect of business relationships between an IO and third parties (see comments on the Jam v IFC litigation ongoing in United States courts by this author here). While NATO is not a financial institution, it should nevertheless be closely inquired as to why NATO should possess immunities in respect of purely commercial contracts it enters into. This is especially the case as the CoA found that the NATO entities in question did not possess any treaty based immunities (CoA Decision, para 6.6.7), and upheld its functional immunities based on customary international law only (CoA Decision, para 6.7.1), a highly contested issue (see M Wood, 'Do International Organizations Enjoy Immunity Under Customary International Law?' (2013) 10 IOLR 2). It is likely that the CoA

Decision would be appealed to the Dutch Supreme Court and any further analysis must await a final outcome.

The Attachment Proceedings

The threshold question in the Attachment Proceedings is whether Dutch courts possess civil jurisdiction under the Brussels Recast to determine the issues in that particular case. If the claim is not considered civil and commercial within the meaning of Article 1 of the Brussels Recast, then no jurisdiction exists under the rules of private international law and the claim comes to an end, with the issue of immunities against enforcement raised by the NATO entities becoming superfluous. This is because if a power to adjudicate does not exist, then the question on the limitations to its exercise due to any immunities obviously becomes irrelevant. Perhaps more crucially, after the CoA Decision, the ongoing relevance of the Attachment Proceedings has been questioned. As has been noted here:

> *At the public hearing in C-186/19 held in Luxembourg on 12 December, the CJEU could not hide its surprise when told by the parties that the Dutch Appellate Court had granted immunity of jurisdiction to Shape and JCFB. The judges and AG wondered whether a reply to the preliminary reference would still be of any use. One should take into account that the main point at the hearing was whether the "civil or commercial" nature of the proceedings for interim measures should be assessed in the light of the proceedings on the merits (to which interim measures are ancillary, or whether the analysis should solely address the interim relief measures themselves.*

Given that a Supreme Court appeal may still be filed in the Main Proceeding potentially reversing the CoA Decision, the CJEU's preliminary ruling could still be of practical relevance. In any event, in light of the conceptual importance of the central question regarding the scope of the Brussels Recast being considered in the Attachment Proceeding, any future preliminary ruling by the CJEU is of much significance for European private international law. Summarising the CJEU's approach to the question at hand, the Dutch Supreme Court said:

> *The concept of civil and commercial matters is an autonomous concept of European Union law, which must be interpreted in the light of the purpose and system of the Brussels I-bis Regulation and the general principles arising from*

the national legal systems of the Member States. In order to determine whether a case is a civil or commercial matter, the nature of the legal relationship between the parties to the dispute or the subject of the dispute must be examined. Disputes between a public authority and a person governed by private law may also fall under the concept of civil and commercial matters, but this is not the case when the public authority acts in the exercise of public authority. In order to determine whether the latter is the case, the basis of the claim brought and the rules for enforcing that claim must be examined. For the above, see, inter alia, ECJ 12 September 2013, Case C-49/12, ECLI: EU: C: 2013: 545 (Sunico), points 33-35, ECJ 23 October 2014, Case C ? 302/13, ECLI: EU: C: 2014: 2319 (flyLal), points 26 and 30, and CJEU 9 March 2017, case C-551/15, ECLI: EU: C: 2017: 193 (Pula Parking), points 33-34 (see the automated translation of the Supreme Court's decision cited earlier, para 4.2.1).

There is not the space here to explore the case law mentioned above in any detail. Briefly, if the litigation was taken as a whole with the analysis taking into account the nature of the Main Proceedings as informing the characterisation of the Attachment Proceedings , there would be a close interaction between the scope of functional immunity and the concept of civil and commercial. If an excessively broad view of functional immunity is taken (as the CoA has done), then it becomes more likely that the matter will not be considered civil and commercial for the purposes of the Brussels system as the relevant claim/s can said to arise from the exercise of public authority by the defendants. However, as I said earlier, it is somewhat puzzling as to why the CoA decided to uphold the immunity of the defendants in respect of a purely commercial claim.

