Corona and Private International Law: A Regularly Updated Repository of Writings, Cases and Developments

by Ralf Michaels and Jakob Olbing

Note: This repository will stay permanent at

www.conflictoflaws.net/corona.
Please send additions to olbing@mpipriv.de

Updated: November 08, 2021

The coronavirus has created a global crisis that affects all aspects of life everywhere. Not surprisingly, that means that the law is affected as well. And indeed, we have seen a high volume of legislation and legal regulations, of court decisions, and of scholarly debates. In some US schools there are courses on the legal aspects of corona. Some disciplines are organizing symposia or special journal issues to discuss the impact of the pandemic on the respective discipline.

For a time Private international law has been vividly discussing the relevance of the crisis for the field, and of the field for the crisis Private international law matters are crucial to countless issues related to the epidemic – from production chains through IP over possible vaccines to mundane questions like the territorial application of lockdown regulations.

Knowledge of these issues is important. It is important for private international lawyers to realize the importance of our discipline. But it is perhaps even more important for decision makers to be aware of both the pitfalls and the potentials of conflicts of law.

This site, which we hope to update continually, is meant to be a place to collect, as comprehensively as possible, sources on the interaction of the new coronavirus and the discipline. The aim is not to provide general introductions into private international law, or to lay out sources that could be relevant. Nor is this meant to be an independent scholarly paper. What we try to provide is a one-stop place at which to find private international law discussions worldwide regarding to coronavirus.

For this purpose, we limit ourselves to the discipline as traditionally understood—jurisdiction, choice of law, recognition and enforcement, international procedure. Coronavirus has other impacts on transnational private law and those deserve attention too, but we want to keep this one manageable.

Please help make this a good informative site. Please share any reference that you have – from any jurisdiction, in any legislation – and we will, if possible, share them on this site. Please contact olbing@mpipriv.de

General

In the early beginning of the Pandemic, contributions from scholars, courts, international institutes and politicians where of a more general character as it was difficult to predict the scope and duration of the new situation.

The European Law Institute for example issued a set of Principles for the COVID-19 Crisis, covering a variety of legal topics such as Democracy (Principle 3) and Justice System (Principle 5) as well as Moratorium on Regular Payments, Force Major and Hardship, Exemption from Liability for simple Negligence (Principles 12 to 14). Ending with something everybody hopes for: Return to Normality (Principle 15).

The Secretary General of the Hague Conference recorded a short online message from his home addressing the most urgent topics. Ensuing, the Permanent Bureau developed a Toolkit for resources and publications relevant to the current global situation.

The university of Oxford‘s Blavatnik School of Government collects all measures by governments around the world in the “Coronavirus Government Response Tracker”.

A German journal is dedicated solely to the topic “COVID-19 and the Law”. The journal is interesting for academics and practitioners alike, since it publishes papers on specific COVID-19 related issues, as well as an extensive overview of German judgements.

An open access project by intersentia examines the COVID-19 legislation and its consequences in European states, bringing together contributions from over 85 highly regarded academics and practitioners in one coherent, open access resource.

Matthias Lehmann discusses the role of private international law on a number of issues – the impact of travel restrictions on transportation contracts, contract law issues for canceled events, canceled or delayed deliveries, but also liability for infections.

Online Workshops, Webinars and Conferences

In time of travel restrictions and social distancing the academic exchange is still active and sometimes more diverse than bevor, since people from all around the world come together, as the great number of workshops and symposiums that are held online shows.

Mid November (17 to 19), the Mexican Academy of Private International and Comparative Law discusses during its XLIV seminar among other topics the impacts of the pandemic on international family as well as aspects surrounding vaccines. participants will discuss in Spanish and the online participation is free of charge.

Contrary to the regular sessions of The Hague Academy of International Law's Centre for Studies and Research, the upcoming edition is entirely online. The topic will be "Epidemics and International Law" and held from September 2020 to June 2021. The collective works will be published later by the Academy. You will find application and programme here.

The Minerva Center for Human Rights at Tel Aviv University hosted an international socio-legal (zoom-) workshop on 22-23 June 2021 to explore the impact of the Covid-19 crisis and its regulation on cross-border families. A call for papers expired on 28 February 2021.

Another series of events organized by the University of Sydney's Centre for Asian and Pacific Law will regularly discuss topics such as social justice, civil rights, trade and investment in light of (post) pandemic developments. Of that series one webinar on the aftermath of the pandemic in the Asia-Pacific region focussed on commercial dispute resolution and issues related to private international law.

Marc-Philippe Weller discussed in a workshop on December 1, 2020 about "Nationalism, Territorialism, Unilateralism: Managing the Pandemic Through Private International Law?" if the measures enacted due to the pandemic may have an effect on the connecting factors in European private international law. He had a particular focus on the determination of habitual residence.

A comparative analysis of reactions in Japan and Germany on COVID-19 in private and public law with scholars from both jurisdictions was the topic of an online conference (mostly in German) on August 2020. Recordings of the presentations are online.

During a live youtube conference on July 23, 2020 Humberto Romero-Muci presented with several others his views on “Migrantes, pandemia y política en el Derecho Internacional Privado”. The video is still online.

A webinar organized by experts from MK Family Law (Washington) and Grotius Chamber (the Hague) discussed pertinent issues relating to international child abduction in times of COVID-19.

Matthias Lehmann presented his views on the application of force majeure certificates and overriding mandatory provisions n international contracts in an online-workshop on “COVID-19 and IPR/IZVR”.

Another webinar was held on “Vulnerability in the Trade and Investment Regimes in the Age of #COVID19”, which is available online, as part of the Symposium on COVID-19 and International Economic Law in the Global South.

The University of New South Wales held a talk on “COVID-19 and the Private International Law” in May, which you find on youtube.

As a follow-up of a webinar on PIL & COVID-19, Inez Lopez and Fabrício Polido give “some initial thoughts and lessons to face in daily life”

A group of Brazilian scholars organized an online symposium on Private International Law & Covid-19. Mobility of People, Commerce and Challenges to the Global Order. The videos are here.

The Organization of American States holds a weekly virtual forum on “Inter-American law in times of pandemic” (every Monday, 11:00 a.m., UTC-5h). One topic of many will be on “New Challenges for Private International Law” (Monday, June 15, 2020).

State Liability

Some thoughts are given to compensation suits brought against China for its alleged responsibility in the spread of the virus. One main issue here is whether China can claim sovereign immunity.

In the United States, several suits have been brought in Florida (March 12),

Nevada (March 23) and Missouri (April 21) against the Peoples republic of China (PRC), which plaintiffs deem responsible for the uncontrolled spread of the virus, which later caused massive financial damage and human loss in the United States. Not surprisingly officials and scholars in China were extremely critical (see here and here).

But legal scholars, including Chimène Keitner and Stephen L. Carter, also think such suits are bound to fail due to China's sovereign immunity, as do Sophia Tang and Zhengxin Huo. Hiroyuki Banzai doubts that the actions can succeed since it will be difficult to prove a causal link between the damages and the (in-) actions by the Chinese Gorvernment. Lea Brilmayer suspects that such a claim will fail since it would be unlikely, that a court will assume jurisdiction. The same conclusion is drawn by Angelica Bonfanti and Chimène Keitner after a thorough analysis of the grounds on which a liability of china could be based. An overview and detailed presentation of many class actions and suits filed by states can be found here.

Until now, only very little has happened concerning the American suits. Some suits where (voluntarily) dismissed or tossed. One suit against the PRC for damages amounting to $ 800 billion was ordered to be dismissed by the District Court, since the plaintiff failed to state a claim (*James-El v the Peoples Republic of China* (M.D.N.C. 2020) WL 3619870). For a general update on the lawsuits against the PRC from January 22, 2021 see here.

In an interview with a German newspaper Tom Ginsburg lays out the legal issues that will be faced, if the claims of state liability are brought in front of a German court. Fabrizio Marrella discusses the Italian perspective on that issue. Brett Joshpe analyzes more generally China's private and public liability in the domestic and international framework.

A Republican Representative is introducing two House Resolutions urging the US Congress to waive China's sovereign immunity in this regard; such a waiver has also been proposed by a Washington Post author. The claim has also found support by Fox News.

Interestingly, there is also a reverse suit by state-backed Chinese lawyers against the United States for covering up the pandemic. Guodong Du expects this will likewise be barred by sovereign immunity.

Martins Paparinskis shares the concerns about a successful litigation against foreign states. However, he suggests to change the law of state responsibility fundamentally to be prepared for further international catastrophes such as the current pandemic.

In the UK, the conservative Henry Jackson Society published a report suggesting that China is liable for violating its obligations under the International Health Regulations. The report discusses ten (!) legal avenues towards this goal, most of them in public international law, but also including suits in Chines, UK and US courts (pp 28-30). Sovereign immunity is discussed as a severe but not impenetrable barrier.

Contract Law

Both the pandemic itself and the ensuing national regulations impede the fulfilment of contracts. Legal issues ensue. An overview of European international contract law and the implications of COVID-19 is given here and here. Two chapters of the book "*La pandemia da COVID-19. Profili di diritto nazionale, dell'Unione Europea ed internazionale*" edited by Marco Frigessi di Rattalma are dedicated to jurisdiction and applicable law in contract matters.

The UNIDROIT Secretariat has released a Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 health crisis.

Bernard Haftel highlights three different techniques to apply COVID-19 legislation to an international contract: as *lex contractus*, as *lois des police* and through consideration within the applicable law.

Gerhard Wagner presents COVID caused defaults under the aforementioned ELI principles.

If a contracting party is unable to perform its contractual obligations, incapacity to perform can be based on force majeure or hardship. Some contributions suggest to apply for force majeure certificates which are offered by most countries, for example by China, Russia. How such a certificate can influence contractual obligations under English and New York Law is shown by Yeseung Jang. The German perspective is given by Philip Reusch and Laura Kleiner.

Further the South Korean, French and the Common Law perspective on force majeure have been published. Bruno Ancel compares the French and American approach. The difficulty to implement appropriate force majeure clauses in a contract is shown by Matteo Winkler.

Drawing from recent cases and experiences Franz Kaps analyses the difficulties in the operation within ICC force majeure clauses and suggests how "state-of-the-art force majeure clauses" should be constructed to include an international pandemic.

Victoria Lee, Mark Lehberg, Vinny Sanchez and James Vickery go beyond force majeure implications on contracts in their expert analysis.

William Shaughnessy presents issues which might occur in international construction contracts.

Another crucial aspect is the application of overriding mandatory rules on international contracts. Ennio Piovesani discusses whether Italian decree-laws enacted in view of the pandemic can operate as overriding mandatory rules and whether that would be compatible with EU law. So does Giovanni Zarra on international mandatory rules. Aposotolos Anthimos adds the Greek perspective, Claire Debourg the French to the discussion.

The applicability of self-proclaiming mandatory provisions in Italian law in respect to package travels in general and the Directive (EU) 2015/15 on package travel in particular, is discussed by Fabrizio Marongiu Buonaiuti.

Matthias Lehmann considers more broadly possible private international law issues and responses under European law. José Antonio Briceño Laborí and Maritza Méndez Zambrano add the Venezuelan view.

The crisis hits in particular global value and production chains. Impacts are discussed by Tomaso Ferando, by Markus Uitz and Hemma Parsché and by Anna Beckers, though neither focuses specifically on private international law.

Caterina Benini explains a new Italian mandatory rule providing a minimum standard of protection for employees.

Klaus Peter Berger and Daniel Behn in their historical and comparative study on force majeure and hardship, highlight that such remedies are quite regular to find

and fit to distribute the risk emanating from such a crisis evenly.

CISG

The CISG has long been of very little importance in international contract law but now is subject to many discussions. André Janssen and Johannes Wahnschaffe dedicate a detailed analysis to exemptions from liability and cases of hardship under the CISG.

Performance on advance purchase agreements on delivering the COVID-19 vaccines, have been a major political debate recently. While asking which law is applicable on such contracts Ben Köhler and Till Maier-Lohmann suspect, that if CISG is in fact the applicable law, the consequences would be far reaching and could be the very first time the CISG enters the "global centre stage". Unfortunately, a Belgian court deciding over a claim by the EU against AstraZeneca for the delivery of doses of vaccines, did not even consider the application of the CISG.

Corporate Law

If the questions of purchasing COVID-19 vaccines shifts to buying the entire company the issue at hand becomes more political. Arndt Scheffler analyses the situation in which a foreign investor tries to purchase a company, which is crucial for the domestic battle against the pandemic and the search for a vaccine.

Employment Law

Closed borders and practically everybody working from has its impact on employment law.

In export-oriented economies such as Germany, it is very common, that employees are posted abroad on a long-term basis. COVID-19 legislation shapes and influences the legal relation between employer and employee, but also between employee and host-country. Roland Falder and Constantin Franke-Fahle discuss

these influences with particular attention to the question of the applicable law here.

