

Final Call: The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries — Pre- Conference Video Roundtable University of Bonn / HCCH on 29 October 2020



The HCCH 2019 Judgments Convention:

**Prospects for Judicial Cooperation in Civil and
Commercial Matters between the EU and Third Countries**

**Pre-Conference Video Roundtable
University of Bonn / HCCH**

Thursday, 29 October 2020, 6.30 p.m. (UTC+1) (via Zoom)

Speakers:

Dr Christophe Bernasconi, Secretary General of the HCCH

**Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy,
DG Trade, European Commission**

**Dr Alexandra Diehl, White & Case LLP, Frankfurt, Chair of the
Arbitration/Litigation/Mediation (“ALM”) Working Group of the German-
American Lawyers Association (DAJV)**

**Dr Veronika Efremova, Senior Project Manager GIZ, Open Regional Funds
for South East Europe-Legal Reform**

**Andreas Stein, Head of Unit, DG JUST - A1 “Civil Justice”, European
Commission**

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

Moderators:

Dr João Ribeiro-Bidaoui, First Secretary, HCCH

Prof Dr Matthias Weller, University of Bonn

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 neighbouring 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 USA are currently the largest trade partner of the EU. 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, the EU still seems to be in search of a strategy for judicial cooperation in civil matters with countries outside the Union. The HCCH 2019 Judgments Convention may be a valuable tool to establish and implement such a strategy, in particular alongside the EU's external trade relations. These prospects will be discussed by the speakers and a global audience in this Pre-Conference Video Roundtable.

We warmly invite you to participate and discuss with us. In order to do so, please register with sekretariat.weller@jura.uni-bonn.de. You will receive the access data for the video conference via zoom per email, including our data protection concept, the day before the event.

If you have already registered and received a confirmation from our office (please allow us a couple of days for sending it back to you), your registration is valid and you do not need to re-register.

Please do not hesitate to forward our invitation to friends and colleagues if you wish.

Main Conference "The HCCH 2019 Judgments Convention", 13 and 14 September 2021

Our event intends to prepare the main conference on the HCCH 2019 Judgments Convention at the University of Bonn (Professors Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Wulf-Henning Roth, Philipp Reuss, Matthias Weller), co-hosted by the HCCH (Dr Christophe Bernasconi, Dr João Ribeiro-Bidaoui), on 13

and 14 September 2021 (originally scheduled for 25 and 26 September 2020, but rescheduled to avoid Covid-19 risks). At this conference on the campus of the University of Bonn, leading experts will present on the legal concepts and techniques of the Convention, and policy issues will be further developed.

Speakers will include (listed chronologically):

Hans van Loon (key note), Former Secretary General of the Hague Conference on Private International Law, The Hague;

Prof Dr Xandra Kramer, Erasmus University Rotterdam;

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich;

Prof Dr Pietro Franzina, Catholic University of Milan;

Prof Dr Francisco Garcimartín Alférez, Autonomous University of Madrid;

Dr Ning Zhao, Senior Legal Officer, HCCH;

Prof Paul Beaumont, University of Stirling;

Prof Dr Marie-Elodie Ancel, University Paris 2 Panthéon-Assas;

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

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

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

Prof Zheng (Sophia) Tang, University of Newcastle;

Jose Angelo Estrella-Faria, Principal Legal Officer and Head, Legislative Branch International Trade Law Division, Office of Legal Affairs, United Nations, Former Secretary General of UNIDROIT.

For the full programme see

<https://www.jura.uni-bonn.de/professur-prof-dr-weller/conference-on-the-hcch-2019-judgments-convention-on-13-and-14-september-2021/>. You will receive an invitation for registration in due time. A registration fee of € 100.- will be asked for participating.

October 2020 Issue of International and Comparative Law Quarterly

The October 2020 issue of *International and Comparative Law Quarterly* was recently published. It features two articles on private international law:

S Donelly, “Conflicting Forum-Selection Agreements in Treaty and Contract” (2020) 69 *International and Comparative Law Quarterly* 759 – 787.

When an investor submits a claim to arbitration under a treaty that falls within the scope of an existing, contractual forum-selection clause between it and the host State, which prevails: the agreement to arbitrate under the treaty or the contractual clause? This is a vexed and commonly arising question. This article argues that by placing it in the context of both private and public international law and reasoning from first principles it is possible to arrive at a coherent, reliable and satisfactory approach. The true question is whether the contractual clause is a waiver of the investor’s right to recourse to an investment tribunal.

TC Hartley, “Recent Developments under the Brussels I Regulation” (2020) 69 *International and Comparative Law Quarterly* 779 – 790.

This article considers recent CJEU case law on the Brussels I Regulation. Two aspects of Article 7(1) (which applies to matters relating to a contract) are considered: the first is whether the contract must be between the parties to the

case; the second is whether membership of an association should be regarded as constituting implied consent to be bound by decisions of the association so that jurisdiction to enforce them may be taken under Article 7(1). The article also discusses recent case law on who counts as a 'consumer' in terms of Article 17.

Out now: Yearbook of Private International Law XXI (2019/2020)

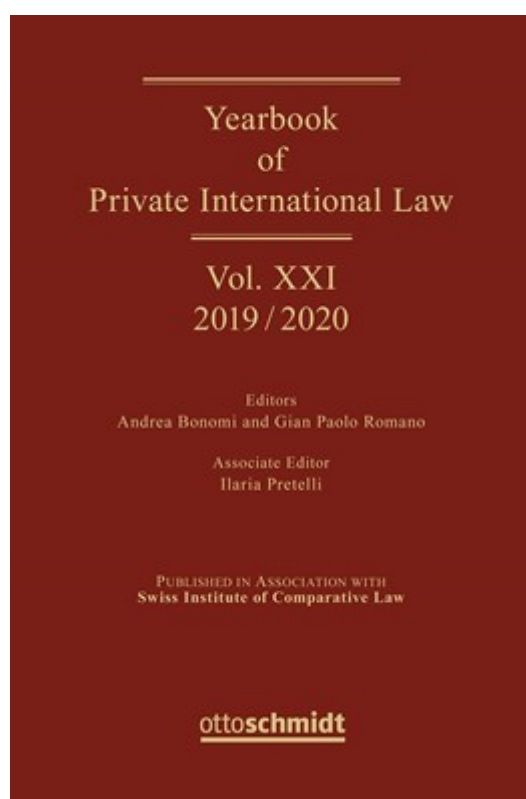


TABLE OF CONTENTS

Foreword	xi
Abbreviations	xiii

Doctrine

Janeen CARRUTHERS

Discerning the Meaning of “Habitual Residence of the Child” in

UK Courts – A Case for the Oracle of Delphi 1

Christian KOHLER

The EU Succession Regulation before the German Courts 2016-2019 37

Mihail DANOV

Cross-Border Litigation – New Data, Initial Brexit Implications in

England and Wales and Long-Term Policy Choices 57

Nikitas E. HATZIMIHAIL

On the Doctrinal Beginnings of the Conflict of Laws 101

Interim Measures in International Commercial Litigation

Proceedings of the SICL’s 31st Private International Law Day -

Lausanne, 23 May 2019

Andrea BONOMI

Interim Measures at the Crossroads of International Litigation and

Arbitration – Some Remarks on Concurrent Jurisdiction and Cross-

Border Enforcement 137

Alexander LAYTON

Interim Measures in English Law and their Circulation 159

Sandrine GIROUD / Noémie RAETZO

The Recognition and Enforcement of Foreign Interim Measures

in Switzerland 175

Ilaria PRETELLI

The Law Applicable to Provisional and Protective Measures – With
a Focus on the EU System of Ancillary Reliefs 197

