University of Glasgow Ph.D. Scholarship – 'The Europeanisation of International Private Law: Implications of Brexit for Children and Families in Scotland'

University of Glasgow has announced a PhD scholarship opportunity for the project entitled "The Europeanisation of International Private Law: Implications of Brexit for Children and Families in Scotland" supervised by Professor Janeen Carruthers. The project shall commence in Oct 2018 and will provide (1) a stipend at the RCUK rate (2018-19 rate is £14,777 Full-Time); (2) 100 % tuition fee waiver; (3) access to the Research Training Support Grant. UK/EU and International applicants are eligible to apply.

For more information, please visit the university website, or follow this link: The Europeanisation of International Private Law – Implications of Brexi….

The impact of Brexit on the operation of the EU legislative measures in the field of private international law

On 28 February 2018, the European Commission published the draft Withdrawal Agreement between the EU and the UK, based on the Joint Report from the

negotiators of the two parties on the progress achieved during the first phase of the Brexit negotiations.

The draft includes a Title VI which specifically relates to judicial cooperation in civil matters. The four provisions in this Title are concerned with the fate of the legislative measures enacted by the EU in this area (and binding on the UK) once the "transition of period" will be over (that is, on 31 December 2020, as stated in Article 121 of the draft).

Article 62 of the draft provides that, in the UK, the Rome I Regulation on the law applicable to contracts and the Rome II Regulation on the law applicable to non-contractual obligations will apply, respectively, "in respect of contracts concluded before the end of the transition period" and "in respect of events giving rise to damage which occurred before the end of the transition period".

Article 63 concerns the EU measures which lay down rules on jurisdiction and the recognition and enforcement of decisions. These include the Brussels I *bis* Regulation on civil and commercial matters (as "extended" to Denmark under the 2005 Agreement between the EC and Denmark: the reference to Article 61 in Article 65(2), rather than Article 63, is apparently a clerical error), the Brussels II *bis* Regulation on matrimonial matters and matters of parental responsibility, and Regulation No 4/2009 on maintenance.

According to Article 63(1) of the draft, the rules on jurisdiction in the above measures will apply, in the UK, "in respect of legal proceedings instituted before the end of the transition period". However, under Article 63(2), in the UK, "as well as in the Member States in situations involving the United Kingdom", Article 25 of the Brussels I *bis* Regulation and Article 4 of the Maintenance Regulation, which concern choice-of-court agreements, will "apply in respect of the assessment of the legal force of agreements of jurisdiction or choice of court agreements concluded before the end of the transition period"(no elements are provided in the draft to clarify the notion of "involvement", which also occurs in other provisions).

As regards recognition and enforcement, Article 63(3) provides that, in the UK and "in the Member States in situations involving the United Kingdom", the measures above will apply to judgments given before the end of the transition period. The same applies to authentic instruments formally drawn up or

registered, and to court settlements approved or concluded, prior to the end of such period.

Article 63 also addresses, with the necessary variations, the issues surrounding, among others, the fate of European enforcement orders issued under Regulation No 805/2004, insolvency proceedings opened pursuant to the Recast Insolvency Regulation, European payment orders issued under Regulation No 1896/2006, judgments resulting from European Small Claims Procedures under Regulation No 861/2007 and measures of protection for which recognition is sought under Regulation No 606/2013.

Article 64 of the draft lays down provisions in respect of the cross-border service of judicial and extra-judicial documents under Regulation No 1393/2007 (again, as extended to Denmark), the taking of evidence according to Regulation No 1206/2001, and cooperation between Member States' authorities within the European Judicial Network in Civil and Commercial Matters established under Decision 2001/470.

Other legislative measures, such as Directive 2003/8 on legal aid, are the object of further provisions in Article 65 of the draft.

The Unsuitability of the Lugano Convention (2007) to Serve as a Bridge between the UK and the EU after Brexit

A working paper authored by Prof. Dr. Dres. h.c. Burkhard Hess, where he contests with strong arguments the suitability of the Lugano Convention (2007) to serve as a bridge between the UK and the EU after Brexit, has just been published at the MPI Luxembourg Working-Paper Series:

In the current discussion on the post-Brexit judicial cooperation in civil and commercial matters, many consider the ratification of the 2007 Lugano Convention (LC) by the United Kingdom as a suitable avenue for an alignment of the UK with the current regime of European co-operation. Similarly, the UK government has already shown some sympathy for this option. So far, the European Commission has not endorsed any official position.