However, it is worth noting that in some earlier cases, while the CJEU seem to take a relatively narrow approach to the scope of the Brussels system (CJEU Case C-29/76, *Eurocontrol*). More recent case law has taken a broader view. For example, in *Pula Parking*, para. 39, the CJEU said 'Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that enforcement proceedings brought by a company owned by a local authority…for the purposes of recovering an unpaid debt for parking in a public car park the operation of which has been delegated to that company by that authority, which are not in any way punitive but merely constitute consideration for a service provided, fall within the scope of that regulation'. If the true nature and subject of Supreme's claims are

considered, it is difficult to see how they can constitute anything but civil and commercial within the meaning of the Brussels system in light of recent case law, with the issue of IO immunities a distraction from the real issues. It will be interesting to see if the CJEU consolidates its recent jurisprudence or prefers to take a narrower approach.

3 The interaction between public and private international law?

In the Main Proceedings, in so far as civil jurisdiction is concerned, already, the applicable law to the BOAs is Dutch law and Dutch national courts are perfectly suited to take jurisdiction over the underlying substantive dispute given the prevailing connecting factors. As the CoA determined that the NATO entities tacitly accepted the jurisdiction of the Dutch courts the existence of civil jurisdiction does not seem to be at issue (CoA Decision, para 6.5.3.4). Clearly, in a private international law sense, Dutch courts are manifestly the suitable forum to determine this claim.

However, on its face, the norms on IO immunities and access to justice require balancing (being issues relevant to both public and private international law). As the district court found, if an independent mechanism to resolve a purely commercial dispute (such as an arbitration) is not offered to the claimant, IO immunities can give way to ensure access to justice. Indeed, developments in general international law require the adoption of a reinvigorated notion of jurisdiction where access to justice concerns should militate towards the exercise of jurisdiction where not doing so would result in a denial of justice. Mills has said:

> *The effect of the development of principles of access to justice in international law also has implications when it comes to prohibitive rules on jurisdiction in the form of the immunities recognised in international law…Traditionally these immunities have been understood as 'minimal' standards for when a state may not assert jurisdiction — because the exercise of jurisdiction was understood to be a discretionary matter of state right, there was no reason why a state might not give more immunity than required under the rules of international law. The development of principles of access to justice, however, requires a state to exercise its jurisdictional powers, and perhaps to expand those jurisdictional powers as a matter of domestic law to encompass internationally permitted grounds for jurisdiction, or even to go beyond traditional territorial or*

nationality-based jurisdiction (A Mills, 'Rethinking Jurisdiction in International Law' (2014) British Yearbook of International Law, p. 219).

The Main Proceedings provide an ideal case where civil jurisdiction under private international law should latch on to public international law developments that encourage the exercise of national jurisdiction to ensure access to justice. Not only private international law should be informed by public international law developments, the latter can benefit from private international law as well. I have argued elsewhere that private international law techniques are perfectly capable of slicing regulatory authority with precision so that different values (IO independence v access to justice) can both be protected and maintained at the same time (see here). Similarly, in the Attachment Proceedings, a reinvigorated notion of adjudicative jurisdiction also demands that the private and public properly inform each other. Here, it is of importance that the mere identity of the defendant as an international public authority or the mere invocation of the pursuit of public goals (such as military action) does not detract from properly characterising the nature of a claim as civil and commercial. More specifically, any ancillary proceeding to protect a party's rights where the underlying dispute is purely of a commercial nature ought to constitute a civil and commercial matter within the meaning of the Brussels system. Once civil jurisdiction in a private international law sense exists, then any immunities from enforcement asserted under public international law ought to give way to ensure that the judicial process cannot be frustrated by lack of enforcement at the end. It remains to be seen what approach the CJEU takes to these significant and difficult questions where the public and private converge.

To conclude, only a decision on the merits after a full consideration of the evidence can help determine whether Supreme's (which itself is accused of fraud) claims against Shape et al can be in fact substantiated. In the absence of an alternative remedy offered by the NATO entities, if the Dutch courts do not exercise jurisdiction, we may never know whether its claims are in fact meritorious.

Happy New Year to our CoL Readers

The Editorial Team of CoL wishes all of you a Happy New Year! We will continue trying our best to keep you posted on conflict of law views and news from around the world.

A first moment of interest might be on Tuesday 14/01/2020, 09:30 CET. According to the Judicial Calendar of the European Court of Justice, Advocate General Maciej Szpunar will deliver his Opinion on the Request for a preliminary ruling from the Tribunale di Genova (Italy) lodged on 12 October 2018 — LG and Others v Rina S.p.A. and Ente Registro Italiano Navale (Case C-641/18).

