

# Latest Issue of RabelsZ: Vol. 76, No. 1 (2012)

The latest issue of “Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law (RabelsZ)” has just been released. It contains – among others – articles on the recent Chinese and Japanese Codifications on Private International Law. The table of contents reads as follows:

## Articles:

**Knut Benjamin Pissler, The New Private International Law of the People’s Republic of China: Cross the River by Feeling the Stones, pp. 1-46**

## Abstract:

*On October 28, 2010, the “Law of the Application of Law for Foreign-related Civil Relations” was promulgated in the People’s Republic of China. The law aims to consolidate the Chinese conflict of laws regime and signals a new step towards a comprehensive codification of civil law in China. Drafting of the law started in the early 1990s and produced an academic model law in the year 2000. The Chinese legislator was reviewing a first draft in 2002. However, due to other priorities, it has only been since the beginning of 2010 that conflict of laws has been at the top of the legislative agenda. It comes, therefore, with little surprise that the law has some deficiencies and has been welcomed with mixed feelings by Chinese academics, who had only limited influence in the last stage of the drafting process.*

*The promulgated law emphasizes party autonomy and the closest connection as general principles. The law furthermore replaces nationality with habitual residence as the principal connecting factor for personal matters in Chinese private international law. However, some lacunas remain and new questions arise from the law. The legislative gaps concern the form of legal acts, the maintenance duties after divorce as well as the assignment and transfer of rights and duties in general. New questions arise from the provisions in the law establishing alternative connecting factors. In some cases the law requires application of the law which favours a particular party (in parent-child*

*relationships, maintenance and guardianship). Chinese courts will therefore be confronted with the demanding task of comparing the legal regimes of different states in this respect. In other cases the law does not stipulate how to choose between the alternative connecting factors and it remains to be seen on which principles courts will render their decisions. Regarding the free choice of law with regard to rights in movable property provided by the law, it is additionally questionable how the rights of third parties are protected where they are not aware of such a choice of law. The decision of the legislator to exclude renvoi will force Chinese courts to apply foreign law even if the foreign private international law refers back to Chinese law.*

*Some of the particular provisions in the law are also a source for further problems: This concerns the application of the lex fori in divorce cases, the conflict of laws rule on trusts and arbitration clauses as well as on agency. Another point of uncertainty stems from older provisions of private international law that can still be found in several laws such as the Maritime Commercial Law, the Civil Aviation Law or the Contract Law. Those norms are still in force formally, but their relation to the new law is not sufficiently clarified. This uncertainty is particularly pronounced given that the relation of the new law to several provisions in the General Principles of Civil Law and the Inheritance Law is expressly regulated whereas the others are not even mentioned. Relating to international contract law and tort law, the Supreme People's Court had issued some judicial interpretations in the past to solve certain questions, but it also remains uncertain whether these interpretations still apply after the enactment of the new law. It is expected that the Supreme People's Court will issue a further judicial interpretation on private international law in the near future to help Chinese courts applying the new law.*

**Qisheng He, The EU Conflict of Laws Communitarization and the Modernization of Chinese Private International Law, pp. 47-85**

**Abstract:**

*Since 2007 the EU has adopted the Rome I, Rome II and Rome III Council Regulations codifying and unifying the respective conflict of laws rules in contract, tort and divorce and legal separation. The EU conflict of laws*

*communitarization has attained great achievements. In 2010, China also adopted a self-contained statute – the Law of the People’s Republic of China on the Application of Law to Civil Relationships Involving Foreign Interests – which marks a significant step forward in the codification of Chinese private international law (PIL). However, the sources of Chinese PIL are still scattered and diverse because the PIL rules in existing commercial statutes have not been incorporated into this separate PIL statute. In contrast with the EU PIL, there are three issues on which China should devote special attention in further developing its PIL: Firstly, because of a mixed mode of legislation and the scattered sources of Chinese PIL, maintaining harmony between the new statute and the other sources still remains an important task. It remains very important for China to enact PIL provisions in future commercial law legislation. Secondly, the draft of the new statute includes no documents or materials which suggest that the Chinese legislative authority appreciated the tension and need for equilibrium between certainty and flexibility. Thus, the new statute manifests some problems in this regard. Lastly, current Chinese PIL is mainly focused on jurisdiction-selection rules, meaning that the formulation of reasonable content-preference rules is still an important task necessary for the modernization of Chinese PIL.*

**Yoshiaki Sakurada & Eva Schwittek, *The Reform of Japanese Private International Law*, pp. 86-130**

**Abstract:**

*Japan has reformed its Act on the Application of Laws. On 1 January 2007, the Hô no tekiyô ni kansuru tsûsoku-hô came into effect, a revised and renamed version of the Hôrei that dates from 1898. This article traces the legislative process and analyses the changes in the law, referring to the way they have been implemented in the court rulings rendered so far.*

*In sessions dating from May 2003 to July 2005, the Subcommittee for the Modernisation of the Act on the Application of Laws (part of the Legislative Commission of the Ministry of Justice) worked out fundamental innovations that were approved by the Legislative Commission of the Ministry of Justice on 6 September 2005. Based on this report, the Ministry of Justice, in cooperation*