Tort Law

Damages caused by an infection are mostly subject to tort law but can also arise in a contractual relation. Focusing on the applicable law on non-contractual liability Rolf Wagner explains, that sometimes damages can be claimed both, as contractual and as non-contractual. He stresses that as the substantive law on damages caused by an infection is still to evolve, applying foreign law is a particular challenge.

An extensive overview about the law applicable to damages caused by an COVID-19 infection under Indian international tort law is given by Niharika Kuchhal, Kashish Jaitley and Saloni Khanderia. Khanderia published a second article, concerning the need of a codification of Indian conflict of laws on tort in respect of a foreseeable surge in international tort proceedings, caused by the pandemic.

General implications of the coronavirus on product liability and a possible duty to warn costumers, without specific reverence to conflict of laws.

In Austria, a consumer protection association is considering mass litigation against the Federal State of Tyrolia and local tourist businesses based on their inaction in view of the spreading virus in tourist places like Ischgl. A questionnaire is opened for European citizens. Matthias Weller reports.

Florian Heindler discusses how legal measures to battle the virus could be applicable to a relevant tort case (either as local data or by special connection), by analyzing the hypothetical case of a tourist who gets infected in Austria.

Jos Hoevenars and Xandra Kramer discuss the potential of similar actions in the Netherlands under the 2005 Collective Settlement Act, WCAM.

Family Law

Implications also exist in family law, for example regarding the Hague Abduction Convention.

In an Ontario case (Onuoha v Onuoha 2020 ONSC 1815), concerning children taken from Nigeria to Ontario, the father sought to have the matter dealt with on an urgent basis, although regular court operations were suspended due to Covid-19. The court declined, suggesting this was “not the time” to hear such a motion, and in any way international travel was not in the best interest of the child. For the discussion see here.

Further sspects of travel restrictions in international abduction cases are analysed by Gemme Pérez.

A general overview of abduction in times of corona was published by Nadia Rusinova. Another article by Nadia by her covers recent case law and legislation on remote child related proceedings which were conducted during the last weeks around the world. She also highlights, that COVID-19 measures can impact Article 8 ECHR.

Also cases of international surrogacy come into mind which are affected by COVID-19, as Mariana Iglesias shows.

Personal Data

The protection of personal data in transnational environments has always been a controversial topic in conflict of laws. Jie Huang shows, that due to COVID-19 existing tensions between the EU, the USA and China are reflected in their conflict of laws approach.

The European Commission published a “toolbox for the use of technology and data to combat and exit from the COVID-19 crisis”, which was an opportunity for some contributions on the GDPR and Tracing Apps.

Economic Law

The crisis puts stress on global trade and therefore also economic law. Sophie

Hunter discusses developments in the competition laws of various countries (though with no explicit focus on conflict of laws issues).

A list of authors from around the world analyses the interrelation between "Competition law and health crises" in its international context in the current issue Concurrences.

Intellectual Property

Due to lockdowns and school closures, online work and teaching has exorbitantly increased but, as Marketa Trimble stresses, with little notion of transnational copyright issues.

To tackle those a prominently endorsed letter to the World Intellectual Property Organization, emphasizes the need to ensure that intellectual property regimes should support the efforts against the Coronavirus and should not be a hindrance.

Public Certification

In times of lockdown and closed borders notarization and public certification become almost impossible. Therefore, various countries have adjusted their legislation. You will find an overview here.

The electronic Apostille Program (e-APP)experiences a new popularity, as a considerable number of countries have implemented new components of the e-APP. For more information see here.

Dispute Resolution

In Dispute resolution two main questions are being discussed.

On the one hand the question of jurisdiction as such, for example for claims suffered within contractual or non-contractual relationships. Rolf Wagner gives the European and German perspective presenting the possible courts of jurisdiction under Brussel I Regulation (recast), the Lugano Convention and the

German code of civil procedure.

In a recent case by the Supreme Court of Queensland (AUS), the court examined the impact of COVID-19 on a foreign jurisdiction clause. You can find Jie Huang's comments on the decision here.

One the other hand, it is being discussed to what extend the requirement of physical presence in courts can conform with social distancing and travel restrictions. As a more drastic reaction some courts suspended their activities except for urgent matters all together. Developments in Italy are discussed here, developments in English law here.

On the other hand, another possibility is the move to greater digitalization, as discussed comparatively by Emma van Gelder, Xandra Kramer and Erlis Themeli. The Hague Conference on Private International Law (HCCH) published a Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention, discussed also with reference to Corona by Mayela Celis.

Using the pandemic, Gisela Rühl analyses why the potential of digitalization is so scarcely used in civil procedure and how it can be improved to serve the needs of a digital society.

Benedikt Windau analyses the German civil procedure and how international digital heraings could be possible within the existing law.

In litigation, virtual hearings become a prominent measure to overcame restrictions on physical presence. While in on some jurisdiction such hearings are possible, Luigi Malferrari discusses the question if such hearings should also be enabled before the CJEU.

Maxi Scherer takes the crisis as an opportunity to analyse virtual hearings in international arbitration. Complications and long-term effects of virtual arbitration are presented here. Mirèze Philippe however sees this development as a positive game changer not just in health aspect but also to protect the environment and saving time as well as travelling costs (further articles covering international arbitration and virtual hearings: here and here).

A very broad presentation of legislation in France, Italy and Germany in civil procedure, including cross border service and taking of evidence as well as its

implications on international child abduction and protection, is given by Giovanni Chiapponi.

Jie Huang examines the case of substitute service under the Hague Service Convention during the pandemic in the case Australian Information Commission v Facebook Inc ([2020] FCA 531).

A US project guided by Richard Suskind collects cases of so-called “remote courts” worldwide.

The EU gives information about the “impact of the COVID-19 virus on the justice field” concerning various means of dispute resolution.

Gilberto A. Guerrero-Rocca analyses the impacts of COVID-19 on international arbitration in relation to the CISG.

Bibliography

General and Workshops

Blavantik School of Government, Coronavirus Government Response Tracker, https://www.bsg.ox.ac.uk/research/research-projects/coronavirus-government-response-tracker

Direito Internacional Privado & Covid19, Mobilidade de Pessoas, Comércio e Desafios da Ordem Global, Webinar 11-22 May 2020, https://www.sympla.com.br/webinar-direito-internacional-privado-e-covid-19__848906

Hague Conference on Private International Law (HCCH), HCCH Covid-19 Toolkit, 04 May 2020, https://www.hcch.net/en/news-archive/details/?varevent=731

Matthias Lehmann, Corona Virus and Applicable Law, EAPIL Blog, 16 March 2020, https://eapil.org/2020/03/16/corona-virus-and-applicable-law/

Inez Lopes, Fabrício Polido, Private International Law and the outbreak of Covid-19: Some initial thoughts and lessons to face in daily life, CoL Blog, 10 June 2020, https://conflictoflaws.net/2020/webinar-report-private-international-law-and-the-o

utbreak-of-covid-19-some-initial-thoughts-and-lessons-to-face-in-daily-life/

Secretariat for Legal Affairs, Organization of American States: Inter-American law in times of pandemic, Weekly virtual forum 11 May – 06 July 2020, http://www.oas.org/en/sla/virtual_forum.asp

Società italiana di Diritto internazionale e di Diritto dell'Unione europea, Forum "Covid-19, Diritto Internatzionale e Diritto dell'Unione Europea", SIDIBlog, 24 March 2020, http://www.sidiblog.org/2020/03/24/forum-covid-19-diritto-internazionale-e-diritto-dellunione-europea/

State Liability

Hiroyuki Akiyama, US lawsuits seek to pin coronavirus blame on China: Allegations of negligence raise legal questions about responsibility, Nikkei Asian Review, 01 April 2020, https://asia.nikkei.com/Spotlight/Coronavirus/US-lawsuits-seek-to-pin-coronavirus-blame-on-China

Shira Anderson, Sean Mirski, An Update on the Coronavirus-Related Lawsuits Against China, Lawfareblog.com, 22 January 2021, https://www.lawfareblog.com/update-coronavirus-related-lawsuits-against-china-0

Angelica Bonfanti, La Cina è immune al COVID-19? Riflessioni sulle cause di risarcimento contro la Cina per i danni causati dalla pandemia negli Stati Uniti, SIDIBlog, 25 June 2020, http://www.sidiblog.org/2020/06/25/la-cina-e-immune-al-covid-19-riflessioni-sulle-cause-di-risarcimento-contro-la-cina-per-i-danni-causati-dalla-pandemia-negli-stati-uniti/

Stephen L. Carter, No, China Can't Be Sued Over Coronavirus: Nation-states are immune from such lawsuits, Bloomberg Opinion, 24 March 2020, https://www.bloomberg.com/opinion/articles/2020-03-24/can-china-be-sued-over-the-coronavirus

C.D. Davidsmeyer, Strip China's Sovereign Immunity and Sue for Damages Caused by Coronavirus, 03 April 2020, https://cddavidsmeyer.org/latest-news/

Guodong Du, Meng Yu, A Wuhan Lawyer Suing the U.S. Government Over

COVID-19? In China, Legal Impediments May Surface, China Justice Observer, March 25 2020, https://www.chinajusticeobserver.com/a/a-wuhan-lawyer-suing-the-us-government-over-covid-19

Georg Fahrion, Reparationen für Coronavirus: "Soll China dem Rest der Welt einen Scheck über zehn Billionen Dollar ausstellen?", SPIEGEL Online, 05 May 2020, https://www.spiegel.de/politik/ausland/corona-donald-trump-forder-entschaedigung-von-china-ohne-aussicht-auf-erfolg-a-5c6b7517-0ab6-4a14-b1a2-7f77b4c5b18a

Matthew Hernderson, Alan Mendoza, Andrew Foxall, James Rogers and Sam Armstrong, Coronavirus Compensation? Assessing China's potential culpability and avenues of legal response, The Henry Jackson Society, April 2020, https://henryjacksonsociety.org/wp-content/uploads/2020/04/Coronavirus-Compensation.pdf

Brett Joshpe, Considering Domestic and International Frameworks for Analyzing China's Potential Legal Liability in the Aftermath of COVID-19, SSRN 13 May 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3598614

Chimène Keitner, To Litigate a Pandemic: Cases in the United States Against China and the Chinese Communist Party and Foreign Sovereign Immunities, 19 Chinese Journal of International Law 2020, 229-239, https://academic.oup.com/chinesejil/article/19/2/229/5890051

Chimène Keitner, Don't Bother Suing China for Coronavirus, Just Security, 31 March 2020, https://www.justsecurity.org/69460/dont-bother-suing-china-for-coronavirus/

José Antonio Briceño Laborí, Maritza Méndez Zambrano, El Derecho Internacional Privado ante el COVID-19, Derecho y Sociedad Blog, March 2020, http://www.derysoc.com/especial-nro-3/el-derecho-internacional-privado-ante-el-covid-19/

Matthias Lehmann, Corona Virus and Applicable Law, EAPIL Blog, 16 March 2020, https://eapil.org/2020/03/16/corona-virus-and-applicable-law/

Fabrizio Marrella, La Cina deve risarcire i danni transnazionali da Covid-19?