The question referred to the ECJ relates to the application of the Brussels I Regulation and it reads (OJ C-25/18 of 21 January 2019):

> *Should Articles 1(1) and 2(1) of Regulation (EC) No 44/2001 (1) of 22 December 2000 be interpreted — particularly in the light of Article 47 of the Charter of Fundamental Rights of the European Union, Article 6(1) of the European Convention on Human Rights and recital 16 of Directive 2009/15/EC (2) — as preventing a court of a Member State from waiving its jurisdiction by granting jurisdictional immunity to private entities and legal persons carrying out classification and/or certification activities, established in that Member State, in respect of the performance of those classification and/or certification activities on behalf of a non-EU State, in a dispute concerning compensation for death and personal injury caused by the sinking of a passenger ferry and liability for negligent conduct?*

As is explained in the Request for the Preliminary Ruling

> *[T]he applicants — relatives of the victims and survivors of the sinking of the Al Salam Boccaccio '98 ferry in the Red Sea on 2 and 3 February 2006, in which more than 1 000 people lost their lives — filed a lawsuit against the defendants seeking a judgment on their collective and/or joint and several civil liability for all pecuniary and non-pecuniary losses suffered as a result of the disaster in jure proprio or jure successionis and, as a result, the award of compensation in*

> *respect of those losses. The applicants submit that the defendants acted negligently when carrying out their classification and certification activities and when adopting decisions and guidelines, thereby rendering the vessel unstable and unsafe and causing it to sink.*
>
> *The defendants entered an appearance […], challenging the applicants' claims on various grounds, including in particular — with regard to the present proceedings — the defendants' immunity from Italian jurisdiction. Briefly, that plea is based on the fact that RINA S.p.A. and RINA ENTE were summonsed in relation to activities carried out as delegates of a foreign sovereign State, the Republic of Panama. Those activities were an expression of the sovereign prerogatives of that delegating foreign State, in whose name and in whose interest the defendants acted.*

We will keep you posted…

XXV Annual Conference of the Italian Society of International and EU Law (SIDI) – Call for papers

The XXV Annual Conference of the Italian Society of International and EU Law (ISIL) on *Shared Values and Commons in the International and Supranational Dimension* will be hosted at the University of Salento on 18-19 June 2020. The Conference will consist of three sessions on the following topics:

-The
respect and promotion of the democratic values and of the rule of law
in the international and European legal orders;

-The mandatory
principle of environmental conservation,
with special emphasis on sustainability;

-The threats to human rights due
to the increasing role played by new technologies in contemporary societies.

Papers are accepted for presentation in
Italian, English or French. Abstracts (250 words max) and a short bio may be submitted to SIDI2020@unisalento.it by 25 January 2020. The selection process will
be completed by the end of February 2020.

More information on this call for papers is
available here.

ERA Seminar on 'Recent ECtHR Case Law in Family Matters' – Strasbourg 13-14 February 2020

On 13-14 February 2020, ERA (Academy of European Law) will host a Seminar in Strasbourg to present the major judgments related to family matters issued by the European Court of Human Rights (ECtHR) in 2019. The focus of the presentations will be mainly on:

- Children in European migration law
- Parental rights, pre-adoption foster care and adoption
- Parental child abduction

- Reproductive rights and surrogacy
- LGBTQI rights and gender identity

The Seminar, organised by Dr Angelika Fuchs, will provide participants with a detailed understanding of this recent jurisprudence. The focus will be placed, in particular, on Article 8 ECHR (respect for private and family life) and the analysis of the case law of the ECtHR will tackle the legal implications but it will also extend to social, emotional and biological factors.

The opening speech will be given by Ksenija Turkovi?, Judge at the European Court of Human Rights in Strasbourg.

More information on the event and on registration is available here.

