Dutch Conference on the Impact of the ECHR on Private International Law

On 12 November 2010 the Netherlands Organisation for Scientific Research (NWO), the Amsterdam Center for International Law (ACIL) and the Centre for the Study of European Contract Law (CSECL) will organize a symposium about 'The Impact of the European Convention on Human Rights on Private International Law'.

The conference will take place in Amsterdam in the Doelenzaal of the university library (UB).

Preliminary Program

9h00–9h30: Arrival and Registration

9h30–9h45: *Welcome and Introduction*: Erika de Wet (Amsterdam/ Pretoria)

9h:45–11h.15: *The ECHR and the Public Policy Exception in Private International Law*
Chair: Jannet Pontier (Amsterdam)
Speaker: Ioanna Thoma (Athens) (25min)
Discussants: James Fawcett (Nottingham); Aukje van Hoek (Amsterdam) (20min each)

11h:45-13h15: *Art. 1 ECHR and Private International Law*
Chair: André Nollkaemper (Amsterdam)
Speaker: Louwrens Kiestra (Amsterdam) (25min)
Discussants: Jaco Bomhoff (Leiden, tbc); Michael Stürner (Frankfurt/Oder) (20min each)

13h15-14h15: Lunch

14h15-15h45: *The Prohibition of Discrimination under the ECHR and Private International Law*
Chair: Ted de Boer (Amsterdam)

Speaker: Patrick Kinsch (Luxemburg) (25min)
Discussants: Andrea Büchler (Zurich); Mathias Reimann (Ann Arbor) (20min each)

16h15-17h15: *General Discussion* – Chair: A.E. Oderkerk (Amsterdam)

17h15-17h30: *Closing Comments by the Organizers*

More information can be found here.

Childress on Erie and International Cases

Trey Childress, who teaches at Pepperdine University School of Law, has posted When Erie Goes International on SSRN. Here is the abstract:

> *This Article challenges the widely held belief that the Erie doctrine automatically applies in private international law cases – namely, cases where a United States federal court is asked by private litigants to apply foreign, non-United States law. Under the conventional understanding, the Erie doctrine not only requires federal courts to apply the law of the state in which the court sits but also to apply that state's conflict-of-laws rules, even when those rules direct the court to apply the law of a foreign country. This Article argues that courts should question the mechanistic application of a doctrine announced in the 1930s (and updated to conflict of laws in the 1940s and 1970s) to the realities of private international litigation today, especially in light of more recent Supreme Court cases concerning constitutional constraints on choice of law. Among other findings, the Article provides empirical evidence uncovering a previously unrecognized connection in the scholarly literature: internationalizing the Erie doctrine may in part explain the increased use of the forum non conveniens doctrine by federal district courts. The Article also reframes the ongoing and contested scholarly debate between Professors Curtis Bradley, Jack Goldsmith, Harold Koh, and others regarding the application of Erie to customary international law in light of Erie's application in private*

international law cases. The Article not only provides a new empirical and scholarly lens through which to view the international application of the Erie doctrine but also offers a suggested approach to be employed by courts when faced with such cases.

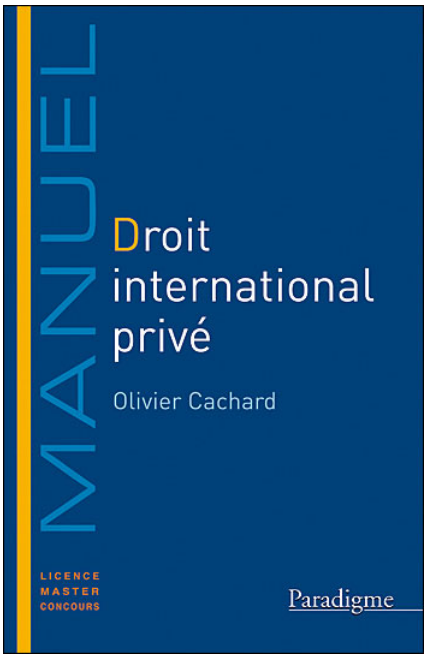
The paper, which is forthcoming in the *Northwestern University Law Review*, can be freely donwloaded here.

ATS and the lack of corporate liability under International Law

For those interest in the fate of the american ATS, see the recent order of the US District Court of the Southern District of Indiana here (a summary of the decision by Antoine Martin, PhD reasearcher in International Law at the University of Surrey and editor of International Law Notepad website, may also be found here).