*with the Legislative Department of the Cabinet, drafted a bill that passed the Upper House on 19 April 2006 and the House of Representatives on 15 June 2006.*

*The reform is comprehensive. The only parts of the law that were exempt from amendment were international family and inheritance law, those already having been reformed in 1989. The present renewal focuses on the provisions concerning international contract law (Arts. 7-12) and the international law of torts (Arts. 17-22). Both sets of rules were further differentiated in their basic principles and complemented by special rules.*

*As for international contract law, the basic connecting factor is still the parties' choice of law (Art. 7). A fundamental change in determining the law applicable to contracts was implemented by introducing a new subsidiary objective connecting factor in Art. 8. It provides that in the absence of a choice of law by the parties, the law of the place with which the contract was most closely connected should apply, and it specifies criteria for determining the closest connection. The newly created rules on consumer and labour contracts in Arts. 11 and 12 contain major innovations aiming at the protection of the weaker party. However, they impose upon the weaker party the burden of stipulating the effect of the protective provision in question, an aspect which was much criticised as it limits such protective effects.*

*The lex loci delicti, as the basic connecting factor for the law of torts, formerly stipulated in Art. 11(1) Hôrei, is maintained in Art. 17. Multilocal torts are governed by the law of the place where the results of the infringing act are produced (Art. 17 sentence 1). However, if it was not foreseeable under normal circumstances that the results would be produced at that place, the law of the place where the infringing act occurred shall apply (Art. 17 sentence 2). Special rules on product liability and on infringements of personality rights were added to the law in Arts. 18 and 19. The lex loci delicti as connecting factor can be deviated from in cases where a manifestly more closely connected place exists (Art. 20) or where the governing law is changed by the parties (Art. 21). The principle of double actionability, stating that Japanese law should be applied cumulatively to the applicable law regarding the grounds of and the compensation for damages incurred by a tort, was upheld in Art. 22 against severe criticism.*

*Apart from the points of critique addressed above, the new law provides for a differentiated set of rules that keep pace with the latest international developments.*

**Anne Röthel, Family and Property in English Law: Developments and Explanations**, pp. 131-160(30)

**Abstract:**

*In continental jurisdictions, there is still a strong link between family and property. Intestate succession, imperative inheritance rights as well as the concepts of matrimonial property regimes and in some aspects also tax law are designed to attribute property rights along personal relationships. The position of English law is often described as a contrasting concept, especially due to the deeply rooted reservations against fixed shares. However, continental lawyers often may be surprised with the actual outcome, especially in divorce cases. The article therefore explores the present state of English law concerning family and property. Is there a convergence in concepts as well? Is English law nowadays more favourable towards general normative models for the attribution of property within family relationships? Or is the 2010 decision of *Radmacher v. Granatino* another turning-point? The author argues that the inner explanation of these – at first glance – diverging steps lies in the recognition of equality in horizontal relationships. The outcome of cases like *White v. White* or *Stack v. Dowden* is only partly the effect of a generally altered view on family and property in English Law. Nonetheless, they reflect a different understanding of how and how much the state should regulate the family. Although all European legislations experience broadly similar demographic trends and social challenges, there remain decisive differences in legal concepts. The distance between English Law and the continent may be somewhat reduced – but it is far from disappearing.*

**Material:**

**Volksrepublik China: Erlass des Präsidenten der Volksrepublik China Nr. 36:** Gesetz der Volksrepublik China zur Anwendung des Rechts auf zivilrechtliche

Beziehungen mit Aussenberührung vom 28. 10. 2010, pp. 161-169 (*Peoples Republic of China: Order of the President of the People's Republic of China No. 36: The Law of the Application of Law for Foreign-related Civil Relations of the People's Republic of China, 28/10/2010*)

**Japan: Gesetz Nr. 78** über die allgemeinen Regeln über die Anwendung von Gesetzen (Rechtsanwendungsgesetz) vom 21. 6. 2006, pp. 170-184 (*Japan: Act No. 78 of 2006 about General Rules for Application of Laws, 21/06/2006*)

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## Third Issue of 2011's Journal of Private International Law

The latest issue of the *Journal of Private International Law* has just been published. The contents:

### **Arbitration and the Draft Revised Brussels I Regulation: Seeds of Home Country Control and of Harmonisation?**

*Luca G Radicati di Brozolo*

*In this article I discuss the provisions on arbitration of the European Commission's December 2010 draft recast of Reg (EC) 41/2001 against the backdrop of the earlier proposals on the inclusion of arbitration within the scope of the Regulation. The analysis focuses principally on the functioning and implications of the lis pendens mechanism laid down by Article 29(4) of the draft, pointing out the analogy between the role conferred on the law and forum of the seat of the arbitration and the mechanism of home country control that is at the heart of European Union law. The article also analyses the reasons and positive consequences of the Commissions' restraint in not extending the scope of the Regulation to other arbitration-related issues, especially the circulation of judgments dealing with the validity of arbitration agreements and awards.*

*The article's conclusion is that the Commission's proposal is well balanced. Whilst it does not solve all problems relating to conflicts between court proceedings and arbitration within the EU, it addresses the most pressing one, that of concurrent court and arbitration proceedings. Moreover, it does so in terms which, in contrast to the use of anti-suit injunctions in aid of arbitration, are reconcilable with the basic tenets of European Union law. Its approach is indisputably favourable to the development of arbitration and does not jeopardise the *acquis* in terms of arbitration law of the more advanced member States.*