This event is organised with the support of the Erasmus+ programme of the European Union

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Call for papers: Introducing the "European Family" Study on EU family law. 2020 Annual Conference of the French Association for European Studies (AFEE) 11 and 12 June 2020 Polytechnic University of Hauts-de-France (Valenciennes)

Call for papers
Introducing the "European Family" Study on EU family law

2020 Annual Conference of the French Association for European Studies (AFEE)
11 and 12 June 2020
Polytechnic University of Hauts-de-France (Valenciennes)

Summary

Family law, with its civil law tradition, and strong roots in the national cultures of the Member States, does not normally fall within the scope of European law. However, it is no longer possible to argue that Family Law is outside European law entirely. There are many aspects of the family which are subject to European influence, to the point that the outlines of a "European family" are starting to emerge. Union law therefore contains a form of "special" family law which is shared between the Member States and supplements their national family laws. What are the sources and outlines of this special family law and what tools is the Union's legal order using to construct it? How should this movement towards the Europeanisation of the family be regarded with respect to a civil and sociological approach to the family and the political and legal integration of the Union? And what is the future for the European family law which is being created? All these questions require collective research as part of a multidisciplinary study (the institutional and substantive law of the Union, civil family law, international private law, comparative law, sociology, history, political sciences etc.) on how this special law of the family is gradually becoming part of the Union's legal order. A call for papers, supplemented by invitations to reputed speakers will bring researchers and practitioners from different disciplines together to throw new light on European family law. There will also be a competition for the best "Letter to the European family" involving proposing a European vision of the family, for junior researchers.

The Scientific Board

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• Dr. Marion Ho-Dac, Polytechnic University of Hauts-de-France marion.hodac@uphfr.fr

The Scientific Committee

• Pr. Elsa Bernard, University of Lille
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- Pr. Marc Fallon, University of Louvain (UCLouvain)
- Pr. Geoffrey Willems, University of Louvain (UCLouvain)
- Dr. Marion Ho-Dac, Polytechnic University of Hauts-de-France (UPHF)
- Pr. Anastasia Illiopoulou, University of Créteil (UPEC)
- Pr. Sandrine Sana, University of Bordeaux, in delegation at University of French Polynesia

I. Argument

Firstly, the research is intended to highlight the European experience of Family Law and its substantive and private international law aspects. Union family law as a special law side-byside with the diversity of national family laws must then be identified. Secondly the existence of this special family law must be considered: its theoretical and political importance in the Union of today and its future in the Union of tomorrow. Will this special family law remain fragmented alongside the national laws of Member states or will it densify to offer European citizens and residents a common family law?
Two areas of study are recommended, which could be used as a benchmark by researchers by prioritising one of them in their papers.

1.UNDERSTANDING EU FAMILY LAW

As a rule, the family in its material dimension falls outside the scope of Union law because the civil law of the family is not subject to the European courts. Only the rules of international private law expressly enable European lawmakers to pass laws concerning "cross-border" family law (article 81 TFEU). These rules therefore exist for international separation matters and international property law of the family. However, over the years a development has gradually been seen and the basis for a substantive law of the family of a European origin has appeared.

1.1.Content

The aspects of European family law which are shared by the Member States therefore supplement the multiplicity of national laws. They play a role as a special law, which varies depending on its area of intervention (Freedom of Movements, European Civil Service, European Immigration Law, Social Law of the Union, International Private Law etc.).The aim is to present its content in a dynamic and comparative way, not only to gauge its extent and characteristics but also its degree of originality compared to the internal laws of the Member states.

1.2.Tools

The emergence of this special law of the Union, which is still fragmentary and dispersed, is the result of the combination of several factors which must be considered. There is a family dimension within Union law because it structures and regulates numerous aspects of the lives of people on a given territory. Thus the Union's traditional areas of competence in economic matters affect the lives of Europeans. This influence has increased with the rapid growth in the freedom of movement of people and more globally, the European Area of Freedom, Security and Justice as well as with the growing influence of fundamental rights through the case law of the European Court of Human Rights and the recent application of the union's Charter of Fundamental Rights. As a consequence, the tools used by the Union and its different players are contributing, day by day, to shaping the contours of this EU Family Law.

2. ASSESSING EU FAMILY LAW

European law only affects the family in a fragmented and dispersed way at the present time. European family law is therefore random, because its existence depends on the political choices made by the actors implementing European tools. It is also incomplete because it does not govern all the sociological and legal realities covering the concept and the law of the family. Finally, it is variable because its content differs depending on whether it concerns the family of a European citizen, of a citizen of a third-party state or of a worker, or the family considered from an international private law perspective, giving rise to questions about the relationship between the standards and methods inside the Union's legal order.

