Journal of Private International Law Conference 2011 (Milan) – Programme and Registration

The editors of J.Priv.Int.L are very pleased to announce that the **4th Journal of Private International Law Conference will take place in the University of Milan from Thursday 14th April 2011 at 2pm until Saturday 16th April at 5pm**. Over 50 early career papers are expected in parallel sessions on Thursday afternoon and Friday morning and 24 papers from experienced academics on Friday afternoon and Saturday.

- The fees for the conference are:

1. full price: 100 euros;
2. academics: 50 euros
3. students (undergraduate and postgraduate) and speakers: free

- The price for the dinner on Friday evening is 60 euros
- The price range for University accommodation per night is between 45-100 euros
- The price range for hotel accommodation per night is between 125-220 euros.

Accommodation has been reserved until the end of February 2011 and will be allocated on a first come first service basis. For registration to the conference and for further details, as well as to book any University accommodation, please contact Dr Giuseppe Serranò and Paola Carminati at jpil_2011@unimi.it. For any other accommodation, please directly contact the hotel at issue, quoting the participation in the *JPIL 2011 conference*.

Programme

Thursday 14 April 2011: 14.00-15.45

Group 1 – Treatment of Foreign Law, Preliminary Questions, PIL Treaties

- C. Azcárraga Monzonís, The urgent need of harmonization of the application of foreign laws by national authorities in Europe
- A. Gardella, Foreign law in member States' courts and its relationship with European Union law
- S. Gössl, The Preliminary Question in European Private International Law
- S. Grossi, An international convention on conflict of laws: the path to Utopia?
- T. Kyselovská, Bilateral (Multilateral) Treaties on Legal Aid as Sources of Law in the European Judicial Area

Group 2 – Jurisdiction in civil and commercial cases

- A. Arzandeh, Twenty five years of Spiliada
- U. Grusic, Jurisdiction in complex contracts under the Brussels I Regulation
- J. Kramberger Škerl, A. Jurisdiction over third party proceedings: articles 6/2 and 65 of the Brussels I Regulation and the countries in-between
- U. Maunsbach, New Technology, new problems and new solutions – Private International Law and the Internet Revisited

Group 3 – Family law – Adults

- J. Borg-Barthet, Family Law in Europe: Should Civil Rights be Divorced from Questions of Sovereignty?
- M. Harding, The public effect of marriage and the un-oustable jurisdiction of the English Matrimonial Courts over the financial consequences of marriage
- M. Melcher, An EU Regulation on the law applicable to registered relationships
- A. Sapota, What happened with Regulation Rome III? Seeking the way for unifying the rules on applicable law in divorce matters.
- S. Shakargy, Local Marriage in a Globalized World: Choice of Law in Marriage and Divorce

16.15-18.00

Group 4 – General PIL

- V. Macokina A new bill of Polish private international law – double edged

sword?
- C. Staath, Human Rights Protection in Private International Law: the role of access to justice
- E. Tornese, Mandatory rules within the European legal system
- T. Kozlowski, Ever Growing Borders in the Ever Closer Union of the EU

Group 5 – Choice of Law in Contract

- A. Dyson, Interpreting Article 4(3) of the Rome I Regulation: Something Old, Something Borrowed or Something New?
- M. Erkan, Examining the Overriding Mandatory Rules under the Rome I Regulation and the Turkish Private International Law Perspective
- E. Lein, The Optional Instrument for European Contract Law and the Conflict of Laws
- W. Long, Mandatory Rules in Cross-Border Contracts: Is China Looking Towards the EU?

Group 6 – Recognition and enforcement of judgments

- P. Mariani, The free movement of judgements in the European Union and the CMR
- C. Nagy, Recognition and enforcement of US judgments involving punitive damages in Europe
- W. Zhang, A Comparative Research on the Exequatur Procedure within the EU and China
- G.B. Özçelik, Application of the Brussels I Regulation and property disputes in Cyprus: reflections on the Orams case

