Collisions of Economic Regulations and the Need to Harmonise Prescriptive Jurisdiction Rules

Milena Sterio (*Cleveland-Marshall College of Law*) has posted "**Clash of the Titans: Collisions of Economic Regulations and the Need to Harmonize Prescriptive Jurisdiction Rules**" (to appear in the *UC Davis Journal of International Law and Policy, 2007*). Here's the abstract:

> *The traditional field of conflict of laws involved clashes of private laws: what law should apply to a vehicular accident that took place in Canada, but involved a victim coming from New York? In the United States, as well as abroad, such clashes involved mostly private actors, and a specific set of rules was developed to address this area of law. More recently, however, a new paradigm has emerged, involving clashes of public laws and regulations, which I refer to as "titans" because they represent what is traditionally known as mandatory law and because they carry implications of state sovereignty and particular regulatory importance with them. Clashes of such titans are not easy to resolve, and often involve not merely economic operators, but also states or state agencies, causing diplomatic tension and foreign relations concerns.*
>
> *Conflict-of-law rules seem ill-adapted for the resolution of this new regulatory puzzle. In the United States, for example, courts and scholars have advocated the need to resort to either territorial-based rules or substance-based rules to resolve clashes of public laws. Under the territorial approach, courts and scholars focus on when a given conduct causes effects or has other links with American territory that would warrant the application of American public laws. Under the substantive approach, courts and scholars determine, by looking at the content of applicable laws and regulations, whether it is reasonable to apply American public laws. However, the general approach followed domestically has been unilateral: the inquiry is to determine simply when American laws and regulations should apply to a given situation. Although the substance-oriented approach gives some thought to global considerations of overlapping regulatory*

jurisdiction, economic inefficiency, and comity, little concern is raised about possibly harmonizing jurisdiction-allocating rules among multiple countries, so that the clashes themselves can be resolved with more uniformity across the globe.

This Article advocates the need to start contemplating the development of global jurisdiction-allocating rules, at least among some countries and at least in some important domains where regulatory clashes frequently occur, such as antitrust, securities and Internet commerce and publishing. Harmonized jurisdiction-allocating rules could decrease instances of overlapping regulatory jurisdiction, thereby increasing predictability of outcomes for economic operators and reducing diplomatic tension caused by some of the important clashes. While challenges to such harmonization seem overwhelming at first, this Article argues that it may be possible to achieve some degree of unification. Some developed countries already have similar jurisdiction-allocating rules, thereby facilitating harmonization among them. Moreover, some domains, such as Internet regulations, may lend themselves better to harmonization. It also may be easier to harmonize jurisdiction-allocating rules that are perceived essentially as procedural, rather than to seek to change substantive regulations themselves. Finally, harmonization may be more easily accomplished within specific fora, such as the World Trade Organization, the World Bank, or similar global bodies. This Article argues that harmonization would work toward the achievement of a global optimum, which would eventually benefit most states and most economic operators.

Download the article from **here**.

Review of Stone's EU Private International Law

Book review of Peter Stone, *EU Private International Law Harmonisation of Laws* [Elgar European Law, Cheltenham, 2006,

***lvi*+462pp, ISBN 1-84542-015-2].** *(Reviewed by Dr Lorna Gillies, Leicester)*

This book is part of a series collection on European Law by Edward Elgar Publishing. According to the blurb, the book offers a "critical assessment of four main areas of concern: civil jurisdiction and judgments; the law applicable to civil obligations ; family law ; and insolvency." The premise of the text is the development of EU international private law rules from Article 95 EC. For the first time, principles of international private law are analysed, considered and presented in the context of EU law. This is one of the key strengths of the book. The book will be of particular interest to academics, practitioners and postgraduate students. Whilst a number of key EU proposals had yet (and still remain) to be finalised when the book was written, this book is nevertheless of significant and relevant interest to the target audience. Whilst the author admittedly does not consider in depth the proposals for the Rome I or II regulations, a further strength of the book is the inclusion of the author's proposed new articles of these instruments in, most often, his concluding analysis of current instruments. Furthermore, the book also makes reference to the EU accession to the Hague Conference on Private International Law.

The book contains detailed case tables of UK, EU Member State and ECJ cases as well as an international case section listing cases from Singapore and the United States. The table of cases also conveniently provides particular page references throughout the text. Mirroring the influence of EU policy, the book is divided into an introduction and four substantive parts comprising nineteen chapters. Part I contains the introduction which succinctly considers the basis for harmonisation of international private law rules (ie those on civil jurisdiction, choice of law, family law and insolvency) at EU level.