Orizzonti ad oriente, SIDIBlog, 17 May 2020, http://www.sidiblog.org/2020/05/17/la-cina-deve-risarcire-i-danni-transnazionali-da-covid-19-orizzonti-ad-oriente/

Hollie McKay, How China can be held legally accountable for coronavirus pandemic, Fox News Channel, 20 March 2020, https://www.foxnews.com/world/china-legally-accountable-coronavirus

Sean A. Mirski, Shira Anderson, What's in the Many Coronavirus-Related Lawsuits Against China?, Lawfare-Blog, 24 June 2020, https://www.lawfareblog.com/whats-many-coronavirus-related-lawsuits-against-china

Frank Morris, The Coronavirus Crisis: Missouri Sues China, Communist Party Over The Coronavirus Pandemic, National Public Radio, 21 April 2020, https://www.npr.org/sections/coronavirus-live-updates/2020/04/21/840550059/missouri-sues-china-communist-party-over-the-coronavirus-pandemic?t=1587575581629&t=1589901982561

Martins Paparinskis, The Once and Future Law of State Responsibility, 114 American Journal of International Law2020, 618-626, https://www.cambridge.org/core/journals/american-journal-of-international-law/article/once-and-future-law-of-state-responsibility/9FC5FFFF27E3F7476D742B17146324D0

Missouri Attorney General Eric Schmitt, Missouri Attorney General Schmitt Files Lawsuit Against Chinese Government, 21 April 2020, https://ago.mo.gov/home/news/2020/04/21/missouri-attorney-general-schmitt-files-lawsuit-against-chinese-government

Zhong Sheng, U.S. practice to claim compensation for COVID-19 outbreak a shame for human civilization, People's Daily Online, 03 May 2020, http://en.people.cn/n3/2020/0503/c90000-9686646.html

Zheng Sophia Tang and Zhengxin Huo, State immunity in global COVID-19 pandemic: Alters, et. al. v People's Republic of China, et. al., CoL Blog, 21 March 2020, https://conflictoflaws.net/2020/state-immunity-in-global-covid-19-pandemic/

Marc A. Thiessen, China should be legally liable for the pandemic damage it has

done, The Washington Post, 09 April 2020, https://www.washingtonpost.com/opinions/2020/04/09/china-should-be-legally-liable-pandemic-damage-it-has-done/

Xinhua, Commentary: Suing China for pandemic damage is nothing but political pandering, edited by Huaxia, Xinhua News, 03 April 2020, http://www.xinhuanet.com/english/2020-04/30/c_139021210.htm

Ng Yik-tung, Ho Shan, Sing Man and Qiao Long, Chinese Lawyers Sue U.S. Over 'Coronavirus Cover-up', edited by Luisetta Mudie, Radio Free Asia, 26 March 2020, https://www.rfa.org/english/news/china/wuhan-lawsuit-03262020122653.html

Contract Law

Bruno Ancel, Les contrats français et américains face au Covid – 19: un futur nimbé d'incertitude?, AJ Contrat 2020, 217

Apostolos Anthimos, Covid-19 and overriding mandatory provisions, CoL Blog, 15 April 2020, https://conflictoflaws.net/2020/italian-self-proclaimed-overriding-mandatory-provisions-to-fight-coronavirus/

Anna Beckers, Towards Constitutionalizing Global Value Chains and Corporations: The State of Exception and Private Law, Verfassungsblog, 08 April 2020, https://verfassungsblog.de/towards-constitutionalizing-global-value-chains-and-corporations/

Caterina Benini, The COVID-19 Crisis and Employment Contracts: the Italian Emergency Legislation on Dismissals, EAPIL Blog, 11 May 2020, https://eapil.org/2020/05/11/the-covid-19-crisis-and-employment-contracts-the-italian-emergency-legislation-on-dismissals/

Klaus Peter Berger, Daniel Behn, Force Majeure and Hardship in the Age of Corona: A Historical and Comparative Study, *McGill Journal of Dispute Resolution*, Forthcoming, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3575869

Claire Debourg, Covid-19 | Lois de police et ordonnances 2020, GIDE 7 May 2020,

https://www.gide.com/fr/actualites/covid-19-lois-de-police-et-ordonnances-2020

Tomaso Ferando, Law and Global Value Chains at the Time of Covid-19: A Systemic Approach Beyond Contracts and Tort, EAPIL Blog, 20 March 2020, https://eapil.org/2020/03/20/law-and-global-value-chains-at-the-time-of-covid-19-a-systemic-approach-beyond-contracts-and-tort/

Claudia Galvis, Jose Moran and James O Brien, Coronavirus Outbreak: Global Guide to Force Majeure and International Commercial Contracts, Global Compliance News UG, 19 March 2020, https://globalcompliancenews.com/coronavirus-outbreak-global-guide-to-force-majeure-and-international-commercial-contracts/

Pascel Guiomard, La grippe, les épidémies et la force majeure en dix arrêts, Dalloz actualité, 4 March 2020, https://www.dalloz-actualite.fr/flash/grippe-epidemies-et-force-majeure-en-dix-arrets#.XyKXqXduKzl

Bernard Haftel, Le Covid-19 et les contracts internationaux, Recueil Dalloz 2020, 1040, Recueil Dalloz | Dalloz

Tony Dongwook Kang, Seong Soo Kim, COVID-19 and Force Majeure in Sales Transactions — South Korea, Bae, Kim & Lee LLC, Law Business Research, 06 March 2020, https://www.lexology.com/librar/detail.aspx?g=d07462e8-7b46-4b20-9b59-9855e3bdaeb5

Franz Kaps, The Second Wave of the COVID-19 Pandemic and Force Majeure, CoL Blog, 11 December 2020, https://conflictoflaws.net/2020/the-second-wave-of-the-covid-19-pandemic-and-force-majeure/

José Antonio Briceño Laborí, Maritza Méndez Zambrano, El Derecho Internacional Privado ante el COVID-19, Derecho y Sociedad, March 2020, http://www.derysoc.com/especial-nro-3/el-derecho-internacional-privado-ante-el-covid-19/

Victoria Lee, Mark Lehberg, Vinny Sanchez and James Vickery, Expert Analysis: COVID-19 Contract Issues Reach Beyond Force Majeure, Law360, 13 March

2020,
https://www.law360.com/articles/1251749/covid-19-contract-issues-reach-beyond-force-majeure

Fabrizio Marongiu Buonaiuti, Le disposizioni adottate per fronteggiare l'emergenza coronavirus come norme di applicazione necessaria, in: Calzolaio, Ermanno/Maccarelli, Massimo/Pollastrelli, Stefano (eds.), Il diritto nella pandemia, 2020, pp. 235-256, http://eum.unimc.it/img/cms/Full%20text_Il%20diritto%20nella%20pandemia_a%20cura%20di_Calzolaio_Meccarelli_Pollastrelli.pdf

Pedro de Miguel Asensio, Medidas de emergencia y contratos internacionales, personal Blog, 27 April 2020, http://pedrodemiguelasensio.blogspot.com/2020/04/medidas-de-emergencia-y-contratos.html

Pedro de Miguel Asensio, Contratación internacional y COVID-19: primeras reflexiones, Personal Blog, 19 March 2020, http://pedrodemiguelasensio.blogspot.com/2020/03/contratacion-internacional-y-covid-19.html

Ekaterina Pannebakker, 'Force majeure certificates' issued by the Russian Chamber of Commerce and Industry, CoL Blog, 17 April 2020, https://conflictoflaws.net/2020/force-majeure-certificates-by-the-russian-chamber-of-commerce-and-industry/

Ennio Piovesani: Italian Self-Proclaimed Overriding Mandatory Provisions to Fight Coronavirus, CoL Blog, 19 March 2020, https://conflictoflaws.net/2020/italian-self-proclaimed-overriding-mandatory-provisions-to-fight-coronavirus/

Philip Reusch, Laura Klein, Distribution of risk in connection with coronavirus-related trade disruptions, Reuschlaw Legal Consultants, 2020, https://www.reuschlaw.de/en/news/distribution-of-risk-in-connection-with-coronavirus-related-trade-disruptions/

William J. Shaughnessy, William E. Underwood, Chris Cazenave, COVID-19's Impact on Construction: Is There a Remedy? — Time Extension, Force Majeure, or More?, The National Law Review, 03 April 2020,

https://www.natlawreview.com/article/covid-19-s-impact-construction-there-remedy-time-extension-force-majeure-or-more

Sophia Tang, Coronavirus, force majeure certificate and private international law, Coronavirus outbreak and force majeure certificate, CoL Blog, 01 March 2020, https://conflictoflaws.net/2020/coronavirus-force-majeure-certificate-and-private-international-law/

Markus Uitz, Hemma Parsché, Coronavirus – ein Praxisleitfaden bei Unterbrechung internationaler Lieferketten, *Ecolex* 273, no. 4, p. 273, 04 April 2020, https://rdb.manz.at/document/rdb.tso.LIecolex20200406

UNIDROIT Secretariat, Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 health crisis, https://www.unidroit.org/89-news-and-events/2886-unidroit-releases-secretariat-note-on-the-unidroit-principles-of-international-commercial-contracts-and-covid-19

Gerhard Wagner, Corona Law, ZEuP 2020, 531, https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fzeup%2F2020%2Fcont%2Fzeup.2020.531.1.htm&anchor=Y-300-Z-ZEUP-B-2020-S-531-N-1

Anton A. Ware, Jeffrey Yang, Yingxi Fu-Tomlinson, Timothy C. Smyth, What to Do When You Receive a Coronavirus-Related Force Majeure Notice, Coronavirus: Multipractice Advisory, Arnold & Porter Kaye Scholer LLP, 04 March 2020, https://www.arnoldporter.com/en/perspectives/publications/2020/03/what-to-do-when-you-receive-a-coronavirus

Matteo Winkler, Practical Remarks on the Assessment of COVID-19 as Force Majeure in International Contracts, SIDIBlog, 06 May 2020, http://www.sidiblog.org/2020/05/06/practical-remarks-on-the-assessment-of-covid-19-as-force-majeure-in-international-contracts/

Giovanni Zarra, Alla riscoperta delle norme di applicazione necessaria Brevi note sull'art. 28, co. 8, del DL 9/2020 in tema di emergenza COVID-19, SIDIBlog, 30 March 2020, http://www.sidiblog.org/2020/03/30/alla-riscoperta-delle-norme-di-applicazione-necessaria-brevi-note-sullart-28-co-8-del-dl-92020-in-tema-di-emergenza-covid-19/

CISG

André Janssen, Christian J. Wahnschaffe, Der internationale Warenkauf in Zeiten der Pandemie, EuZW 2020, 410-416, https://beck-online.beck.de/?vpath=bibdata/zeits/EUZW/2020/cont/EUZW.2020.410.1.htm

Ben Köhler, Global sales law in a global pandemic: The CISG as the applicable law to the EU-AstraZeneca Advance Purchase Agreement?, CoL Blog, 05 February 2021, https://conflictoflaws.net/2021/global-sales-law-in-a-global-pandemic-the-cisg-as-the-applicable-law-to-the-eu-astrazeneca-advance-purchase-agreement/

Till Maier-Lohmann, EU-AstraZeneca contract – applicability of the CISG?, CISG-Online, 01 February 2021, https://cisg-online.org/Home/international-sales-law-news/eu-astrazeneca-contract-applicability-of-the-cisg

Till Maier-Lohmann, EU v. AstraZeneca – both sides win but no side sides with the CISG?, CISG-online, 23 June 2021, https://cisg-online.org/Home/international-sales-law-news/eu-v.-astrazeneca-both-sides-win-but-no-side-sides-with-the-cisg

Corporate Law

Arndt Scheffler, Freundschaft, Meistbegünstigung und COVID-19-Impfstoff, RIW 2020, 499-506, https://online.ruw.de/suche/riw/Freundschaf-Meistbeguenstigun-un-COVI-1-Impfstof-ef50e2d3f3395df3ecf99c34a007fc68

Employment Law

Roland Falder, Constantin Frank-Fahler, Entsandte Arbeitnehmer im Niemandsland – Die Corona-Krise und ihre Auswirkungen auf die Auslandstätigkeit (am Beispiel der Vereinigten Arabischen Emirate), COVuR 2020, 184-189, https://beck-online.beck.de/?vpath=bibdata/zeits/COVUR/2020/cont/COVUR.2020.184.1.htm

Tort Law

Florian Heindler, Schadenersatz mit Auslandsberührung wegen COVID-19 ZAK

2020/237
https://lesen.lexisnexis.at/_/schadenersatz-mit-auslandsberuehrung-wegen-covid-19/artikel/zak/2020/8/Zak_2020_08_237.html

Jos Hoevenaars and Xandra Kramer: Mass Litigation in Times of Corona and Developments in the Netherlands, CoL Blog, 22 April 2020, https://conflictoflaws.net/2020/mass-litigation-in-times-of-corona-and-developments-in-the-netherlands/

Saloni Khanderia, Kashish Jaitley, Niharika Kuchhal, The COVID pandemic: Time to 'ramp-up' India's conflict of law rules in matters of tort?, CoL Blog, 14 April 2020,
https://conflictoflaws.net/2020/the-covid-pandemic-time-to-ramp-up-indias-conflict-of-law-rules-in-matters-of-tort-by-kashish-jaitley-niharika-kuchhal-and-saloni-khanderia/

Saloni Khanderia, Identifying the applicable law in cross-border disputes on injuries caused by the covid-19 in India: a critical analysis, Commonwealth Law Bulletin, 09 March 2021, https://www.tandfonline.com/doi/full/10.1080/03050718.2021.1894957

Schnader Harrison Segal & Lewis LLP, Product Liability and Tort Law Implications of the COVID-19 Crisis, JD Supra, 02 April 2020, https://www.jdsupra.com/legalnews/product-liability-and-tort-law-94866/

Verein zum Schutz von Verbraucherinteressen (Verbraucherschutzverein), Class Action: Corona-Virus-Tyrol questionnaire, 2020, https://www.umfrageonline.com/s/f1fb254

Verein zum Schutz von Verbraucherinteressen (Verbraucherschutzverein), Sammelaktion Corona-Virus-Tirol, 2020, https://www.verbraucherschutzverein.at/Corona-Virus-Tirol/