At first sight, the 2007 Lugano Convention appears an ideal tool for maintaining the core of the existing system of judicial cooperation between the EU and the UK: Although the LC has not been amended to reflect the latest changes (and improvements) introduced with the Brussels Ibis Regulation, it nevertheless provides for the essential provisions of the Brussels regime on jurisdiction, pendency and recognition and enforcement. In addition, Protocol No 2 to the LC requires the courts of non EU Member States only to "pay due account" to the case-law of the Court of Justice of the European Union (ECJ) on the Brussels I Regulation. Hence, Protocol No 2 might provide an acceptable way for British courts to respect the case-law of the ECJ – without being bound by it – in the post-Brexit scenario.

However, as I am going to argue in this posting, the 2007 Lugano Convention is not the appropriate instrument to align judicial cooperation between the United Kingdom and the European Union after Brexit. In the first part, I will briefly summarize the functioning of Protocol No 2 of the LC, as demonstrated by the practice of the Swiss Federal Tribunal. The second part will address the cultural divergences between the continental and the common private international and procedural laws by making use of two examples related to the Brussels I Regulation: the scheme of arrangement, on the one hand, and anti-suit injunctions, on the other hand. As I will explain in my conclusions, only a bilateral agreement between the European Union and the United Kingdom can offer a solution which is suitable and acceptable for both sides.

To continue reading click here.

Trade Relations after Brexit: Impetus for the Negotiation Process – Joint Conference of EURO-CEFG, MaCCI and the University of Mannheim – Thursday, 25 January 2018 and Friday, 26 January 2018 at the Zentrum für Europäische Wirtschaftsforschung (ZEW), Mannheim

The upcoming negotiations regarding the United Kingdom's exit from the European Union are of great interest to politicians, economists, the public and academics. The withdrawal agreement will set the course for the economic relations between the EU and the UK, while taking into account that it might have a considerable impact on the binding strengths of the European integration.

In this context, the Mannheim Centre for Competition and Innovation (MaCCI), a joint research initiative of the Faculty of Law of Mannheim University and the ZEW (Centre for European Economic Research) together with the European Research Centre for Economic and Financial Governance (EURO-CEFG) of the Universities of Leiden, Delft and Rotterdam will host an interdisciplinary conference on 25/26 January 2018 in Mannheim to raise crucial questions and challenges with respect to the Brexit negotiations and discuss them from both the legal and economic perspective.

The conference will consist of three parts, the first one dealing with the bargaining positions of the EU and the UK. The second part will look into the future relations: which type of trade agreement could serve as a model and what

are the respective requirements and economic consequences? Lastly, the third part will focus on specific sectoral issues regarding for instance the future embodiment of cross-border trade and financial services or ensuring the unity of law.

Registration for this conference is possible here.

Find the detailed programme here.

EU Member State sees opportunities in Brexit: Belgium is establishing a new English-language commercial court

Expecting higher demands for international commercial dispute resolution following Britain's departure from the EU, Belgium plans to set up a new English-language commercial court, the Brussels International Business Court (BIBC), to take cases away from the courts and tribunals in London. This decision was announced on 27 Oct 2017. This BIBC is designed to address disputes arising out of Brexit and major international commercial disputes. The court will take jurisdiction based on parties' choice, and will do the hearing and deliver judgments in English. The parties would have no right to appeal. BIBC combines elements of both traditional courts and arbitration. See comments here.

Although Brexit may cause uncertainty to litigants in the UK, a survey suggests that the EU judicial cooperation scheme is not the main reason for international parties choosing London to resolve their disputes. The top two factors that attract international litigants to London are the reputation and experience of English judges and combination of choice of court clauses with choice of law clauses in favor of English law, followed by efficient remedies, procedural effectiveness, neutrality of the forum, market practice, English language, effective UK-based

counsel, speed and enforceability of judgments. Furthermore, Brexit will not affect the New York Convention and would less likely affect London as an arbitration centre. It may be more reasonable to suggest that the main purpose of BIBC is not to compete with London at the international level, but to offer additional judicial tool and become a new commercial dispute resolution centre within the EU to attract companies and businesses to Brussels.