Part II is the largest part of the book and focuses, not surprisingly, on civil jurisdiction and judgments across nine chapters. The main focus of the text in this Chapter is, as expected, Regulation 44/2001. A historical assessment of the changes from the Brussels Convention 1968 to the final version of the Regulation is provided. The Chapter consider the application of English cases with frequent reference to ECJ cases. At the end of Chapter Two there is a helpful table providing all of the commencement dates for the Brussels and Lugano Conventions and Regulation 44/2001. Chapter Three focuses on domicile as the connecting factor in the Brussels Convention and Regulation 44/2001. This Chapter usefully considers the concept of domicile and the application of the

concept vis-à-vis local, other European and external (ie non EU) defendants. Chapter Four then considers the alternative grounds of jurisdiction in Regulation 44/2001 and assesses the changes to Article 5 in particular. The author assesses the merits of Article 5(1) and comments on the possible reform of Article 5(3). Unlike many other texts on international private law, a strength of this book is that it offers a separate chapter on the jurisdiction rules for protected contracts, namely consumer, employment and insurance contracts. The jurisdictional and governing laws of such contracts are becoming increasingly important as (the (would-be) "reasonably informed and circumspect") consumers purchase goods and services from sellers in different jurisdictions and as employees move between (an ever increasing number of) Member States to seek work. This text is different to other international private law texts as it recognises the legal and commercial importance of such (supposedly minor) contracts to EU policy and the application of international private law rules in the day-to-day lives of ordinary EU citizens. As one would expect, there are also chapters on the rules on exclusive jurisdiction, submission and concurrent proceedings. The latter contains an interesting and reflective analysis of the recent cases *Gasser v MISAT* and *Turner v Grovit*. There is also a shorter chapter on provisional measures. The final two chapters in this Part provide an assessment of the rules on recognition and enforcement and enforcement procedure. These succinct chapters provide key summaries of the relevant case law plus, in respect of enforcement an analysis of Regulation 805/2004, the European Enforcement Order for Uncontested Claims.

Part II of the book focuses on the law applicable to civil obligations. Part II contains four chapters which focus on contracts, protected contracts (mirroring Part I), torts and restitution. The main focus on Chapter Twelve is the replacement of the Rome Convention 1980. Regular reference is made in this Part to the proposals for the Rome I Regulation. The basis of the Rome Convention is considered as is its application and relationship with other conventions. The author does comment on the Green Paper which considered the replacement of the Rome Convention with a Community Instrument. The author recommends the further clarification of the rules governing implied choice of law by the inclusion of a range of factors in Article 3(1A) with the emphasis on establishing the commercial expectations of the parties. Articles 3 and 4 of the Rome Convention are considered in depth. The case is then put by the author for possible reform thereof. Importantly, the author devotes Chapter Thirteen separately to protected contracts, in recognition of the important and difficult task in reconciling party

autonomy in selecting the governing law with the overriding need to protect consumers, employees and insured parties. The author provides commentary on the replacement of the Rome Convention with the Rome I Regulation and in concluding his analysis suggests in particular, a revised Article 5. On the matter of insurance contracts, Chapter Thirteen assesses and considers possible reform of Directives 88/357 and 90/619 on non-life and life insurance contracts respectively. Chapters Fourteen and Fifteen are devoted to the proposal for the Rome II Regulation. Chapter Fourteen considers the proposed Regulation vis-à-vis torts in depth, including, *inter alia*, its scope and relationship with other international convention. This Chapter also offers critical assessment and suggested amendments to, *inter alia*, Articles 3(2) and (3) and analysis of a number of specific torts including product liability, unfair competition, intellectual property, defamation, environmental damage, industrial disputes and traffic accidents. Chapter Fifteen provides a concise analysis of the proposals in Rome II vis-à-vis claims in restitution.

Part III of the book contains three, and by comparison shorter, chapters on family matters comprising matrimonial proceedings, parental responsibility and familial maintenance and matrimonial property. Part III of the book focuses on Regulations 1347/2000 (Brussels II) and 2201/2003 (Brussels IIA). Chapter Sixteen includes a table on the transitional operation of these two regulations amongst the Member States. Chapter Seventeen examines parental responsibility and contrasts the Brussels IIA Regulation with the Hague Convention 1996 on Parental Responsibility and Measures for the Protection of Children and the 1980 Child Abduction Convention.