2.1. Significance

The question of significance is then raised i.e. the usefulness, the need but also perhaps the effectiveness of this family law of the Union which is being constructed in the European area. Further clarification of the European conception of the family or families might also be required. The analysis of the significance of European family law will inevitably vary depending on which point of view is adopted: the point of view of national peoples, mobile European citizens, nationals of third-party states living in the Union or aspiring to live there, States or the Union …. Reconciling these points of view also enriches the considerations.

2.2. The future

The development of the family law of the Union in a quantitative (enlarging its area of intervention, relationships with States) and, perhaps above all, qualitative (coordination, harmonization, unification, rationalization, articulation) way would have a certain number of benefits. However, this development would inevitably come up against serious difficulties of a political and a technical nature. The research on the possible deepening of European family law would therefore be twofold: the prospective content of European family law, and its relationship with national family laws.

II. Methods of submission and publication

Legal researchers and practitioners interested in this research project are invited to send their contribution to the members of the Scientific Board (see email addresses above). Collective contributions from researchers in different specialities and/or from different legal cultures are particularly welcome.

Contributions must be in the form of a summary (a maximum of 10,000 characters, spaces included) written in French or English, presenting the chosen theme, the goals and interest of the contribution, the plan and main references (normative, bibliographic etc.) at the heart of the analysis. The contributions will be subject of a selection process by Scientific Committee after they have been anonymized by the Scientific Board.

The contribution may be accompanied by a quick presentation of the writer (maximum 3000 characters spaces included).

The papers will be published in the autumn of 2020.

Contributors are informed that written contributions must be written (in English or French) and sent to the members of the Scientific Board before the conference on 11 and 12 June. Writers will, if they wish, have a short time after the conference in which to make slight adjustments to their original contributions to incorporate new aspects highlighted by other presentations or during the debates.

III. Timetable

Submission of contributions: by **13 January 2020**
Reply to contributors: week of **2 March 2020**
Delivery of the written contribution: **28 May 2020**
Conference dates: **11 and 12 June 2020**

Delivery of the final contribution: **22 June 2020**
Publication: **Autumn 2020**

IV. Junior researchers and the competition
Junior researchers are asked to examine the relationship between European law and the family from a new, critical and prospective stand point. The call for papers is therefore open to PhD students, doctors and post-docs under the same conditions.
There is also a competition for the best "Letter to the European Family", where a short text (maximum 6000 characters including spaces), beginning with "Dear European family" and giving a European vision of the family will be proposed. At a time when the direction European construction should take is constantly being questioned, considerations about the European family could offer a path for political renewal for Europe. The best i.e. the most convincing letter will be read at the end of the conference, and the letter will be published in the conference papers.

The letters received will be submitted to the Scientific Committee for selection after they have been anonymised by the Scientific Board.

The same timetable (see above) applies to contributions to the conference and the same "junior" researcher can submit a contribution as well as a letter.

Appel à communication
Connaissez-vous la « famille européenne » ?
Étude du droit de la famille de l'Union européenne
* * * *
Congrès annuel 2020 de l'Association Française d'Études Européennes (AFEE) 11 & 12 juin 2020
Université Polytechnique Hauts-de-France (Valenciennes)

Résumé
Le droit de la famille, dans sa dimension civiliste, fortement ancrée dans les cultures nationales des États membres, est une matière qui ne relève pas en principe du droit de l'Union européenne. Pourtant, il n'est plus possible d'affirmer que la matière échappe dans son entier au droit de l'Union. De nombreux aspects de la famille sont sous influence européenne, au point que l'on voit se dessiner les contours d'une « famille européenne ». En ce sens, le droit de l'Union contient

une forme de « droit spécial » de la famille, partagé par les États membres, qui complète les droits nationaux de la famille.

Quels sont les sources et les contours de ce droit spécial de la famille et quels outils mobilise l'ordre juridique de l'Union pour le construire ? Comment apprécier ce mouvement d'européanisation de la famille au regard tant d'une approche civiliste et sociologique de la famille, que du sens de l'intégration politique et juridique de l'Union ? Et au-delà, quel avenir imaginer pour ce droit européen de la famille en construction ?

