‘Force majeure certificates’ issued by the Russian Chamber of Commerce and Industry

The Russian Chamber of Commerce and Industry is issuing ‘force majeure certificates’, like some of their homologues in other countries, as discussed earlier in this blog. Although this practice has existed in Russia since 1993, the number of requests for the certificates has recently increased. The requests come not only from Russian companies but also from foreign entities. While the increase is understandable in these times of the coronavirus pandemic, under Russian law, the ‘force majeure certificate’ can (only) form a part of evidence in possible future disputes, as its impact on the outcome of the dispute is ultimately defined by the (Russian or foreign) courts or arbitration tribunals.

The Russian Chamber of Commerce and Industry (CCI) is issuing ‘force majeure certificates’, like some of their homologues in other countries. Although this practice exists in Russia since 1993, the CCI has recently noticed an increase in the number of requests for the certificates, due to the coronavirus pandemic. The requests come not only from Russian companies but also from foreign entities. What could be the practical value of the certificate in a contractual dispute relating to the consequences of the pandemic?

The legal basis for the CCI’s competence to issue the ‘force majeure certificates’ is laid down in the law ‘On the chambers of commerce and industry in the Russian Federation’ of 7 July 1993. Article 1 of the law defines the CCI as a non-state non-governmental organisation created to foster business and international trade. Along with other competences, the CCI may act as an ‘independent expert’ (art. 12) and may provide information services (art. 2) in matters relating to international trade. One of the services is the issuing of ‘force majeure certificates’. The Rules for issuing the certificates are defined by the CCI’s governing council. These Rules entrust the CCI’s legal department with assessing requests and advising whether the certificate should be issued. The advice is given on the basis of the documents that a party submits to substantiate their request, following the Rules.

Notably, the list of documents includes (a copy of) the contract, 'which contains a clause on force majeure' (point 3.3.2 of the Rules). This requirement is not accidental; it has to do with the non-mandatory character of the legal provision on force majeure. Article 401(3) of the Russian Civil Code provides for exoneration of liability for non-performance of a contractual obligation, if the party proves that the non-performance was due to the force majeure. This provision applies by default, if 'the law or the contract does not provide otherwise' (art. 401(3)). The parties may provide otherwise by including a clause about unforeseen circumstances, hardship, frustration, force majeure, or similar circumstances in the contract. This is, at least, the way Russian courts have applied art. 401(3) up to the present time. The Russian CCI does not appear to deviate from this approach. More than 95% of the requests submitted to the Russian CCI for 'force majeure certificates' have so far been rejected, according to the head of the Russian CCI (even though some decrees deliberately label the COVID-19 pandemic 'force majeure' as, for example, the Decree of 14 March 2020 does, this decree is adopted by the municipality of Moscow to prevent the spread of the virus by various measures of social distancing).

Thus, the legal basis of the CCI's competence to issue a 'force majeure certificate' implies that the certificate is the result of a service provided by a non-state non-governmental organisation. The application of Article 401(3) implies the need to interpret the contract, more specifically, the provision on force majeure it possibly includes. If the parties disagree on the interpretation, a dispute may arise. The competence to resolve the dispute lies with the courts or arbitration tribunals. In this way, the ICC's decision (taken upon the advice of the CCI's legal department) to confirm by issuing a certificate that a particular event represents a force majeure in the context of the execution of a specific contract can have persuasive authority in the context of the application of Art. 401 (3). However, it remains the competence of the courts or arbitration tribunals to apply art. 401(3) to the possible dispute and to establish the ultimate impact of the relevant events on the outcome of the dispute. Under Russian law, one would treat the 'force majeure certificates' issued by the CCI (and possibly a refusal to issue the certificate) as a part of evidence in possible future disputes. A (Russian or foreign) court or arbitration tribunal considering this evidence is free to make a different conclusion than that of the Russian CCI or may consider other evidence.

The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries – Conference on 25 and 26 September 2020, University of Bonn, Germany – Final Programme

Dear CoL Readers,

While we are all deeply concerned about the still growing dimensions of the coronavirus pandemic, we did not want to give up working on the programme of our conference.

Thanks to the HCCH, the Bonn PIL colleagues and our distinguished speakers, there is now a fantastic programme we would like to bring to your attention in this post (see below).

Meanwhile, we will closely follow the instructions of the University of Bonn as well as the German local and federal governments and travel restrictions in other countries to see whether the conference can take place on site. We have not yet given up optimism in this respect. Yet, safety must be first. This is why we are setting up structures for a video conference via zoom in case we need it. We assume that all of you would agree to proceeding via zoom if necessary. We will take a final and corona risk-averse decision on this during July and keep you posted. Please do not hesitate to register with us (sekretariat.weller@jura.uni-bonn.de) if you wish to be updated by email.

Looking forward to seeing you in Bonn in September!

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Brexit has become reality – one more reason to think about the EU's Judicial Cooperation with third states:

The largest proportion of EU economic growth in the 21st century is expected to arise in trade with third countries. This is why the EU is building up trade relations with many states and other regional integration communities in all parts of the world. The latest example is the EU-MERCOSUR Association Agreement concluded on 28 June 2019. With the United Kingdom's exit of the Union on 31 January 2020, extra-EU trade with neighboring countries will further increase in importance. Another challenge for the EU is China's "Belt and Road Initiative", a powerful global development strategy that includes overland as well as sea routes in more than 100 states around the globe.