New French Book on Private International Law

Professor Olivier Cachard, who is the Dean of the Law Faculty of Nancy, has recently published a book on French private international law.

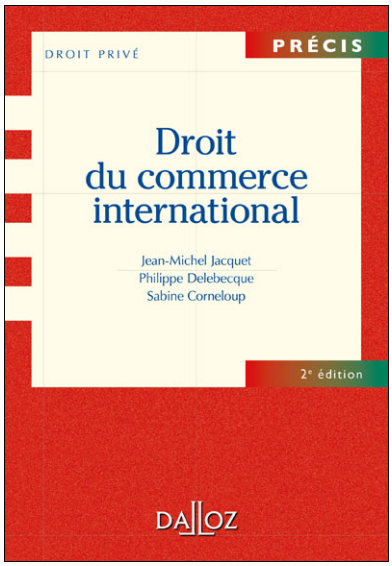


The book is short (less than 300 pages). It aims at surveying the subject, and will thus be very useful for not only for students, but also for foreigners wishing to get a first acquaintance with the subject. Remarkably, it also includes quite a few materials such as cases, statutory texts and extracts from leading articles.

More details can be found here.

New French Book on International Commercial Law

The second edition of Jean-Michel Jacquet, Philippe Delebecque and Sabine Corneloup's manual on international business law (*Droit du commerce international*) was released this summer.



It is one of the few comprehensive French books in this field, and it is up to date.

For more details, see here.

Rueda and Cuniberti on Abolition of Exequatur

Isabelle Rueda and I (University of Luxembourg) have posted Abolition of Exequatur – Addressing the Commission's Concerns on SSRN. The abstract reads:

> *After the European Council called for the reduction of intermediate measures necessary for the enforcement of judgments, the European Commission has initiated a process of gradual abolition of exequatur in the European Union. The exequatur procedure, however, serves the important purpose of preventing the enforcement of foreign judgments made in violation of human rights. Along with many other critiques of the project, this Article argues that existing mechanisms sanctioning human rights violations do not serve the same purpose, and that the new remedies forged by the Commission do not afford the same level of protection. However, unlike many other critiques, the Article argues that the concerns articulated by the European lawmaker with respect to the traditional exequatur procedure should not be ignored and could be*

addressed by reforming exequatur in a less radical way.

The paper can be freely downloaded here. All comments welcome!

Faculty Position at National University of Singapore

The Faculty of Law at the National University of Singapore invites applications for full-time academic appointment at all levels.

JOB DESCRIPTION:

We seek candidates who are committed to excellence in research and teaching. Applications in all areas are welcome. At present, we are especially interested in scholars who specialise in (1) Conflict of Laws (Private International Law) or (2) Law and Economics.

ABOUT NUS:

NUS Faculty of Law is a leading law school in Asia widely noted for its global outlook and high standards of scholarship and education. The law school has more than 60 academic staff members and more than 1200 undergraduate and postgraduate students. The Faculty is actively engaged in research and its members regularly publish books and monographs as well as articles in leading journals in Singapore and abroad.

Apart from the LL.B. programme, NUS also offers double degree programmes in law and business, law and economics, law and life sciences, and law and accountancy, and a concurrent degree programme in law and public policy. It has a vibrant graduate community of students working towards the LL.M. (with or without specialisation) and Ph.D. degrees. Together with New York University

School of Law, the NUS law school offers the NYU@NUS programme which allows students to earn an LLM concurrently from both institutions and the LL.B. (NUS) and LL.M. (NYU) concurrent degree programme. For more information on the NUS Faculty of Law, please visit: http://www.law.nus.edu.sg

The strength of the NUS Faculty of Law lies in its outstanding students and faculty. The law school offers subjects ranging from the theoretical to the practical, with comparative and cross-disciplinary perspectives. The overriding objective is to provide students with a liberal legal education that will allow them to realise their full potential intellectually and professionally.

APPLICATION PROCEDURE:

To apply, please visit: http://law.nus.edu.sg/about_us/academic_positions.html for more information.

If you have any queries, you may email: lawlsfj@nus.edu.sg (Contact: The Search Committee Secretariat).

APPLICATION DEADLINES: 31 Dec 2010 and 1 June 2011

Another twist in surrogacy motherhood saga

Many thanks to Isabel Rodríguez-Uría Suárez

The 5th of October the Spanish Dirección General de los Registros y el Notariado (hereinafter DGRN) has issued an Instruction about the regulation of affiliation registration in cases of surrogate pregnancy in order to protect the best interests of the child and the interests of the women who give birth (see BOE, n. 243, 7.10.2010).