Friday 15 April 2011: 09.00-10.30

Group 7 – Choice of Law in Tort/Delict

- J. Papettas, Rome II, Intra-Community Cross Border Traffic Accidents and the Motor Insurance Directives
- D. Krivokapic, Potential impact on the US Speech Act: Influence of the Speech Act on Ongoing PIL Debate within EU and Third Countries
- J.J. Kuipers, Towards a European approach in cross-border infringement of personality rights
- T. Thiede, The protection of personality rights against supra-national

invasions by mass-media

Group 8 – Family Law – children

- P. Jimenez Blanco, The Charter of fundamental rights of the European Union and international child abduction
- I. Kucina, K. Trimmings, P. Beaumont, Loopholes in the Brussels IIbis Child Abduction Regime
- A. Muñoz Fernández, Recognition of guardianships that were established abroad and preventive powers of attorney granted abroad
- F. S. ?ahin, S. Ünver, Affiliation in surrogate motherhood in private international law perspective
  M. Wells-Greco, Cross-border surrogacy and nationality: achieving full parent status

Group 9 – Competition Law and Intellectual Property

- M. Danov, Cross-border EU competition law actions: should private international law be relied upon by the EU legislator in the European context?
- P. Dolniak, The rule in Article 6 of the Rome II Regulation as a „clarification" of general rule specified in Article 4
- S. Neumann, The infringement of intellectual property rights in European private international law – meeting the requirements of territoriality and private international law
- B. Ubertazzi, Intellectual Property Rights, Exclusive (Subject-Matter) Jurisdiction and Public International Law
- N. Zhao, China's Choice-of-law Rules in International Copyright and Related Right Disputes

11.00 – 12.30

Group 10 – Trusts and insolvency

- N. Zitkevits, Recognition of trusts in the European Union countries
- R. Yatsunami, The Choice of Law Rules on Trust in Japan
- Z. Crespi Reghizzi, Jurisdiction, recognition of judgments and law applicable to reservation of title in insolvency proceedings
  A. Leandro, EU cross-border insolvency: a free zone for the anti suit

injunctions?

Group 11 – Choice of Court and Arbitration

- V. Salveta, The Enforceability of Exclusive Choice-of-Court Agreements
- L. Manigrassi, Arbitration Exception and Brussels I -Time for Change? An appraisal in light of the review of the Brussels I Regulation
- N. Zambrana Tévar, A new approach to applicable law in investment arbitration
  B. Yüksel, The relevance of the Rome I regulation to international commercial arbitration in the European Union

Group 12 – Class actions, Property and Succession

- V. Ruiz Abou-Nigm, Maritime Liens in the Conflict of Laws Revisited
- M. Casado, The investigation of the debtor´s assets abroad
- K. Svobodova, Relation Between Succession Law Determined under the EU Draft Regulation on Succession and the Lex Rei Sitae
- B. Glaspell, Global Class Actions Prosecuted in Canadian Courts

12.30 – 14.00 Lunch break

14.00-15.45

PLENARY SESSION

Theory of PIL and party autonomy

- R. Michaels, What Private International Law Is About
- T. Kono, P. Jur?ys, Institutional Perspective to Private International Law
- M. Keyes, Party autonomy in private international law beyond international contracts
- A. Mills, Party Autonomy in Non-Contractual Private International Law Disputes

15.45-16.15 Coffee break

16.15 -18.00

Connecting Factors, Law Reform and Model Laws

- E. Schoeman, The connecting factor in private international law: neglected in theory, yet key to just solutions
- I. Canor, Reform of Choice-of-Laws in Torts in the Israeli Legal System – A Normative Perception and a Comparative Perspective
- D. E. Childress III, Courts and the conflict of norms in private international law
- J.A. Moreno Rodríguez, M.M. Albornoz, The Contribution of the Mexico City Convention to the Reflection on a New Soft Law Instrument on Choice of Law in International Contracts

20.00 Conference Dinner – After Dinner Speaker is Hans Van Loon, Secretary General of the Hague Conference on Private International Law

Saturday 16 April 2011: 09.00-10.45

Characterisation, external relations in PIL, declining jurisdiction and choice of law in contract

- G. Maher, B. Rodger, The respective roles for the lex fori, the applicable law and autonomous/harmonised concepts in international private law, with particular focus on key aspects of the law of obligations
- P. Mostowik, M. Niedzwiedz, Five Years after ECJ "Lugano II Opinion" – Its Current Developments and Further Consequences
- S. Pitel, The Canadian Codification of Forum Non Conveniens
- G. Tu, Contractual Choice of Law in the People's Republic of China: the Past, the Present and the Future