## **European Public Policy (with an Emphasis on Exequatur Proceedings)**

*Jerca Kramberger Škerl*

*After addressing the historical role of the public policy defence in private international law, the author defines European public policy and researches its protection in the case-law of the Court of Justice of the EU and the European Court of Human Rights.*

*The paper further discusses the possible differences and contradictions between the fundamental values of the European Convention on Human Rights and EU law in the context of giving effect to foreign judgments. Regulations already abolishing the exequatur are assessed from the human rights point of view. The relationship between European public policy and the fundamental values arising from public international law is also treated.*

*Finally, the author evaluates the impact of the adoption of the Lisbon treaty and the process of revision of the Brussels I Regulation on the protection of European public policy in the EU Member states.*

## **Reflections on the Mexico Convention in the Context of the Preparation of the Future Hague Instrument on International Contracts**

*José Antonio Moreno Rodriguez and María Mercedes Albornoz*

*The Hague Conference is creating a soft law instrument on international contracts, which is expected to promote a general admission of the principle of party autonomy. Even if it is nowadays accepted in developed countries, this principle still needs consolidation in other regions of the world, like Latin America. In this context, the importance of the modern solutions adopted by the Mexico Convention on the law applicable to international contracts is outstanding. It is not only that the Mexico Convention clearly accepts party autonomy, but it is also well-known even outside the American continent, for its reception of *lex mercatoria* –an achievement that we do not find in the European Rome I Regulation. This article carries out an analysis of the main provisions of the Mexico Convention, in order to highlight some of the reflections it should provoke during the preparation of the Hague instrument.*

## **Where Does Economic Loss Occur?**

*Matthias Lehmann*

*It is well-known that rules of private international law for torts often refer to the place where the damage has occurred. Locating this place poses serious difficulties if no physical object has been harmed, but only economic or “financial” loss has been suffered. These cases are of tremendous practical importance. The contribution provides an in-depth analysis of the problem and compares solutions adopted by EU and Swiss courts. Finally, the author suggests an original step-by-step approach as to how to determine the place of economic loss.*

## **International Litigation Trends in Environmental Liability: A European Union-United States Comparative Perspective**

*Carmen Otero García-Castrillón*

*At times where environmental concerns take a predominant role and corporate social responsibility is at the forefront of various legal debates, the fact that the laws and/or the judicial proceedings -to establish it and to order remedies- in the country of damage could be inadequate or even non-existent, makes it*

*appropriate to reflect on the opportunities provided by the international litigation system of the European Union (EU) as compared to the system of the United States (US). Responding to the recent case law, this paper reflects on the international environmental litigation trends from a private international law perspective, analysing the jurisdiction and conflict of laws issues that, within this field, interact with a number of international civil liability conventions. In this regard, the complex determination of the applicable law and the liability limitations in the EU do not prevent the conclusion that, due to recent jurisdiction and applicable law trends in the US, international environmental litigation may be turning to the eastern side of the Atlantic.*

## **Intellectual Property Rights Infringements in European Private International Law: Meeting the Requirements of Territoriality and Private International Law**

*Sophie Neumann*

*The article tends to compare and analyse the private international law solutions adopted by the European legislator and their possible justification for the infringement of intellectual property rights against the background of territoriality of intellectual property rights and against the background of the different methodological approaches adopted, on the one hand, by the Rome II Regulation for the applicable law and, on the other hand, by the Brussels I Regulation for jurisdiction. The thesis to be analysed is that the respective solutions concerning the infringement of intellectual property rights can be read both in an intellectual property perspective against the background of territoriality and in a private international law perspective against the background of a more “genuine” private international law interests’ analysis. Both perspectives are affected by territoriality and therefore often lead, notwithstanding the methodological differences, to the same result in practice.*

## **Dual Nationality = Double Trouble?**

*Thalia Kruger and Jinske Verhellen*

*The occurrence of dual nationality is increasing, due to several reasons. This article investigates the considerations private international law uses to deal with dual nationality, especially in civil law countries, where nationality is an important connecting factor and is sometimes even used for purposes of jurisdiction. Four such considerations are identified: preference for the forum nationality, the closest connection, the influence of EU law, and the principle of choice by the parties. When analysing the applications of these four considerations in issues of jurisdiction, applicable law and the recognition of foreign authentic acts or judgments, one sees that not all conflicts are real. The authors argue that false conflicts (for instance where jurisdiction can be based on the common nationality of the spouses under the Brussels IIbis Regulation) need no resolution. Both nationalities can carry equal weight in these cases. For real conflicts (for instance application of the law of the common nationality of the spouses under Art. 8c of the Rome III Regulation), a broad closest-connection test should be maintained, rather than a preference for the forum nationality (which relies heavily on arguments of State sovereignty). A closest-connection test based on objective factors is the most reliable in ensuring an outcome respectful of legal certainty.*