Conference Report: Annual meeting of the Alumni of the Hague Academy of International Law/Hamburg 2017 – Thorn and Lasthaus on Brexit and Private International Law

By Stephan Walter, Research Fellow at the Research Center for Transnational Commercial Dispute Resolution (TCDR), EBS Law School, Wiesbaden, Germany, and attendee of the 2017 Summer Courses on Private International Law at the Hague Academy of International Law

On 13 October 2017, the Alumni of the Hague Academy of International Law/Hamburg, the German section of Attenders and Alumni of the Hague Academy of International Law, A.A.A., hosted their annual meeting. At the invitation of Professor Karsten Thorn (Bucerius Law School, Hamburg), who lectured a Special Course on "The Protection of Small and Medium Enterprises in Private International Law" at the Academy during the 2016 Summer Courses, the meeting was held at Bucerius Law School, Hamburg. The academic programme consisted of four presentations, two of them dealt with issues of Private International Law after Brexit.

Professor Karsten Thorn's presentation on "European Private International Law after Brexit" was divided into two parts. In the first part he discussed direct legal consequences of Brexit on Private International Law in relations between the United Kingdom (in particular England) and Germany. He highlighted the importance of Union Law and especially the duties to recognise derived from the fundamental freedoms for the rise of England as a legal hub. Therefore, Brexit would have grave consequences for the attractiveness of England in a number of legal areas. This would apply, for example, to company law. Whereas under Union Law the recognition of a company established in accordance with the law of one Member State must not be refused by another Member State, each Member State would apply its own rules on this issue post-Brexit. This could also impact companies established before Brexit, although it was disputed whether this would infringe their legitimate expectations and if so, whether this protection was subject to a certain time limit. In any event, the companies should act rather sooner than later to avoid any legal uncertainty. Comparable issues would arise in insolvency law. First and foremost, there would be – in contrast to the current legal situation – no duty for a Member State's court to recognise a decision of an English court on the existence of the centre of the debtor's main interests (COMI) in England anymore. Again, each Member State would apply its national rules on the recognition of foreign insolvency proceedings. Secondly, an English scheme of arrangement, a court-approved private debt restructuring solution, would likely not be recognised by the Member States after Brexit. By contrast, fewer negative consequences would arise with regard to the right to a name because even now Article 21 TFEU only guaranteed the recognition of a name rightfully obtained in the EU citizen's State of nationality or residence and this freedom is further limited by the Constitution of the recognising Member State. Finally, he highlighted the negative impact of Brexit on procedural law. Post-Brexit, English decisions will no longer benefit from mutual trust in the EU Member States. A revival of bilateral treaties with Member States or instruments of the Hague Conference could only serve as sectoral solutions. Under these conditions, he presumed an increased usage of arbitration in the UK post-Brexit, not least because the United Kingdom is a Contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, he pointed out that English courts would return to traditional instruments of the English procedural law such as anti-suit injunctions. The second part of his presentation dealt with indirect consequences of Brexit on the European Private International Law. Firstly, he submitted that a number of provisions in EU

legislation can be regarded as legal transplants from English law. This applies, e.g., to Article 9 paragraph 3 Rome I Regulation and Article 6 lit. a EU Succession Regulation. In his opinion, post-Brexit at least the former provision will be discarded after a revision of the respective EU legislation. Secondly, he turned to the question of the usage of English as working language of the EU bodies. He stated that most EU legislation was drafted in English. Because legal English was very different to the legal language used in all other Member States this was still noticeable in the official translations. Therefore, English shaped the spirit of the EU legislation. Although he believed that English would still be the dominant language in the EU bodies after Brexit, he argued that the continental legal thinking could gain more significance.

In her presentation on "Pluralism of Legal Sources with regard to International Choice of Court Agreements", Caroline Lasthaus (Bucerius Law School, Hamburg) examined – after a brief overview of the interplay between the German autonomous national rules on jurisdiction, the Brussels I Regulation Recast, the 2007 Lugano Convention and the 2005 Hague Choice of Court Convention –options of the United Kingdom to foster the enforcement of choice of court agreements in favour of UK courts post-Brexit. An accession to the 2007 Lugano Convention would require either the membership of the United Kingdom in the European Free Trade Association or a unanimous agreement of the Contracting Parties. However, both options were, in her opinion, unlikely. Furthermore, the rules of the 2007 Lugano Convention would be outdated and the United Kingdom would have to accept the CJEU's jurisdiction over questions of interpretation of the Convention. Therefore, she scrutinised whether an accession to the 2005 Hague Choice of Court Convention could be a suitable solution. The accession itself would not raise any difficulties, since the United Kingdom could accede to the Convention unilaterally. Hence, the decisive question was whether the Convention would serve the needs of the United Kingdom. Lasthaus argued that neither the applicability of the Convention only to international exclusive choice of court agreements nor the exclusion of agreements with a consumer would make the Convention less attractive for the United Kingdom. Moreover, both the Brussels I Regulation Recast and the 2005 Hague Choice of Court Convention would allow the choice of a neutral forum. However, she stressed that the Convention was rather strict with regard to the formal requirements of an agreement, whereas the Brussels I Regulation Recast followed a much more flexible approach. Even though a violation of formal requirements would not lead