Gilles CUNIBERTI

Jurisdiction to Grant Interim Measures in Support of Arbitration –
The Influence of European Law 225

Laurent HIRSCH

Swiss Practice of Interim Relief in International Arbitration 237

Karim EL CHAZLI / Ahmed HABIB

Interim Measures in International Arbitration – An Arab Perspective 259

viii

The 2019 Hague Judgments Convention

Matthias WELLER

The Jurisdictional Filters of the HCCH 2019 Judgments Convention 279

Marko JOVANOVIĆ

Thou Shall (Not) Pass – Grounds for Refusal of Recognition and
Enforcement under the 2019 Hague Judgments Convention 309

Lidia SPITZ

Refusal of Recognition and Enforcement of Foreign Judgments on
Public Policy Grounds in the Hague Judgments Convention –
A Comparison with The 1958 New York Convention 333

Cristina M. MARIOTTINI

Establishment of Treaty Relations under The 2019 Hague Judgments

Convention 365

National Reports

Yitshak COHEN

International Jurisdiction of the Rabbinical Courts in Claims for

Divorce in Israel 381

Florence GUILLAUME

The Connecting Factor of the Place of Celebration of Marriage in

Swiss Private International Law 399

Yin LIU

Recognition of Foreign Same-Sex Unions in China 425

Richard Frimpong OPPONG / Sam TECLE

The *lex loci delicti* Rule in Canadian Conflict of Laws 457

Eduardo PICAND ALBÓNICO

Law of Succession to Estates of Deceased Persons in Chilean Private

International Law 489

Court Decision

Wolfgang FABER

Foreign Proprietary Security Rights Failing to Comply with National

Publicity Standards to Be Accepted? On Case No. 3 OB 249/18S of the

Austrian Supreme Court of Justice 509

Forum

Pascal FAVROD-COUNE

The Legal Position of the Weaker Party in B2B Relationships with
Online Platforms in the European Union – An Analysis of Dispute
Resolution Mechanisms in Regulation (EU) 2019/1150..... 523

Maria Chiara MARULLO

“Almost” Universal Jurisdiction 549

Adeline MICHOU

Public Policy Exceptions in U.S. and European Private International
Law – An Ultimate Fortress for Social and Environmental Standards? 569

Chukwuma Samuel Adesina OKOLI

Choice of Law in The European Union – Common Law Procedure and
Evidence 589

Sven RIVA

Decentralized Autonomous Organizations (DAOs) in the Swiss
Legal Order 601

Cassius Jean SOSSOU BIADJA

Bridging the Gap in the OHADA Treaty with Respect to the
Interpretative Role of the CCJA in Arbitration Matters 639

Index
663

Anti-Suit Injunction Issued in China: Comity, Pragmatism and Rule of Law

1 Anti-suit Injunctions issued in *Huawei v Conversant* and *Xiaomi v Intel Digital*

Chinese courts have issued two anti-suit injunctions recently in cross-border patent cases. The first is the Supreme Court's ruling in *Huawei v Conversant*, (2019) Zui Gao Fa Zhi Min Zhong 732, 733 and 734 No 1. (here) Huawei, a Chinese telecom giant brought an action on 25 Jan 2018 in Jiangsu Nanjing Intermediate Court requiring determination of FRAND royalty for all Chinese patents held by Conversant that is essential to 2G, 3G and 4G standard (standard essential patent or 'SEP'). Conversant brought another action in Düsseldorf, Germany on 20 April 2018 claiming Huawei infringed its German patents of the same patent family. On 16 Sept 2019, the Chinese court ordered a relatively low rate pursuant to Chinese standard and Conversant appealed to the Supreme Court on 18 Nov 2019. On 27 Aug 2020, the German Court held Huawei liable and approved the FRAND fee proposed by Conversant, which is 18.3 times of the rate determined by the Chinese court. Pursuant to Huawei's application, the Chinese Supreme Court restrained Conversant from applying the German court to enforce the German judgment. The reasons include: the enforcement of the Düsseldorf judgment would have a negative impact on the case pending in Chinese court; an injunction is necessary to prevent irreparable harm to Huawei; the damage to Conversant by granting the injunction is significantly smaller than the damage to Huawei if not granting injunction; injunction will not harm public interest or international comity.

On 9 June 2020, Chinese company Xiaomi brought the proceedings in the Wuhan Intermediate Court requesting the determination of the global FRAND rate for SEPs held by the US company, Inter Digital. On 29 July, Intel Digital sued Xiaomi in Delhi High Court in India for infringement of Indian patents of the same patent family and asking for injunction. The Wuhan Intermediate Court ordered Inter

Digital to stop the injunction application in India and prohibited Intel Digital from applying injunctions, applying for the determination of FRAND rate or enforcing injunctions already received in any countries. (Xiaomi v Intel Digital (2020) E 01 Zhi Min Chu 169 No 1) The court provides reasons as follows: Inter Digital intentionally brought a conflicting action in India to hamper the Chinese proceedings; the Indian proceedings may lead to judgments irreconcilable to the Chinese one; an anti-suit injunction is necessary to prevent irreparable harm to Xiaomi's interests; an anti-suit injunction will not harm Intel Digital's legitimate interests or public interests.

2 Innovative Judicial 'Law Making' to Transplant Foreign Law

These two cases are interesting in that they open the door for the courts to 'make law' by providing Chinese legislation innovative interpretation. Chinese law does not explicitly permit the courts to issue anti-suit or anti-arbitration injunctions. Article 100 of the Civil Procedure Law of China permits Chinese courts to order or prohibit the respondent to do, or from doing, certain actions, if the respondent's behaviour may lead to the difficulty to enforce the judgment or cause other damages to the other party. But this act preservation provision was generally used only in the preservation of property, injunction of infringing actions, or other circumstances where the respondent's action may directly cause substantive harm to the applicant's personal or proprietary rights. It was never applied as the equivalent to anti-suit injunctions. The 'Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in Cases Involving the Review of Act Preservation in Intellectual Property Disputes' (No. 21 [2018] of the Supreme People's Court) enforced from 1 Jan 2019 did not mention the court's competence to issue anti-suit injunction. These two judgments provide innovative interpretation to Art 100 by extending act preservation measures to cover anti-suit injunction.