Rolf Wagner, Anwendbares Recht für zivilrechtliche Schadensersatzansprüche aufgrund von Virusinfektionen, COVuR 2020, 738-743, https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fcovur%2F2020%2Fcont%2Fcovur.2020.738.1.htm&anchor=Y-300-Z-COVUR-B-2020-S-738-N-1

Matthias Weller, Cross-border Corona mass litigation against the Austrian

Federal State of Tyrol and local tourist businesses?, CoL Blog, 02 April 2020, https://conflictoflaws.net/2020/cross-border-corona-mass-litigation-against-the-austrian-federal-state-of-tyrol-and-local-tourist-businesses/

Family Law

Pamela Cross, Recent case: Hague Convention case under COVID-19 court protocols, Luke's Place, 31 March 2020, https://lukesplace.ca/case-law-hague-convention-case-under-covid-19-court-protocols/

Mariana Iglesias, Un tema polémico: La espera de los bebés que nacieron en Ucrania durante la cuarentena reaviva el debate por el alquiler de vientres, Calrín, 06. June 2020, https://www.clarin.com/sociedad/espera-bebes-nacieron-ucrania-cuarentena-reaviva-debate-alquiler-vientres_0_932tbfYvo.html

Gemma Pérez, ¿Puede el COVID-19 tener efectos en materia de sustracción internacional de menores?, Diario Jurídico, 27 April 2020, https://www.diariojuridico.com/puede-el-covid-19-tener-efectos-en-materia-de-sustraccion-internacional-de-menores/

MK Family Law (Washington), Grotius Chambers (The Hague), COVID-19 and International Child Abduction: Pertinent Issues, CoL Blog, Webinar 08 April 2020, https://conflictoflaws.net/2020/webinar-on-covid-19-and-international-child-abduction/

Nadia Rusinova, COVID-19 and the Right to Respect for Family Life under Article 8 ECHR, EAPIL Blog, 1 June 2020, https://eapil.org/2020/06/01/the-interplay-between-covid-19-and-the-right-to-respect-for-family-life-under-article-8-echr/

Nadia Rusinova, Child abduction in times of corona, CoL Blog, 16 April 2020, https://conflictoflaws.net/2020/child-abduction-in-times-of-corona/

Nadia Rusinova, Remote Child-Related Proceedings in Times of Pandemic – Crisis Measures or Justice Reform Trigger?, CoL Blog, 30 April 2020, https://conflictoflaws.net/2020/remote-child-related-proceedings-in-times-of-pandemic-crisis-measures-or-justice-reform-trigger/

Personal Data

Stergios Aidinlis, The EU GDPR in Times of Crisis: COVID-19 and the Noble Dream of Europeanisation, EuCML 2020, 151-165, https://beck-online.beck.de/?vpath=bibdata%2fzeits%2fEUCML%2f2020%2fcont%2fEUCML%2e2020%2e151%2e1%2ehtm

Jie (Jeanne) Huang, COVID-19 and Applicable Law to Transnational Personal Data: Trends and Dynamics, Sydney Law School Research Paper No. 20/23, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3570178

Claudia Sandei, Tracing Apps, Digital Health and Consumer Protection, EuCML 2020, 156-161, https://beck-online.beck.de/?vpath=bibdata%2fzeits%2fEUCML%2f2020%2fcont%2fEUCML%2e2020%2e156%2e1%2ehtm#FNA19

Economic Law

Sophie Hunter, Competition Law and COVID 19, CoL Blog 09 April 2020, https://conflictoflaws.net/2020/competition-law-and-covid-19/

Frédéric Jenny et. al., Competition law and health crisis, Concurrences 2020, 24, https://www.concurrences.com/en/review/issues/no-2-2020/on-topic/competition-law-and-health-crisis-en

Intellectual Property

Marketa Trimble, COVID-19 and Transnational Issues in Copyright and Related Rights, *IIC – International Review of Intellectual Property and Competition Law* 51 (2020), 40.

Public Certification

Ralf Michaels, Notarization from abroad in times of travel restrictions, CoL Blog 22 May 2020, https://conflictoflaws.net/2020/notarization-from-abroad/

Dispute Resolution

Giovanni Chiapponi, Judicial cooperation and coronavirus: the law must go on, Judicium, 23 May 2020, http://www.judicium.it/judicial-cooperation-and-coronavirus-the-law-must-go/

Giovanni Chiapponi, The Impact of Corona Virus on the Management of Judicial Proceedings in Italy, EAPIL Blog, 13 March 2020, https://eapil.org/2020/03/13/the-impact-of-corona-virus-on-the-management-of-judicial-proceedings-in-italy/

Mayela Celis, Useful reading in times of corona and just released: The Guide to Good Practice on the Use of Video-Link under the HCCH 1970 Evidence Convention, CoL Blog, 17 April 2020, https://conflictoflaws.net/2020/useful-reading-in-times-of-corona-and-just-released-the-guide-to-good-practice-on-the-use-of-video-link-under-the-hcch-1970-evidence-convention/

European Union, Impact of the COVID-19 virus on the justice field, The European e-Justice Portal, 2020, https://e-justice.europa.eu/content_impact_of_the_covid19_virus_on_the_justice_field-37147-en.do

Emma van Gelder, Xandra Kramer and Erlis Themeli, Access to justice in times of corona, CoL Blog, 07 April 2020, https://conflictoflaws.net/2020/access-to-justice-in-times-of-corona/

Gilberto A. Guerrero-Rocca, Arbitraje internacional al 'rescate' de la CISG en tiempos del COVID-19, CIAR Global, 21 April 2020, https://ciarglobal.com/arbitraje-internacional-al-rescate-de-la-cisg-en-tiempos-del-covid-19/

Horacio Grigera Naón, Björn Arp, Virtual Arbitration in Viral Times: The Impact of Covid-19 on the Practice of International Commercial Arbitration, https://www.wcl.american.edu/impact/initiatives-programs/international/news/covid-19/virtual-arbitration-in-viral-times-the-impact-of-covid-19-on-the-practice-of-international-commercial-arbitration/

Hague Conference on Private International Law (HCCH), Guide on Use of Video-Link under Evidence Convention, 16 April 2020, https://www.hcch.net/en/news-archive/details/?varevent=728

Jie (Jeanne) Huang, RCD Holdings Ltd v LT Game International (Australia) Ltd: Foreign jurisdiction clauses and COVID-19,CoL Blog, 17 February 2021, https://conflictoflaws.net/2021/rcd-holdings-ltd-v-lt-game-international-australia-lt

d-foreign-jurisdiction-clauses-and-covid-19/

Jie (Jeanne) Huang, Australian Information Commission v Facebook Inc: Substituting the Hague Service Convention during the Pandemic?, CoL Blog 11 Juli 2020, https://conflictoflaws.net/2020/australian-information-commission-v-facebook-inc-substituting-the-hague-service-convention-during-the-pandemic/

Alex Lo, Virtual Hearings and Alternative Arbitral Procedures in the COVID-19 Era: Efficiency, Due Process, and Other Considerations, Contemporary Asia Arbitration Journal, Special Issue on "COVID-19 and International Dispute Settlement, 2020, 85, https://heinonline.org/HOL/Page?handle=hein.journals/caaj13&id=&collection=journals&div=8

Luigi Malferrari, Corona-Krise und EuGH: mündliche Verhandlungen aus der Ferne und in Streaming? EuZW 2020, 393-395, https://beck-online.beck.de/?vpath=bibdata%2fzeits%2fEUZW%2f2020%2fcont%2fEUZW%2e2020%2e393%2e1%2ehtm

Aygun Mammadzada, Impact of Coronavirus on English Civil Proceedings: Legislative Measures During Emergency and Potential Outcomes, EAPIL Blog, 13 May 2020, https://eapil.org/2020/05/13/impact-of-coronavirus-on-english-civil-proceedings-legislative-measures-during-emergency-and-potential-outcomes/

Philippe Mirèze, Offline or Online? Virtual Hearings or ODR?', Kluwer Arbitration Blog, 26 April 2020, http://arbitrationblog.kluwerarbitration.com/2020/04/26/offline-or-online-virtual-hearings-or-odr/

Gisela Rühl, Digitale Justiz, oder: Zivilverfahren für das 21. Jahrhundert, JZ 2020, 809-817
https://www.mohrsiebeck.com/artikel/digitale-justiz-oder-zivilverfahren-fuer-das-21-jahrhundert-101628jz-2020-0245?no_cache=1

Maxi Scherer, Remote Hearings in International Arbitration – and What Voltaire Has to Do with It ?, Kluwer Arbitration Blog, 26 May 2020, http://arbitrationblog.kluwerarbitration.com/2020/05/26/remote-hearings-in-inter

national-arbitration-and-what-voltaire-has-to-do-with-it/?doing_wp_cron=1594296650.8850700855255126953125

Mark L. Shope, The International Arbitral Institution Response to COVID-19 and Opportunities for Online Dispute Resolution, Contemporary Asia Arbitration Journal, Special Issue on "COVID-19 and International Dispute Settlement, 2020, 67, https://heinonline.org/HOL/Page?handle=hein.journals/caaj13&id=&collection=journals&div=8

Richard Susskind, Remote Courts Worldwide, Society for Computers and Law, 27 March 2020, https://remotecourts.org/

Rolf Wagner, Internationale und örtliche Zuständigkeit für zivilrechtliche Schadensersatzansprüche aufgrund von Virusinfektionen, COVuR 2020, 566-573, https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fcovur%2F2020%2Fcont%2Fcovur.2020.566.1.htm&anchor=Y-300-Z-COVUR-B-2020-S-566-N-1

Benedikt Windau, Kann der „anderer Ort" i.S.d. § 128a Abs. 1 ZPO auch im Ausland sein? zpoblog.de, 14 April 2021, https://www.zpoblog.de/videokonferenz-verhandlung-grenzueberschreitend-anderer-ort-%C2%A7-128a-zpo-ausland/

Public international law requirements for the effective enforcement of human rights

Written by Peter Hilpold, University of Innsbruck

Note: This blogpost is part of a series on „Corporate social responsibility and international law" that presents the main findings of the contributions published in August Reinisch, Stephan Hobe, Eva-Maria Kieninger & Anne Peters (eds),

Unternehmensverantwortung und Internationales Recht, C.F. Müller, 2020.

1. The UN Guiding Principles on Business and Human Rights (2011) have set forth a process by which Corporate Social Responsibility (CSR) rules are to be further specified. The approach followed is not to impose specific results but to create procedures by which CSR is given further flesh on the basis of a continuing dialogue between all relevant stakeholders.

2. The operationalization of this concept takes place by a three pillar model („protect", „respect", „remedy") based on an approach called „embedded liberalism" according to which the creation of a liberal economic order allowing also for governmental and international intervention is pursued.

3. The „remedies" pillar is the least developed one within the system of the Guiding Principles. Intense discussion and studies are still needed to bring more clarity into this field.

4. In the attempt to bring more clarity into this area guidance can be obtained by discussions that have taken place within the UN in the field of general human rights law and by ensuing academic studies referring to the respective documents.

5. The remedies mentioned in the Guiding Principles are formulated in a relatively „soft" manner, after attempts to create „harder" norms have failed. There are, however, initiatives underway to create a binding instrument in this field. According to the „Zero Draft" for such a treaty much more restrictive rules are envisaged. It is, however, unlikely that such an instrument will meet with the necessary consensus within the foreseeable future.

6. In Europe, within the Council of Europe as well as within the European Union, various attempts have been undertaken to give further substance to the „remedies". The relevant documents contain both an analysis of the law in force as well as proposals for new instruments to be introduced. These proposals are, however, in part rather far-reaching and thus it is unclear whether they can be realized any time soon.

7. If some pivotal questions shall be identified that have emerged as an issue for further discussion, the following can be mentioned:

7.1. The extraterritorial application of remedies

a) In this context, first of all, the specific approach taken by the US Courts when applying the Alien Tort Statute (ATS) has to be mentioned. However, after „Kiobel“ this development seems to have come to a halt.

b) Some hopes are associated with the application of tort law in Europe according to the „Brussels I”- and the „Rome II”-Regulation. However, on this basis European tort law can be applied to human rights violations by companies and subsidiaries abroad only to a very limited measure.

7.2. Criminal law as a remedy

According to some, remedies should be sought more forcefully within the realm of international criminal law. A closer look at the relevant norms reveals, however, that expectations should not be too high as to such an endeavour. International Investment Agreements (IIAs) and Counterclaims

Due to their „asymmetrical“ nature (As are intended to protect primarily the investor) IIAs do not offer, at first sight, a suitable basis for holding investors responsible for human rights abuses in the guest state. Recently, however, in the wake of the „Urbaser“ case, hopes have come up that counterclaims could be used to such avail. For the time being, however, these hopes are not justified. Nonetheless, attempts are under way to re-draft IIAs so that counterclaims are more easily available and, in general, to emphasize the responsibility of investors.