to the agreement to be null and void by virtue of the Convention, the Convention's rules on recognition and enforcement would not apply to judgements rendered based on such an agreement. Finally, one crucial downside of the Convention would be the necessity of an exequatur procedure with regard to the judgements rendered based on a choice of court agreement. This would lead to higher costs for the litigants and to a longer procedure. As a result, she conceded that an accession to the 2005 Hague Choice of Court Convention could not mend all the consequences of the non-applicability of the Brussels I Regulation Recast post-Brexit. Nonetheless, an accession would still make sense for the United Kingdom and could also boost the conclusion of a worldwide Convention on the recognition and enforcement of foreign judgements.

Both presentations were followed by lively discussions among the speakers and participants. It was agreed that the implementation of existing EU legislation into domestic law could not cushion the consequences of Brexit, especially because the fundamental freedoms would no longer apply to the United Kingdom. Additionally, it became clear once more that the final outcome of Brexit is still uncertain. In this vein, it is noteworthy from a Private International Law point of view that there was some disagreement on whether the United Kingdom would need to accede to the Convention at all or if it would still be a Contracting State of the Convention after Brexit by way of a succession of State.

Le Brexit, Enjeux régionaux, nationaux et internationaux (2017) by Charles Bahurel, Elsa Bernard and Marion Ho-Dac (ed.)

The book *Le Brexit, Enjeux régionaux, nationaux et internationaux* (Bruylant, 2017), edited by Pr. Charles Bahurel, Pr. Elsa Bernard and Associate Pr. Marion Ho-Dac, has just been published. It includes a foreword, an introduction and

papers from a three-days symposium on legal aspects of Brexit which took place in February and March 2017 in different universities.
The book is divided in three parts. The first is dedicated to the policy and institutional issues of Brexit and deals with Brexit preparation and post-Brexit relationships. The second part concerns EU citizenship and economic issues and deals with internal market and judicial cooperation in civil and commercial matters (see, *inter alia*, the contribution of Gilles Cuniberti on international economic aspects with a discussion paper by Emmanuel Guinchard and the contribution of Jean Sagot-Duvauroux on international family law aspects). It also focuses on some major actors of Brexit: EU citizens, students, patients, bankers and lawyers. The third part is devoted to criminal and immigration issues.

The abstract reads as follows:
Moins d'un an après le referendum britannique sur le retrait du Royaume-Uni de l'Union européenne, de nombreuses questions d'ordre économique, politique, juridique et social se posent quant à cet événement sans précédent dans l'histoire de la construction européenne.
Compte tenu des conséquences régionales, nationales et internationales du Brexit, il était nécessaire que des spécialistes viennent éclairer les multiples zones d'ombre qui subsistent sur des sujets aussi divers que l'engagement du retrait, les modèles de coopération possibles entre le Royaume-Uni et l'Union européenne, l'avenir politique, juridique et économique de cette Union, les enjeux migratoires du Brexit mais aussi ses enjeux pour les citoyens européens et pour les opérateurs économiques que sont, par exemple, les banques ou les entreprises.
Cet ouvrage s'adresse aux praticiens spécialisés en droit européen (avocats, notaires, fiscalistes, banquiers) ainsi qu'aux universitaires et aux membres des collectivités territoriales.

Foreword of the editors: here

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I thought we were exclusive? Some issues with the Hague Convention on Choice of Court, Brussels Ia and Brexit

This blog post is by Dr Mukarrum Ahmed (Lancaster University) and Professor Paul Beaumont (University of Aberdeen). It presents a condensed version of their article in the August 2017 issue of the Journal of Private International Law. The blog post includes specific references to the actual journal article to enable the reader to branch off into the detailed discussion where relevant. It also takes account of recent developments in the Brexit negotiation that took place after the journal article was completed.