The increasing volume of trade with third states will inevitably lead to a rise in the number and importance of commercial disputes. This makes mechanisms for their orderly and efficient resolution indispensable. China is already setting up infrastructures for commercial dispute resolution alongside its belts and roads. In contrast, there seems to be no elaborate EU strategy on judicial cooperation in civil matters with countries outside of the Union, despite the DG Trade's realisation that "trade is no longer just about trade". Especially, there is no coherent plan for establishing mechanisms for the coordination of cross-border dispute resolution and the mutual recognition and enforcement of judgments. This is a glaring gap in the EU's policy making in external trade relations.

This is why the Bonn group of PIL colleagues – Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Philipp Reuss, and Matthias Weller – will host a conference on Friday and Saturday, 25 and 26 September 2020, at the University of Bonn that seeks to explore ways in which judicial cooperation in civil matters between the EU and third countries can be improved by the HCCH 2019 Judgments Convention as an important driver, if not game changer, of legal certainty in cross-border commercial relations.

The list of speakers includes internationally leading scholars, practitioners and experts from the Hague Conference on Private International Law (HCCH), the European Commission (DG Trade, DG Justice), and and the German Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und

für Verbraucherschutz)

The Conference is co-hosted by the HCCH as one of the first European events for discussing the HCCH 2019 Judgments Convention. The Conference will be further supported by the Zentrum für europäisches Wirtschaftsrecht at the University of Bonn and The International Litigation Exchange (ILEX).

The Organizers will kindly ask participants to contribute with € 100.- to the costs of the event (includes conference dinner).

Dates:

Friday, 25 September 2020, and Saturday, 26 September 2020.

Venue:

Friday:

Universitätsclub Bonn, Konviktstraße 9, D – 53113 Bonn

Saturday:

Main Auditorium (Aula), Hauptgebäude, Am Hof 21, 53113 Bonn

Registration: sekretariat.weller@jura.uni-bonn.de

Registration Fee: € 100.-

To be transferred to the following account (you will receive confirmation of your registration only after payment was booked on this account):

Bonn Conference 2020

IBAN: DE71 5001 0517 0092 1751 07

BIC: INGDDEFF (ING-Diba Bank)

Programme

Friday, 25 September 2020

1.30 p.m. Registration

2 p.m. Welcome note

Prof Dr Wulf-Henning Roth, University of Bonn, Director of the Zentrum für Europäisches Wirtschaftsrecht (ZEW)

Dr Christophe Bernasconi, Secretary General of the HCCH (video message)

2.10 p.m. Part 1: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 1: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Keynote: Hague Conference's Perspective and Experiences

Hans van Loon, Former Secretary General of the Hague Conference on Private International Law, The Hague

1. **Scope of application**

Prof Dr Xandra Kramer, Erasmus Universiteit Rotterdam

2. **Judgments, Recognition, Enforcement**

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich

Discussion

3.30 p.m. Coffee Break

4.00 p.m. Part II: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 2: Prof Dr Nina Dethloff / Prof Dr Moritz Brinkmann

1. **Jurisdictional filters**

Prof Dr Pietro Franzina, Catholic University of Milan

2. **Grounds for refusal**

Prof Dr Francisco Garcimartín Alférez, University of Madrid

Discussion

5.30 p.m. Panel Discussion: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries

Chairs of Part 3: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy, DG Trade (tbc)

Andreas Stein, Head of Unit, DG JUST – A1 "Civil Justice"

Dr Jan Teubel, German Federal Ministry of Justice and Consumer Protection

RA Dr Heiko Heppner, Attorney at Law (New York), Barrister and Solicitor Advocate (England and Wales), Chair of ILEX, Head of Dispute Resolution, Partner Dentons, Frankfurt

and perhaps more…

Discussion

7 p.m. Conference Dinner

Saturday, 26 September 2020

9.00 a.m. The context of the HCCH 2019 Judgments Convention

Chairs of Part 4: Prof Dr Moritz Brinkmann / Prof Dr Philipp Reuss

1. **Lessons from the Genesis of the Judgments Project**

Dr Ning Zhao, Senior Legal Officer, HCCH

2. **Relation to the HCCH 2005 Convention on Choice of Court Agreements**

Prof Paul Beaumont, University of Stirling

3. **Relations to the Brussels Regime / Lugano Convention**

Prof Marie-Elodie Ancel, Université Paris-Est Créteil

4. **Brexit…**

Dr Pippa Rogerson, Reader in Private International Law, Faculty of Law, Cambridge

Discussion

11:00 a.m. Coffee Break

11:30 a.m. Chairs of Part 5: Prof Dr Nina Dethloff / Prof Dr Matthias Lehmann

1. **South European Neighbouring and Candidate Countries**

Ass. Prof Dr Ilija Rumenov, Ss. Cyril and Methodius University, Skopje, Macedonia

2. **MERCOSUR**

Dr Veronica Ruiz Abou-Nigm, Director of Internationalisation, Senior Lecturer in International Private Law, School of Law, University of Edinburgh

3. **China (OBOR)**

Prof Zheng (Sophia) Tang, University of Newcastle

4. **International Commercial Arbitration**

Jose Angelo Estrella-Faria, Senior Legal Officer UNCITRAL Secretariat, International Trade Law Division Office of Legal Affairs, United Nations, Former Secretary General of UNIDROIT

Discussion

1.30 p.m. Closing Remarks

Dr João Ribeiro-Bidaoui, First Secretary, HCCH

Mareva injunctions in support of foreign proceedings

In *Bi Xiaoqing v China Medical Technologies* [2019] SGCA 50, the Singapore Court of Appeal provided clarity on the extent of the court's power to grant Mareva relief in support of foreign proceedings.