## **International Surrogacy Arrangements: An Urgent Need for Legal Regulation at the International Level**

*Katarina Trimmings and Paul Beaumont*

*Recent developments and research in the area of reproductive medicine have resulted in various treatment options becoming available to infertile couples. One of them is the use of a surrogate mother. Over the last two decades, surrogacy has become an increasingly popular method of reproductive technology.*

*Surrogacy targets the same clientele as its counterpart, adoption. It follows that with an increasingly limited global market for adoption, surrogacy will continue expanding. It is no exaggeration to say that the modern world has already witnessed the development of an extensive international surrogacy market. This market, although initially largely unnoticed, has recently attracted a great deal*

*of interest by the media.*

*A source of worry, however, is the completely unregulated character of global surrogacy. Addressing this issue, this paper seeks to outline a potential legislative framework for a private international law instrument that could regulate cross-border surrogacy arrangements.*

## Review Article

A review article by Sirko Harder of K Boele-Woelki, T Einhorn, D Girsberger and S Symeonides (eds), *Convergence and Divergence in Private International Law: Liber Amicorum Kurt Siehr*

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## Latest Issue of “Praxis des Internationalen Privat- und Verfahrensrechts” (6/2011)

Recently, the November/December issue of the German law journal “Praxis des Internationalen Privat- und Verfahrensrechts” (**IPRax**) was published.

Here is the contents:

- **Christoph M. Giebel:** “Fünf Jahre Europäischer Vollstreckungstitel in der deutschen Gerichtspraxis – Zwischenbilanz und fortbestehender Klärungsbedarf” – the English abstract reads as follows:

*The regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims has been applicable for more than five years now. During this time, German courts, including the Federal Supreme Court, have rendered*

*substantial case law on this subject matter. Whilst awaiting further clarifications through the European Court of Justice, legal practice has thus been provided with valuable indications on the procedural requirements to be observed when applying for a European Enforcement Order in Germany. Despite the abundance of case law rendered by German Courts, a need for general clarification persists in certain areas. The article analyses this case law and proposes solutions for some material problems still to be solved. As the most serious deficit of the current German legal situation relating to European Enforcement Orders the author identifies the lack of clear-cut provisions on due information requirements under German law as to certain decisions that fall within the scope of application of the regulation. This particularly relates to resolutions determining costs or expenses (Kostenfestsetzungsbeschlüsse) and contempt fines (Zwangsgeld-/Ordnungsgeldbeschlüsse). The author suggests that the German legislator should introduce the relevant due information requirements in the German Code of Civil Procedure. In the meanwhile, the lack of such provisions does not hinder German judgement creditors from providing due information to the debtors themselves.*

- **Carl Friedrich Nordmeier:** New Yorker Heimfallrecht an erbenlosen Nachlassgegenständen und deutsches Staatserbrecht (§ 1936 BGB) – the English abstract reads as follows:

*§ 3-5.1 of the New Yorker Estates, Powers and Trust Law (EPTL) determines as applicable for succession in immovables the *lex rei sitae*, for succession in movables the law of the state in which the decedent was domiciled at death. According to § 4-1.5 EPTL, heirless property situated in the State of New York escheats to the State. The present article shows, based on an analysis of § 4-1.5 EPTL, that the law of the State of New York generally calls for the application of the *lex rei sitae* if an estate is left without heir. § 4-1.5 EPTL is based on an “idea of power”, according to which a state does not pass heirless property which is found on its territory to another state.*

*Regarding the EU Commission proposal for a Regulation on the law applicable in matters of succession, the present contribution suggests the application of the *lex rei sitae* for estates without a claimant (art. 24 of the Proposal) and the admission of *renvoi* (art. 26 of the Proposal) when the law of a third State is designated to be applicable by the Regulation.*

- **Christoph Thole:** “Die Reichweite des Art. 22 Nr. 2 EuGVVO bei Rechtsstreitigkeiten über Organbeschlüsse” – the English abstract reads as follows:

*In its decision, the ECJ held that Art. 22(2) of the Brussels I-Regulation is inapplicable in cases in which a company pleads that a contract cannot be relied upon against it because a decision of its organs which led to the conclusion of the contract is supposedly invalid on account of infringement of its statutes. Thus, exclusive jurisdiction is not conferred on the courts of the country in which the company has its seat in cases where the validity of a decision of the company's organs is put in issue merely as a preliminary question to the validity of a contract. The ECJ established, inter alia, that the ruling of the famous GAT case concerning Art. 22(4) is not to be applied to the construction of Art. 22(2). In conclusion, the Court significantly narrows the scope of Art. 22(2). The article shows that the judgment is both persuasive in its findings and in accordance with former decisions. However, the ECJ has not managed to completely resolve the obvious disparity between the GAT case and other decisions dealing with the matter of preliminary questions.*

- **Ansgar Staudinger:** “Wer nicht rügt, der nicht gewinnt – Grenzen der stillschweigenden Prorogation nach Art. 24 EuGVVO” – the English abstract reads as follows:

*The court correctly clarified that the second sentence in Art. 24 of the Brussels I Regulation constitutes an exceptional clause which is subject to a restrictive interpretation (this applies accordingly to the parallel agreement between the EU and Denmark, the Lugano Convention, as well as Council Regulation No 4/2009 on matters relating to maintenance obligations). As a form of tacit prorogation, Art. 24 Brussels I Regulation is the equivalent of Art. 23 Brussels I Regulation. As far as the elements of Art. 24 Brussels I Regulation are fulfilled, the court must have jurisdiction. To this extent, national courts do not have discretionary power.*