On 1 October 2015, the Hague Convention on Choice of Court Agreements 2005 ('Hague Convention') entered into force in 28 Contracting States, including Mexico and all the Member States of the European Union, except Denmark. The Convention has applied between Singapore and the other Contracting States since 1 October 2016. China, Ukraine and the USA have signed the Convention indicating that they hope to ratify it in the future (see the official status table for the Convention on the Hague Conference on Private International Law's website). The Brussels Ia Regulation, which is the European Union's device for jurisdictional and enforcement matters, applies as of 10 January 2015 to legal proceedings instituted and to judgments rendered on or after that date. In addition to legal issues that may arise independently under the Hague Convention, some issues may manifest themselves at the interface between the Hague Convention and the Brussels Ia Regulation. Both sets of issues are likely to garner the attention of cross-border commercial litigators, transactional lawyers and private international law academics. The article examines anti-suit injunctions, concurrent proceedings and the implications of Brexit in the context of the Hague Convention and its relationship with the Brussels Ia Regulation. (See pages 387-389 of the article)

It is argued that the Hague Convention's system of 'qualified' or 'partial' mutual trust may permit anti-suit injunctions, actions for damages for breach of exclusive

jurisdiction agreements and anti-enforcement injunctions where such remedies further the objective of the Convention. (See pages 394-402 of the article) The text of the Hague Convention and the Explanatory Report by Professors Trevor Hartley and Masato Dogauchi are not explicit on this issue. However, the *procès-verbal* of the Diplomatic Session of the Hague Convention reveal widespread support for the proposition that the formal 'process' should be differentiated from the desired 'outcome' when considering whether anti-suit injunctions are permitted under the Convention. Where anti-suit injunctions uphold choice of court agreements and thus help achieve the intended 'outcome' of the Convention, there was a consensus among the official delegates at the Diplomatic Session that the Convention did not limit or constrain national courts of Contracting States from granting the remedy. (See Minutes No 9 of the Second Commission Meeting of Monday 20 June 2005 (morning) in *Proceedings of the Twentieth Session of the Hague Conference on Private International Law* (Permanent Bureau of the Conference, Intersentia 2010) 622, 623–24) Conversely, where the remedy impedes the sound operation of the Convention by effectively derailing proceedings in the chosen court, there was also a consensus of the official delegates at the meeting that the Convention will not permit national courts of the Contracting States to grant anti-suit injunctions.

However, intra-EU Hague Convention cases may arguably not permit remedies for breach of exclusive choice of court agreements as they may be deemed to be an infringement of the principle of mutual trust and the principle of effectiveness of EU law (*effet utile*) which animate the multilateral jurisdiction and judgments order of the Brussels Ia Regulation (see pages 403-405 of the article; C-159/02 *Turner v Grovit* [2004] ECR I-3565). If an aggrieved party does not commence proceedings in the chosen forum or commences such proceedings after the non-chosen court has rendered a decision on the validity of the choice of court agreement, the recognition and enforcement of that ruling highlights an interesting contrast between the Brussels Ia Regulation and the Hague Convention. It appears that the non-chosen court's decision on the validity of the choice of court agreement is entitled to recognition and enforcement under the Brussels Ia Regulation. (See C-456/11 *Gothaer Allgemeine Versicherung AG v Samskip GmbH* EU:C:2012:719, [2013] QB 548) The Hague Convention does not similarly protect the ruling of a non-chosen court. In fact, only a judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States. (See

Article 8(1) of the Hague Convention) Therefore, the ruling of a non-chosen court is not entitled to recognition and enforcement under the Hague Convention's system of 'qualified' or 'partial' mutual trust. This provides a ready explanation for the compatibility of anti-suit injunctions with the Hague Convention but does not proceed any further to transpose the same conclusion into the very different context of the Brussels Ia Regulation which prioritizes the principle of mutual trust.