The first and second respondents were companies incorporated in the Cayman Islands and the British Virgin Islands. The action was pursued by the liquidators of the first respondent against the appellant, a Singapore citizen, who was formerly involved in the management of the respondents and allegedly misappropriated funds from them.

Hong Kong proceedings were commenced first and a worldwide Mareva injunction was granted against, inter alia, the appellant. The terms of the Hong Kong injunction specifically identified assets in Singapore.

Two days after the Hong Kong injunction was obtained, the respondents commenced action in Singapore and applied for a Mareva injunction to prevent the defendants from disposing of assets in Singapore. The action in Singapore covered substantially the same claims and causes of action as those pursued in Hong Kong. After the grant of a Mareva injunction on an *ex parte* basis, the respondents applied to stay the Singapore proceedings pending the final determination of the Hong Kong proceedings on the basis that Hong Kong was the most appropriate forum for the dispute. The High Court granted the stay and confirmed the Mareva injunction in *inter partes* proceedings.

The issues before the Court of Appeal were: (1) whether the court had the power to grant a Mareva injunction and (2) whether it should grant the Mareva injunction. In other words, the first question dealt with the existence of the court's power to grant a Mareva injunction and the second question dealt with the exercise of the power.

The Singapore court's power to grant an injunction can be traced back to section

4(10) of the Civil Law Act which is in these terms: "A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made." The Court of Appeal clarified that section 4(10) of the Civil Law Act should be read as conferring on the court the power to grant Mareva injunctions, even when sought in support of foreign proceedings. Two conditions had to be satisfied: (1) the court must have *in personam* jurisdiction over the defendant; and (2) the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore.

Given the stay of the Singapore proceedings, the Court of Appeal had to consider if the Singapore court still retained the power to grant Mareva relief. There had been conflicting first instance decisions on this point: see *Petroval SA v Stainsby Overseas Ltd* [2008] 3 SLR(R) 856 cf *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000. The Court of Appeal preferred the *Multi-Code* approach, taking the view that the court retains a residual jurisdiction over the underlying cause of action even when the action is stayed. This residual jurisdiction grounds the court's power to grant a Mareva injunction in aid of foreign proceedings. Further, a party's intentions on what it would do with the injunction had no bearing on the existence of the court's power to grant the Mareva injunction.

Party intentions, however, was a consideration under the second question of whether the court should exercise its power to grant the injunction. Traditionally, a Mareva injunction is granted to safeguard the integrity of the Singapore court's jurisdiction over the defendant so that, if judgment is rendered against the defendant, that jurisdiction is not rendered toothless. The court commented that where it appears that the plaintiff is requesting the court to assume jurisdiction over the defendant for the collateral purpose of securing and safeguarding the exercise of jurisdiction by a foreign court, the court should not exercise its power to grant Mareva relief. On the facts, the court held that it could not be said that the respondents had such a collateral purpose as there was nothing on the facts to dispel the possibility that the respondents may later request for the stay to be lifted. This conclusion suggests that the court would generally take a generous view of litigation strategy and lean towards exercising its power in aid of foreign

proceedings.

Given the requirement that the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore, a Mareva injunction is not free-standing relief under Singapore law. The court emphasized that a Mareva injunction in aid of foreign court proceedings is still ultimately premised on, and in support of, Singapore proceedings. This stance means that service in and service out cases may end up being treated differently. If the defendant has been served outside of jurisdiction and successfully sets aside service of the writ, there would no longer be an accrued cause of action in Singapore on which to base the application for a Mareva injunction. See for example, *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64, [2018] 4 SLR 1420 (see previous post **http://conflictoflaws.net/2018/mareva-injunctions-under-singapore-law/**). On the other hand, if the defendant had been served as of right within jurisdiction and the action is stayed (as in the present case), the court retains residual jurisdiction to grant a Mareva injunction.

After a restrictive court ruling in relation to the court's power to grant free-standing Mareva relief in aid of foreign arbitrations, the legislature amended the International Arbitration Act to confer that power to the courts. It remains to be seen if the legislature would act similarly in relation to the court's power to grant free-standing Mareva relief in aid of foreign proceedings.

To a certain extent, this lacuna is plugged by the recent amendments to the Reciprocal Enforcement of Foreign Judgments Act ("REFJA") (see previous post **http://conflictoflaws.net/2019/reform-of-singapores-foreign-judgment-rules/**). Under the amended REFJA, a judgment includes a non-monetary judgment and an interlocutory judgment need not be "final and conclusive". In the Parliamentary Debates, the minister in charge made the point that these specific amendments were intended to enable the court to enforce foreign orders such as Mareva injunctions. Only judgments from certain gazetted territories qualify for registration under the REFJA. To date, HK SAR is the sole listed gazetted territory although it is anticipated that the list of gazetted territories will expand in the near future. While the respondents had in hand a Hong Kong worldwide Mareva injunction, the amendments to REFJA only came into force after the case was decided.

The judgment may be found at: **https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/ca-188-2018-j—bi-xiaoqiong-pdf.pdf**

Australia's first contested ICSID enforcement

In February, the Federal Court of Australia delivered its judgment on the first contested enforcement of International Centre for Settlement of Investment Disputes (ICSID) awards in Australia.

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)

Chinese Practice in Private International Law in 2018

Qisheng He, Professor of International Law at the Peking University Law School, and Director of the Peking University International Economical Law Institute, has published a survey on the Chinese practice in Private International Law in 2018. The full title of the article is the following: The *Chronology of Practice: Chinese Practice in Private International Law in 2018*.