*Currently, the Brussels I Regulation does not provide an obligation to inform or instruct the defending party, prior to it entering an appearance without contesting the court's jurisdiction. Such an obligation may only be introduced by the European legislator. Thus, in the scope of the Brussels I Regulation,*

provisions such as § 39 sentence 2 and § 504 of the German Code of Civil Procedure (Zivilprozessordnung) infringe the regulation's precedence over national law. However, the spirit and purpose of the protective clause in matters relating to insurance require that the court may ensure that the defending party is aware of the consequences of entering an appearance without contesting the court's jurisdiction, and that the decision to do so is therefore deliberate. This applies accordingly to matters relating to individual contracts of employment as well as consumer contracts. Only to this extent is a recourse to § 39 sentence 2 and § 504 of the German Code of Civil Procedure possible. The aforementioned principles may vary in light of the Council Directive on unfair terms in consumer contracts, as the judge's discretionary powers in this context may be reduced to such a degree that an obligation to instruct the defending party would be necessary as to not breach the directive. In any case, an instruction is not to be given to parties with legal representation by a lawyer. As far as legal policy is concerned, it seems preferable to specify an obligation of instruction in Art. 24 Brussels I Regulation, *de lege ferenda*. Therefore, the Commission's proposal for reform is welcome in its original intention. However, it is too far-reaching in its extent, since it neither differentiates between defendants with and those without legal representation by a lawyer, nor distinguishes initial cases from appeal procedures and lacks any distinction within matters relating to insurance.

- **Jan D. Lüttringhaus:** "Vorboten des internationalen Arbeitsrechts unter Rom I: Das bei „mobilen Arbeitsplätzen“ anwendbare Recht und der Auslegungszusammenhang zwischen IPR und IZVR" – the English abstract reads as follows:

*For the first time since the adoption of the European regulations in the private international law of obligations, the Court of Justice has decided on the uniform interpretation of European jurisdiction and conflict of laws terminology. While the preliminary ruling primarily concerns Art. 6 (2)(a) Rome Convention, the Court holds also that the "habitual workplace" has to be interpreted consistently with Art. 8 (2) Rome I as well as with Brussels I. Thus, mobile employees like truck-drivers, flight and train attendants working in more than one state may actually have their habitual workplace not only in the country in which, but also from which they carry out their work.*

- **Urs Peter Gruber:** “Unterhaltsvereinbarung und Statutenwechsel” – the English abstract reads as follows:

*Under Art. 18 par. 1 EGBGB, when the creditor changes his habitual residence, the law of the state of the new habitual residence becomes applicable as from the moment when the change occurs. This rule is convincing as long as the creditor bases his claims on the statutory law of the state of his new residence. If however the parties conclude a maintenance agreement, it seems questionable that a subsequent change of residence should have an influence on the law applicable to that maintenance agreement. If that were the case, the creditor would unilaterally influence the validity of the maintenance agreement by simply changing his habitual residence. This would clearly be in contradiction to the legitimate expectations of both parties. In a decision on legal aid, the OLG Jena has rightly come to the same conclusion.*

*The OLG Jena has also rightly pointed out that, although the validity of the maintenance agreement is as such not influenced by the subsequent change of residence, the parties might seek a modification on the agreement and base their petition on the fact that – due to the change of residence – the maintenance obligation is now governed by another law. Therefore, one has to differentiate between the validity of the agreement and the possibility to modify the agreement. Whether and to what extent the agreement can be modified is mainly determined by the law of the state of the creditor’s new habitual residence.*

- **Markus Würdinger:** “Die Anerkennung ausländischer Entscheidungen im europäischen Insolvenzrecht” – the English abstract reads as follows:

*Regulation No 1346/2000 on insolvency proceedings (European Insolvency Regulation) provides in Article 16, that the judgment opening insolvency proceedings is to be recognised automatically in all the other Member States, with no further formalities. The author analyses a judgement of the ECJ about the recognition of insolvency proceedings opened by a court of a Member State. The ECJ rules that the competent authorities of another Member State are not entitled to order enforcement measures relating to the assets of the debtor declared insolvent that are situated in its territory. The author agrees with the judgement, but he criticises, that the ECJ has checked the international*

*jurisdiction. The article also clarifies the follow-up question, whether the attachment effected by the German authorities is lawful.*

- **Susanne Deißner:** “Anerkennung gerichtlicher Entscheidungen im deutsch-chinesischen Rechtsverkehr und Wirksamkeit von Schiedsabreden nach chinesischem Recht” – the English abstract reads as follows:

*The question whether Chinese court decisions are to be recognised by German courts was decided in the affirmative by the Higher Regional Court Berlin in a decision of 18 May 2006. With regard to Chinese law and its application by the courts in China it is, however, doubtful that the requirement of reciprocity under German civil procedure law is met by Chinese court decisions under three aspects: the requirement of “reciprocity in fact”, the vague notion of public policy in Chinese law, and important differences in the concept of international lis pendens. Nevertheless, the decision by the Higher Regional Court Berlin has possibly – as proof of a positive German recognition practice with regard to Chinese court decisions – enhanced the chances for German judgments to be recognised in China. Dismissing the action, as the Higher Regional Court Berlin did, was, in any case, justified on other grounds mentioned obiter dictum by the court: According to the applicable Chinese law on arbitration, the arbitration agreement in question was invalid.*

- **Matthias Weller:** “Vollstreckungsimmunität für Kunstleihgaben ausländischer Staaten” – the English abstract reads as follows:

*The Higher Regional Court of Berlin once more deals with the question whether loans of art by foreign states are immune from seizure in the host state under customary international law. The decision seems to support such rule of customary international law if the exhibition serves the purpose of cultural representation by the foreign state. The new element of this rule merely lies in the acknowledgment that the loan of works of art and cultural property constitutes one of other modes of cultural representation by a foreign state in the host state. Once this small step is taken, it is clear that property used for the purpose of cultural representation falls within the general rule of customary international law that property used for acta iure imperii of a state cannot be seized or attached while present on the territory of another state. The practical*

*importance of this rule will continue to grow in the future.*

- **Daniel Girsberger** on a new book by Kronke, Herbert/Nacimient, Patricia/Otto, Dirk/Port, Nicola Christine (Hrsg.): Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention
- **Jörn Griebel**: “Zuständigkeitsabgrenzung von Verwaltungs- und Justizgerichtsbarkeit in Frankreich” – the English abstract reads as follows:

*In its decision of 17 May 2010 (no. 3754) the French Tribunal des conflits addresses the division of jurisdiction between the jurisdiction de l’ordre administratif and the jurisdiction de l’ordre judiciaire. Within the decision the Tribunal des conflits defines under which circumstances the jurisdiction de l’ordre administratif is mandatory, inter alia where state property or government procurement contracts are at stake. In the present case the jurisdiction fell, however, into the jurisdiction de l’ordre judiciaire because the contract in question was concluded by a public entity with a foreign person and comprised elements of international commercial law.*

- **Michael Stürner**: “Staatenimmunität bei Entschädigungsklagen wegen Kriegsverbrechen” – the English abstract reads as follows:

*There has been an ongoing controversial discussion on State immunity, a long-standing principle of customary international law. While according to the traditional view the principle of State immunity extends to any act of State (acta iure imperii) a newly emerging opinion pleads in favour of exceptions in cases of grave violations of human rights. Both decisions discussed here reflect that debate. The Highest Court of the Republic of Poland, on the one hand, also considering the pending case Germany against Italy before the ICJ, does not see any ground for departing from the principle par in parem non habet iurisdictionem. Conversely, the Italian Corte di Cassazione follows its previous case law, according to which a restriction of State immunity in cases dealing with crimes against humanity is justified.*

- **Ruiting QIN**: “Eingriffsnormen im Recht der Volksrepublik China und

das neue chinesische IPR-Gesetz” – the English abstract reads as follows:

*There exist some provisions in the Chinese law, especially in the Chinese law relating to foreign exchange administration, which are in nature overriding statutes of the law of the Mainland of China. However, the judicial practice of the Chinese people's courts up to now has dealt with these provisions incorrectly. These provisions should be applied to all foreign-related loan contracts as well as guarantee contracts directly, no matter which law governs the aforesaid contracts. The judicial practice of the Chinese people's courts which has applied the Chinese overriding statutes by a roundabout way through forbidding evasion of law not only runs against the Chinese private international law de lege data, but also is harmful to the development of the Chinese private international law. According to Article 4 of Law on the Application of Law for Foreign-related Civil Relations of the People's Republic of China, coming into force on April 1st, 2011, should the provisions relating to foreign exchange administration in the Chinese law be directly applied as overriding statutes of the law of the Mainland of China. Overriding statutes, choice of law and evasion of law are three kinds of private international law phenomena and need different legislative regulation. Article 4 of the new Chinese Private International Law is a great development of the Chinese private international law, but it still need improvement.*

- **Arkadiusz Wowerka:** Translation of the new Polish statute on PIL “Gesetz der Republik Polen vom 4.2.2011: Das Internationale Privatrecht”

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# Anuario Español de Derecho

# Internacional Privado, vol. X (2010)

A new volume of the *Anuario Español de Derecho Internacional Privado* has just been released. It includes a number of unique studies, most of which are in-depth developments of the ideas briefly presented both by Spanish and foreign scholars at the International Seminar on Private International Law, held last March at the Universidad Complutense de Madrid; that is why the volume is as rich as the seminar was. Patricia Orejudo, secretary of the magazine since 2010, has kindly provided the abstract of each single publication:

**JACQUET, J.M.: “La aplicación de las leyes de policía en materia de contratos internacionales”, pp. 35-48.**

*This article analyses from a current perspective some of the issues raised by the application of overriding mandatory provisions, with a special emphasis on questions of EU Law. On the one hand, the author identifies the practical obstacles which hinder the effective application of overriding mandatory provisions, either by means of a control to be carried out prior to their application, or by means of jurisdictional mechanisms intended to obstruct such application, as for example choice of court agreements and arbitration agreements. On the other hand, the author points out possible solutions –both material and procedural– that can be used to overcome the obstacles previously detected, in order to guarantee that the imperative character of overriding mandatory provisions is respected and, consequently, that such provisions are effectively applied to all the cases falling within their scope of application.*