11.15-13.00

Lex mercatoria, arbitration and consumer protection

- C. Gimenez Corte, Lex mercatoria, independent guarantees and non-state enforcement

L. Radicati di Brozolo, Conflicts between arbitration and courts in the EU: free for all, harmonization or home country control?
- S.I. Strong, Resolving mass legal disputes in the international sphere: are class arbitrations an option? lessons from the United States and Canada
  G. Rühl, Consumer Protection in Private International Law

Lunch break 13.00-14.00

14.00-15.30

Torts and Intellectual Property

- I. Kunda, Overriding mandatory rules in intellectual property contracts
- M. Lehmann, Where Do Pecuniary Damages Occur?
- C. O. García-Castrillón Private international law issues of non-contractual liability with special reference to environmental law claims
- E. Rodriguez Pineau, The law applicable to intra-family torts

Coffee break 15.30-15.45

15.45-17.00

Family law, succession, nationality and Europeanisation of PIL

- K. Trimmings, P. Beaumont, International Surrogacy Arrangements – An Urgent Need for a Legal Regulation at the International Level
- T. Kruger, J. Verhellen, Dual nationality = double trouble?
- J Fitchen, The Cross-Border Recognition and Enforcement of Authentic Instruments in the proposed European Succession Regulation
- L. Gillies, The Europeanisation of the Conflict of Laws and Third States: Scottish Perspectives

Joerges on Conflicts Law as Europe's Constitutional Form

Christian Joerges, who is a professor of law at Bremen University (and formerly at the European University Institute) has posted Unity in Diversity as Europe's Vocation and Conflicts Law as Europe's Constitutional Form on SSRN. The abstract reads:

> *"Unity in Diversity" was the fortunate motto of the otherwise unfortunate Draft Constitutional Treaty. The motto did not make it into the Treaty of Lisbon. It deserves to be kept alive in a new constitutional perspective, namely the re-conceptualisation of European law as new type of conflicts law. The new type of conflicts law which the paper advocates is not concerned with selecting the proper legal system in cases with connections to various jurisdictions. It is instead meant to respond to the increasing interdependence of formerly more autonomous legal orders and to the democracy failure of constitutional states which result from the external effects of their laws and legal decisions on non-nationals. European has many means to compensate these shortcomings. It can derive its legitimacy from that compensatory potential without developing federal aspirations.*
>
> *The paper illustrates this approach with the help of two topical examples. The first is the conflict between European economic freedoms and national industrial relations (collective labour) law. The recent jurisprudence of the ECJ in Viking, Laval, and Rüffert in which the Court established the supremacy of the freedoms over national labour law is criticised as a counter-productive deepening of Europe's constitutional asymmetry and its social deficit. The second example from environmental law concerns the conflict between Austria and the Czech Republic over the Temelin nuclear power pant. The paper criticises the reasoning of the ECJ, but does not suggest an alternative outcome to the one the Court has reached.*
>
> *The introductory and the concluding sections generalise the perspectives of the conflicts-law approach. The introductory section takes issue with max Weber's national state. The concluding section suggests a three-dimensional differentiation of the approach which seeks to respond to the need for*

transnational regulation and governance.

It can be freely downloaded here.

Rome III Regulation Published in the Official Journal

The Rome III regulation (see our most recent post here, with links to the previous ones) has been published in the Official Journal of the European Union n. L 343 of 29 December 2010. The official reference is the following: **Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation** (OJ n. L 343, p. 10 ff.).

Pursuant to its Art. 21(2), **the regulation should apply from 21 June 2012 in the 14 Member States which currently participate in the enhanced cooperation** (Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia).

Art. 18 (*Transitional provisions*) provides that "[the] regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 5 [choice of the applicable law by the spouses] concluded as from 21 June 2012". The same article stipulates that "effect shall also be given to an agreement on the choice of the applicable law concluded before 21 June 2012, provided that it complies with Articles 6 and 7" (rules governing material and formal validity of the agreement). As regards proceedings commenced in the court of a participating Member State before 21 June 2012, the regulation will be without prejudice to *pacta de lege utenda* concluded in accordance with the law of that State (Art. 18(2)).