It is important to note that anti-suit injunction is a controversial instrument used to combat the conflict of jurisdiction and forum shopping. It is not issued frequently or lightly. Instead, there is a high threshold to cross. In England, for example, an anti-suit injunction can be ordered only if the foreign proceedings are vexatious or oppressive and England is the natural forum, (*Airbus Industrie GIE v Patel* [1999] AC 119) or the foreign proceedings would breach a valid exclusive jurisdiction or arbitration clause between the parties. (*The "Angelic Grace"*, [1995] 1 Lloyd's Rep. 87) In both cases, neither courts justify China is a natural

forum. Such justification may be more difficult in disputes concerning foreign patent due to the territoriality of patent. Furthermore, foreign proceedings are not oppressive just because they award higher rate to the patent holder, which is not properly handled either by the Chinese judgments. In the US, anti-suit injunction requires the parties and issues in foreign proceedings are 'the same' as the local ones. (*E. & J. Gallo Winery v. Andina Licores SA*, 446 F. 3d 984 (Court of Appeals, 9th Circuit 2006)) This barrier is difficult to lift in disputes concerning infringement of national patents in the same family. In FRAND cases, the court usually relies on the 'contractual umbrella over the patent' to avoid the difficulty brought by the territoriality of patent. (*Huawei v Samsung*, Case No. 3:16-cv-02787-WHO) Even if a contractual approach is adopted, the court still needs to ascertain the foreign litigation may frustrate a local policy, would be vexatious or oppressive, would threaten the U.S. court's in rem jurisdiction, or would prejudice other equitable considerations. (*Zapata Off-Shore Company v. Unterweser Reederei GMBH*, 428 F.2d 888 (United States Court of Appeals, Fifth Circuit, 1970))

The Chinese judgments show clear sign of borrowing the common law tests. In particular, the *Huawei v Conversant* judgment has high similarity with *Huawei v Samsung* judgment rendered by the California Northern District Court. The problem is the enjoined Düsseldorf judgment awarded FRAND rate instead of an unconditional injunction like the Shenzhen judgment. While enforcing a permanent injunction in the biggest market of Samsung may lead to a forced settlement which would make the US proceedings unnecessary or redundant, enforcing the court determined FRAND rate covering only one state may not have the same effect on the Chinese proceedings. In particular, due to different standards to calculate the FRAND rate, a higher rate covering the German market is not oppressive and would not result in a forced settlement for Chinese FRAND rate. The Wuhan judgment focuses on the vexatious foreign proceedings brought in bad faith and abuse of process. The Wuhan court considers the Indian proceedings was brought to frustrate the pending proceedings before the Wuhan court. The judgment seems to follow the English trait. However, the court did not fully explain how an action purely covering Indian patents and concerning Indian market would affect the Chinese proceedings based on contract. It is also unclear whether Chinese court could award a global FRAND rate as the English court will do. Although in contrast to many other judgments, these two judgments show reasonable quality and laudable efforts of reasoning, reading in details may

suggest the courts have learnt more in form instead of substance. The judicial transplant of very unfamiliar common law instruments into Chinese practice seems a little awkward and immature.

3 Comity, Pragmatism and Rule of Law

Anti-suit injunction is a controversial instrument in that it may infringe foreign judicial sovereignty and comity. Even if it is technically directed to the respondent not a foreign court, it makes judgment on the appropriateness of foreign proceedings, which, in normal circumstances, should be judged by the foreign court. No matter how indirect the interference is, an interference is there. Such an approach is fundamentally incompatible with Chinese jurisprudence and diplomatic policy, which emphasise on the principle of sovereign equality and non-interference. China usually considers parallel proceedings tolerable which concern the judicial sovereignty of two countries and each could continue jurisdiction pursuant to their domestic law. (Art 533 of Civil Procedural Law Judicial Interpretation by SPC) Adopting anti-suit injunction to tackle foreign parallel proceedings or related proceedings directly contradicts this provision.

Since Chinese courts would not deviate from the central government's policy, the two judgments may be a sign to show China is gradually adjusting its international policy from self-restraint to zealous competition, at least in the high-tech area. This is consistent with China's strategic plan to develop its high-tech industry and a series of reform is adopted to improve IP adjudication. It may imply consideration of diffused reciprocity, i.e. since some foreign courts may issue anti-suit injunction to obstruct Chinese proceedings, Chinese courts should have the same power. It may also reflect China's increased confidence on its institutions led by its economic power. The transplant of anti-suit injunction cannot be deemed as admiring foreign law, but a pragmatic approach to use any tools available to achieve their aims. Since anti-suit injunctions may interfere a state's sovereignty, a foreign state may issue 'anti-anti-suit injunction' to block it. While injunction wars occur in high-tech cases, the final trump card should be a country's economic power. Since China is the biggest market for many telecom products, it would be the last market that most companies would give up, which would provide Chinese courts a privilege.

Finally, since anti-suit injunction is not included explicitly in Chinese law, there is no consistent test applying to it. The two judgments have applied different tests

following the practice from different common law countries. It is also noted that the lack of relevant training in exercise discretion in issuing anti-suit injunctions or applying precedents leads to uncertainty and some discrepancy. Issuing anti-suit injunction is serious in that it may affect comity and international relation. It thus cannot be adopted randomly or flexibly by mirroring one or two foreign judgments. If China indeed wants to adopt anti-suit injunction, a test guidance should be provided. Anti-suit injunction needs to be issued under the rule of law.

HCCH 2019 Judgments Convention Repository

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In preparation of the Conference on the HCCH 2019 Judgments Convention on 9/10 June 2023, taking place on campus of the University of Bonn, Germany, registration now open, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately...

Update of 4 April 2023: New entries are printed bold.

Please also check the “official” Bibliography of the HCCH for the instrument.

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III. Recordings of Events Related to the HCCH 2019 Judgments Convention

ASADIP; HCCH	“Conferencia Internacional: Convención HCCH 2019 sobre Reconocimiento y Ejecución de Sentencias Extranjeras”, 3 December 2020 (full recording available here and here)
ASIL	“The Promise and Prospects of the 2019 Hague Convention”, 25-26 June 2020 (full recording available here and here)
CILC; HCCH; GIZ; UIHJ	“HCCH 2019 Judgments Convention: Prospects for the Western Balkans”, Regional Forum 2022, 30 June-1 July 2022 (short official video available here)
CIS Arbitration Forum	“CIS-related Disputes: Treaties, Sanctions, Compliance and Enforcement, Conference, Keynote 2: Russia’s accession to the Hague Convention on Recognition and Enforcement of Foreign Judgments”, 25-26 May 2021 (recording available here)
CUHK	“Latest Development of Hague Conference on Private International Law and the Hague Judgments Convention”, Online Seminar by Prof. Yun Zhao, 25 March 2021 (full recording available here)
Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
GIAS	“Arbitration v. Litigation: Can the Hague Foreign Judgments Convention Change the Game?, Panel 2, 10th Annual International Arbitration Month, Commercial Arbitration Day”, 25 March 2022 (full recording available here)

HCCH	“HCCH a Bridged: Innovation in Transnational Litigation – Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention”, 1 December 2021 (full recording available here)
HCCH	“22 nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)
JPRI; HCCH; UNIDROIT; UNCITRAL	“2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments”, 12 November 2020 (recording available here)
Lex & Forum Journal; Sakkoula Publications SA	« The Hague Conference on Private International Law and the European Union – Latest developments », 3 December 2021 (full recording available here)
UIHJ; HCCH	“3 rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)”, 15/18 March 2021 (full recording available here in French and here in English)
University of Bonn; HCCH	“Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries”, 29 October 2020 (full recording available here)

**The HCCH 2019 Judgments Convention:
Cornerstones - Prospects - Outlook**

University of Bonn / HCCH

Friday and Saturday, 9 and 10 June 2023



Bundesministerium
der Justiz und
für Verbraucherschutz

The HCCH 2019 Judgments Convention: Cornerstones – Prospects – Outlook

Moderators: Prof Dr Moritz Brinkmann, Prof Dr Nina Dethloff, Prof Dr Matthias Weller, University of Bonn;
Prof Dr Matthias Lehmann, University of Vienna;
Dr João Ribeiro-Bidaoui, Former First Secretary, Melissa Ford, Secretary, HCCH

Dates: Friday and Saturday, 9 and 10 June 2023

Venue: Universitätsclub Bonn, Konviktstraße 9, D – 53113 Bonn

8.30 a.m. Registration

9.00 a.m.