**BERGÉ, J-S.: “El Derecho europeo ante la fragmentación del Derecho aplicable a las relaciones internacionales: la mirada del internacional-privatista”, pp. 49-68.**

*When we evoke the question of the European law (European Union) confronted with the fragmentation of the choice of law to the international relations, by what law do we speak? For the private lawyer, two answers are outlined. The fragmentation of the choice of law can result, at the first level,*

*from a confrontation of the solutions and the methods of the private international law and from the European law. But it can also find accommodation, at the second level, in the appropriate constructions of the European private international law.*

**MEDINA ORTEGA, M.: “El Derecho patrimonial europeo en la perspectiva del programa de Estocolmo”, pp. 69-90.**

*The principle of mutual recognition and its extension to the rules of jurisdiction, recognition and enforcement of decisions and Law applicable is not enough satisfactory for a European Union which aims at creating an internal market where persons, goods, capitals and services are not subject to the arbitrary application of a given legal order, on grounds of legal technique. No matter the reasons that could be bestowed to uphold the “living” nature of Law and its connexion to the national culture and traditions, the European Union, as a great area of supranational peace, is developing its own society and its own social and legal culture. Such culture may not be split on basis of whimsy sociological and legal theories that are nostalgic of the culture of the “peoples of Europe”, for these “peoples” are nowadays melting in a unified political community, right before our eyes. The European “acquis” in contractual matters is already important; though still spread in a set of instruments whose purpose is the harmonization of certain fields: mainly the field of consumer protection. In this context, the CFR is an ambitious project. It still has an uncertain future, but both the Commission and the European Parliament are doing their best to take it forward, in its most cautious character, i.e., that of an optional instrument to which parties could resort in order to avoid a particular state Law. The task is not easy, but the multiplication of efforts over the past decade by the common institutions to achieve a harmonization of European property law shows that it is a necessary and urgent task that the European citizens demand today as an essential part of the Area of Freedom and Justice established by the Treaties of the European Union.*

**RÜHL, G.: “La protección de los consumidores en el Derecho internacional privado”, pp. 91-120.**

*The majority of cross-border consumer contracts are governed by general contract terms provided by the professional. In most cases these terms*

*provide for a choice of law clause. From an economic perspective these clauses pose serious problems. However, this is not because consumers are “weaker” than professionals, but rather because they know less about the applicable law and have no incentive to invest into the gathering of the relevant information. Professionals, in contrast, enter into a large number of similar contracts on the same market. As a result, they have an incentive to gather information about the applicable law in order to choose the law that provides the most benefits for them and the least benefits for consumers. Since consumers are not able to distinguish between professionals who choose consumer-friendly laws and those who don’t, this may lead to a race to the bottom and a market for lemons. The self-healing powers of markets are unlikely to avoid these problems. Therefore, it is necessary to directly regulate consumer transactions by modifying the general provisions determining the applicable law. An analysis of the various models that are applied around the world lead us to conclude that the general European model, which is also to be found, albeit with differences in detail, in Japan, Korea, Russia, Turkey and the United States, promises the greatest benefits in terms of efficiency.*

**MIQUEL SALA, R.: “El fracaso de la elección del Derecho a la luz del Reglamento Roma I y de las libertades fundamentales”, pp. 121-154.**

*According to an obiter dictum in the decision Alsthom Atlantique, it seems that party autonomy excludes the control by the ECJ of a possible limitation of the fundamental freedoms by the chosen law. This paper analyses the implications and the convenience of this rule, not considering the cases in which despite freedom of choice of law the parties have not been able to avoid the application of the given legal system. In order to find out to what extent the parties should carry the risk of the application of rules which are contrary to community law, it focuses on the issues of the admissibility and the validity of the choice-of-law agreement under the Rome I Regulation and the Spanish civil law.*

*Later on, the paper discusses the practical problems of the application of this doctrine and the arguments in favour and against of the control of dispositive law by the ECJ.*

**OREJUDO PRIETO DE LOS MOZOS, P.: “El idioma del contrato en el Derecho internacional privado”, pp. 155-182.**

*Where the parties to a contract do not share the same mother tongue, an additional question arises. It happens to be necessary to choose the language to be employed within their relationship and to conclude the contract. Each party will try to impose its own language, so as to avoid linguistic risks, and the election will become a matter of negotiation. The parties may agree to use a third neutral language (habitually, English), the language of one of them or both. In any case, specific language clauses will be needed in order to solve or prevent conflicts. The language finally chosen will be paramount to manifest the concepts, and it will impinge on the interpretation of the contract. But it might also have some effect on international jurisdiction, the law applicable to the contract and the service of documents and acts.*

**UBERTAZZI, B.: “Derechos de propiedad intelectual y competencia exclusiva (por razón de la materia): entre el Derecho internacional privado y público”, pp. 183-257.**