Autant de questions qui nécessitent un travail de recherche collective permettant de conduire une réflexion pluridisciplinaire (droit institutionnel et matériel de l'Union, droit civil de la famille, droit international privé, droit comparé, sociologie, histoire, sciences politiques…) sur l'élaboration progressive de ce droit spécial de la famille dans l'ordre juridique de l'Union.

Un **appel à communication**, complété par l'invitation de personnalités reconnues, permettra de réunir des chercheurs et praticiens d'horizons divers, porteurs d'éclairages renouvelés et innovants en droit européen de la famille. Un concours de la meilleure « Lettre à la famille européenne » consistant à proposer une vision européenne de la famille sera, par ailleurs, ouvert aux jeunes chercheurs.

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- Pr. Anastasia Illiopoulou, Université de Créteil (UPEC)

• Pr. Sandrine Sana, Université de Bordeaux, en délégation à l'Université de Polynésie française

I. Argumentaire

La recherche vise, dans un premier temps, à mettre en lumière l'acquis européen en matière de droit de la famille, dans ses aspects de droit matériel comme de droit international privé. Le droit de la famille de l'Union, comme droit spécial, à côté de la diversité des droits nationaux de la famille, doit ainsi être identifié. Dans un second temps, c'est l'essence d'un tel droit spécial de la famille qu'il faudra questionner : sa signification théorique et politique dans l'Union d'aujourd'hui, autant que son devenir dans l'Union de demain. Ce droit spécial de la famille a-t-il vocation à demeurer fragmentaire à côté des droits nationaux des États membres ou, au contraire, à se densifier pour offrir aux citoyens et résidents européens un droit commun de la famille ?
Deux axes de réflexion sont suggérés pour mener à bien la recherche ; ils pourraient utilement servir de repère pour les chercheurs proposant une communication, en mentionnant l'axe dans lequel ils entendent s'inscrire prioritairement.

1. Appréhender

le droit de la famille de l'Union La famille, dans sa dimension matérielle, échappe, en principe, au droit de l'Union dans la mesure où le droit civil de la famille ne relève pas des compétences européennes. Seules les règles de droit international privé permettent explicitement aujourd'hui au législateur de l'Union d'adopter des textes relatifs au droit de la famille « transfrontière » (article 81 TFUE). De telles règles existent ainsi en matière de désunion internationale et de droit patrimonial international de la famille. Pourtant, au fil des années, un constat s'est peu à peu imposé : les prémices d'un droit matériel de la famille, de source européenne, sont apparues.

1.1. Contenu

Ces éléments de droit européen de la famille, partagés par les États membres, complètent ainsi la multiplicité des droits nationaux. Ils jouent le rôle d'un droit spécial, à géométrie variable selon ses domaines d'interventions (libertés de circulation, fonction publique de l'Union, droit européen de l'immigration, droit social de l'Union, droit international privé…). L'objectif est alors, dans une perspective dynamique et comparative, de présenter son contenu et de mesurer non seulement son étendue et ses caractéristiques, mais aussi son degré

d’originalité par rapport aux droits internes des États membres.

1.2. Outils

L’apparition de ce droit spécial de l’Union, encore parcellaire et éclaté, s’explique par la combinaison de plusieurs facteurs qu’il est proposé d’étudier. Le droit de l’Union recèle en luimême une dimension familiale, en ce sens qu’il structure et règlemente de nombreux aspects de la vie des personnes sur un territoire donné. C’est ainsi, notamment, que les compétences traditionnelles de l’Union en matière économique ont rejailli sur la vie familiale des Européens. L’essor de la libre circulation des personnes et, plus globalement, de l’espace de liberté, de sécurité et de justice, n’a fait qu’accroître ce constat, de même que l’influence croissante des droits fondamentaux, à travers tant la jurisprudence de la Cour EDH que l’application plus récente de la Charte des droits fondamentaux de l’Union. Partant, les différents outils mis en œuvre par l’Union et ses différents acteurs contribuent, jour après jour, à façonner les contours de ce droit de la famille de l’Union.