Welcome notes

Prof Dr Matthias Weller, Director of the Institute for German and International Civil Procedural Law, Rheinische Friedrich-Wilhelms-Universität Bonn;
Dr Christophe Bernasconi, Secretary General, HCCH

Part I: Cornerstones

1. Scope of application

Prof Dr Xandra Kramer, Erasmus University Rotterdam, Utrecht University, The Netherlands

2. Judgments, Recognition, Enforcement

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich, Germany

3. The jurisdictional filters

Prof Dr Pietro Franzina, Catholic University of Milan, Italy

4. Grounds for refusal

Adj Prof Dr Marcos Dotta Salgueiro, University of the Republic, Montevideo; Director of International Law Affairs, Ministry of Foreign Affairs, Uruguay

5. Article 29: From a Mechanism on Treaty Relations to a Catalyst of a Global Judicial Union

Dr João Ribeiro-Bidaoui, Former First Secretary, HCCH; Dr Cristina Mariottini, Senior Research Fellow at the Max Planck Institute for International, European and Regulatory Law, Luxembourg

1.00 p.m.

Lunch Break

6. The HCCH System for choice of court agreements: Relationship of the HCCH Judgments Convention 2019 to the HCCH 2005 Convention on Choice of Court Agreements

Prof Dr Paul Beaumont, University of Stirling, United Kingdom

Part II: Prospects for the World

1. European Union

Dr Andreas Stein, Head of Unit, DG JUST - A1 "Civil Justice", European Commission

2. Perspectives from the US and Canada

Professor Linda J. Silberman, Clarence D. Ashley Professor of Law, Co-Director, Center for Transnational Litigation, Arbitration, and Commercial Law, New York University School of Law, USA
Professor Geneviève Saumier, Peter M. Laing Q.C. Professor of Law, McGill Faculty of Law, Canada

3. Southeast European Neighbouring and EU Candidate Countries

Prof Dr Ilija Rumenov, Assistant Professor at Ss. Cyril and Methodius University, Skopje, North Macedonia

8.00 p.m.

Conference Dinner (€ 60.-)

Dinner Speech

Prof Dr Burkhard Hess, Director of the Max Planck Institute for International, European and Regulatory Law, Luxembourg

9.00 a.m.

Part II continued: Prospects for the World

4. Perspectives from the Arab World

Prof Dr Bélgil Elbalti, Associate Professor at the Graduate School of Law and Politics at Osaka University, Japan

5. Prospects for Africa

Prof Dr Abubakri Yekini, University of Manchester, United Kingdom

Prof Dr Chukwuma Okoli, University of Birmingham

6. Gains and Opportunities for the MERCOSUR Region

Prof Dr Verónica Ruiz Abou-Nigm, Director of Internationalisation, Professor in International Private Law, School of Law, University of Edinburgh, United Kingdom

7. Perspectives for ASEAN

Prof Dr Adeline Chong, Associate Professor of Law, Yong Pung How School of Law, Singapore Management University, Singapore

8. China

Prof Dr Zheng (Sophia) Tang, University of Newcastle, United Kingdom

1.00 p.m.

Lunch Break

Part III: Outlook

1. Lessons Learned from the Genesis of the HCCH 2019 Judgments Convention

Dr Ning Zhao, Principal Legal Officer, HCCH

2. International Commercial Arbitration and Judicial Cooperation in civil matters: Towards an Integrated Approach

José Angelo Estrella-Faria, Principal Legal Officer and Head, Legislative Branch, International Trade Law Division, Office of Legal Affairs, United Nations; Former Secretary General, UNIDROIT

3. General Synthesis and Future Perspectives

Hans van Loon, Former Secretary General, HCCH

Registration Fee:	€ 220.-
Young Scholars Rate (limited capacity):	€ 110.-
Dinner (optional):	€ 60.-

Registration: Please register with sekretariat.weller@jura.uni-bonn.de. Please communicate your full name and your postal address (for accounting purposes). Clearly indicate whether you want to benefit from the young scholars' reduction of the conference fees and whether you want to participate in the conference dinner. You will receive an invoice per email for the respective conference fee and, if applicable, for the conference dinner. Please make sure that we receive your payment at least two weeks in advance to the conference (26 May 2023 at the latest). After receiving your payment, we will send out a confirmation of your registration. This confirmation will allow you to access the conference hall and the conference dinner.

Please note: Access will only be granted if you are vaccinated against Covid-19. Please confirm in your registration that you are, and attach an e-copy of your vaccination document. Please follow further instructions on site. Thank you for your cooperation. **Accommodation:** We have blocked a larger number of rooms in the newly built hotel "Motel One Bonn-Beethoven", <https://www.motel-one.com/de/hotels/bonn/hotel-bonn-beethoven/>, few minutes away from the conference venue. The hotel's address is: Berliner Freiheit 36, D – 53111 Bonn. The contact details are: bonn-beethoven@motel-one.com, +49 228 9727860. These rooms need to be booked on your own initiative and account by making reservation with the Hotel and by referring to „Universität Bonn“. These rooms will be blocked until 22 April 2023 at the latest. As there will be several larger events in town at the date of our conference we recommend making arrangements.

<https://www.jura.uni-bonn.de/professur-prof-dr-weller/the-hcch-2019-judgments-convention-cornerstones-prospects-outlook-conference-on-9-and-10-june-2023>

Dear Friends and Colleagues,

On 23 June 2022, the European Parliament by adopting JURI Committee Report A9-0177/2022 gave its consent to the accession of the European Union to the HCCH 2019 Judgments Convention. The Explanatory Statement describes the convention with a view to the “growth in international trade and investment flows” as an “instrument [...] of outmost importance for European citizenz ans businesses” and expressed the hope that the EU’s signature will set “an example for other countries to join”. However, the Rapporteur, Ms. Sabrina Pignedoli, also expresses the view that the European Parliament should maintain a strong role when considering objections under the bilateralisation mechanism provided for in Art. 29 of the Convention. Additionally, some concerns were raised regarding the protection of employees and consumers under the instrument. For those interested in the (remarkably fast) adoption process, the European Parliament’s vote can be rewatched [here](#). Given these important steps towards accession, June 2023 should be a perfect time to delve deeper into the subject-matter, and the Conference is certainly a perfect opportunity for doing so:

The list of speakers includes internationally leading scholars, practitioners and experts from the most excellent Universities, the Hague Conference on Private International Law (HCCH), the United Nations Commission on International Trade Law (UNCITRAL), and the European Commission (DG Trade, DG Justice). The Conference is co-hosted by the Permanent Bureau of the HCCH.

The Organizers kindly ask participants to contribute with EUR 220.- to the costs of the event and with EUR 60.- to the conference dinner, should they wish to participate. There is a limited capacity for young scholars to contribute with EUR 110.- to the conference (the costs for the dinner remain unchanged).