The final part of the book, Part IV, is on the matter of insolvency. Chapter nineteen examines the jurisdiction, choice of law and enforcement aspects of insolvency as contained in Regulation 1346/2000. A noticeable feature of this Chapter is the author's criticism of the rational for secondary proceedings and his suggestion for harmonisation of "the substantive laws of the Member States as regards the definition and extent of preferential rights […] by means of a directive under Article 95 EC."

In conclusion, this book is warmly welcomed and will be an important research resource to its readership. Purchase the book from here or direct form the CONFLICT OF LAWS .NET bookshop.

Conference: “EU Harmonization of Private International Law and External Relations in Family and Succession Matters”

An international conference (held in English) is organised by **University Carlo Cattaneo (LIUC) on 9-10 March 2007**. It will present the results of the **Research Project "EU Harmonisation of Private International Law and External Relations in Family and Succession Matters"**, carried out by a group of European scholars and funded by the European Community under the Framework Programme for Judicial Cooperation in Civil Matters 2005.

The conference will deal with the increasing legislative activity of the EC in the field of private international law of family and successions, starting from Regulation (EC) No 2201/2003 (Brussels IIbis) to the recent Draft regulations and Green Papers adopted in 2005 and 2006, which embrace all P.I.L. aspects (jurisdiction, recognition and enforcement of judgments and applicable law).

Special attention will be devoted to the external dimension of EC action in the field:

> *Among the various issues raised by these acts, those concerning the relations with third States are particularly important and delicate, even because they shed light on the general characters of the emerging EC system of private international law. On the one hand, the issue of the external competence in this field is to be assessed, in the light of the ECJ’s ruling in the Lugano Opinion of 7 February 2006. On the other hand, special attention will be given to the scope of these acts in so far as private relations connected with third countries are concerned.*

Here’s a short presentation of the programme:

Friday 9 March 2007

15.00 Welcome and Introduction

- *Mario Zanchetti* (Dean of the Law Faculty)
- *Alberto Malatesta* (Director of the Law Department)

EC EXTERNAL RELATIONS AND PRIVATE INTERNATIONAL LAW

Chair: *Fausto Pocar* (University of Milan)

The Lugano Opinion and its Consequences in Family and Succession Matters

- *Alberto Malatesta* (University Carlo Cattaneo – LIUC)
- Discussant: *Andrea Santini* (Catholic University of Milan)

Bilateral Agreements with third States after the Lugano Opinion

- *David McClean* (University of Sheffield)
- Discussant: *Stefania Bariatti* (University of Milan)

18.00 General Discussion

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Saturday 10 March 2007 – Morning Program

GENERAL PROBLEMS OF EC PRIVATE INTERNATIONAL LAW WITH REGARD TO RELATIONS WITH THIRD STATES

09.50 FIRST SESSION:

JURISDICTION, RECOGNITION AND ADMINISTRATIVE COOPERATION IN FAMILY AND SUCCESSION MATTERS

Chair: *Alegría Borrás* (University of Barcelona)

Conflicts of Jurisdiction

- *Etienne Pataut* (University of Cergy Pontoise)
- Discussant: *Andrea Bonomi* (University of Lausanne)

Recognition and Enforcement of Judgments

- *Marta Pertegás* (University of Antwerp)
- Discussant: *Roberto Baratta* (University of Macerata)

Administrative Cooperation

- *William Duncan* (Hague Conference on Private International Law)

12.15 General Discussion

13.00 Lunch

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Saturday 10 March 2007 – Afternoon Program

14.30 SECOND SESSION:

APPLICABLE LAW IN FAMILY AND SUCCESSION MATTERS

Chair: *David McClean* (University of Sheffield)

Connecting Factors, Renvoi, Party Autonomy

- *Kurt Siehr* (University of Zurich)
- Discussant: *Peter McEleavy* (University of Dundee)

Public Policy

- *Ted M. de Boer* (University of Amsterdam)
- Discussant: *Johan Meeusen* (University of Antwerp)

Characterisation and Interpretation

- *Carmen Parra* (University Abat Oliba CEU)
- Discussant: *Luigi Fumagalli* (University of Milan Bicocca)

17.20 General Discussion

17.40 Final Report

- *Alberto Malatesta* (University Carlo Cattaneo – LIUC)

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The Conference is funded by the European Community under the Framework Programme for Judicial Cooperation in Civil Matters 2005 (Agreement No JLS/2005/FPC/50 – CE-0036594/00-04).