In order to make national rules concerning formal and procedural requirements of an *optio legis* fully accessible, Art. 17 (applicable from 21 June 2011) requires the

participating Member States to communicate any relevant information in respect thereof to the Commission, which will make them publicly available, in particular through the website of the European Judicial Network in civil and commercial matters.

(Many thanks to Federico Garau – Conflictus Legum blog – for the tip-off)

Morocco Judicial Seminar on Cross-Border Protection of Children and Families

The report of the Hague Conference is available here, and the conclusions of the Seminar can be found here.

Visit of the Hague Conference in Viet Nam (Adoption)

The report of the Hague Conference is available here, and the report of the visit prepared by the Permanent Bureau and the Ministry of Justice of Viet Nam can be found here.

Swiss Book on the Resolution of IP Disputes

The second volume of the Series of books on intellectual property law of the University of Geneva was recently released. It comprises the papers (either in English or in French) which were written for the conference of intellectual property law of February 8, 2010 which was devoted to the theme ***Resolution of intellectual property disputes/La résolution des litiges de propriété intellectuelle.***

The book, which was edited by Jacques de Werra, a professor of law at the University of Geneva, includes the following papers:

- Joost Pauwelyn, *The Dog That Barked But Didn't Bite: 15 Years of Intellectual Property Disputes at the WTO*
- Pierre Véron, *Le contentieux de la propriété industrielle en Europe : état des lieux, stratégies et perspectives*
- Edouard Treppoz, *Les litiges internationaux de propriété intellectuelle et le droit international privé*
- Julie Bertholet & Pierre-Alain Killias, *La création de juridictions spécialisées : l'exemple du Tribunal fédéral des brevets*
- Torsten Bettinger, *ICANN's New gTLD Program: Applicant Guidebook and Dispute Resolution*
- Bernard Hanotiau, *L'arbitrabilité des litiges de propriété intellectuelle*
- Sarah Theurich, *Designing Tailored Alternative Dispute Resolution in Intellectual Property: the Experience of WIPO*

The full table of contents can be found here.

The book can be ordered here.

Rome III Regulation Adopted by Council

As a Christmas gift for European PIL scholars, the first enhanced cooperation in the history of the EU has been achieved in the field of conflict of laws (on the origin of the initiative see our previous post here).

The Council, in its meeting of 20 December 2010, **adopted the Rome III regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation** (for previous steps of the procedure, see here and here). As of mid-2012 (18 months after its adoption, pursuant to Art. 21), the Rome III reg. will apply in the **14 Member States** which have been authorised to participate in the enhanced cooperation by Council decision no. 2010/405/EU: Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. Further Member States which wish to participate may do so in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union.

The text of the new regulation is available in Council doc. no. 17523/10 of 17 December 2010; after the signing of the President of the Council, it will be soon published in the Official Journal. The regulation is accompanied by a Declaration of the Council regarding the insertion of a provision on *forum necessitatis* in reg. no. 2201/2003, worded as follows:

> *The Council invites the Commission to submit at its earliest convenience to the Council and to the European Parliament a proposal for the amendment of Regulation (EC) No 2201/2003 with the aim of providing a forum in those cases where the courts that have jurisdiction are all situated in Member States whose law either does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings (forum necessitatis).*

The European Parliament, merely consulted under the special legislative procedure provided by Art. 81(3) TFEU for measures concerning family law, gave its opinion on 15 December 2010 (informal contacts with the Council have ensured that the EP views were taken into account in the final text). In the

preamble of the legislative resolution, the EP called "on the Commission to submit a proposal for amendment of Regulation (EC) No 2201/2003, limited to the addition of a clause on *forum necessitatis*, as a matter of great urgency before the promised general review of that Regulation".

Many thanks to Federico Garau (Conflictus Legum blog) and to Marina Castellaneta for the tip-off.

Luxembourg Conference on Provisional Measures (updated)

The *Journal des Tribunaux Luxembourg* will hold a conference on Provisional Measures in International Private and Criminal Law before Luxembourg Courts (*Les mesures provisoires du contentieux privé et le droit pénal international devant le juge luxembourgeois*) on **February 10th**, 2011, in Luxembourg.