2. Apprécier le droit de la famille de l’Union

La famille n’est, à ce jour, saisie par le droit de l’Union que de manière ponctuelle et fragmentée. Il en résulte que le droit européen de la famille est aléatoire : son existence dépend des choix politiques des acteurs mettant en œuvre les outils européens. Il est également incomplet puisqu’il ne régit pas l’intégralité des réalités sociologiques et juridiques que recouvrent respectivement la notion et le droit de la famille. Il est, enfin, à géométrie variable car le contenu donné à ce droit n’est pas le même selon qu’il s’agit de la famille du citoyen européen, du ressortissant d’État tiers ou du travailleur, ou encore de la famille appréhendée par les mécanismes de droit international privé… Il en résulte par là même un questionnement relatif à l’articulation des normes et des méthodes, en matière familiale, au sein de l’ordre juridique de l’Union.

2.1. Sens

Dans ce contexte, se pose la question du sens, c’est-à-dire de l’utilité, du besoin mais aussi peut-être de l’efficience, de ce droit de la famille de l’Union en construction dans l’espace européen. Pour y répondre, il pourrait être nécessaire de préciser davantage la conception européenne de la famille ou des familles. L’analyse du sens du droit européen de la famille variera nécessairement selon le point de vue adopté : celui des peuples nationaux, des citoyens européens mobiles, des ressortissants d’États tiers vivant dans l’Union ou aspirant à y vivre,

des États ou encore de l'Union… La question de la conciliation de ces points de vue s'ajoute alors à la réflexion.

2.2. Devenir

L'évolution future du droit de la famille de l'Union dans un sens quantitatif (élargissement de son domaine d'intervention, rapports avec les États), et peut-être surtout qualitatif (coordination, harmonisation, unification, rationalisation, articulation…) présenterait un certain nombre d'avantages. Dans le même temps, une telle tendance ne manquerait pas de se heurter à de sérieuses difficultés d'abord politiques, puis techniques. S'agissant d'un possible approfondissement du droit européen de famille, la recherche serait double : le contenu prospectif de la matière et son articulation avec les droits nationaux de la famille.

II. Modalités de soumission et de publication

Les chercheurs et praticiens du droit intéressés par ce projet de recherche sont invités à envoyer leur proposition de contribution aux membres de la Direction scientifique (v. adresses e-mails mentionnées ci-dessus). Seront accueillies avec un intérêt particulier les contributions collectives proposées par deux ou trois chercheurs de spécialités et/ou de culture juridique différentes.

Les contributions prendront la forme d'un résumé (max. 10 000 caractères, espaces compris) rédigé en français ou en anglais, présentant le thème retenu, les objectifs et l'intérêt de la contribution, le plan envisagé et les principales références (normatives, bibliographiques…) au cœur de l'analyse.

Les contributions reçues feront l'objet d'une sélection par le Comité scientifique après avoir été anonymisées par la Direction scientifique.

L'envoi de la contribution pourra, à titre facultatif, être accompagné d'une rapide présentation de leur auteur (max. 3 000 caractères espaces compris).

Les actes du colloque sont destinés à être publiés à l'automne 2020.

L'attention des contributeurs est attirée sur le fait que les **contributions écrites** devront être rédigées (en anglais ou en français) et envoyées aux membres de la Direction scientifique avant le congrès des 11 et 12 juin. Un bref délai sera laissé aux auteurs à l'issue du congrès pour, s'ils le souhaitent, apporter de légères modifications à leur contribution originale afin d'intégrer des éléments nouveaux mis en lumière par d'autres présentations ou lors des débats.

III. Calendrier
Date limite d'envoi des propositions de contribution : **13 janvier 2020**
Réponse aux intervenants : semaine du **2 mars 2020**
Remise de la contribution écrite : **28 mai 2020**
Dates du colloque : **11 et 12 juin 2020**
Remise des contributions finales : **22 juin 2020**
Publication : **automne 2020**

IV. Jeune doctrine et concours
La jeune doctrine est invitée à apporter un regard neuf, critique et prospectif sur les relations entre Union européenne et famille. L'appel à communication est ainsi ouvert, aux mêmes conditions (v. ci-dessus), aux doctorants, docteurs et post-doctorants.