7.3. The national level

The national level is of decisive importance for finding remedies in the area of CSR. In this context, National Contact Points, National Action Plans and Corporate Social Reporting have to be mentioned. A wide array of initiatives have been taken in this field. Up to this moment the results are, however, not really convincing.

8. The Guiding Principles envisage a vast panoply of judicial and non-judicial initiatives, of State-based and non-State based measures. Many of these measures have to be further specified and tested. It is most probably too early to impose binding obligations in this field as the „Zero Draft“ ultimately intends. Further discussion and a further exchange of experience, as it happens within the „Forum

on business and human rights", seem to be the more promising way to follow.

Full (German) version: *Peter Hilpold,* Maßnahmen zur effektiven Durchsetzung von Menschen- und Arbeitsrechten: Völkerechtliche Anforderungen, in: August Reinisch, Stephan Hobe, Eva-Maria Kieninger & Anne Peters (eds), Unternehmensverantwortung und Internationales Recht, C.F. Müller, 2020, pp. 185 et seq.

Third-party liability of classification and certification societies in the context of conflict of laws and public international law – a comment on the CJEU's recent 'Rina judgement'

Written by Yannick Morath

Yannick Morath, doctoral candidate at the University of Freiburg, has kindly provided us with his thoughts on the CJEU's judgement in the case of LG and Others v Rina SpA, Ente Registro Italiano Navale (C-641/18 – ECLI:EU:C:2020:349)

(See also the earlier post by Matthias Weller concerning the CJEU's judgement).

1. **Introduction**

Private-law classification and certification societies play a vital role in modern economies. Especially in the maritime sector, external auditors issue certificates

dealing with public tasks such as the seaworthiness and safety of vessels. Not only their contractual partners but also third parties rely on the accuracy of such certificates. Due to cross-border mobility of certificates and certified items, issues of Private International Law have to be taken into account when dealing with a certifiers' liability.

When not applying the appropriate level of care, classification and certification agencies can – according to the CJEU – be sued in the courts of the Member State where the agency is seated. By finding this ruling, the CJEU had to deal with two interesting questions: Firstly, it had to establish whether an action for damages, brought against private certifiers falls within the concept of 'civil and commercial matters', and therefore, within the scope of the Regulation 44/2001 (Brussels I). Secondly, the CJEU had to examine the legitimacy of the certifier's plea based on the principle of customary international law concerning immunity from state jurisdiction.

2. Facts of the 'Rina-case'

In 2006, the *Al Salam Boccaccio '98*, a ship sailing under the flag of the Republic of Panama, sunk in the Red Sea, tragically causing the loss of more than 1,000 lives. Relatives of the victims and survivors have brought an action under Italian law before the Tribunale di Genova (District Court, Genoa, Italy) against two private law corporations (the Rina companies), that are seated in Genoa and were responsible for the classification and certification of the ship.

The applicants argue that the defendants' operations, carried out under a contract concluded with the Republic of Panama, are to blame for the ship's lack of stability and its lack of safety at sea, which are the causes of its sinking. Therefore, they claim compensation from the Rina companies for the losses they suffered.

The Rina companies counter that the referring court lacks jurisdiction, relying on the international-law principle of immunity from jurisdiction of foreign States. They state that they are being sued in respect of activities, which they carried out as delegates of the Republic of Panama. The activities in question were a manifestation of the sovereign power of a foreign State and the defendants carried them out on behalf of and in the interests of that State.

The applicants, however, argue in favour of the case's civil law nature, within the

meaning of Article 1 (1) of Regulation 44/2001. As the Rina companies are seated in Genoa, the Italian courts should have jurisdiction under Article 2 (1) of that regulation. They submit that the plea of immunity from jurisdiction does not cover activities that are governed by non-discretionary technical rules, which are, in any event, unrelated to the political decisions and prerogatives of a State.

The Tribunale di Genova decided to stay the proceedings and consult the CJEU for further clarification under Article 267 TFEU.

3. Background: The dual role of classification and certification societies

When dealing with the classification and certification of ships it is important to be aware of the dual role private-law societies play in this area. Traditionally they are hired by a shipowner to attest that a ship is built in accordance with the standards of a specific ship class. Those 'class rules' are developed by the classification societies themselves. The maritime industry depends on these services, as the classification of a ship is necessary to evaluate its insurability and marketability. Therefore, these voluntary classifications are mainly prompted by private interest. This is referred to as the 'private function' of classification.

On the other hand, the same societies fulfil a 'public function' as well. Under international maritime law, states have a duty to take appropriate measures for ships flying under their flag to ensure safety at sea (Article 94 (3) of the United Nations Convention of the Law of the Sea). For this purpose ships have to be surveyed by a qualified personnel to make sure it meets all relevant safety and environmental standards. Flag states can perform these tasks themselves; however, most of them delegate executive powers to classification societies. Pursuant to Article 3 (2) of Directive 2009/15 this is also possible under EU law. When executing these powers classification agencies are subject to two contracts: The first one is the agreement on the delegation of powers with the flag state, the second contract is the actual certification agreement with the owner of the ship that is about to be surveyed. Whereas shipowners are free to choose one of the recognized classification societies, the certification itself is compulsory.

It must be noted that the classification according to class rules (private function) is a prerequisite for the statutory inspection and certification (public function). In the case at hand, the Rina companies were responsible for both aspects. They classified the ship in accordance with their class rules and then issued the

statutory certificate on behalf of and upon delegation from the Republic of Panama. This public law background caused the need for clarification by the CJEU.

4. The CJEU on the interpretation of 'civil and commercial matters'

Under Article 1(1) of Regulation 44/2001, the scope of that regulation is limited to 'civil and commercial matters'. It does not extend, in particular, to revenue, customs or administrative matters. In order to ascertain whether Italian courts have jurisdiction pursuant to Article 2 (1) of that regulation it is necessary to interpret the concept of 'civil and commercial matters'. This concept is subject to an autonomous European interpretation. By determining whether a matter falls within the scope of the Regulation, the nature of the legal relationships between the parties to the dispute is crucial. It must be noted that the mere fact that one of the parties might be a public authority does not exclude the case from the scope of the Regulation. It is, however, essential whether the party exercises public powers (*acta iure imperii*). These powers are 'falling outside the scope of the ordinary legal rules applicable to relationships between private individuals' (para. 34).

Following the Advocate General's opinion and the CJEU's judgement in *Pula Parking* (C-551/15 – ECLI:EU:C:2017:193), the Court notes that 'it is irrelevant that certain activities were carried out upon delegation from a State' (para. 39). The fact that the operations were carried out on behalf of and in the interest of the Republic of Panama and that they fulfil a public purpose, do not, in themselves, 'constitute sufficient evidence to classify them as being carried out *iure imperii*' (para. 41.).

In fact it must be taken into account that 'the classification and certification operations were carried out for remuneration under a commercial contract governed by private law concluded directly with the shipowner of the *Al Salam Boccaccio '98*' (para. 45). Moreover, it is the responsibility of the flag state to interpret and choose the applicable technical requirements for the certification necessary to fly their flag.

The CJEU continues to examine the agency's decision-making power. If the agency decides to withdraw a certificate, the respective ship is no longer able to sail. It argues, however, that this effect does not originate from the decision of the

agency but rather from the sanction which is imposed by law (para. 47). The role of the certifier simply 'consists in conducting checks of the ship in accordance with the requirements laid down by the applicable legislative provisions.' As it is for the States to fix those provisions, it is ultimately their power to decide on a ship's permission to sail.

Whereas the general remarks on the interpretation of 'civil and commercial matters' are convincing and based on settled case law, the findings about the 'decision making power' of recognised organisations give rise to further questions. If a ship does not comply with the relevant requirements, the statutory certificate must not be issued and the shipowner is not allowed to sail under the flag of the respective state. Even though this legal consequence is finally imposed by law, it is the certifier's application of that law that leads to this effect. Whenever a certification agency refuses to issue a certificate, the ship is initially not able to sail. The CJEU's technical perspective in paragraph 47 does not sufficiently appreciate the factual decision making of the certifier. The judgement does unfortunately not explicitly address the issue of legal discretion and its consequences on the concept of 'civil and commercial matters'.

However, there are other grounds to qualify the case a 'civil matter'. As the CJEU pointed out as well, it follows from Regulation 6 (c) and (d) of Chapter I of the International Convention for the Safety of Life at Sea, that the final responsibility is allocated to the flag state (para. 48). Therefore, the state is subject to far-reaching supervisory duties. Even though this is not expressively regulated by international or EU law, it appears like the flag state can at any time overrule an agency's decision to issue or withdraw the certificate. This would result in a limitation to the finality of the agency's powers and prepare the ground for a civil law qualification. Some further remarks by the CJEU about this aspect would have been interesting.

5. The CJEU on state immunity from jurisdiction

Doubts regarding the jurisdiction of the Italian courts arose from the Rina companies' plea based on the principle of customary international law concerning immunity from jurisdiction. Pursuant to the principle *par in parem non habet imperium*, a State cannot be subjected to the jurisdiction of another State. 'However, in the present state of international law, that immunity is not absolute, but is generally recognised where the dispute concerns sovereign acts performed

iure imperii. By contrast, it may be excluded if the legal proceedings relate to acts which do not fall within the exercise of public powers' (para. 56).

The CJEU held that this principle does not preclude the application of the Regulation in this case, although it is the referring court that has to examine whether the Rina companies had recourse to public powers within in the meaning of international law. It must be noted that a rule of customary international law will only exist where a given practice actually exists that is supported by a firm legal view (*opinio iuris*). Following the Advocate General, the CJEU finds that the case-law cited by the defendants 'does not support the unequivocal conclusion that a body carrying out classification and certification operations may rely on immunity from jurisdiction in circumstances such as those of the present case` (c.f. para. 109 of his opinion).

In regard of state immunity, the CJEU changes its perspective on the case. Whereas the interpretation of 'civil and commercial matters' was driven by EU law, the doctrine of state immunity requires a different methodological approach, as it originates from international law. Nevertheless, the CJEU's overall convincing remarks are in line with its earlier findings, setting a high bar for statutory certification societies to plead for state immunity.

6. Final remarks

The CJEU established legal security for the victims of maritime disasters such as the sinking of the *Al Salam Boccaccio '98*. The judgement indirectly clarified the applicability of the Brussels I Regulation in cases where maritime certifiers operate only in their private function. When statutory certifications are a civil matter, this must *a fortiori* be the case for voluntary classifications. Having consistent results when establishing jurisdiction in such cases, also meets with the principle of foreseeability. The remarks on the applicability of the Brussels I regulation are also of significant relevance when dealing with the Brussels Ibis and the Rome I and II Regulations, as all of them apply the concept of 'civil and commercial matters'.

Moreover, the judgement underlines the responsibility of private-law certifiers and recognises their vital role as regulators that operate in the public interest. Even though the CJEU' findings on the interpretation of 'civil matters' are consistent with its earlier developed broad understanding of the concept, further

clarification regarding privatised decision making powers would have been desirable.

Rivista di diritto internazionale privato e processuale (RDIPP) No 4/2019: Abstracts

The fourth issue of 2019 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

Costanza Honorati, Professor at the University Milan-Bicocca, **La tutela dei minori migranti e il diritto internazionale privato: quali rapporti tra Dublino III e Bruxelles II-bis?** (The Protection of Migrant Minors and Private International Law: Which Relationship between the Dublin III and Brussels IIa Regulations?; in Italian)

- Few studies have investigated the relation between Migration Law and PIL. Even less have focused on the interaction between Brussels IIa and Dublin III Regulations. The present study, moving from the often declared assumption that 'a migrant minor is first of all a minor' focuses on the coordination between the two Regulations and the possible application of Brussels IIa to migrant minors in order to adopt protection measures to be eventually recognized in all EU Member States or to possibly place a minor in another EU Member State.

Francesca C.

Villata,
Professor at the University of Milan, **Predictability First! *Fraus Legis*, Overriding Mandatory Rules and *Ordre Public* under EU Regulation 650/2012 on Succession Matters** (in English)

- This paper aims at investigating: (i) how *fraus legis*, overriding mandatory rules and *ordre public* exceptions position themselves within the system of the Succession Regulation; (ii) whether they are meant to perform their traditional function or to pursue any alternative or additional objective; and (iii) which limits are imposed on Member States in the application of said exceptions and to what extent Member States can avail themselves of the same to preserve, if not to enforce, their respective legal traditions in this area, as acknowledged in Recital 6 of Regulation No 650/2012. The assumption here submitted is that the traditional notions to which those exceptions refer have been reshaped or, rather, adjusted to the specific needs of Regulation No 650/2012 and of the entire EU private international law system, which increasingly identifies in predictability the ultimate policy goal to pursue.