The dynamics of the relationship between Article 31(2) of the Brussels Ia Regulation and Articles 5 and 6 of the Hague Convention is mapped in the article (at pages 405-408). In a case where the Hague Convention should apply rather than the Brussels Ia Regulation because one of the parties is resident in a non-EU Contracting State to the Convention even though the chosen court is in a Member State of the EU (See Article 26(6)(a) of the Hague Convention) one would expect Article 6 of the Convention to be applied by any non-chosen court in the EU. However, the fundamental nature of the Article 31(2) *lis pendens* mechanism under the Brussels Ia Regulation may warrant the pursuance of a different line of analysis. (See Case C-452/12 *Nipponkoa Insurance Co (Europe) Ltd v Interzuid Transport BV* EU:C:2013:858, [2014] I.L.Pr. 10, [36]; See also to similar effect, Case C-533/08 *TNT Express Nederland BV v AXA Versicherung AG* EU:C:2010:243, [2010] I.L.Pr. 35, [49]) It is argued that the Hartley–Dogauchi Report's interpretative approach has much to commend it as it follows the path of least resistance by narrowly construing the right to sue in a non-chosen forum as an exception rather than the norm. The exceptional nature of the right to sue in the non-chosen forum under the Hague Convention can be effectively reconciled with Article 31(2) of the Brussels Ia Regulation. This will usually result in the stay of the proceedings in the non-chosen court as soon as the chosen court is seised. As a consequence, the incidence of parallel proceedings and irreconcilable judgments are curbed, which are significant objectives in their own right under the Brussels Ia Regulation. It is hoped that the yet to develop jurisprudence of the CJEU on the emergent Hague Convention and the Brussels Ia Regulation will offer definitive and authoritative answers to the issues discussed in the article.

The implications of Brexit on this topic are not yet fully clear. (See pages 409-410 of the article) The UK is a party to the Hague Choice of Court Agreements Convention as a Member State of the EU, the latter having approved the Convention for all its Member States apart from Denmark. The UK will do what is

necessary to remain a party to the Convention after Brexit. In its recently published negotiating paper – only available after the article in the Journal of Private International Law was completed – the UK Government has explicitly stated that:

"It is our intention to continue to be a leading member in the Hague Conference and to participate in those Hague Conventions to which we are already a party and those which we currently participate in by virtue of our membership of the EU." (see *Providing a cross-border civil judicial cooperation framework* (PDF) at para 22).

The UK will no doubt avoid any break in the Convention's application. Brexit will almost certainly see the end of the application of the Brussels Ia Regulation in the UK. The reason being that its uniform interpretation is secured by the CJEU through the preliminary ruling system under the Treaty on the Functioning of the European Union (TFEU). The UK is not willing to accept that jurisdiction post-Brexit ("Leaving the EU will therefore bring an end to the direct jurisdiction of the CJEU in the UK, because the CJEU derives its jurisdiction and authority from the EU Treaties." see *Providing a cross-border civil judicial cooperation framework* at para 20). So although the UK negotiators are asking for a bespoke deal with the EU to continue something like Brussels Ia ("The UK will therefore seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework" see *Providing a cross-border civil judicial cooperation framework* at para 19) it seems improbable that the EU will agree to such a bespoke deal just with the UK when the UK does not accept the CJEU preliminary ruling system. The EU may well say that the option for close partners of the EU in this field is the Lugano Convention. The UK Government has indicated that it would like to remain part of the Lugano Convention (see *Providing a cross-border civil judicial cooperation framework* at para 22). In doing so it would continue to mandate the UK courts to take account of the jurisprudence of the CJEU -when that court is interpreting Brussels Ia or the Lugano Convention – when UK courts are interpreting the Lugano Convention (see the opaque statement by the UK Government that "the UK and the EU will need to ensure future civil judicial cooperation takes into account regional legal arrangements, including the fact that the CJEU will remain the ultimate arbiter of EU law within the EU." see *Providing a cross-border civil judicial cooperation*

framework at para 20). However, unless the Lugano Convention is renegotiated it does not contain a good solution in relation to conflicts of jurisdiction for exclusive choice of court agreements because it has not been amended to reflect Article 31(2) of Brussels Ia and therefore still gives priority to the non-chosen court when it is seised first and the exclusively chosen court is seised second in accordance with the *Gasser* decision of the CJEU (see Case C-116/02 [2003] ECR I-14693). Renegotiation of the Lugano Convention is not even on the agenda at the moment although the *Gasser* problem may be discussed at the Experts' Meeting pursuant to Article 5 Protocol 2 of the Lugano Convention on 16 and 17 October 2017 in Basel, Switzerland (Professor Beaumont is attending that meeting as an invited expert). Revision of the Lugano Convention would be a good thing, as would Norway and Switzerland becoming parties to the Hague Convention. It seems that at least until the Lugano Convention is revised and a means is found for the UK to be a party to it (difficult if the UK does not stay in EFTA), the likely outcome post-Brexit is that the regime applicable between the UK and the EU (apart from Denmark) in relation to exclusive choice of court agreements within the scope of the Hague Convention will be the Hague Convention. The UK will be able to grant anti-suit injunctions to uphold exclusive choice of court agreements in favour of the courts in the UK even when one of the parties has brought an action contrary to that agreement in an EU Member State. The EU Member States will apply Article 6 of the Hague Convention rather than Article 31(2) of the Brussels Ia Regulation when deciding whether to decline jurisdiction in favour of the chosen court(s) in the UK.