Please register with sekretariat.weller@jura.uni-bonn.de. **Please communicate your full name and your postal address (for accounting purposes).** Clearly indicate whether you want to benefit from the young scholars’ reduction of the conference fees and whether you want to participate in the conference dinner. You will receive an **invoice per email** for the respective conference fee and, if applicable, for the conference dinner. **Please make sure that we receive your**

payment at least two weeks in advance to the conference (26 May 2023 at the latest). After receiving your payment we will send out a confirmation of your registration. This confirmation will allow you to access the conference hall and the conference dinner.

Accommodation: We have blocked a larger number of rooms in the newly built hotel **“MotelOne Bonn-Beethoven”**, <https://www.motel-one.com/de/hotels/bonn/hotel-bonn-beethoven/>, few minutes away from the conference venue. The hotel’s address is: Berliner Freiheit 36, D - 53111 Bonn. The contact details are: bonn-beethoven@motel-one.com, +49 228 9727860. These rooms need to be booked on your own initiative and account by making reservation with the Hotel and by referring to „Universität Bonn“. These rooms will be **blocked until 22 April 2023 at the latest**. As there will be several larger events in town at the date of our conference we recommend making arrangements for accommodation quickly.

Further information on the conference:
<https://www.jura.uni-bonn.de/professur-prof-dr-weller/the-hcch-2019-judgments-convention-cornerstones-prospects-outlook-conference-on-9-and-10-june-2023>

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Dinner: **€ 60.-**

Programme

Friday, 9 June 2023

8.30 a.m. Registration

9.00 a.m. Welcome notes

Prof Dr Matthias Weller, Director of the Institute for German and International Civil Procedural Law, Rheinische Friedrich-Wilhelms-Universität Bonn

Dr Christophe Bernasconi, Secretary General of the HCCH

Moderators: Prof Dr Moritz Brinkmann, Prof Dr Nina Dethloff, Prof Dr Matthias Weller, University of Bonn; Prof Dr Matthias Lehmann, University of Vienna; Dr João Ribeiro-Bidaoui, Former First Secretary, HCCH; Melissa Ford, Secretary HCCH

Part I: Cornerstones

1. Scope of application

Prof Dr Xandra Kramer, Erasmus University Rotterdam, Utrecht University, Netherlands

2. Judgments, Recognition, Enforcement

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich, Germany

3. The jurisdictional filters

Prof Dr Pietro Franzina, Catholic University of Milan, Italy

4. Grounds for refusal

Adj Prof Dr Marcos Dotta Salgueiro, University of the Republic, Montevideo; Director of International Law Affairs, Ministry of Foreign Affairs, Uruguay

5. Article 29: From a Mechanism on Treaty Relations to a Catalyst of a Global Judicial Union

Dr João Ribeiro-Bidaoui, Former First Secretary, HCCH

Dr Cristina M. Mariottini, Jurist in Luxembourg

1.00 p.m.

Lunch Break

6. The HCCH System for choice of court agreements: Relationship of the HCCH Judgments Convention 2019 to the HCCH 2005 Convention on Choice of Court Agreements

Prof Dr Paul Beaumont, University of Stirling, United Kingdom

Part II: Prospects for the World

1. European Union

Dr Andreas Stein, Head of Unit, DG JUST - A1 "Civil Justice", European Commission

2. Perspectives from the US and Canada

Prof Linda J. Silberman, Clarence D. Ashley Professor of Law, Co-Director, Center for Transnational Litigation, Arbitration, and Commercial Law, New York University School of Law, USA

Prof Geneviève Saumier, Peter M. Laing Q.C. Professor of Law, McGill Faculty of Law, Canada

3. Southeast European Neighbouring and EU Candidate Countries

Ass. Prof. Dr.sc Ilija Rumenov, Assistant Professor at Ss. Cyril and Methodius University, Skopje, Macedonia

8.00 p.m. Conference Dinner (€ 60.-)

Dinner Speech

Prof Dr Burkhard Hess, Director of the Max Planck Institute for International, European and Regulatory Law, Luxembourg

Saturday, 10 June 2023

9.00 a.m. Part II continued: Prospects for the World

4. Perspectives from the Arab World

Prof Dr Bélig Elbalti, Associate Professor at the Graduate School of Law and Politics at Osaka University, Japan

5. Prospects for Africa

Prof Dr Abubakri Yekini, University of Manchester, United Kingdom

Prof Dr Chukwuma Okoli, University of Birmingham, United Kingdom

6. Gains and Opportunities for the MERCOSUR Region

Prof Dr Verónica Ruiz Abou-Nigm, Director of External Relations, Professor of Private International Law, University of Edinburgh, United Kingdom

7. Perspectives for ASEAN

Prof Dr Adeline Chong, Associate Professor of Law, Yong Pung How School of Law, Singapore Management University, Singapore

8. China

Prof Dr Zheng (Sophia) Tang, Wuhan University, China

1.00 p.m. Lunch Break

Part III: Outlook

1. Lessons Learned from the Genesis of the HCCH 2019 Judgments Convention

Dr Ning Zhao, Principal Legal Officer, HCCH

2. International Commercial Arbitration and Judicial Cooperation in civil matters: Towards an Integrated Approach

José Angelo Estrella-Faria, Principal Legal Officer and Head, Legislative Branch, International Trade Law Division, Office of Legal Affairs, United Nations; Former Secretary General of UNIDROIT

3. General Synthesis and Future Perspectives

Hans van Loon, Former Secretary General, HCCH

February 7, 2023/by Matthias Weller

Download the Conference Poster as a PDF Document.

Invitation: The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries – Pre- Conference Video Roundtable University of Bonn / HCCH on 29 October 2020



The HCCH 2019 Judgments Convention:
Prospects for Judicial Cooperation in Civil and
Commercial Matters between the EU and Third Countries

Pre-Conference Video Roundtable
University of Bonn / HCCH

Thursday, 29 October 2020, 6.30 p.m. (UTC+1) (via Zoom)

Speakers:

Dr Christophe Bernasconi, Secretary General of the HCCH

**Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy,
DG Trade, European Commission**

**Dr Alexandra Diehl, White & Case LLP, Frankfurt, Chair of the
Arbitration/Litigation/Mediation (“ALM”) Working Group of the German-
American Lawyers Association (DAJV)**

**Dr Veronika Efremova, Senior Project Manager GIZ, Open Regional Funds
for South East Europe-Legal Reform**

**Andreas Stein, Head of Unit, DG JUST - A1 “Civil Justice”, European
Commission**

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

Moderators:

Dr João Ribeiro-Bidaoui, First Secretary, HCCH

Prof Dr Matthias Weller, University of Bonn

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 neighbouring 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 USA are currently the largest trade partner of the EU. 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, the EU still seems to be in search of a strategy for judicial cooperation in civil matters with countries outside the Union. The HCCH 2019 Judgments Convention may be a valuable tool to establish and implement such a strategy, in particular alongside the EU's external trade relations. These prospects will be discussed by the speakers and a global audience in this Pre-Conference Video Roundtable.

We warmly invite you to participate and discuss with us. In order to do so, please register with sekretariat.weller@jura.uni-bonn.de. You will receive the access data for the video conference via zoom per email, including our data protection concept, the day before the event.

If you have already registered and received a confirmation from our office (please allow us a couple of days for sending it back to you), your registration is valid and you do not need to re-register.