The article has been published by the Chinese Journal of International Law, a journal published by Oxford University Press. This is the 6th survey published by Prof. He on the topic.

Prof. He has prepared an abstract of his article, which goes as follows:

This survey contains materials reflecting the practice of Chinese private international law in 2018. **First**, the statistics of the foreign-related civil or commercial cases accepted and decided by Chinese courts is extracted from theReport on the Work of the Supreme People's Court (SPC) in 2018. **Second**, some relevant SPC judicial interpretations including the SPC Provisions on Several Issues Regarding the Establishment of the International Commercial Court are introduced. The SPC Provisions on Several Issues concerning the Handling of Cases on the Enforcement of Arbitral Awards by the People's Courts are translated, and the Provisions reflect a pro-arbitration tendency in Chinese courts. **Third**, regarding jurisdiction, a case involving the binding force of a choice of court clause under the transfer of contract is selected. **Fourth**, three typical cases, relating to the conflict of laws rules, are examined and deal with the matters such as personal injury on the high seas, visitation rights, as well as uncontested divorces. The case regarding personal injury on the high seas discusses the "extension of territory" theory, but its choice of law approach deviate from Chinese law. **Fifth**, two cases involving foreign judgments are cited: one analyses the probative force of a Japanese judgment as evidence used by the SPC, and the other recognises the judgment of a French commercial court. **Sixth,** the creation of a "one-stop" international commercial dispute resolution mechanism is discussed. This new dispute resolution mode efficiently coordinates mediation, arbitration and litigation. One mediation agreement approved by Chinese courts is selected to reflect this development. Finally, the paper also covers six representative decisions regarding the parties' status, the presumption of the parties' intention as to choice of law, and the validity of arbitration agreements.

Save the Date: “The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries” – Conference on 25 and 26 September 2020, University of Bonn, Germany

As of today, Brexit has become reality – one more reason to think about the EU’s Judicial Cooperation with third states:

The largest proportion of EU economic growth in the 21st century is expected to arise in trade with third countries. This is why the EU is building up trade relations with many states and other regional integration communities in all parts of the world. The latest example is the EU-MERCOSUR Association Agreement concluded on 28 June 2019. With the United Kingdom’s exit of the Union on 31 January 2020, extra-EU trade with neighboring countries will further increase in importance. Another challenge for the EU is China’s “Belt and Road Initiative”, a powerful global development strategy that includes overland as well as sea routes in more than 100 states around the globe.

The increasing volume of trade with third states will inevitably lead to a rise in the number and importance of commercial disputes. This makes mechanisms for their orderly and efficient resolution indispensable. China is already setting up infrastructures for commercial dispute resolution alongside its belts and roads. In contrast, there seems to be no elaborate EU strategy on judicial

cooperation in civil matters with countries outside of the Union, despite the DG Trade's realisation that "trade is no longer just about trade". Especially, there is no coherent plan for establishing mechanisms for the coordination of cross-border dispute resolution and the mutual recognition and enforcement of judgments. This is a glaring gap in the EU's policy making in external trade relations (see also, in an earlier post by Matthias Weller on CoL on this matter: Mutual trust and judicial cooperation in the EU's external relations – the blind spot in the EU's Foreign Trade and Private International Law policy?).

This is why the Bonn group of PIL colleagues – Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Philipp Reuss, and Matthias Weller – are hosting a conference on Friday and Saturday, 25 and 26 September 2020, at the University of Bonn that seeks to explore ways in which judicial cooperation in civil matters between the EU and third countries can be improved by the Hague Judgments Convention of 2019 as an important driver, if not game changer, of legal certainty in cross-border commercial relations.

The list of speakers includes internationally leading scholars, practitioners and experts from the Hague Conference on Private International Law (HCCH), the European Commission (DG Trade, DG Justice), and the German Ministry of Justice and for Consumers (Bundesjustizministerium der Justiz und für Verbraucherschutz).

The Conference is supported by the HCCH as one of the first European events for discussing the HCCH 2019 Convention. The Conference will be further supported by the Zentrum für europäisches Wirtschaftsrecht at the University of Bonn and The International Litigation Exchange (ILEX).

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Date:

Friday, 25 September 2020, and Saturday, 26 September 2020.

Venue:

Bonner Universitätsforum, Heussallee 18 – 22

Pre-Registration:

sekretariat.weller@jura.uni-bonn.de

Draft Programme

Friday, 25 September 2020

1.30 p.m. Registration

2 p.m. Welcome note

Prof Dr Wulf-Henning Roth, University of Bonn, Director of the Zentrum für Europäisches Wirtschaftsrecht (ZEW)

2.10 p.m. Part 1: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 1: Matthias Weller / Matthias Lehmann

Keynote: Hague Conference's Perspective and Experiences

Hans van Loon, Former Secretary General of the Hague Conference on Private International Law, The Hague

1. Scope of application

Prof Dr Xandra Kramer, Erasmus Universiteit Rotterdam

2. Judgments, Recognition, Enforcement

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich

Discussion

3.30 p.m. Coffee

Break

4.00 p.m. Part 2: Chances and Challenges of the HCCH 2019 Judgments Convention continued

Chairs of Part 2: Prof Dr Nina Dethloff / Prof Dr Moritz Brinkman

3. Jurisdictional filters

Prof Dr Pietro Franzina, Catholic University of Milan

4. Grounds for refusal

Prof Dr Paco Garcimartín, University of Madrid

Discussion

5.30 p.m. Part 3: Panel Discussion – Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries, 60 min:

Chairs of Part 3: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy, DG Trade (tbc); Andreas Stein, Head of Unit, DG JUST – A1 "Civil Justice"; Dr. Jan Teubel, German Ministry of Justice and for Consumers; RA Dr. Heiko Heppner, Attorney at Law (New York), Barrister and Solicitor Advocate (England and Wales), Chair of ILEX, Head of Dispute Resolution, Partner Dentons, Frankfurt, and perhaps more…

Discussion

7 p.m. Conference Dinner

Saturday

9.30 a.m. Part 4: The context of the HCCH 2019 Judgments Convention

Chairs: Prof Dr Moritz Brinkmann/Prof Dr Philipp Reuss

5. Relation to the HCCH 2005 Convention on Choice of Court Agreements

Prof Paul Beaumont, University of Stirlin

6. Relations to the Brussels Regime / Lugano Convention

Prof Marie-Elodie Ancel, Université Paris-Est Crétei

7. Brexit…

Dr
Pippa Rogerson, Reader in Private International Law, Faculty of Law, Cambridge

Discussion

11:00 a.m. Coffee Break

11:30 a.m. Part 4: The context of the HCCH 2019 Judgments Convention continued

Chairs: Prof Dr Nina Dethloff / Prof Dr Matthias Lehman

8. South European Neighbouring and Candidate Countries

Prof Dr Ilija Rumenov, Ss. Cyril and Methodius University, Skopje, Macedonia

9. MERCOSUR – EU

Dr Veronica Ruiz Abou-Nigm, Director of Internationalisation, Senior Lecturer in International Private Law, School of Law, University of Edinburgh

10. Relations to International Commercial Arbitration

Jose Angelo Estrella-Faria, Former Secretary
General of UNIDROIT, Senior Legal Officer UNCITRAL Secretariat, International Trade Law Division Office of Legal Affairs, United Nations (tbc)

Discussion

1 p.m. Closing Remarks

Matthias Weller

RabelsZ, Issue 1/2020

The first 2020 issue RabelsZ has just been released. It features the following articles:

Magnus, Robert, Unternehmenspersönlichkeitsrechte im digitalen Raum und Internationales Privatrecht (Corporate Personality Rights on the Internet and the Applicable Law), pp. 1 et seq

> *Companies can defend themselves against defamatory and business-damaging statements made on the internet. German case law in this area is based primarily on the concept of a corporate right relating to personality, which has some similarities but also important differences to the personality rights of natural persons. A corresponding legal right is also recognised in European law. However, determining the applicable law for these claims proves to be difficult. First of all, it is an open though not yet much-discussed question whether the exception in Art. 1(2) lit. g Rome II Regulation for "violation[s] of privacy or personal rights" is limited to the rights of natural persons or whether it applies also to the corresponding claims of legal entities. Moreover, the determination "of the country in which the damage occurs" in accordance with Art. 4(1) Rome II Regulation is hotly debated with respect to violations of rights relating to personality, especially when the violations were committed via the internet. The thus far prevailing mosaic principle produces excessively complex results and therefore makes it unreasonably difficult to enforce the protected legal position. This article discusses alternative concepts for the determination of the applicable law for these actions and analyses the scope and background of the exception in Art. 1(2) lit. g Rome II Regulation.*

Thon, Marian, Transnationaler Datenschutz: Das Internationale Datenprivatrecht der DS-GVO (Transnational Data Protection: The GDPR and Conflict of Laws), pp. 24 et seq

> *This article analyses the territorial scope of the new General Data Protection Regulation (GDPR) and addresses the question whether Article 3 GDPR can be*

considered as a conflict-of-law rule. It analyses the possibility of agreements on the applicable law and argues that Article 3 GDPR qualifies as an overriding mandatory provision. It finds that the issue of the applicable national law is no longer addressed by the GDPR and that a crucial distinction should therefore be made between internal and external conflicts of law. It argues that the country-of-origin principle is the key to determining which national data protection law applies. Furthermore, the article analyses Article 3 GDPR in more detail from the perspective of private international law. It finds that the targeting criterion is helpful in mitigating the problem of information asymmetries in view of the applicable data protection law. However, it criticizes the establishment criterion because it puts European companies at a competitive disadvantage. Finally, the article proposes to incorporate a "universal" conflict-of-law rule into the Rome II Regulation which should be accompanied by a general conflict-of-law rule specifically addressing violations of privacy and rights relating to personality.

Voß, Wiebke, Gerichtsverbundene Online-Streitbeilegung: ein Zukunftsmodell? Die online multi-door courthouses des englischen und kanadischen Rechts (Court-connected ODR: A Model for the Future? – Online Multi-door Courthouses Under English and Canadian Law), pp. 62 et seq

Will conflict management systems based on the model of companies such as eBay and PayPal soon become a part of civil proceedings before German state courts? Recently, some thought has been given to the development of a new "expedited online procedure" designed to provide an affordable and fast alternative to traditional civil litigation for small consumer claims, thus broadening access to justice. After a brief outline of the current barriers to the justice system and the shortcomings of the private ODR platforms consumers often turn to instead, this article explores the concept of online procedures which other legal systems have developed in response to similar challenges. The analysis of typical, trendsetting examples of e-courts – the Civil Resolution Tribunal under Canadian Law as well as the Online Court that is currently being established in England – reveals a new model of court-connected ODR that is based on the integration of private ODR structures into the justice system. By harnessing digital technologies and integrating methods of dispute prevention and consensual dispute resolution into the state-based proceedings, such online courts offer enormous potential for lay-friendly, accessible civil

justice while at the same time using scarce judicial resources sparingly. On the other hand, online technology alone is not a panacea. Establishing online procedures in Germany poses challenges which go beyond the technical dimension. These procedures may conflict with constitutional requirements and procedural maxims such as the principle of open justice, the right to be heard before the legally designated court and the principle of immediacy. However, a well thought-out design and minor modifications of the English and Canadian models would avoid these conflicts without losing the benefits of the innovative procedure.