In addition to the foregoing, the following comments are featured:

Michele Grassi,
Research Fellow at the University of Milan, **Sul riconoscimento dei matrimoni contratti all'estero tra persone dello stesso sesso: il caso *Coman*** (On the Recognition of Same-Sex Marriages Entered into Abroad: The *Coman* Case; in Italian)

- With its judgment in the *Coman* case, the Court of Justice of the European Union has extended the scope of application of the principle of mutual recognition to the field of family law and, in particular, to same-sex marriages. In that decision the Court has ruled that the refusal by the authorities of a Member State to recognise (for the sole purpose of granting a derived right of residence) the marriage of a third-country national to a Union citizen of the same sex, concluded in accordance with the law of another Member State, during the period of their residence in

that State, is incompatible with the EU freedom of movement of persons. The purpose of this paper is to analyse the private-international-law implications of the *Coman* decision and, more specifically, to assess the possible impact of the duty to recognise same-sex marriages on the European and Italian systems.

Francesco Pesce,
Associate Professor at the University of Genoa, **La nozione di «matrimonio»: diritto internazionale privato e diritto materiale a confronto** (The Notion of 'Marriage': Private International Law and Substantive Law in Comparison; in Italian)

- This paper tackles the topical and much debated issue of the notions of 'marriage' and 'spouse' under EU substantive and private international law. Taking the stand from the different coexisting models of family relationships and from the fragmented normative approaches developed at the domestic level, this paper (while aware of the ongoing evolutionary trends in this field) focuses on whether it is possible, at present, to infer an autonomous notion of 'marriage' from EU law, either in general or from some specific areas thereof. The response to this question bears significant consequences in terms of defining the scope of application of the uniform rules on the free movement of persons, on the cross-border recognition of family statuses and on the ensuing patrimonial regimes. With specific regard to the current Italian legal framework, this paper examines to which extent characterization issues are still relevant.

Carlo De Stefano, PhD, **Corporate Nationality in International Investment Law: Substance over Formality** (in English)

- Since incorporation is usually codified in IIAs as sole criteria for the definition of protected corporate 'investors', arbitral tribunals have traditionally interpreted and applied such provisions without requiring any thresholds of substantive bond between putatively covered investors and their alleged home State. By taking issue with the current status of international investment law and arbitration, the Author's main proposition is that States revise treaty provisions dealing with the determination of corporate nationality so as to insert real seat and (ultimate) control prongs in coexistence with the conventional test of

incorporation. This proposal, which seems to be fostered in the recent state practice, is advocated on the grounds of legal and policy arguments with the aim to combat questionable phenomena of investors' 'treaty shopping', including 'round tripping', and, consequently, to strengthen the legitimacy of investor-State dispute settlement.

Ferdinando Emanuele, Lawyer in Rome, *Milo Molfa*, Lawyer in London, and *Rebekka Monico*, LL.M. Candidate, **The Impact of Brexit on International Arbitration** (in English)

- This article considers the effects of the United Kingdom's withdrawal from the EU on international arbitration. In principle, Brexit will not have a significant impact on commercial arbitration, with the exception of the re-expansion of anti-suit injunctions, given that the *West Tankers* judgment will no longer be binding. With respect to investment arbitration, because the BITs between the United Kingdom and EU Member States will become extra-EU BITs, the *Achmea* judgment will no longer be applicable following Brexit. Furthermore, English courts will enforce intra-EU BIT arbitration awards pursuant to the 1958 New York Convention. Investment treaties between the EU and third countries will not be applicable to the United Kingdom.

Finally, the issue features the following case notes:

Cinzia Peraro, Research Fellow at the University of Verona, **Legittimazione ad agire di un'associazione a tutela dei consumatori e diritto alla protezione dei dati personali a margine della sentenza *Fashion ID*** (A Consumer-Protection Association's Legal Standing to Bring Proceedings and Protection of Personal Data in the Aftermath of the *Fashion ID* Judgment; in Italian)

Gaetano Vitellino, Research Fellow at

Università Cattaneo LIUC of Castellanza, **Litispendenza e accordi confliggenti di scelta del foro nel caso *BNP Paribas c. Trattamento Rifiuti Metropolitani*** (*Lis Pendens* and Conflicting Choice of Court Agreements in *BNP Paribas v. Trattamento Rifiuti Metropolitani*; in Italian)

Gaetano Vitellino, Research Fellow at Università Cattaneo LIUC of Castellanza, **Note a margine di una pronuncia del Tribunale di Torino in materia societaria** (Remarks on a Decision of the Turin Tribunal on Corporate Matters; in Italian)

The most modern PIL act in the Western Balkans: North Macedonia

It took quite some time but the news is finally here: North Macedonia has an entirely new Private International Law Act.

The Act was adopted by the Assembly on February 4th 2020 and it was just published in the Official Gazette of the Republic of North Macedonia No. 32, on 10 February 2020. The Act is not available online yet but we will make sure to share it here as soon as it or an English translation is available.

The first draft of the Act was completed in 2015 and was much welcomed by experts and scholars in the region as it ensured compatibility with all relevant EU Regulations, including Rome I, Rome II, Rome III, Brussels I bis, Brussels II bis, Succession Regulation etc. Since then, the Draft Law had been waiting for discussion and adoption by the Assembly until recently. The wait was worth it since the law has been passed without any amendments which is even more groundbreaking given that the new Act is quite a departure from the previous PIL Act in force.

Until now, the Republic of North Macedonia had been applying the PIL Act enacted in 2007 (Official Gazette of Republic of Macedonia No 87/2007). An amendment of this act was made in 2010 specifically to provisions on choice of law (Official Gazette of the Republic of Macedonia, No. 87/2007, 156/2010). While the rules on choice of law in contractual and non-contractual matters were updated to match the EU Conventions (and later Regulations), the Act of 2007 had stayed quite true to its predecessor – the Yugoslav PIL Act of 1982.

This new PIL Act of 2020 makes North Macedonia now the bearer of the most modern PIL Act in the Region of the Western Balkans. The last adopted PIL Act in this region was the Act of Montenegro, in force since 2014. Although other reforms of PIL Acts are underway in Serbia (since 2014) and Kosovo (since 2018) these countries and Bosnia and Herzegovina continue applying the Yugoslav PIL Act of 1982, while Albania's PIL Act in force is that of 2011.

A more detailed report of the PIL developments in the region of the Western Balkans will be posted soon.

For queries about the Act, please contact Prof. Toni Deskoski at t.deskoski@pf.ukim.edu.mk, or Prof. Vangel Dokovski at v.dokovski@pf.ukim.edu.mk, or me at donike.qerimi@uni-pr.edu.

Rivista di diritto internazionale privato e processuale (RDIPP) No 3/2019: Abstracts

- The third issue of 2019 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released and it features:

Stefania Bariatti, Professor at the University of Milan, **Volontà delle parti e internazionalità del rapporto giuridico: alcuni sviluppi recenti nella giurisprudenza della Corte di giustizia sui regolamenti europei in materia**

di diritto internazionale privato (Party Autonomy and Characterization of a Legal Relationship as International: Some Recent Developments in the Jurisprudence of the Court of Justice on the EU Regulations in Private International Law; in Italian)

Two recent cases brought before the Court of Justice of the EU lead to meditate about the admissibility of choice of court clauses in favour of a foreign court and choice of law clauses in favour of a foreign law inserted in purely domestic contracts. In the *Vinyls* case, the Court of Justice has stated that the choice of a foreign law, that is valid according to the Rome I Regulation, is valid also for purposes of Article 16 of Regulation No 2015/848 (European Insolvency Regulation Recast), provided that such choice is not fraudulent or abusive. This solution, that is in line with the previous case-law of the Court, requires that the parties to a domestic contract carefully check the reasons for choosing a foreign law and it excludes that national provisions of law concerning the voidness or voidability of detrimental acts in case of insolvency qualify as mandatory rules under Article 3(3) of the Rome I Regulation. The second case, that will not be decided by the Court since it was repealed by the national judge, concerns the choice of a foreign forum in a domestic contract subject to the ISDA rules, that are widely used in international business transactions. Some recent judgments of the Court suggest that such choice is apt to qualify a domestic contract as 'international' for purposes of applying the Brussels I recast Regulation and is valid according to its Article 25.

In addition to the foregoing, the following comment is featured:

Martina Mantovani, PhD Candidate at the University of Paris II Pantheon-Assas and Research Fellow at the Max Planck Institute Luxembourg for Procedural Law, **Horizontal Conflicts of Member States' GDPR-Complementing Laws: The Quest for a Viable Conflict-of-Laws Solution** (in English)

This paper offers a comparative overview of the national provisions defining the reach of the laws adopted by Member States on the basis of the opening clauses enshrined in the GDPR. It identifies the lack of coordination among the Member States' complementing laws as a major hindrance to the proper functioning of the internal digital market, due to the paramount problems of over – and under – regulation, and increased potential for forum and law shopping stemming from the existing legislative framework. Against this backdrop, this paper submits that

existing national rules of applicability may be deemed contrary to EU law, and should be interpreted, to the extent possible, "in conformity" with the wording and the purpose of the GDPR. In this vein the scheme and objectives of the GDPR, should be directly applied.

AMS Neve: An Unfortunate Extension of the 'Targeting' Criterion to Jurisdiction for EU Trademarks

written by Tobias Lutzi

Last week's decision by the CJEU in Case C-172/18 *AMS Neve* has rightly received a lot of attention from IP lawyers (see the comments by Eleonora Rosati on IPKat; Terence Cassar et al. on Lexology; James Nurton on ipwatchdog.com; see also Geert van Calster on gavclaw.com). As it adds another piece to the puzzle of international jurisdiction for online infringements of IP rights, it also seems suitable for discussion on this blog.

The EU Framework of International Jurisdiction for Online Infringements of IP rights

The rules on international jurisdiction established by EU instruments differ depending on the specific type of IP right in question.

Jurisdiction for infringements of IP rights that are protected through national law (even where it has been harmonised by EU Directives) is governed by the general rule in Art 7(2) of the Brussels Ia Regulation. Accordingly, both the courts of the place of the causal event – understood as the place where the relevant technical process has been activated (Case C-523/10 *Wintersteiger*, [34]–[35], [37]) – and the courts of the place of the damage – understood as the place of registration

(for trademarks: *Wintersteiger*, [28]) or access (for copyright: Case C-441/13 *Hejduk*, [34]), limited to the damage caused within the forum (*Hejduk*, [36]) – can be seised.

The wide range of courts that this approach makes available to potential claimants in internet cases has however been somewhat balanced out through an additional *substantive* requirement. Starting with Case C-324/09 *L'Oréal*, [64], the Court of Justice has repeatedly found an IP right in a given member state to be infringed only where the online activity in question had been directed or 'targeted' at consumers in that member state. The Court has also made clear, though, that this requirement is to be distinguished from the requirements for jurisdiction under Art 7(2) Brussels Ia, which could still be based on the mere accessibility of a website, regardless of where it was targeted (see Case C-170/12 *Pinckney,* [41]–[44]).

Turning to the second group of IP rights, those that are protected under 'uniform' EU instruments, the rules of the Brussels Ia Regulation are displaced by the more specific rules contained in the relevant instrument. Under Art 97(1) of the EU Trademark Regulation 207/2009 (now Art 125(1) of Regulation 2017/1001) for instance, jurisdiction is vested in the courts of the member state in which the defendant is domiciled; in addition, certain actions, including actions over infringements, can also be brought in the courts of the member state in which 'the act of infringement' has been committed or threatened pursuant to Art 97(5) (now Art 125(5)). While this latter criterion may have appeared to simply refer to the place of the causal event of Art 7(2) Brussels Ia in light of the Court of Justice's decision in Case C-360/12 *Coty Germany*, [34] (an interpretation recently adopted by the German Federal Court (BGH 9 Nov 2017 – I ZR 164/16)), the Court of Justice had never specified its interpretation in cases of online infringements.

The Decision in AMS Neve

This changed with the reference in *AMS Neve.* The CJEU was asked to interpret Art 97(5) of Regulation 207/2009 in the context of a dispute between the UK-based holders of an EU trademark and a Spanish company that had allegedly offered imitations of the protected products to consumers in the UK (and elsewhere) over the internet. While the Intellectual Property and Enterprise Court (which is part of the High Court) had held that it had no jurisdiction because the

'place of infringement' referred to in Art 97(5) was the place in which the relevant technical process had been activated, i.e. Spain, ([2016] EWHC 2563 (IPEC)), the Court of Appeal (Kitchen LJ and Lewison LJ) was not persuaded that this conclusion necessarily followed from the CJEU's case law and submitted the question to the CJEU for a preliminary ruling ([2018] EWCA Civ 86).