Please do not hesitate to forward our invitation to friends and colleagues if you wish.

Main Conference “The HCCH 2019 Judgments Convention”, 13 and 14 September 2021

Our event intends to prepare the main conference on the HCCH 2019 Judgments Convention at the University of Bonn (Professors Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Wulf-Henning Roth, Philipp Reuss, Matthias Weller), co-hosted by the HCCH (Dr Christophe Bernasconi, Dr João Ribeiro-Bidaoui), on 13 and 14 September 2021 (originally scheduled for 25 and 26 September 2020, but rescheduled to avoid Covid-19 risks). At this conference on the campus of the University of Bonn, leading experts will present on the legal concepts and techniques of the Convention, and policy issues will be further developed.

Speakers will include (listed chronologically):

Hans van Loon (key note), Former Secretary General of the Hague Conference on Private International Law, The Hague;

Prof Dr Xandra Kramer, Erasmus University Rotterdam;

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich;

Prof Dr Pietro Franzina, Catholic University of Milan;

Prof Dr Francisco Garcimartín Alférez, Autonomous University of Madrid;

Dr Ning Zhao, Senior Legal Officer, HCCH;

Prof Paul Beaumont, University of Stirling;

Prof Dr Marie-Elodie Ancel, University Paris 2 Panthéon-Assas;

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

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

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

Prof Zheng (Sophia) Tang, University of Newcastle;

Jose Angelo Estrella-Faria, Principal Legal Officer and Head, Legislative Branch International Trade Law Division, Office of Legal Affairs, United Nations, Former Secretary General of UNIDROIT.

For the full programme see <https://www.jura.uni-bonn.de/professur-prof-dr-weller/conference-on-the-hcch-2019-judgments-convention-on-13-and-14-september-2021/>. You will receive an invitation for registration in due time. A registration fee of € 100.- will be asked for participating.

Mandatory Mediation Process Has Been Introduced in Turkey Relating to Certain Consumer Disputes

The Law Amending the Civil Procedure Law and Certain Laws No. 7251 has entered into force on 28 July 2020 and has amended the Consumer Protection Law No. 6502. Accordingly, a mandatory mediation process has been implemented under Article 73/A of the Consumer Protection Law as a prerequisite to file a lawsuit relating to consumer disputes having a monetary claim of 10,390 Turkish Liras and above. Provisional Article 2 of the Consumer Protection Law excludes the application of this mandatory mediation rule to cases pending before the first instance and the regional courts of appeal as well as the Court of Cassation, as of the date of entry into force of this amendment.

The amendment in the Consumer Protection Law further envisages exceptions to the said mandatory mediation process. Pursuant Article 73/A/2 of the Consumer Protection Law, disputes within the competence of consumer arbitration tribunals and the objections made against the decisions of the tribunal, interim injunctions, disputes regarding the suspension of production or sales of goods or recalling of the goods from the market and disputes having a nature of a consumer transaction and arising from rights in rem in relation to a immovable property are not subjected to this mandatory mediation process. It is important to add that pursuant Consumer Protection Law certain consumer disputes are envisaged to be resolved through a mandatory consumer arbitration process.

Under Turkish law, a mandatory mediation condition has also been envisaged relating to commercial disputes and certain employment disputes. In relation to commercial disputes, Turkish Commercial Code Article 5/A is the relevant piece of legislation. It is clearly regulated under this article that as of 01.01.2019, completing the mandatory mediation process prior to court proceedings is a prerequisite for the commercial disputes relating to receivables and compensation of a sum. Relating to employment disputes, the relevant piece of legislation regarding the prerequisite of mediation is the Law on Labour Courts numbered 7036. Pursuant Article 3/1 of the said law, in relation to legal disputes relating to employee or employer receivables, compensation and reemployment based on law or individual or collective bargaining agreements, having applied to the mediation process prior to court proceedings is regulated as a prerequisite. This procedural requirement does not apply to pecuniary and non-pecuniary compensation claims arising from work accident or occupational disease and declaratory and recourse actions as well as objections related to such claims pursuant Article 3/3 of the Law on Labour Courts.

It is also important to note that pursuant Article 18/A/11 of the Law on Mediation in Civil Disputes, in the event that the mediation process is ended due to the absence of one of the parties in the first meeting without a valid excuse, that party shall be liable from the costs of litigation; whilst the attorney fees cannot be claimed from the other party even where this party eventually partially or completely succeeds in the relevant case. Nevertheless, in relation to consumer disputes, the recent amendment under the Consumer Protection Law envisages an exception under Article 73/A and provides that where the consumer does not attend the first meeting of the mediation process without a valid excuse he/she

shall not be liable of the legal costs and the fees of his/her attorney can be collected from the other party where he/she receives a judgement in his/her favour.

Pursuant the *lex fori* principle, where a dispute involving a foreign element is brought before a Turkish court, the prerequisite of having completed the mandatory mediation process shall be fulfilled pursuant the aforementioned laws in relation to consumer, commercial and employment disputes. Where the parties fail to fulfill this prerequisite and initiate court proceedings in the absence of a pre-trial mediation process, the case will be dismissed with no further action pursuant Article 18/A/2 of the Law on Mediation in Civil Disputes.

Ethiopia's Ratification of Convention on the Recognition and Enforcement of Foreign Arbitral Awards: A reflection

Written by Bebizuh Mulugeta Menkir, Lecturer of Laws, University of Gondar

babimulugeta@gmail.com

Ethiopia, located in east Africa, is the second most populous country in the continent. The Ethiopian parliament has recently ratified, through proclamation No 1184/2020[1], the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" which is commonly known as "New York Convention" (here after referred as "the Convention"). This short piece aims to reflect some points in reaction to this ratification proclamation, specifically changes that this will bring to the approach to arbitration in Ethiopia.

As stated in the Convention, state parties are obliged to recognize and give effect to arbitral agreements including an arbitral clause; and ordinary courts are

precluded from exercising their jurisdiction on the merits of the case.[2] In addition, unless in exceptional circumstances recognized under the convention, foreign arbitral awards shall be enforced just like domestic arbitral awards.[3]

By ratifying the Convention, Ethiopia undertakes to perform the above-mentioned and other obligations of the Convention. As a result, some of the hitherto debatable issues are addressed by the terms of the Convention. For instance, the Ethiopian Supreme Court cassation bench had previously passed a decision that rejects the parties' agreement that makes the outcome of the arbitration to be final.[4] In its decision, the cassation bench contends that its mandate given by the Ethiopian constitution as well as the "Federal Courts Proclamation re-amendment Proclamation No 454/1997" cannot be limited by an arbitration finality clause. But now, this power of cassation can be taken to have ceased at least in relation to cases falling under the scope of application of the Convention.

The declarations and reservation that Ethiopia has entered while ratifying the Convention should not be forgotten though. As such, Ethiopia will apply the Convention only in relation to arbitral awards made in the territory of another contracting state.[5] In the Civil Procedure Code of Ethiopia, Art 458 and Art 461(1) (a), the law that had been in force before the ratification of the Convention, reciprocity was one of the requirements that need to be fulfilled before recognizing and giving effect to the terms of foreign judgments as well as foreign arbitral awards.