According to the Instruction, a prerequisite is required for the registration of

births by surrogate motherhood: it is necessary to produce before the Spanish responsible of the Registro Civil a judicial resolution of the competent Court of the country in which the surrogate pregnancy occurred. The judicial resolution must determine the affiliation of the child. This requisite is demanded in order to control the legal requirements of the surrogate pregnancy contract and to ensure the protection of the best interests of the child and the interests of the pregnant mother.

The foreign court decision raises a question of recognition in Spain. The DGRN distinguishes between contentious and non-contentious proceedings: on the one hand, contentious foreign decisions must be recognized by *exequatur*; on the other hand, the DGRN gives a set of guidelines for the recognition of non-contentious decisions in affiliation matters. In short, the Spanish officer in charge of the Registro Civil must check: a) the formal validity of the foreign decision b) that the original court had based its international jurisdiction in conditions equivalent to those provided by Spanish law c) the due process respect d) that the interests of the child and the pregnant mother had been guaranteed e) that the foreign decision is a final decision and that the consents given in the contract are irrevocable.

Finally, the Spanish DGRN states that foreign registration certificates do not support affiliation registration in the Registro Civil.

Conference on the Judge and the Border in Beirut

An international conference will be held on 22 October 2010 in Beirut, Lebanon, on ‘The Judge and the Border’.

The morning session focuses on ‘The extra-territorial activity of the courts’, and deals with the powers of the courts in respect of foreign territories, foreign evidence, foreign litigants, foreign judgments, etc. The afternoon session deals with ‘International judicial cooperation and conflict of laws’, and covers issues

such as lis pendens, the reception of foreign procedural institutions, the application of foreign mandatory rules, etc.

The speakers include Professors Paul Lagarde, Bernard Audit, Pascal de Vareilles-Sommières, Léna Ganagé, Marie-Maure Niboyet, Etienne Pataut, Arnaud Nuyts, Mouhib Maamari, Sami Mansour, Haffiza Haddad. The Conference (in French and Arabic) is held under the auspices of the 'Conseil supérieur de la magistrature' and 'Institut d'Etudes Judiciaires du Liban'.

The full programme can be found on www.dipulb.be.

(European) Mercy for Jérôme Kerviel? (updated)

Jérôme Kerviel was a young trader with a promising future. Today, a French criminal court ordered him to pay his employer Société Générale € 4.9 BILLION in damages. The court has also sentenced him to serve 3 years in prison. Unsurprisingly, Mr Kerviel has already announced that he will appeal.

€ 5 billion is a high sum that Mr Kerviel will likely have difficulties paying. The court has forbidden him to be a trader again. That will not help. Given his current salary (he is in computers now), journalists have calculated that he may need to work 177,000 years to pay his debt. After all, as journalists have also reported, € 5 billion is the GDP of Benin.

It seems that some innovative legal argument would be welcome here. On the top of my hat, two come to mind.

First, Mr Kerviel may want to pay nothing at all. What about trying insolvency? Unfortunately, it is not available for him in France, as he is a mere employee. But it might be elsewhere in Europe. If he settles in such country, could he after a while take advantage of local insolvency law, and obtain recognition of the judgment in France under the insolvency regulation?

Readers have pointed out to me that it might be enough for Mr Kerviel to move inside France. Alsace and Moselle have kept a special insolvency regime (French Commercial Code, Art. L 670-1), that German debtors particularly fancy, and which is open to everybody, including employees. The geographic requirement is to be domiciled in one of these two regions. Mr Kerviel could thus move to Metz or Strasbourg and, if he could show that he would have genuinely settled there, benefit from local insolvency law. However, the rule of French law which does not allow debts resulting from criminal offences to be cancelled in such cases, also applies in Alsace and Moselle. But maybe other jurisdictions would allow the cancellation for even such debts.

Secondly, Mr Kerviel may want to pay his debt, and think that he would thus need to be back in business again. Would the ban of the French criminal court be recognised outside of Europe? Could he practice in other major financial centers of the world?

UPDATE: Société Général people have told the French press that they would not insist that Mr Kerviel pay the entire sum. When asked whether that meant that they did not intend to ask for any payment, they said that it only meant that they would be happy to explore whether they could reach an agreement with Mr Kerviel. Well, even if Mr Kerviel was fortunate enough to settle for 1% of the entire sum, he would still need 1,770 years to meet his new obligation. In any case, he announced this morning on a French radio that he was not asking anything to SocGen.