The Court of Justice has indeed confirmed these doubts and, held that the 'place of infringement' in Art 97(5) must be understood as 'the Member State within which the consumers or traders to whom that advertising and those offers for sale are directed are located' (*AMS Neve*, [65]). To arrive at this conclusion the Court had to drastically limit the scope of the relevant section in *Coty* (see *AMS Neve*, [44]) and to extend the substantive criterion of 'targeting' established in *L'Oréal* (which the Court has since relied on in numerous contexts, typically involving internet activities: see Case C-191/15 *VKI*, [43], [75]–[77]) to the question of international jurisdiction, at least as far as the Trademark Regulation is concerned.

In addition to improving the protection of trademark owners (see *AMS Neve*, [59] and [63]), the decision seems to rely on two considerations.

First, unlike a general instrument on jurisdiction such as the Brussels Ia Regulation, Regulation 207/2009 defines itself the relevant infringements (in Art 9), which include acts of advertising and offers for sale (see *AMS Neve*, [54]). Therefore, even though the wording of Art 97(5) does not make any reference to a requirement of targeting (as Eleonora Rosati rightly notes), there may at least be some indirect reference to the concept.

Second, and more importantly, Art 97 is followed by Art 98, which specifies the territorial scope of jurisdiction based on Art 97; it distinguishes between full jurisdiction (of the courts of the member state of the defendant's domicile, Art 98(1)) and territorially limited jurisdiction (of the courts of the place of infringement, Art 98(2)). This distinction, which is reminiscent of the Court's decision in Case C-68/93 *Shevill* and the following case law, indeed seems to provide a strong argument not to limit Art 97(5) to the place of the causal act, where a territorial limitation would make rather little sense.

Still, it seems questionable if the Court's decision in *AMS Neve* does not run counter to the idea of vesting jurisdiction in clearly identifiable courts so as to

reduce the risk of irreconcilable decisions. As the Court acknowledges (see *AMS Neve*, [42]), its interpretation of Art 97(5) allows the holder of an EU Trademark to bring multiple actions against an alleged online infringer, which would not fall under constitute *lis pendens* as they would concern different subject matters (i.e. infringements in different member states).

The Court of Justice appears to have attached more significance to these concerns when interpreting Art 8(2) Rome II in Joined Cases C-24/16 and C-25/16 *Nintendo*, which similarly refers to the country 'in which the act of infringement was committed.' In this regard, the court had explained that

> *the correct approach for identifying the event giving rise to the damage is not to refer to each alleged act of infringement, but to make an overall assessment of that defendant's conduct in order to determine the place where the initial act of infringement at the origin of that conduct was committed or threatened. (Nintendo, [103])*

It is unfortunate that this reasoning has not been extended to Art 97(5) of the Trademark Regulation.

CJEU confirms that an actio pauliana is a matter relating to a contract: Case C-722/17 Reitbauer et al v Casamassima

Written by Michiel Poesen

Less than a year after its decision in Case C-337/17 Feniks (discussed here), the Court of Justice had another opportunity to consider the extent to which the Brussels Ia Regulation provides a head of special jurisdiction for an actio pauliana*. In Case C-722/17 Reitbauer (decided last Wednesday but still not*

available in English), the Court confirmed its decision in Feniks*, according to which such an action falls under Art 7(1) Brussels Ia if it is based on a contractual right.* ***Michiel Poesen****, PhD candidate at KU Leuven, has been so kind as to share his thoughts on the decision with us in the following post.*

Earlier this week, the Court of Justice of the European Union found that an *actio pauliana* is subject to jurisdiction in matters relating to a contract, contained in Article 7(1) Brussels Ia (Case C-722/17 *Reitbauer*).

In general terms, the *actio pauliana* is a remedy that allows a creditor to have an act declared ineffective, because said act was carried out by a debtor with the purpose of diminishing its assets by passing them on to a third party (see Opinion of AG Bobek, C-337/17 *Feniks*, [35]). This blogpost will briefly summarise the Court's ruling and its wider impact.

Facts

The facts leading to the ruling are quite complex. Mr Casamassima and Ms Isabel C., both resident in Rome, lived together at least until the spring of 2014. In 2010, they purchased a house in Villach, Austria. While Mr Casamassima apparently funded the transaction, Isabel C. was registered in the land register as the sole owner.

Ms Isabel C. – with the 'participation' of Mr Casamassima – entered into contracts for extensive renovation works of the house with Reitbauer and others (the applicants in the preliminary reference proceedings, hereinafter referred to as 'Reitbauer'). Because the costs of the renovation far exceeded the original budget, payments to Reitbauer were suspended. From 2013 onwards, Reitbauer were therefore involved in judicial proceedings in Austria against Ms Isabel C. Early 2014, the first of a series of judgments was entered in favour of Reitbauer. Ms Isabel C. appealed against those judgments.

On 7 May 2014 before a court in Rome, Ms Isabel C. acknowledged Mr Casamassima's claim against her with respect to a loan agreement which was granted by the latter in order to finance the acquisition of the house in Villach. Ms Isabel C. undertook to pay this amount to the latter under a court settlement. In addition, she agreed to have a mortgage registered on the house in Villach in order to secure Mr Casamassima's claim.

On 13 June 2014 a (further) certificate of indebtedness and pledge certificate was drawn up in Vienna by a notary to guarantee the above settlement (‘the pledge’). With this certificate, the pledge on the house in Villach was created on 18 June 2014.

The judgments in favour of Reitbauer did not become enforceable until after this date. The pledges on the house of Ms Isabel C. held by Reitbauer, obtained by way of legal enforcement proceedings, therefore ranked behind the pledge in favour of Ms Casamassima.

In order to realise the pledge, Mr Casamassima applied in February 2016 to the referring court (the District Court in Villach, Austria) for an order against Ms Isabel C., requiring a compulsory auction of the house in Villach. The house was auctioned off in the autumn of 2016. The order of entries in the land register shows that the proceeds would go more or less entirely to Mr Casamassima because of the pledge.

With a view to preventing this, Reitbauer brought an action for avoidance (*‘Anfechtungsklage’*) in June 2016 before the Regional Court in Klagenfurt, Austria, against Mr Casamassima and Ms Isabel C. The action was dismissed by that court due to a lack of international jurisdiction, given Casamassima’s and Isabel C’s domicile outside of Austria.

At the same time, Reitbauer filed an opposition before the district court of Villach, Austria, in the course of the proceedings regarding distribution of the proceeds from the compulsory auction, and subsequently brought opposition proceedings against Mr Casamassima. In these opposition proceedings, Reitbauer sought a declaration **1)** that the decision regarding the distribution to Mr Casamassima of the proceeds of the action was not legally valid for reasons of compensation between Ms Isabel C.’s claims and those of Mr Casamassima, and **2)** that the pledge certificate was drawn up to frustrate Reitbauer’s enforcement proceedings with regard to the house in Villach. Essentially, the second part of Reitbauer’s action was based on the allegation that Ms Isabel C. had acted with fraudulent intent, therefore being a form of *actio pauliana*.

Decision

The Court of Justice had to consider first whether jurisdiction in proceedings that have as their object rights *in rem* in immovable property or tenancies of

immovable property, provided in Article 24(1) Brussels Ia, was applicable. To trigger this ground of jurisdiction, Reitbauer and others alleged that their action was closely related to the house in Villach.

In reaching its conclusion, the Court reiterated that Article 24(1) Brussels Ia does not encompass all actions concerning rights *in rem* in immovable property, but only those which both come within the scope of th Regulation and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights in rem therein and to provide the holders of those rights with protection for the powers which attach to their interest (Case C-722 *Reitbauer*, [44]; see also Case C?417/15 *Schmidt*, [30])

This definition implies that an action was based on rights *in rem*, not on rights *in personam*. The part of the action alleging compensation between Casamassima's and Isabel C.'s claims does not satisfy this requirement, as it aims at contesting the existence of the Mr Casamassima's right *in personam* that was the cause of the enforcement proceedings.

The second part of the action, the *actio pauliana*, does not fit within *in rem* jurisdiction either. The Court found that such an action does not involve the assessment of facts or the application of rules and practices of the *locus rei sitae* in such a way as to justify conferring jurisdiction on a court of the State in which the property is situated (Case C-722 *Reitbauer*, [48]; see also C-115/88 *Reichert I*, [12]).

Having come to this conclusion, the Court decided that jurisdiction over the actions brought by Reitbauer and others was not subject to Article 24(5) Brussels Ia either – which contains a special ground of jurisdiction "in proceedings concerned with the enforcement of judgments". According to the Court, this bespoke ground of jurisdiction is to be understood as englobing proceedings that may arise from "recourse to force, constraint or distraint on movable or immovable property in order to ensure the effective implementation of judgments and authentic instruments" (Case C-722 *Reitbauer*, [52]; see also Case C?261/90 *Reichert II*, [28]) .

Reitbauer and others' actions were clearly not related to the enforcement of the judgment but to the substantive rights underlying the pledge which was being enforced. For that reason, enforcement jurisdiction was to remain inapplicable.

Having reached the conclusion that no exclusive ground of jurisdiction could apply, the Court went on to consider Art 7(1) Brussels Ia – jurisdiction in matters relating to a contract. Following a short motivation (Case C-722 *Reitbauer*, [56]–[62]) the Court confirmed that the part of Reitbauer and others' action amounting to an *actio pauliana* was a matter relating to a contract. As in the *Feniks* ruling, the reason cited is that the action aims at preserving Reitbauer and others' contractual rights by setting aside the creditor's allegedly fraudulent acts (Case C-722 *Reitbauer*, [58]–[59]; Case C-337/17 *Feniks*, [43]–[44]).

As a consequence, Art 7(1)(b) Brussels Ia allocates jurisdiction to the place of performance of the allegedly defrauded contract, being Villach since Reitbauer and others delivered their renovation services in that location (see Case C-337/17 *Feniks*, [46]).

The Purpose and Role of Art 7(1) Brussels Ia

As far as the exclusive grounds of jurisdiction in Art 24(1) and 24(5) Brussels Ia are concerned, the decision can hardly be considered surprising. Reitbauer and others tried to plead their actions as relating to a matter covered by exclusive jurisdiction, with the aim of suing the Italian domiciled defendants in Austria instead of Italy (which would be the outcome of the default rule of jurisdiction of Art 4(1) Brussels Ia). This attempt was bound to fail.

More interestingly, the Court confirmed that an *action pauliana* can be a matter relating to a contract. This emerging line of case law is met with criticism. One of the points raised was that a defendant may be ignorant of the contract it allegedly helped to defraud. In such a situation, applying contract jurisdiction would trigger a forum that is unforeseeable for the defendant (an outcome that the Court rightly attempted to avoid in Case C-26/91 *Handte*, [19]). A response to this criticism would be not to apply contract jurisdiction to an *actio pauliana* altogether, as suggested earlier by AG Bobek (Opinion of AG Bobek, C-337/17 *Feniks*, [62]–[72]). There, the AG opined that an *actio pauliana* is too tenuously and too remotely linked to a contract to be a matter relating to a contract for the purpose of Art 7(1) Brussels Ia. Alternatively, AG Tanchev opined that the defendant's knowledge should be taken into account (Opinion in Case C-722/17):

> *[84] … knowledge of a third party should act as a limiting factor: … the third party needs to know that the legal act binds the defendant to the debtor and*

> *that that causes harm to the contractual rights of another creditor of the debtor (the applicants).*
>
> *[92] … the defendant's knowledge of the existence of the contract(s) at issue is important.*

Instead of realigning the *Feniks* ruling with the principle of foreseeability, the decision in *Reitbauer* confirmed that an *actio pauliana* fits squarely within jurisdiction in matters relating to a contract, the driving factor seemingly being the hope to offer the claimant an additional forum that presumably has a close connection to the dispute (Case C-722 *Reitbauer*, [60]: Case C-337/17 *Feniks*, [44]–[45]).

Looking beyond the *actio pauliana*, the case law begs the question what other types of remedies – however remotely linked to a contract – could be subject to Art 7(1) Brussels Ia. An action for wrongful interference with contract, for example, regarded to be tortious in nature (e.g. *Tesam Distribution Ltd v Schuh Mode Team GmbH and Commerzbank AG* [1990] I.L.Pr. 149), would be a matter relating to a contract by the standard applied in *Feniks* and *Reitbauer*. It is doubtful whether such a broad construction of jurisdiction in matters relating to a contract complies with the limited role of Art 7(1) Brussels Ia within the Regulation (Recital (15) Brussels Ia).