Monsenepwo, Justin, Vereinheitlichung des Wirtschaftsrechts in Afrika durch die OHADA (The Unification of Business Law in Africa Through OHADA), pp. 97 et seq

In the 1980s, legal and judicial uncertainty prevailed in most western and central African countries, thereby impeding local and foreign investments. To improve the investment climate and further legal and economic integration in Africa, fourteen western and central African States created the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (Organization for the Harmonization of Business Law in Africa, OHADA) on 17 October 1993. As per the preamble of the Treaty on the Harmonization of Business Law in Africa, OHADA aims to harmonize business laws in Africa through the elaboration and the adoption of simple, modern, and common business law regulations adapted to the economies of its Member States. Nearly two decades after its creation, OHADA has developed ten Uniform Acts and three main Regulations, which cover several legal areas, such as company law, commercial law, security interests, mediation, arbitration, enforcement procedures, bankruptcy, transportation law, and accounting. This article analyses the historical background, the institutions, and the main provisions of some of these Uniform Acts and Regulations. It also recommends a few legal areas which OHADA should make uniform to increase legal certainty and predictability in civil and commercial transactions in Africa.

Private International Law and Venezuelan Academia in 2019: A Review

by José Antonio Briceño Laborí, Professor of Private International Law, Universidad Central de Venezuela y Universidad Católica Andrés Bello

In 2019 the Venezuelan Private International Law (hereinafter "PIL") academic community made clear that, despite all the difficulties, it remains active and has the energy to expand its activities and undertake new challenges.

As an example of this
we have, firstly, the different events in which our professors have
participated and the diversity of topics developed by them, among which the following stand out:

- XI
  Latin American Arbitration Conference, Asunción, Paraguay, May 2019 (Luis
  Ernesto Rodríguez – How is tecnology impacting on arbitration?)
- Conferences for the 130th
  Anniversary of the Treaties of Montevideo of 1889, Montevideo, Uruguay, June
  2019 (Eugenio Hernández-Bretón and Claudia Madrid Martínez – The recent
  experience of some South American countries not part of Montevideo Treaties in comparative
  perspective to them. The case of Venezuela).
- OAS XLVI Course on
  International Law. Rio de Janeiro, Brazil, August 2019 (Javier Ochoa Muñoz – Effectiveness
  of foreign judgements and transnational access to justice. Reflections from global
  governance).
- The Role of Academia in Latin

American Private Intertnational Law, Hamburg, Germany, September 2019 (Javier
Ochoa Muñoz – The Legacy of Tatiana Maekelt in Venezuela and in the Region).

- XIII ASADIP Annual Conference
  2019: Transnational Effectiveness of Law: Recognition and enforcement of foreign judgments, arbitral awards and other acts (Claudia Madrid Martínez –
  Transnational Efficacy of Foreign Judgments – Flexibilization of Requirements; Eugenio
  Hernández-Bretón – Transnational Effectiveness of Provisional Measures; and
  Luis Ernesto Rodríguez – New Singapore Convention and the execution of international agreements resulting from cross-border mediation).

However, this year's three
most important milestones for our academic community occurred on Venezuelan soil. Below we review each one in detail:

1. **Celebration of the 20th Anniversary of the Venezuelan PIL Act**

The
Venezuelan
PIL Act, the first autonomous legislative instrument on this subject in the continent, entered into force on February 6, 1999 after a six months *vacatio legis* (since it was enacted in the Official Gazette of the Republic of Venezuela on August 6, 1998).

This instrument has a
long history, as its origins date back to the Draft Law on PIL Norms written by professors Gonzalo Parra-Aranguren, Joaquín Sánchez-Covisa and Roberto Goldschmidt in 1963 and revised in 1965. The Draft Law was rescued in 1995 on the occasion of the First National Meeting of PIL Professors. Its content was updated and finally a new version of the Draft Law was sent by the professors to the Ministry of Justice, which in turn sent it to the Congress, leading to its enactment (for an extensive overview of the history of the Venezuelan PIL Act and its content, see: Hernández-Bretón, Eugenio, Neues venezolanisches

Gesetz über das Internationale Privatrecht, *IPRax* 1999, 194 (Heft 03); Parra-Aranguren,
Gonzalo, The Venezuelan Act on Private International Law of 1998, *Yearbook of Private International Law*, Vol. 1 1999, pp. 103-117; and B. de Maekelt, Tatiana, Das neue venezolanische Gesetz über Internationales Privatrecht, *RabelsZ*,
Bd. 64, H. 2 (Mai 2000), pp. 299-344).

To celebrate the 20th anniversary of the Act, the Private International and Comparative Law Professorship of the Central University of Venezuela and the "Tatiana Maekelt" Institute of Law with the participation of 7 professors and 9 students of the Central University of Venezuela Private International and Comparative Law Master Program.