Programme

17h00 : Accueil des participants

17h30-17h45 : Présentation du Journal des Tribunaux – Luxembourg et introduction au colloque, Marc Thewes, rédacteur en chef et avocat à la Cour

17h45-18h00 : Les mesures provisoires dans le contentieux commercial international, Gilles Cuniberti, professeur à l'Université du Luxembourg

18h00-18h15 : Les mesures provisoires dans le cadre des demandes d'entraide internationales en matière pénale, Michel Turk, magistrat

18h15-18h30 : La communication forcée de pièces par voie de référé dans le cadre d'un contentieux international – La Document discovery à la luxembourgeoise, Marc Kleyr, président du conseil de la concurrence

18h30-18h45 : Rapport de synthèse, Thierry Hoscheit

18h45-19h00 : Question time

19h00-21h00 : Cocktail dînatoire

More details can be found here.

Third 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.

The first article is authored by Jürgen Basedow, who is one of the directors of the Max Planck Institute of Comparative and International Private Law in Hamburg. The article discusses nationality as a connecting factor in European Union law (*Le rattachement à la nationalité et les conflits de nationalité en droit de l'Union Européenne*). The English abstract reads:

> *The constance and variety of recourse to nationality as connecting factor in the laws of Member States as within the private international law of the European Union requires that its use be confronted with article 18 TFEU, which prohibits all discrimination by reason of nationality. In cases of double nationality, the Court of Justice has undertaken to conciliate the principle and the prohibition by setting aside more traditional approaches in favour of one based on the equality of treatment of national regulations, which implies both preference to the first in time and mutual recognition. A renewed assessment of nationality as an indicator of close connection and a reading of article 18 which restricts its content to unilateral rules conferring rights and privileges to citizens of the*

forum State leads to the formulation of a corpus of general rules of private international law.

The second article is authored by the Director of the *Revue*, Bertand Ancel (Paris II University) and its Editor in Chief Horatia Muir Watt (Sciences Po Law School). The article offers a comprehensive study of the 2009 maintenance regulation (*Aliments sans frontières. Le règlement CE n° 4/2009 du 18 décembre 2008 relatif à la compétence, la loi applicable, la reconnaissance et l'exécution des décisions et la coopération en matière d'obligations alimentaires*). The English abstract reads:

Beyond its commitment to ensure the effectiveness within the European Union of the Convention and Protocol signed at the Hague on 23rd November 2007, on alimentary obligations, EC Regulation n° 4/2009 lays out the defining features of the future European private international law ; it imposes new orientations on jurisdictional issues, particularly since trans-European enforcement of judgments is now freed from the constraints of specific enforcement procedures or formalities ; on issues of applicable law, il devises a method of coordination with the Hague Protocol which consists in actually borrowing its content ; in turn, this content serves as a guarantee ensuring the free movement of decisions as between Member States ; finally, by extending its personal scope and establishing a forum necessitatis, it carries its own authority beyond the borders of the internal market so as to catch litigation involving third states.

Articles of the *Revue* can be downloaded here by subscribers.

When to Depart from Rome?

The Commission has published lists of the Conventions which Member States have notified under Art. 26(1) of the Rome I Regulation and Art. 29(1) of the Rome II Regulation.

It appears that Belgium alone among the Member States has not notified the Commission of any derogating conventions, even though it has ratified the Hague Traffic Accidents Convention and signed (but not ratified) the Hague Products Liability Convention, two instruments to which Art. 29(1) Rome II was clearly intended to apply.

The reasons for these omissions are unclear, with the deadlines for notification having long passed (28 July 2008 in the case of Rome II and 17 June 2009 in the case of Rome I). The failure to notify should not prevent Belgian Courts from applying the Hague Traffic Accidents Convention, just as it should not prevent any other Member State court from applying any convention involving a third state, to determine the law applicable to contractual or non-contractual obligations. Belgium's apparent lack of engagement with EU private international law instruments, resulting in doubt for those litigating before Belgian courts, is however unfortunate. It is unclear whether the Commission intends to take steps to address this.