Un concours de la meilleure « Lettre à la famille européenne » est également lancé. Il s'agit de proposer un texte court (max. 6000 signes, espaces compris) commençant par « *Chère famille européenne* », consistant à proposer une vision européenne de la famille. A l'heure où l'on ne cesse de s'interroger sur le sens de la construction européenne, penser la famille européenne pourrait offrir une voie de renouvellement politique pour l'Europe. Une lecture de la meilleure lettre, c'est-à-dire de la plus convaincante et originale, est prévue en clôture du colloque et la lettre sera publiée dans les actes du colloque.

Les lettres reçues seront soumises au processus de sélection par le Comité scientifique après avoir été anonymisées par la Direction scientifique.

Le même calendrier (v. ci-dessus) que pour les contributions au congrès s'applique et un même chercheur « jeune doctrine » peut proposer tout à la fois une contribution et une lettre.

Gender and Private International

Law (GaP) Transdisciplinary Research Project: Report on the kick-off event, October 25th at the Max Planck Institute for Comparative and International Private Law

As announced earlier on this blog, the Gender and Private International Law (GaP) kick-off event took place on October 25th at the Max Planck Institute for Comparative and International Private Law in Hamburg.

This event, organized by Ivana Isailovic and Ralf Michaels, was a stimulating occasion for scholars from both Gender studies and Private and Public international law to meet and share approaches and views.

During a first session, Ivana Isailovic presented the field of Gender studies and its various theories such as liberal feminism and radical feminism. Each of these theories challenges the structures and representations of men and women in law, and helps us view differently norms and decisions. For example, whereas liberal feminism has always pushed for the law to reform itself in order to achieve formal equality, and therefore focused on rights allocation and on the concepts of equality and autonomy, radical feminism insists on the idea of a legal system deeply shaped by men-dominated power structures, making it impossible for women to gain autonomy by using those legal tools.

Ivana Isailovic insisted on the fact that, as a field, Gender studies has expanded in different directions. As a result, it is extremely diverse and self-critical. Recent transnational feminism studies establish links between gender, colonialism and global capitalism. They are critical toward earliest feminist theories and their hegemonic feminist solidarity perception based on Western liberal paradigms.

After presenting those theories, Ivana Isailovic asked the participants to think about the way gender appears in their field and in their legal work, and

challenged them to imagine how using this new Gender studies approach could impact their field of research, and maybe lead to different solutions, or different rules. That was quite challenging, especially for private lawyers who became aware, perhaps for the first time, of the influence of gender on their field.

After this first immersion in the world of gender studies, Roxana Banu offered a brief outline of private international law's methodology, in order to raise several questions regarding the promises and limits of an interdisciplinary conversation between Private International Law (PIL) and gender studies. Can PIL's techniques serve as entry points for bringing various insights of gender studies into the analysis of transnational legal matters? Alternatively, could the insights of gender studies fundamentally reform private international law's methodology?

After a short break, a brainstorming session on what PIL and Gender studies could bring to each other took place. Taking surrogacy as an example, participants were asked to view through a gender studies lens the issues raised by transnational surrogacy. This showed that the current conversation leaves aside some aspects which, conversely, a Gender studies approach puts at the fore, notably the autonomy of the surrogate mother and the fact that, under certain conditions, surrogacy could be a rational economic choice.

This first set of questions then prompted a broader philosophical debate about the contours of an interdisciplinary conversation between PIL and Gender studies. Aren't PIL scholars looking at PIL's methodology in its best light while ignoring the gap between its representation and its practice? Would this in turn enable or obfuscate the full potential of gender studies perspectives to critique and reform private international law?

As noted by the organizers, "although private international law has always dealt with question related to gender justice, findings from gender studies have thus far received little attention within PIL". The participants realized that is was also true the other way around: although they were studying international issues, scholars working on gender did not really payed much attention to PIL either.

One could ask why PIL has neglected gender studies for so long. The avowedly a-political self-perception of the discipline on the one hand, and the focus on public policy and human rights on the other, could explain why gender issues were not examined through a Gender studies lens. However, Gender studies could be a

useful reading grid to help PIL become aware of the cultural understanding of gender in a global context. It could also help to understand how PIL's techniques have historically responded to gender issues and explore ways to improve them. Issues like repudiation recognition, polygamous marriage or child abductions could benefit from this lens.

It was announced that a series of events will be organized: reading groups, a full day workshop and a conference planned for the Spring of 2020.

If you want to know more about the project, please contact gender@mpipriv.de.