Ethiopian courts require the existence of a reciprocity treaty signed between Ethiopia and the forum state whose judgment is sought to be recognized or enforced.[6] It is fair to assume that Ethiopian courts would have the same stand in relation to foreign arbitral awards. And Art 2(1) has fulfilled this requirement because the arbitral award has been given in the member state to the Convention by itself warrants the recognition and enforcement of the award in Ethiopia.

Moreover, Ethiopia also declares that "the convention will apply on differences arising out of legal relationships, whether contractual or not, which are considered commercial under the National Law of Ethiopia." [7] But here, a national law that provides a comprehensive list or definition of commercial activities hardly exists. As a result, while giving effect to the terms of the Convention, Ethiopian courts are expected to answer what sort of activities shall be deemed to be commercial activities according to Ethiopian law.

The definition contained under Art 2(6) of the “Trade Competition and Consumers Protection Proclamation” will provide some help in identifying “commercial activities” in Ethiopia. Accordingly, “Commercial activities are activities performed by a business person as defined under sub-Art 5 of this article.”[8] And Art 2(5) defines a business person as “any person who professionally and for gain carries on any of the activities specified under Art 5 of the Commercial Code, or who dispenses services or who carries those commercial activities designed as such by law”. [9] Moreover, it is to be noted that the “Commercial Registration and Licensing Proclamation (Proclamation No. 980/2016)” also provides the same kind of definition for commercial activities.[10]

From the combined reading of the above provisions, commercial activities are those activities listed under Art 5 of the Commercial Code, when they are performed by a person professionally and for gain. However, this cannot be a comprehensive answer to the question, as there can be areas other than those listed under Art 5 of the Commercial Code that can be characterized as commercial activities. In addition, there are numerous service deliveries that can be considered as commercial activities. In such cases, Ethiopian courts will have to consult other domestic laws and decide whether the activity in question can be considered as commercial or not.

Last but not least, even if ratified treaties are declared to be an integral part of the law of Ethiopia[11], the domestic application of treaties whose contents have not been published in domestic law gazette has been a debatable issue for long. As there are points that are not incorporated under the ratification proclamation, the same problem may probably arise in relation to the New York Convention. To avoid this challenge, the Ethiopian parliament should have published the provisions of the Convention together with the ratification proclamation.[12] As per its responsibility under Art 5 of the ratification proclamation the Federal Attorney General, should at least have the Convention translated to Ethiopian working languages.

[1] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards Ratification Proclamation, Proclamation No 1184/2020, Federal *Negarit*

Gazette, 26th year No 1, Addis Ababa, 13th March 2020.

[2] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), Art. II(1),(2),(3)

[3] *Id.* Art I and V

[4] National Mineral Corporation Plc. vs. Danni Drilling plc., Federal Supreme Court, cassation bench

[5] Ratification Proclamation, *supra* note 1, Art 2(1)

[6] See *paulos papassinus* case, Federal Supreme court File no 1769/88; *Yosera Abdulmuen et al. vs. Abdulkeni Abdulmuen*, Federal Supreme Court of Ethiopia, Cassation Bench , Fed Sup. Court File No 78206

[7] Ratification Proclamation, *supra* note 1, Art 2(2)

[8] Trade Competition and Consumers Protection Proclamation, Proclamation No 813/2013, Federal *Negarit* Gazette, 20th year No 28, Addis Ababa, 21st March 2013, Art 2(6)

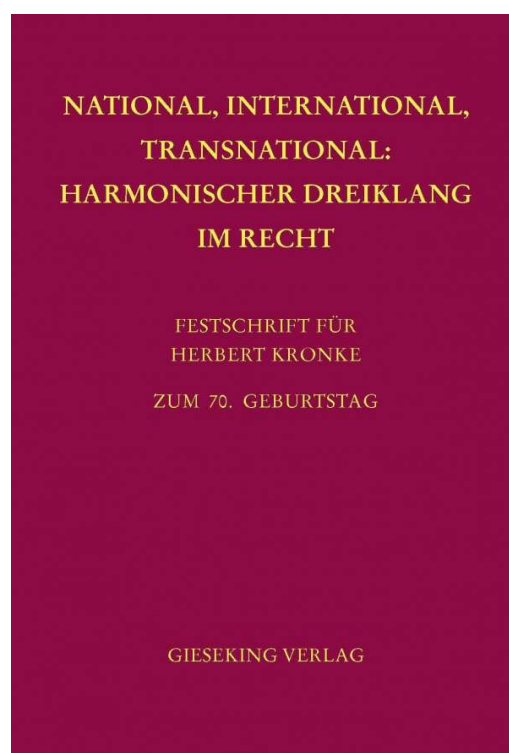
[9] *Id.* Art. 2(5)

[10] The Commercial Registration and Licensing Proclamation, Proclamation No 980/2016, Federal *Negarit* Gazette, 22nd year No. 101, Addis Ababa, 5th August 2016, Art 2(2)&(3)

[11] Constitution of Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, Federal *Negarit* Gazette, 1st year No.1 , Addis Ababa, 21st August 1995, Art 9(4)

[12] International Agreements Making and Ratification Procedure (Proclamation No 1024/2017) states that “The House of Peoples’ Representatives may decide to publish the provisions of the international agreements with the ratification proclamation.”(Art. 11)

Out now: Festschrift for Herbert Kronke on the Occasion of his 70th Birthday: „National, International, Transnational: Harmonischer Dreiklang im Recht“



On the occasion of the 70th birthday of Herbert Kronke, Professor emeritus of the University of Heidelberg, President of the German Institution of Arbitration and Arbitrator (Chairman, Chamber Three) at the Iran US Claims Tribunal at The Hague, Former Secretary-General of UNIDROIT, a large number of friends and colleagues gathered to honour a truly outstanding scholar with essays, edited by Christoph Benicke, Professor at the University of Gießen, Germany, and Stefan Huber, Professor at the University of Tübingen, in an impressive volume of nearly

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Dieter MARTINY

Private international law aspects of geo-blocking and portability

Felix MAULTZSCH

Forumsfremde Eingriffsnormen im Schuldvertragsrecht

zwischen Macht- und Wertedenken

Francesca MAZZA

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Kulturelle Identität und Menschenrechte im Internationalen Privatrecht

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des Art. 9 Rom I-VO - Bemerkungen zu EuGH Rs. C-507/15 - *AGRO*

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Burkhard HESS

Prozessökonomie und Judicial Efficiency – Verfahrensmaximen im Schnittpunkt zwischen nationaler Kodifikation und internationaler Maßstabsbildung –

Stefan HUBER

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Erik JAYME

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Tatjana JOSIPOVI?

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Eva-Maria KIENINGER

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Hans KUHN

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Matthias LEHMANN

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CISG and Africa

Gerald MÄSCH

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Charles W. MOONEY, JR.