Whilst the Hague Convention only offers a comprehensive jurisdictional regime for cases involving exclusive choice of court agreements, it does give substantial protection to the jurisdiction of UK courts designated in such an agreement which will be respected in the rest of the EU regardless of the outcome of the Brexit negotiations. Post-Brexit the recognition and enforcement regime for judgments not falling within the scope of the Hague Choice of Court Agreements Convention could be the new Hague Judgments Convention currently being negotiated in The Hague (see Working Paper No. 2016/3- Respecting Reverse Subsidiarity as an excellent strategy for the European Union at The Hague Conference on Private International Law – reflections in the context of the Judgments Project? by Paul Beaumont). Professor Beaumont will continue to be a part of the EU Negotiating team for that Convention at the Special Commission in the Hague from 13-17 November 2017. It is greatly to be welcomed that the UK Government has

affirmed its commitment to an internationalist and not just a regional approach to civil judicial co-operation:

"The UK is committed to increasing international civil judicial cooperation with third parties through our active participation in the Hague Conference on Private International Law and the United Nations Commission on International Trade Law… We will continue to be an active and supportive member of these bodies, as we are clear on the value of international and intergovernmental cooperation in this area." See *Providing a cross-border civil judicial cooperation framework* at para 21.

One good thing that could come from Brexit is the powerful combination of the EU and the UK both adopting a truly internationalist perspective in the Hague Conference on Private International Law in order to genuinely enhance civil judicial co-operation throughout the world. The UK can be one of the leaders of the common law world while using its decades of experience of European co-operation to help build bridges to the civil law countries in Europe, Africa, Asia and Latin America.

Child & Family Law Quarterly: Special Brexit Issue

Back in March the Child & Family Law Quarterly together with Cambridge Family Law hosted a conference on the impact of Brexit on international family law (see our previous post). Some of the academic papers that were presented at this occasion have now been published in a special Brexit issue of the Child & Family Law Quarterly.

Here is the table of content:

- Brexit and international family law from a continental perspective, *Anatol Dutta*
- Private international law concerning children in the UK after Brexit:

comparing Hague Treaty law with EU Regulations, *Paul Beaumont*

- Divorcing Europe: reflections from a Scottish perspective on the implications of Brexit for cross-border divorce proceedings, *Janeen M Carruthers and Elizabeth B Crawford*
- What are the implications of the Brexit vote for the law on international child abduction?, *Nigel Lowe*
- Not a European family: implications of 'Brexit' for international family law, *Ruth Lamont*

Baudenbacher on Brexit and the EFTA option

By Stephan Walter, Research Fellow at the Research Center for Transnational Commercial Dispute Resolution (TCDR), EBS Law School, Wiesbaden, Germany.

In response to the United Kingdom's intention to leave the jurisdiction of the Court of Justice of the European Union after Brexit (see in this respect the policy paper on providing a cross-border civil judicial cooperation framework issued by the Department for Exiting the European Union), Carl Baudenbacher, the President of the Court of the European Free Trade Association (EFTA), has just published an interesting article which advocates that the United Kingdom could use his court to resolve disputes. According to him, the relationship of the EFTA Court and the CJEU is based on judicial dialogue. On the one hand, the EFTA Court as a rule follows relevant case law of the CJEU. On the other hand, the CJEU usually follows EFTA Court case law, both explicitly and implicitly. In case of a conflict between the two courts, the EFTA Court is, in his opinion, not easily "outgunned" by the CJEU. By contrast, he highlights that the EFTA Court has gone its own way on essential questions of European single market law. Nonetheless, he argues that the case law of the EFTA Court and the CJEU must develop in a homogeneous way.

The article can be found here.