Call for participants: Second Meeting of the Young EU Private International Law Research Network

This spring, the first meeting of the newly established Young EU Private International Law Research Network was held at the University of Würzburg

(please find more information about this event here). The first research project and meeting in Würzburg dealt with the "Recognition/Acceptance of Legal Situations" in the EU.

The cooperation involving the young generation of private international lawyers is intended to be continued with annual conferences. The next meeting of the network will take place at **ELTE Eötvös Loránd University,Budapest** on 20 March 2020. The conference will focus on **overriding mandatory provisions**with particular regard to national legislation and court practice outside the scope of application of the EU private international law regulations. The provisions of the EU private international law regulations, and in particular the Rome I and II Regulations, on overriding mandatory provisions and the related case law received considerable attention among commentators. However, less attention has been devoted to the treatment of overriding mandatory provisions in the law of the Member States outside the scope of application of the EU private international law regulations. The areas concerned may include property law, family law, company law, etc. A comprehensive comparative study is missing in this field. In order to map the similarities and differences of the approaches of the private international law of the Member States, national reports will be prepared. Based on these national reports, a general report will be produced.

The conference will consist of a morning session where overriding mandatory rules will be discussed in a general way (e.g., the appearance of overriding mandatory provisions in property law, family law, arbitration, their interconnection with human rights, etc.) and an afternoon workshop where participants will discuss the outcome of the national reports and the conclusions of the general report.

If you are interested in the research project or the activity of the Young EU Private International Law Research Network, please do not hesitate to contact us (youngeupil@gmail.com).

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 4/2019: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)“ features the following articles:

S.A. Kruisinga: **Commercial Courts in the Netherlands, Belgium, France and Germany – Salient Features and Challenges**

A new trend is emerging in continental Europe: several states have taken the initiative to establish a new commercial court which will use English as the language of the proceedings. Other states have provided that the English language may be used in civil proceedings before the existing national courts. Several questions arise in this context. Will such a new international (chamber of the) court only be competent to hear international disputes, or only a specific type of dispute? Will there be a possibility for appeal? Will extra costs be involved compared to regular civil proceedings? Which provisions of the law of procedure will the court be required to follow? These questions will be answered in relation to developments in the Netherlands, Belgium, France and Germany. For example, in Belgium, a draft bill, which is now being discussed in Parliament, provides for the establishment of a new court that is still to be established: the Brussels International Business Court. In the Netherlands, as of 1 January 2019, the Netherlands Commercial Court has been established, which will allow to conduct civil proceedings in the English language.

K. de la Durantaye: **Same same but different? Conflict rules for same sex-marriages in Germany and the EU**

Conflict rules for same-sex marriages are as hotly disputed as the legal treatment of such marriages in general. The German rules on the topic contain multiple inconsistencies. This is true even after the latest amendments to the relevant statute (EGBGB) entered into force in January 2019. Things become even more problematic when the German rules are seen in conjunction with Rome III as well as the two EU Regulations on matrimonial property regimes and on property consequences of registered partnerships, both of which are applicable since

January 29, 2019. Some instruments do treat same-sex marriages as marriages, others – notably the EGBGB – do not. Curiously, this leads to a preferential treatment vis-à-vis opposite-sex marriages. The EU Regulation on matrimonial property regimes does not define the term marriage and provides for participating member states to do so. At the same time, the ECJ extends its jurisdiction on recognition of personal statuses to marriages. Given all these developments, one might want to scrutinize the existing conflict rules for marriages as provided for in the EGBGB.

T. Lutzi: **Little Ado About Nothing: The Bank Account as the Place of the Damage?**

The Court of Justice has rendered yet another decision on the place of the damage in the context of prospectus liability. In addition to the question of international jurisdiction, it also concerned the question of local competence under Art. 5 No. 3 Brussels I (now Art. 7 No. 2 Brussels Ia) in a case where the claimant held multiple bank accounts in the same member state. The Court confirms that under certain circumstances, the courts of the member state in which these banks have their seat may have international jurisdiction, but avoids specifying which bank account designates the precise place of the damage. Accordingly, the decision adds rather little to the emerging framework regarding the localization of financial loss.

P.-A. Brand: **International jurisdiction for set-offs – Procedural prohibition of set-off and rights of retention in domestic litigation where the jurisdiction of a foreign court has been agreed for the claims of the Defendant**

The question whether or not a contractual jurisdiction clause entails an agreement of the parties to restrict the ability to declare a set-off in court proceedings to the forum prorogatum has been repeatedly dealt with by German courts. In a recent judgement – commented on below – the Oberlandesgericht München in a case between a German plaintiff and an Austrian defendant has held that the German courts may well have international jurisdiction under Article 26 of the Brussels Ia-Regulation also for the set-off declared by the defendant, even if the underlying contract from which the claim to be set-off derived contained a jurisdiction clause for the benefit of the Austrian courts. However, the Oberlandesgericht München has taken the view that the jurisdiction clause for

the benefit of the Austrian courts would have to be interpreted to the effect that it also contains an agreement of the parties not to declare such set-off in proceedings pending before the courts of another jurisdiction. That agreement would, hence, render the set-off declared in the German proceedings as impermissible. The judgment seems to ignore the effects of entering into appearance according to Article 26 of the Brussels Ia-Regulation. That provision must be interpreted to the effect that by not contesting jurisdiction despite a contractual jurisdiction clause for the claim to be set-off, any effects of the jurisdiction clause have been repealed.

P. Ostendorf: **(Conflict of laws-related) stumbling blocks to damage claims against German companies based on human rights violations of their foreign suppliers**

In an eagerly awaited verdict, the Regional Court Dortmund has recently dismissed damage claims for pain and suffering against the German textile discounter KiK Textilien und Non-Food GmbH („KiK“) arising out of a devastating fire in the textile factory of one of KiK's suppliers in Pakistan causing 259 fatalities. Given that the claims in dispute were in the opinion of the court already time-barred, the decision deals only briefly with substantial legal questions of liability though the latter were upfront hotly debated both in the media as well as amongst legal scholars. In contrast, many conflict-of-laws problems arising in this setting were explicitly addressed by the court. In summary, the judgment further stresses the fact that liability of domestic companies for human rights violations committed by their foreign subsidiaries or independent suppliers is – on the basis of the existing framework of both Private International as well as substantive law – rather difficult to establish.

M. Thon: **Overriding Mandatory Provisions in Private International Law – The Israel Boycott Legislation of Arab States and its Application by German Courts**

The application of foreign overriding mandatory provisions is one of the most discussed topics in private international law. Article 9 (3) Rome I- Regulation allows the application of such provisions under very restrictive conditions and confers a discretionary power to the court. The Oberlandesgericht Frankfurt a.M. had to decide on a case where an Israeli passenger sought to be transported from Frankfurt a.M. to Bangkok by Kuwait Airways, with a stop over in Kuwait City.

The Court had to address the question whether to apply such an overriding mandatory provision in the form of Kuwait's Israel-Boycott Act or not. It denied that because it considered the provision to be "unacceptable". However, the Court was not precluded from giving effect to the foreign provision as a matter of fact, while applying German law to the contract. Since the air transport contract had to be performed partly in Kuwait, the Court considered the performance to be impossible pursuant to § 275 BGB. The judgement of the Court received enormous media coverage and was widely criticized for promoting discrimination against Jews.

C.F. Nordmeier: **The inclusion of immoveable property in the European Certificate of Succession: acquisition resulting from the death and the scope of Art. 68 lit. l) and m) Regulation (EU) 650/2012**

The European Certificate of Succession (ECS) has arrived in legal practice. The present article discusses three decisions of the Higher Regional Court of Nuremberg dealing with the identification of individual estate objects in the Certificate. If a transfer of title is not effected by succession, the purpose of the ECS, which is to simplify the winding up of the estate, cannot be immediately applied. Therefore, the acquisition of such a legal title in accordance with the opinion of the OLG Nuremberg is not to be included in the Certificate. In the list foreseen by Art. 68 lit. l and m Regulation 650/2012, contrary to the opinion of the Higher Regional Court of Nuremberg, it is not only possible to include items that are assigned to the claimant „directly" by means of a dividing order, legal usufruct or legacy that creates a direct right in the succession. Above all, the purpose of the ECS to simplify the processing of the estate of the deceased is a central argument against such a restriction. Moreover, it is not intended in the wording of the provision and cannot constructively be justified in the case of a sole inheritance under German succession law.

J. Landbrecht: **Will the Hague Choice of Court Convention Pose a Threat to Commercial Arbitration?**

Ermgassen & Co Ltd v Sixcap Financials Pte Ltd [2018] SGHCR 8 is the first judicial decision worldwide regarding the Hague Choice of Court Convention. The court demonstrates a pro-enforcement and pro-Convention stance. If other Contracting States adopt a similar approach, it is likely that the Convention regime will establish itself as a serious competitor to commercial arbitration.

F. Berner: **Inducing the breach of choice of court agreements and "the place where the damage occurred"**

Where does the relevant damage occur under Article 7 (2) of the Brussels I recast Regulation (Article 5 (3) of the Brussels I Regulation), when a third party induces a contracting party to ignore a choice of law agreement and to sue in a place different from the forum prorogatum? The UK Supreme Court held that under Article 5 (3) of the Brussels I Regulation, the place where the damage occurs is not the forum prorogatum, but is where the other contracting party had to defend the claim. This case note agrees, but argues that the situation is now different under the Brussels I recast Regulation because of changes made to strengthen choice of court agreements. Thus, under the recast Regulation, the place where the damage occurs is now the place of the forum prorogatum. Besides the main question, the decision deals implicitly with the admissibility for claims of damages for breach of choice of law agreements and injunctions that are not antisuit injunctions. The decision also raises questions about the impact of settlement agreements on international jurisdiction.

D. Otto: **No enforcement of specific performance award against foreign state**

Sovereign immunity is often raised as a defence either in enforcement proceedings or in suits against foreign states. The decision of the U.S. District Court for the District of Columbia deals with a rarely discussed issue, whether an arbitration award ordering a foreign state to perform sovereign acts can be enforced under the New York Convention. The U.S. court held that in general a foreign state cannot claim immunity against enforcement of a Convention award, however that a U.S. court cannot order specific performance (in this case the granting of a public permit) against a foreign state as this would compel a foreign state to perform a sovereign act. Likewise, enforcement of an interest or penalty payment award has to be denied for sovereign immunity reasons if the payment does not constitute a remedy for damages suffered but is of a nature so as to compel a foreign state to perform a sovereign act. Whilst some countries consider sovereign immunity to be even wider, the decision is in line with the view in many other countries.

A. Anthimos: **No application of Brussels I Regulation for a Notice of the National Association of Statutory Health Insurance Physicians**

The Greek court refused to declare a Notice of the National Association of Statutory Health Insurance Physicians in Rhineland-Palatinate enforceable. The Greek judge considered that the above order is of an administrative nature; therefore, it falls out of the scope of application of the Brussels I Regulation.

C. Jessel-Holst: **Private international law reform in Croatia**

This contribution provides an overview over the Private International Law Act of the Republic of Croatia of 2017, which applies from January 29, 2019. The Act contains conflict-of-law rules as well as rules on procedure. In comparison to the previous Act on Resolution of Conflicts of Laws with Provisions of Other States in Certain Matters which had been taken over after independence from former Yugoslavia in 1991, nearly everything is new. Full EU-harmonization was a key purpose of the reform. The 2019 Act also refers to a number of Hague Conventions. Habitual residence has been introduced as a main connecting factor. Renvoi is as a rule excluded. Many issues are addressed for the first time. For the recognition of foreign judgments, the reciprocity requirement has been abandoned.

G. Ring/L. Olsen-Ring: **New Danish rules of Private International Law applying to Matrimonial Property Matters**

The old Danish Law on the Legal Effects of Marriage, dating back to the year 1925, has been replaced by a new Law on Economic Relations Between Spouses, which was passed on May 30, 2017. The Law on Economic Relations Between Spouses entered into force on January 1, 2018. There is no general statutory codification of private international law in Denmark. The Law on Economic Relations Between Spouses, however, introduces statutory rules on private international law relating to the matrimonial property regime. The Danish legislature was inspired by the EU Matrimonial Property Regulation, but also developed its own approach. The EU Matrimonial Property Regulation is not applied in Denmark, as Denmark does not take part in the supranational cooperation (specifically the enhanced cooperation) in the field of justice and home affairs, and no parallel agreement has been concluded in international law between the European Union and Denmark. The rules set out in the Danish Law on Economic Relations Between Spouses are based on the principle of closest connection. The main connecting factor is the habitual residence of both spouses at the time when their marriage was concluded or the first country in which they

both simultaneously had their habitual residence after conclusion of the marriage. The couple is granted a number of choice-of-law options. In case both spouses have had their habitual residence in Denmark within the last five years, Danish law automatically applies.