All the expositions revolved around the Venezuelan PIL Act, covering the topics of the system of sources, vested rights, ordre public, in rem rights, consumption contracts, punitive damages, jurisdiction matters, international labour relations, recognition and enforcement of foreign judgements, transnational provisional measures and the relations between the Venezuelan PIL Act and international arbitration matters. The conference was both opened and closed by the professor Eugenio Hernández-Bretón with two contributions: "The Private International Law Act and the Venezuelan university" and "The 'secret history' of the Private International Law Act".

- **Private International and Comparative Law Master Program's Yearbook**

On the occasion of the XVIII National Meeting of Private International Law Professors, the Private International and Comparative Law Master's Degree Program of the Central University of Venezuela launched its website and the first issue of its yearbook. This specialized publication was long overdue, particularly in the Master's Program context which is focused on educating and training researchers and professors

in the areas of Private International Law and Comparative Law with a strong theoretical
foundation but with a practical sense of their fields. The Yearbook will allow professors, graduates, current students and visiting professors to share their views on the classic and current topics of Private International Law and Comparative Law.

This
first issue included the first thesis submitted for a Master's Degree on the institution of *renvoi*, four papers spanning International Procedural Law, electronic means of payment, cross-border know-how contracts and International Family Law, sixteen of the papers presented during the Commemoration of the Twentieth Anniversary of the Venezuelan Private International Law Act's entry into force, and two collaborations by Guillermo Palao Moreno and Carlos Esplugues Mota, professors of Private International Law at the University of Valencia (Spain), that shows the relation of the Program with visiting professors that have truly nurtured the students' vision of their area of knowledge.

The
Call of Papers for the 2020 Edition of the Yearbook is now open. The deadline for the reception of contributions will be April 1st, 2020 and the expected date of publication is May 15th, 2020. All the information is available here.
The author guidelines are available here. Scholars
from all over the world are invited to contribute to the yearbook.

- **Libro Homenaje al Profesor Eugenio Hernández-Bretón**

On
December 3rd, 2019 was launched a book to pay homage to Professor Eugenio Hernández-Bretón. Its magnitude (4 volumes, 110 articles and 3298) is a mirror of the person honored as we are talking about a highly productive and prolific lawyer, professor and researcher and, at the same time, one of the humblest human beings that can be known. He is truly one of the main reasons why the Venezuelan Private International Law professorship is held up to such a high standard.

The
legacy of Professor Hernández-Bretón is recognized all over the work. Professor of Private International Law at the Central University of Venezuela, Catholic University Andrés Bello and Monteávila University (he is also the Dean of the Legal and Political Sciences of the latter), Member of the Venezuelan Political and Social Sciences Academy and its President through the celebration of the Academy'a
centenary, the fifth Venezuelan to teach a course at The Hague Academy of International Law and a partner in a major law firm in Venezuela (where he has worked since his law school days) are just some of the highlights of his career.

The
contributions collected for this book span the areas of Private International Law, Public International Law, Comparative Law, Arbitration, Foreign Investment, Constitutional Law, Administrative Law, Tax Law, Civil Law, Commercial Law, Labor Law, Procedural Law, Penal Law, General Theory of Law, Law & Economics and Law & Politics. The book closes with six studies on the honored.

The
contributions of Private International Law take the entire first volume. It includes the following articles:

- Adriana
  Dreyzin de Klor – El Derecho internacional privado argentino aplicado a partir
  del nuevo Código Civil y Comercial (The Argentine Private International Law
  applied from the new Civil and Commercial Code).
- Alfredo
  Enrique Hernández Osorio – Objeto, contenido y características del Derecho
  internacional privado (Purpose, content and characteristics of Private International Law).
- Andrés
  Carrasquero Stolk – Trabajadores con elevado poder de negociación y Derecho

applicable a sus contratos: no se justifica restricción a la autonomía de las partes (Workers with high bargaining power and applicable law to their contracts: no restriction to party autonomy is justified).

- Carlos
  E. Weffe H. – La norma de conflicto. Notas sobre el método en el Derecho internacional privado y en el Derecho internacional tributario (The conflict
  norm. Notes on the method in Private International Law
  and in International Tax Law).
- Cecilia
  Fresnedo de Aguirre – Acceso al derecho extranjero en materia civil y comercial: cooperación judicial y no judicial (*Access to foreign law in civil and commercial matters: judicial and non-judicial cooperation*).
- Claudia
  Madrid Martínez – El rol de las normas imperativas en la contratación internacional contemporánea (The role of peremptory norms in contemporary
  international contracting).
- Didier
  Opertti Badán – Reflexiones sobre gobernabilidad y Derecho internacional privado (Reflections on governance and Private International Law).
- Fred
  Aarons P. – Regulación del internet y el derecho a la protección de datos personales en el ámbito internacional (Internet regulation and the right to personal data protection at international level).
- Gerardo
  Javier Ulloa Bellorin – Interpretación del contrato: estudio comparativo entre
  los principios para los contratos comerciales internacionales del UNIDROIT y el
  derecho venezolano (Contract interpretation: comparative study between the
  UNIDROIT Principles on International Commercial Contracts and Venezuelan law).
- Gilberto
  Boutin I. – El recurso de casación en las diversas fuentes del Derecho internacional privado panameño (Cassational complaint in the various

sources of
Panamanian Private International Law).

