Promoting a Spanish Law on International Civil Cooperation

In 2000, the Spanish Civil Procedure Act stated that within six months after its entry into force the Government would propose a draft law on international cooperation. Many years have elapsed, and the law, obviously needed, has not yet seen the light. The last Foro de Arbitraje y Litigación Internacional, celebrated in FIDE (Fundación para la Investigación sobre el Derecho y la Empresa) in February, addressed the issue, having F.J. Garcimartín Alférez (professor of private international law) and A. Mejía Errasquín (General Director for International Legal Cooperation and Relations with the Confessions of the Ministry of Justice) as speakers. Numerous references were made to a draft prepared in 2001 by M. Virgos Soriano, professor of private international law, where all the important issues of a future law on international cooperation, especially exequatur, are dealt with. For those interested in this topic here is a summary of the meeting.

Many thanks to Carlos Espósito, of aquiescencia.

Swiss Conference on the Brussels I Review

The Swiss Institute of Comparative Law will hold a conference on the Brussels I Review and its impact on the Lugano Convention on April 8th at the Institute in Lausanne.

The full programme can be downloaded here, and the registration document is available here.

UAM Conference on EU Law. Call for Papers

The UAM (Universidad Autónoma de Madrid) Faculty of Law will host the 1st *UAM International Conference on EU Law. Recent trends in the case law of the Court of Justice of the EU* (2008-2011) the 14-15 July 2011. This Conference is meant to be a forum for the critical analysis of the most recent ECJ case law. The programme includes two plenary lectures and eight specialized panels, one of them devoted to judicial cooperation in civil matters. Informants for the panel will be selected on the basis of proposals and abstract submitted in response to a Call for Papers.

The deadline for the call for papers is 10th April 2011.

For more information see here

Antisuit Injunctions

My colleague Roger Alford has an excellent post up at Opinio Juris regarding the recent comings and goings in the Chevron Ecuador Litigation. See here for more.

Fourth Issue of 2010's Revue

Critique de Droit International Privé

The last issue of the *Revue critique de droit international privé* was just released. It contains two articles and several casenotes. The full table of content can be found here.



In the first article, Dr. Marius Kohler and Dr. Markus Buschbaum discuss the concept of recognition of authentic instruments in the context of cross-border successions (*La « reconnaissance » des actes authentiques prévue pour les successions transfrontalières. Réflexions critiques sur une approche douteuse entamée dans l'harmonisation des règles de conflits de lois*). The English abstract reads:

> *However advantageous the introduction of a European inheritance certificate may be, as envisaged by the Commission's proposed Regulation on international successions, it is in its current form likely to create friction because of the way in which it organises the relationship with national inheritance certificates. It would therefore be wise to restrict the use of the European certificate to international successions, where it could then be drafted on basis of the national one, and to limit its effects to the Member States of destination. Moreover, as far as the free circulation of authentic instruments in general is concerned, the Regulation raises serious misgivings as to the use made by the proposal of the concept of mutual recognition. It appears that this concept – appropriate as it is for judicial decisions – is unsuitable to promote the circulation of authentic instruments.*

In the second article, Professor Malik Laazouzi, who teaches at St Etienne University, discusses the impact of the recent *Inserm* decision of the French *Tribunal des conflits* (a translation of which can be found here) on choice of law in administrative contracts (*L'impérativité, l'arbitrage international des contrats administratifs et le conflit de lois. A propos de l'arrêt du Tribunal des conflits du 17 mai 2010,* Inserm c/ Fondation Saugstad). I am grateful to the author for providing the following summary:

The Inserm case deals primarily with international arbitration issues. But the way of reasoning used to decide the case could also interfere with the handling of public law matters involving French public entities in private international law by French jurisdictions.

How did the issue occur ?

A French public law entity (Inserm) entered into a contract with a Norwegian Fondation (Letten F. Sugstad) in order, inter alia, to achieve the implementation of a research facility in France, including a construction project. An arbitration occurred to decide over the termination of the agreement by the Fondation. The arbitral award, rendered in France, dismissed Inserm's claims. The French entity then applied to set aside the award simultaneously before french civil and administrative courts. To assert the jurisdiction of the letter, Insermargued that the dispute arose out of a French administrative contract.