Participation is free of charge. For the full programme and contact information (including registration), see the LIUC website and the downloadable leaflet.

Analysis of Non-Exclusive Jurisdiction Agreement by Ontario Court

In *Sugar v. Megawheels Technologies Inc* (available here) a judge of the Ontario Superior Court of Justice has analysed the role of a non-exclusive jurisdiction agreement in favour of a foreign forum on a motion to stay proceedings in the domestic forum. The judge ends up giving the agreement relatively little weight, in part in reliance on the approach of the English Court of Appeal in the *Ace Insurance* decision (see para. 28), and the stay is refused.

Is this decision open to question? It would seem at least some English cases have relied on a non-exclusive jurisdiction agreement to stay proceedings under a forum non conveniens analysis, at least where the other connections were spread relatively evenly across the jurisdictions. The Ontario judge thought the approach adopted was essential to preserve the distinction between exclusive and non-exclusive jurisdiction clauses, but arguably that distinction can and has been maintained at common law without giving so little weight to a non-exclusive jurisdiction clause on a motion to stay.

The First US Conflicts Restatement Through the Eyes of Old: As Bad as its Reputation?

Symeon C. Symeonides (*Willamette*) has posted "**The First Conflicts Restatement Through the Eyes of Old: As Bad as its Reputation?**" on SSRN. Here's the abstract:

The first Conflicts Restatement (1934) and its drafter, Professor Joseph Beale, have been the favorite punching bags of every conflicts teacher, well before the Restatement was toppled by the conflicts revolution of the 1960s. Because history is often written by the victors, it is worth asking whether Beale and his Restatement were as bad as their reputation.

This Article is not an attempt to rehabilitate them. Rather it is a necessary historical journey undertaken with all the trepidation of a traveler who expects the worst but hopes for at least some small pleasant surprises. It revisits Beale and the Restatement in the context of their own time–the 1920s–and examines Beale's life and work, the state of American conflicts law before him, the criticisms of his contemporaries, and the imperfect process that produced the Restatement. For the impatient reader, the short answer to the above question is that, generally, the bad reputation is deserved. However, the journey is rewarding for what one discovers along the way.

Without Beale, there would not have been a Conflicts Restatement and, primarily because of Beale, the Restatement could not have been any better than it was. Even so, it is not clear that American conflicts law would have been better of without a Restatement at all. The prevailing view that the Restatement impeded the development of American conflicts is partly offset by some byproducts of the Restatement process. The Restatement is the beginning of modern American conflicts law. Although it is better to start on the right foot, sometimes starting on the wrong foot is better than not starting at all. The Restatement unified and systematized the previously scattered and neglected conflicts law, brought it to the attention of bar and bench, earned for it a place in the curriculum of all law schools, and galvanized the opposition among the

> *legal realists and other academics. In turn, this led to the production of outstanding scholarship that brought the renaissance of American conflicts law during the next generation and eventually the conflicts revolution. Understanding the Restatement and the forces that produced it is essential in understanding the revolution, but also in avoiding similar mistakes in the future.*

Highly recommended indeed. You can download the article from the Social Science Research Network. If you wish to do some further reading, a large portion of Beale's seminal 1935 treatise on the conflict of laws can be found here.

The Differing Approach to Commercial Litigation in the ECJ and the Courts of England and Wales

Anthony Clarke (Master of the Rolls) has also written an article in the *European Business Law Review*, on "**The differing approach to commercial litigation in the European Court of Justice and the courts of England and Wales**". The abstract reads:

> *Reviews European Court of Justice cases on the allocation of jurisdiction under Council Regulation 44/2001 (the Brussels Regulation), comparing the English courts' approach. Discusses whether courts can still issue anti-suit injunctions to restrain legal proceedings in other Member States. Contrasts the principle of forum non conveniens with the emphasis on legal certainty, mutual trust and the facilitation of the single internal market under the Brussels Regulation.*

~~Again, those with a subscription can download the article from here~~. Andrew Dickinson has kindly provided a **link to the article**, which originally breathed life

as a lecture at the *Institute of Advanced Legal Studies* in February 2006. You can download it free of charge.