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Peter-Christian MÜLLER-GRAFF

Algorithmen im Kartellrecht

Wolfgang OEHLER

Zu Nutzen und Notwendigkeit eines internationalen Einheitskaufrechts in einem leisen Gelehrtendisput zwischen Ernst Rabel und Hans Großmann-Doerth

Charalambos (Haris) P. PAMBOUKIS

Fragments of Legal Discourse on the Future of Global Law

Željko PEJOVIĆ

Development of Carrier by Sea Liability: from Roman Law to the Rotterdam Rules

Andreas PIEKENBROCK

Der (Rück-)Erwerb des Nichtberechtigten - rechtsvergleichende Überlegungen zu einem Klassiker des Sachenrechts

Giuseppe B. PORTALE

Vom Codice Civile des Jahres 1942 zu den (Re)Kodifikationen: Die Suche nach einem neuen Handelsrecht

Teresa RODRÍGUEZ DE LAS HERAS BALLELL

Embracing Technological Disruption in International Transactions: Challenges for Legal Harmonization

Boris SCHINKELS

Fehlerhafte Produkte aus Fernost auf *Amazon Marketplace* - Für eine Produkthaftung transnationaler Warenhausplattformen als Quasi-Importeur

Kurt SIEHR

Unidroit Übereinkommen von 1995 über gestohlene oder

rechtswidrig ausgeführte Kulturgüter - Europäischer Kulturgüterschutz 25 Jahre nach dem Unidroit Übereinkommen

Rolf STÜRNER

Die Mündlichkeit im Zivilprozess - ein europaweit anerkanntes Verfahrensprinzip mit Zukunft?

Lajos VÉKÁS

Über das europäische Verbrauchervertragsrecht und die Herausforderungen bei der Umsetzung

Wolfgang WIEGAND

Brexit - ein Fall für die *clausula rebus sic stantibus*?

III. Handelsschiedsgerichtsbarkeit und Investor-Staat-Streitbeilegung

Mir-Hossein ABEDIAN and Reza EFTEKHAR

Invoking the Ground of Public Policy in Refusing the Recognition and Enforcement of an Arbitral Award Embodying the Remedy of Specific Performance

Georges AFFAKI

Arbitration in Banking and Financial Disputes Deconstructed

Rosemary BARKETT

A Call for More Specificity in Proposed Ethical Codes of Conduct Regarding the Submission of False Evidence in International Arbitration

Massimo V. BENEDETTELLI

“Harmonization” vs. “Pluralism” in the 1958 New York Convention: Balancing Party Autonomy with State Sovereignty

George A. BERMAN

The Self-styled “Autonomy” of International Arbitration

Charles N. BROWER

Harmonizing the Way Forward: Herbert Kronke

Giuditta CORDERO-MOSS

Towards Lean Times for Arbitrability?

Nadia DARWAZEH and Sarah LUCAS

From Paris with Love or How the French Courts Fight International Arbitral Awards Tainted by Corruption and Money Laundering

Giorgio DE NOVA

Arbitrato internazionale con sede in Italia e *Prague Rules*

Siegfried H. ELSING

The New Approach to ISDS – Improvement or Setback?

Axel FLESSNER

Investitionsschutz und Schiedsrecht – Ein schräges Verhältnis

Daniel GIRSBERGER

Von Chamäleons und Hybriden in der grenzüberschreitenden Bewältigung von Wirtschaftskonflikten

Thomas JOHNSON and Sean COLENSO-SEMPLE

Investment Agreements between Developed Countries: Unintended Consequences and Disenchantment

Athanassios KAISSIS

Awards Set Aside in Their Country of Origin. Two Incompatible Schools of Thought

Christoph A. KERN

The Flight from ISDS

Katharina LUGANI

Das lex fori-Prinzip im Schiedsverfahrensrecht – ein überholter Theorienstreit?

Peter MANKOWSKI

Die Schriftform des Art. II (2) UNÜ und ihr Transfer in die digitale Moderne 1475

Werner MELIS

70 Jahre Internationale Handelsschiedsgerichtsbarkeit

Patricia NACIMIENTO, Dirk OTTO and Nicola PORT

The New York Convention and the Rule of Law: Obligation of the Tribunal to Prevent Surprises for the Parties?

Thomas PFEIFFER

Erstreckung von Schiedsvereinbarungen auf Organwalter von Gesellschaften

Jörg PIRRUNG (†)

EuGH und internationale Investitions(schieds)gerichtsbarkeit

Dorothee RUCKTESCHLER und Tanja STOOSS

Die vorzeitige Beendigung der Schiedsrichtertätigkeit

Jürgen SAMTLEBEN

Internationale Handelsschiedsgerichtsbarkeit in Lateinamerika – Eine Skizze
1529

Maxi SCHERER

Article II(2) of the New York Convention is Dead! Long Live Article II(2)! 1543

Christoph SCHREUER

Pre-Investment Activities

Rolf A. SCHÜTZE

Die Dutco-Entscheidung. Probleme der Schiedsrichterbestellung in

Mehrparteienschiedsverfahren

Jamal SEIFI

Globalization of the International Arbitral Process: Trends and Implications

Bruno SIMMA and Jan ORTGIES

Six Considerations before You Begin Interim Measures Proceedings in International Arbitration

David P. STEWART

Sovereignty, Natural Resources, Injunctions, and the Public Policy Exception to the Enforcement of Foreign Arbitral Awards

Chris THOMALE

Rechtsprechung als Öffentliches Gut - Über die gesellschaftlichen Kosten der Schiedsgerichtsbarkeit

Christian TIETJE and Andrej LANG

The (Non-)Applicability of the *Monetary Gold* Principle in ICSID Arbitration Concerning Matters of EU Law

Rolf TRITTMANN and Nikolaos TSOLAKIDIS

Looking into the Crystal Ball: The Future of Commercial Arbitration and European Union Law

Wolfgang WURMNEST

Die Durchsetzung von Art. 101, 102 AEUV durch Schiedsgerichte: Ein Spannungsfeld

IV. Ausländisches und deutsches Privat- und Wirtschaftsrecht

Necla AKDA? GÜNEY

Ein neues Rechtsinstitut im türkischen Aktienrecht: Die Klage auf Auflösung aus

wichtigem Grund

Neil ANDREWS

Contract Law: Interpretation and Breach

Christian BALDUS

Labeo oder Das Geld, die Macht und der Tod

Christoph BENICKE

Haftung des Herstellers für Mangelfolgeschäden im Wege des Händlerregresses

Talia EINHORN

The Israeli Statute on National Book Price Maintenance – A Critical Evaluation

Frédérique FERRAND

L'avenir de la Cour de cassation française : réformer ou révolutionner ?

Holger FLEISCHER und Yannick CHATARD

Zur Reform des französischen Gesellschaftsrechts durch die Loi PACTE: Intérêt social – raison d'être – société à mission

Henry Deeb GABRIEL

From Formalism to Instrumentalism: The Inevitability of the Decline of the Concept of Title in the American Law of Personal Property Security Rights 1735

Attila HARMATHY

Credit

Hideki KANDA

Rethinking Property Rights in the Digital Age

Julia KLAUER

Die Bestellung von Pfandrechten an einen Sicherheitentreuhänder

Edgar MATYSCHOK

Europäischer Know-how-Schutz und deutsche Berufsfreiheit

Salvatore PATTI

Il testamento pubblico della persona anziana «vulnerabile»

Jorge SÁNCHEZ CORDERO

Patrimoine Culturel - Réflexions mexicaines

Uwe H. SCHNEIDER

Ad-hoc-Publizität im Konzern

Klaus-Peter SCHROEDER

Franz Anton Wilhelm Gambsjäger (1752-1816) - Ein Heidelberger Rechtslehrer
im Umbruch der Epochen

Markus STOFFELS

Sprachrisiko bei Abschluss von Arbeitsverträgen mit ausländischen
Arbeitnehmern

The publisher's website is here.

Home