The case has given rise to the intricate issue of allocation of jurisdiction between civil and administrative courts. As a matter of consequence, it has been brought before the Tribunal des conflits.

The question which the Tribunal des conflits had to solve is complicated to enunciate. Which one of the French civil or administrative courts have jurisdiction to set aside an international arbitral award rendered in France, in a dispute arisen out of the performance or termination of a contract to be performed on the French territory and entered into between a French public law entity and a foreign individual or entity ?

The Tribunal des conflits decided, on 17 may 2010, that the application to set aside the award in such a case is to be brought before civil courts, even if the contract is an administrative one under French law. This solution allows an exception when the contract entered into by a french public entity is governed by a mandatory administrative regime. In this particular case, administrative courts retain jurisdiction to decide over challenges to the arbitral award.

This decision is strictly limited to some international arbitration matters involving a contract entered into by a french public entity. When it is not the case – i.e. when no french public entity is involved – French administrative courts does not intervene at all.

This case is worth mentioning within the field of private international law. The distinction it introduces between mandatory and non mandatory administrative rules in the international arena could reshape the very idea of the split in methods to solve conflict of laws issues according to the public or private law nature of the rules at stake.

Jurisdiction in Cross-Border Libel Cases

The Court of Appeal for Ontario has released *Paulsson v. Cooper*, 2011 ONCA 150 (available here). The plaintiff, an academic and author resident in Ontario, sued the defendants for publishing an allegedly libellous review of his book. The defendant publisher was incorporated in New York and had its national office in Massachusetts. The reviewer was an Australian academic.

The motions judge had held that Ontario lacked jurisdiction, but the Court of Appeal held that Ontario had jurisdiction and that no other forum was more appropriate for the resolution of the dispute. The court found that there was a "real and substantial connection" to Ontario. The court applied the orthodox analysis that the tort of libel was committed where the statement was read, and so had happened in Ontario. In addition, the place of the damage was Ontario since that was where the plaintiff's reputation was located.

The case was perhaps easier than some other recent cases. The plaintiff's connection to Ontario was quite strong on the facts; he was not a "libel tourist" who had sought out an advantageous forum. The publication was not over the internet, which raises greater complexity, but rather in printed form. The publisher had circulated 3528 copies, of which 81 were circulated in Ontario. Several of those 81 copies had ended up in academic or public-access libraries.

The court agreed with a key quotation from *Barrick Gold Corp. v. Blanchard and Co.* (2003), 9 B.L.R. (4th) 316 (Ont. S.C.J.): "If a person issues a statement and

places that statement in a normal distribution channel designed for media attention and publication, a person ought to assume the burden of defending those statements, wherever they may damage the reputation of the target of those statements and thereby cause the target harm, as long as that harm occurred in a place that the originator of the statements ought reasonably to have had in his, her or its contemplation when the statements were issued."

As noted in an earlier post on this forum, many of these issues are being heard by the Supreme Court of Canada later this month in four other cases being appealed from the Court of Appeal for Ontario.

Arbitration Academy: Summer Courses 2011

An International Academy for Arbitration Law will be launched in Paris in July 2011.

The Academy is an initiative of the French Arbitration Committee (Comité Français de l'Arbitrage (CFA)) and is presided by Professor Emmanuel Gaillard. The Board of Directors is composed of the Academy's President, Alexandre Hory and Yas Banifatemi as co- Secretary Generals, Jean-Georges Betto as Treasurer, Professor Marie- Elodie Ancel and Professor Jean-Baptiste Racine as members of the Selection Committee, and Maitre Philippe Leboulanger as Chair of the CFA. The Academy also has a Board of Advisors which includes Professor George Abi-Saab (Egypt), Professor Liza Chen (China), Professor Eros Grau (Brazil), Professor Horacio Grigera Naon (Argentina), Judge Gilbert Guillaume (France), Professor Gabrielle Kaufmann-Kohler (Switzerland), Professor Alexander Komarov (Russian Federation), Professor Pierre Mayer (France), Professor Michael Reisman (USA), Professor Dorothé Sossa (Benin), Professor Christoph Schreuer (Austria), and V.V. Veeder QC (UK).

The Academy will offer three-week Summer Courses to students and young practitioners interested in the field, covering both international commercial

arbitration and international investment arbitration. The Summer Courses will be given in Paris from 4 July to 22 July 2011, and will be offered in English. They will include a General Course, Special Courses, Workshops on institutional arbitration, an Inaugural Lecture and The Berthold Goldman Lecture on historic arbitration stories.