Mance: "Is Europe Aiming to Civilise the Common Law"?

Jonathan Mance (*House of Lords*) has published an article in the *European Business Law Review* entitled, "**Is Europe Aiming to Civilise the Common Law?**" ((2007) 18 *E.B.L. Rev* pp. 77-99) Here's the abstract:

> *Explains the EC project to develop a Common Frame of Reference (CFR) for substantive civil law, and responds to criticism that the European Commission is acting beyond its competence and planning to replace the UK common law system with a Continental civil code. Reviews the tendency towards civilian principles in the project to harmonise private international law. Examines the development of the CFR project.*

~~Those with access can download the PDF from the Kluwer website.~~ **Update**: Andrew Dickinson has kindly pointed out that this article is the *2006 Chancery Bar lecture*, and can be downloaded for free from **here**.

ECJ: AG Opinion on Article 5 (1) (b) Brussels I Regulation

On February 15th, *Advocate General Bot* delivered his Opinion in Case C-386/05 (*Color Drack GmbH v LEXX International Vertriebs GmbH*).

The proceedings for a preliminary ruling concern for the first time the interpretation of Article 5 (1) Brussels I Regulation, **in particular the question whether Article 5 (1) (b) Brussels I is applicable if several places of delivery (all situated in a single Member State) are involved – which is answered affirmative by the Advocate General.**

I.) The Background of the Case

The case concerns a dispute between a company the registered office of which is in Austria (Color Drack GmbH) and a company (LEXX International Vertriebs GmbH) the registered office of which is in Germany. Color Drack purchased sunglasses from LEXX International Vertrieb and paid them in full, but had the latter company deliver them directly to its customers in different places in Austria. Subsequently, Color Drack returned the unsold sunglasses to LEXX International Vertrieb and asked to repay the respective sum. Since LEXX International Vertrieb did not pay, Color Drack brought a payment action against LEXX International at the District Court in St. Johann (Austria), in the jurisdiction of which its registered office is situated. While the District Court ruled that it had jurisdiction under Art. 5 (1) (b) Brussels I, LEXX International appealed and the Regional Court Salzburg set aside the judgment due to the fact that the District Court had lacked territorial jurisdiction. The Austrian Supreme Court to which Color Drack appealed, decided to stay the proceedings and to submit the following question to the European Court of Justice for a preliminary ruling:

> *Is Article 5 (1) (b) of Council Regulation (EC) No 44/2001 […] to be interpreted as meaning that a seller of goods domiciled in one Member State who, as agreed, has delivered the goods to the purchaser, domiciled in another Member State, at various places within that other Member State, can be sued by the purchaser regarding a claim under the contract relating to all the (part) deliveries – if need be, at the plaintiff's choice – before the court of one of those places (of performance)?*

II.) Legal Questions

The request for a preliminary ruling raises – according to the Advocate General – two questions (para. 23 et seq.):

First, the referring court asks whether Art. 5 (1) (b) Brussels I is applicable if, as agreed between the parties, goods have been delivered to different places in a

single Member State.

In case this questions is answered in the affirmative, the courts seeks to know secondly whether, where the claim relates to all the deliveries, the plaintiff may sue the defendant in the court of the place of delivery of his choice.

With regard to the first question, the applicability of Art. 5 (1) (b) Brussels I where there are several places of delivery in a single Member State, the Advocate General holds, along with the UK Government and the European Commission, that Article 5 (1) (b) Brussels I was applicable where, as agreed by the parties, the goods have been delivered in different places within a single Member State (para. 32).

With this holding, the Advocate General did not follow the opinion of the German and the Italian government which argued, Article 5 (1) (b) Brussels I was not applicable where there are several places of delivery.

The Advocate General referred, inter alia, to one of the main objectives of the Regulation, which is to prevent irreconcilable judgments given in several Member States and sets forth that there was "no risk that irreconcilable judgments may be given by courts in different Member States" even if several courts of the respective Member State had – due to the plurality of places of delivery – jurisdiction since these were all courts of the same Member State (para. 101).

Since the Advocate General answered the first question in the affirmative, he had also to address the second question, i.e. the issue whether, pursuant to Article 5 (1) (b) Brussels I, the plaintiff can bring his action before the court of the place of delivery of his choice or before the court of a particular place of performance (cf. para. 117 et seq.).