- Guillermo
  Palao Moreno – La competencia judicial internacional en la nueva regulación
  europea en materia de régimen económico matrimonial y de efectos patrimoniales de
  las uniones registradas (International jurisdiction in the new European
  regulation on the economic matrimonial regime and the property effects of
  registered partnerships).
- Héctor
  Armando Jaime Martínez – Derecho internacional del trabajo (International Labor
  Law).
- Javier
  L. Ochoa Muñoz – El diálogo de las fuentes ¿un aporte del Derecho internacional
  privado a la teoría general del Derecho? (The dialogue
  of sources: a contribution from private international law to the general theory
  of law?
- Jorge
  Alberto Silva – Contenido de un curso de Derecho internacional regulatorio del
  proceso (Content of a course on international law regulating the process).
- José
  Antonio Briceño Laborí – La jurisdicción indirecta en la ley de derecho
  internacional privado.
- José
  Antonio Moreno Rodríguez – Los Principios Unidroit en el derecho paraguayo (The
  UNIDROT Principles in Paraguayan law).
- José
  Luis Marín Fuentes – ¿Puede existir una amenaza del Derecho uniforme frente al
  Derecho interno?: ¿podríamos hablar de una guerra anunciada? (Can

there be a threat to national law from uniform law? Could we talk about an announced war?).

- Jürgen Samtleben – Cláusulas de jurisdicción y sumisión al foro en América Latina (Jurisdiction and submission clauses in Latin America).
- Lissette Romay Inciarte – Derecho procesal internacional. Proceso con elementos de extranjería (International Procedural Law. Trial with foreign elements).
- María Alejandra Ruíz – El reenvío en el ordenamiento jurídico venezolano (*Renvoi* in the Venezuelan legal system).
- María Mercedes Albornoz – La Conferencia de La Haya de Derecho Internacional Privado y el Derecho aplicable a los negocios internacionales (The Hague Conference on Private International Law and the applicable Law to International Business).
- María Victoria Márquez Olmos – Reflexiones sobre el tráfico internacional de niños y niñas ante la emigración forzada de venezolanos (Reflections on international child trafficking in the face of forced migration of Venezuelans).
- Mirian Rodríguez Reyes de Mezoa y Claudia Lugo Holmquist – Criterios atributivos de jurisdicción en el sistema venezolano de Derecho internacional privado en materia de títulos valores (Attributive criteria of jurisdiction in the Venezuelan system of Private International Law on securities trading matters).
- Nuria González Martín – Globalización familiar: nuevas estructuras para su estudio (Globalization

of the family: new structures for its study).

- Peter Mankowski – A very special type of renvoi in contemporary Private International Law. Article 4 Ley de Derecho Internacional Privado of Venezuela in the light of recent developments.
- Ramón Escovar Alvarado – Régimen aplicable al pago de obligaciones en moneda extranjera (Regime applicable to the payment of obligations in foreign currency).
- Roberto Ruíz Díaz Labrano – El principio de autonomía de la voluntad y las relaciones contractuales (The party autonomy principle and contractual relations).
- Stefan Leible – De la regulación de la parte general del Derecho internacional privado en la Unión Europea (Regulation of the general part of Private International Law in the European Union).
- Symeon c. Symeonides – The Brussels I Regulation and third countries.
- Víctor Gregorio Garrido R. – Las relaciones funcionales entre el forum y el ius en el sistema venezolano de derecho internacional privado (The functional relations between forum and ius in the Venezuelan system of private international law.

As we see, the contributions are not just from Venezuelan scholars, but from important professors and researchers from Latin America, USA and Europe. All of them (as well as those included in the other three volumes) pay due homage to an admirable person by offering new ideas and insights in several areas of law and related sciences.

The book will be
available for sale soon. Is a must have publication for anyone interested in Private International Law and Comparative Law.

Inaugural Lecture by Alex Mills (UCL): The Privatisation of Private (and) International Law

Speaker: Professor Alex Mills (Faculty of Laws, UCL)

Chair: Professor Campbell McLachlan QC (Victoria University Wellington)

Date and time: 06 February 2020, 6:00 pm to 7:00 pm

Location: Bentham House, UCL Laws, London, WC1H 0EG, United Kingdom

Abstract

The
boundary between public and private legal relations at the international level has become increasingly fluid. State actors engage internationally in private commercial activity, while the privatisation of traditional governmental functions has led to private actors exercising ostensibly public authority, and accelerated the development of a hybridised public-private international investment law. Privatisation as a general phenomenon is much debated, although there has been relatively little focus on the governmental functions which are perhaps of most interest to lawyers – law making, law enforcement, and dispute resolution. This lecture will argue that modern legal developments in the context of private law and cross-border private

legal relations can be usefully analysed as two distinct forms of privatisation. First, privatisation of the allocative functions of public and private international law, in respect of both institutional and substantive aspects of regulation. Second, privatisation of the institutional and substantive regulation of private legal relationships themselves, through arbitration and the recognition of non-state law. Analysing these developments through the lens of privatisation highlights a number of important critical questions which deserve greater consideration.

About the Speaker

Alex Mills is Professor of Public and Private International Law in the Faculty of Laws, University College London. His research encompasses a range of foundational issues across public and private international law, as well as international investment law and commercial arbitration. He has degrees in Philosophy and Law from the University of Sydney, and an LLM and PhD (awarded the Yorke Prize) from the University of Cambridge, where he also taught before joining UCL. His publications include 'Party Autonomy in Private International Law' (CUP, 2018), 'The Confluence of Public and Private International Law' (CUP, 2009), and (co-authored) 'Cheshire North and Fawcett's Private International Law' (OUP, 2017). He was awarded the American Society of International Law's Private International Law Prize in 2010, has Directed Studies in Private International Law at the Hague Academy of International Law, and is a member of Blackstone Chambers Academic Advisory Panel and the Editorial Board of the International and Comparative Law Quarterly.

The organisors request you to consult for more information and to register for the event here.