For the first Session of the Academy in 2011, the General Course will be taught by Professor Christoph Schreuer. The Special Courses will be taught by Professor George Bermann, Professor Pierre- Marie Dupuy, Professor Diego Fernandez Arroyo, Professor François Knoepfler, Professor Pierre Mayer, Dr. Klaus Sachs, and Maître Michael Schneider. The 2011 Workshops will be offered by ICSID, ICC , and the PCA. The Inaugural Lecture will be delivered by Professor Pierre Lalive on the topic "Is Arbitration a Form of International Justice?". The Berthold Goldman Lecture on historic arbitration stories will be given by V.V. Veeder QC on the Lena Goldfield arbitration.

Interested students and young practitioners are invited to apply to the Academy by April 30, 2011. The Application Form and the complete Program can be viewed on the Academy's Website at www.arbitrationacademy.org.

Many thanks to Marie-Élodie Ancel.

Private International Law Seminar, Madrid 2011

On 24 and 25 March, 2011, a new edition of the Private International Law Seminar organized by Prof. Fernández Rozas and De Miguel Asensio will take place in Madrid. Supported this time by the European Commission and the Notary Association of Madrid, the Seminar is organized in coordination with the Anuario Español de Derecho Internacional Privado, where most of the contributions will be published later this year.

As in previous editions, the Seminar, which has become one of the most

successful events in the field of conflict of laws in Spain, will be held at the Complutense University. It will bwe structured in five sessions: family and successions, interregional conflicts, obligations, company law, and a final panel on harmonization of international business law. The conference will bring together numerous experts, academics and lawyers from more than fifteen countries. Spanish, English and French will be spoken -though no translation is provided. The full programme can be found here

Madrid 2011

and registration (which is free) is now open.

French Court Declines Jurisdiction in Libel Case over Book Review

Yesterday, a Paris criminal court declined jurisdiction over the proceedings initiated against Joseph Weiler for a book review published on his website (original judgment available here, Weiler offers translation of part of it here).

We had reported earlier on this case: an Israel based scholar had initiated criminal libel proceedings in France against Weiler, a U.S based law professor, for the online review of her book by the Dean of Cologne law school.

Jurisdiction

The court settled the case on jurisdiction. It held that no evidence had been provided that the site was accessible and actually consulted in France within 3 months of the publication of the book review. 3 months was the time period within which criminal libel proceedings can be prosecuted under French law. The "plaintiff" had only provided evidence of the accessibility of the site more than 110 days after such date.

Abuse of Right

The court then moved on to entertain Weiler's counter claim. Weiler had filed a counter tort action for abuse of the right to sue.

The court found that there had been such abuse. First, the "plaintiff" had explained that she had sued in France because it was cheaper, and because the claim had no chance of being successful anywhere else. The court held that this was forum shopping. Secondly, the court found that the plaintiff should have known that she had no chance on the merits. Importantly, the court held the review, which was moderate, expressed a scientific opinion.

Weiler had asked for € 10,000 in damages. He got € 8,000.

Ringe and Hellgardt on Issuer Liability

Wolf-Georg Ringe (Oxford Faculty of Law) and Alexander Hellgardt (Max Planck Institute for Tax Law and Public Finance) have published an article on *The International Dimension of Issuer Liability—Liability and Choice of Law from a Transatlantic Perspective* in the last issue of the Oxford Journal of Legal Studies.

> *The worldwide integration of capital markets makes progress and has led both issuers and investors to being active on various markets on both sides of the Atlantic. In times of financial crises, this brings one question into the centre of attention which had not been discussed exhaustively before: In the situation of a securities liability towards investors in an international context, which is the applicable law to the liability claim? The harmonisation of private international law rules in Europe gives rise to new reflections on the problem of international issuer liability. In the United States, on the other hand, the Supreme Court has just granted certiorari in a 'foreign-cubed' securities class action case and will thus rule for the first time on matters relating to the international application of the US securities regulation soon. This paper understands the role of issuer liability in a broader context as a 'corporate governance' device and, from this*

starting point, develops a new approach to the legal problem of cross-border securities liability.

The paper is also available on SSRN.