With regard to this question, the European Commission proposed to transfer the distinction between a principal obligation and an ancillary obligation as established in the *Shenavai* judgment, to Article 5 (1) (b) Brussels I. Thus, the Commission argues, the claimant should bring his action in the court of the place of performance of the principal delivery.

This point of view is not shared by the Advocate General. He argues (at para. 128) that it was a question of the national procedural law of the Member States to decide whether all the courts in the area of which a delivery has been made have

jurisdiction or whether this action falls within the jurisdiction of only one of these courts. Thus, the defendant could – as long as there were no special jurisdiction rules within the respective Member State – be sued in the court of one of the places of delivery, at the choice of the plaintiff (para. 129).

III.) Conclusion of the Advocate General

On the basis of these considerations, the Advocate General proposed to reply to the submitted questions as follows:

> ***Where there are several places of delivery, Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is applicable if, as agreed between the parties, the goods have been delivered in different places in a single Member State.***
>
> ***If the action relates to all the deliveries, it is for the law of the Member State in which the goods have been delivered to determine whether the plaintiff may sue the defendant in the court of the place of delivery of his choice or only in the court of one of those places. If the law of that State does not lay down rules on special jurisdiction, the plaintiff may sue the defendant in the court of the place of delivery of his choice.***

The Trust in Spanish and Italian Private International Law

Benedetta Ubertazzi (*Prof. University Firenze, Attorney in Milan and Madrid, Studio Ubertazzi, Milan, Italy*) has published the second part of his paper on **The *Trust* in Spanish and Italian Private International Law** in the *Trusts and Trustees* journal (OUP). Here's a short abstract:

> *This is the concluding part of the Article of which the first part appeared in*

the September 2006 issue of Trusts & Trustees and which dealt with the position of trusts under Italian conflict of law. This second part examines the position under Spanish conflict of law rules and the impact that the Hague Convention might have on it.

Those with access can download the full article from the journal website.

ECJ: Legal Actions for Compensation for Acts perpetrated by Armed Forces in the Course of Warfare are no "Civil Matters" in Terms of the Brussels Convention

Today, the European Court of Justice has delivered the judgment in case C-292/05 (*Lechouritou and Others v. Federal Republic of Germany*).

The case concerned an action for compensation based on the Brussels Convention brought by Greek descendants of victims of a massacre perpetrated by German armed forces in 1943 in Greece against the Federal Republic of Germany with regard to financial loss, non-material damage and mental anguish.

The Court of Appeal Patras had referred the following questions to the ECJ:

Do actions for compensation which are brought by natural persons against a Contracting State as being liable under civil law for acts or omissions of its armed forces fall within the scope ratione materiae of the Brussels Convention in accordance with Article 1 thereof where those acts or omissions occurred during a military occupation of the plaintiffs' State of domicile following a war of aggression on the part of the defendant, are manifestly contrary to the law of

war and may also be considered to be crimes against humanity?

Is it compatible with the system of the Brussels Convention for the defendant State to put forward a plea of immunity, with the result, should the answer be in the affirmative, that the very application of the Convention is neutralised, in particular in respect of acts and omissions of the defendant's armed forces which occurred before the Convention entered into force, that is to say during the years 1941-44?

With regard to the first question, the Court first states that Art. 1 Brussels Convention did not define the meaning or the scope of the concept of "civil and commercial matters" (para. 28) before it is pointed out that this term had to be regarded as "an independent concept" which had to be interpreted by referring "first, to the objectives and scheme of the Brussels Convention and, second to the general principles which stem from the corpus of the national legal systems […]" (para. 29). Further the Court refers to its case law where it has been held that actions between a public authority and a person governed by private law did not fall within the scope of the Brussels Convention if the public authority is acting in the exercise of its public powers.

The Court agrees with the Advocate General's Opinion that " […] there is no doubt that operations conducted by armed forces are one of the characteristic emanations of State sovereignty […]" (para. 37) and concludes that the present action "[…] does not fall within the scope ratione materiae of the Brussels Convention […]" (para. 39).

Thus, the Court ruled as follows:

On a proper construction of the first sentence of the first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, 'civil matters' within the meaning of that provision does not

cover a legal action brought by natural persons in a Contracting State against another Contracting State for compensation in respect of the loss or damage suffered by the successors of the victims of acts perpetrated by armed forces in the course of warfare in the territory of the first State.

Compare also our lengthy post on the AG Opinion which can be found here as well as the very comprehensive post at the EU Law Blog which can be viewed here.