*In the last years, prestigious courts of different countries around the world have declined jurisdiction in matters related to foreign -registered or not- intellectual property rights: in particular, when an incidental question concerning the validity of the right arise. This incidental question comes up both when the proceedings concern the violation of intellectual property rights and the defendant argues that the right is void or null, so there is no violation at all; and when the claimant aims at a declaration of no-violation of the right, on grounds of its nullity. The present paper takes up and develops a thesis that is being held by the majority of scholars and has been brought to the most recent academic works, such as the Principles of the American Law Institute and the Draft CLIP Principles. According to this thesis, the rules on exclusive jurisdiction in matters of intellectual property are not suggested by Public International Law, and are illicit according with the general principles of denial of justice and the fundamental human right of access to jurisdiction. Therefore, the said rules must be abandoned not only in the matters related to the violation of the right, but also when a question concerning the validity of the right arises.*

**REQUEJO ISIDRO, M.: “Litigación civil internacional por abusos contra derechos humanos. El problema de la competencia judicial internacional”, pp. 259-300.**

*In 2008, the Committee on Civil Litigation and the Interests of the Public of the International Law Association launched a research into the area called “private litigation for violations of human rights”, with particular focus on the private international law aspects of civil actions against multinational corporations. In its 2010 report, the Committee presented the issue of international jurisdiction as one of the most serious obstacles to such actions. Our study examines personal jurisdiction criteria in the U.S. (so far the prime forum for this kind of litigation), and Europe (as potential forum, likely to become a real one to counterbalance the increasingly serious restrictions to access to American jurisdiction). Not surprisingly, we conclude that the situation is unsatisfactory, and that as far as Europe is concerned, the proposal for amending EC Regulation No. 44/01 does not alter such result. Changes in PIL will not be enough for private litigation to become a useful regulatory mechanism of corporations in relation to human rights; a much more comprehensive action is needed, supported by international consensus. In other words: still a long way to run.*

**ESPINIELLA MENÉNDEZ, A.: “Incidencia de la nacionalidad de las sociedades de capital en su residencia fiscal”, pp. 301-317.**

*Rules on tax residence in Spain and rules on Spanish Nationality in respect of corporate enterprises are consistent because they are both based on the incorporation under the Spanish Law and the placement of the registered office in Spain. Nevertheless, tax rules are silent on certain issues of dual nationality and change of nationality.*

**MICHINEL ÁLVAREZ, M.A.: “Inversiones extranjeras y sostenibilidad”, pp. 319-338.**

*International investment Law has been generally drawn upon a model which largely assumes first the need to solve the problem about protection of investors, in despite of the interests of the host States, in particular the developing countries, whose needs for foreign investments are much more intense. That situation is shown not just by the text of the agreements itself, but also when they are applied in the arbitration proceedings. However, a number of significant problems have emerged, considering the tension between the policies oriented towards the sustainable development of host States – regarding basically environmental protection and social welfare– and*

*the protection of foreign investments. This kind of problems must be solved through a new International Investment Law. This paper highlights those tensions and focuses on the ways to find the proper balance.*

**ÁLVAREZ GONZÁLEZ, S.: “Efectos en España de la gestación por sustitución llevada a cabo en el extranjero”, pp. 339-377.**

*This paper points out the current situation that arises in Spain after some recent events related to surrogacy. Two contradictory statements triggered new rules to be enacted at a civil registry level. The first one, delivered by the DGRN (administrative body depending on the Ministry of Justice), recognizes Californian surrogacy in order to register it on the Spanish civil register. This statement (resolución) was revoked by a Court of Justice, that ruled the statement of the DGRN was unlawful. The author deals with the new situation and points out that these new rules are clearly unsatisfactory to offer an adequate and proper answer to the wide constellation of problems arising from surrogacy. According to him, the fact that surrogacy is banned by the Spanish civil law is not enough reason to consider surrogacy as opposite to Spanish international public policy. So it would be possible nowadays to recognise some situations of foreign surrogacy. The main question is to determine the precise conditions to admit foreign surrogacy and to act in order to provide an adequate degree of stability for the recognized cases. In this context, the author also proposes a change at civil level: the admission of surrogacy in Spanish civil law. The admission under certain conditions of foreign surrogacy jointly with the maintenance of its ban in Spanish law brings as unsatisfactory outcome the promotion of a undesirable discrimination between people that can afford a foreign surrogacy and those who can not. From a methodological perspective, the author deals with the delimitation between conflict of laws and recognition method and, related to this second issue, with the scope of public policy and the question of *fraus legis*.*

**HELLNER, M.: “El futuro Reglamento de la UE sobre sucesiones. la relación con terceros Estados”, pp. 379-395.**

*The proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession follows a recent*

*trend in EU private international law regulations in that its rules on jurisdiction are intended to apply universally. In order to compensate for the non-referral to national rules of jurisdiction, the proposed Regulation itself contains rules on subsidiary jurisdiction in Article 6 which foresees a kind of jurisdiction based on the location of property. And an Article 6a on forum necessitatis has also been added in the latest text discussed in the Council. But the proposal has some lacunae, that must be remedied before the final adoption or there is great risk that a situation of unnecessary 'limping' devolutions of estates will occur. The paper proposes three different ways to avoid such 'limping' devolutions: renvoi, deference to the foreign devolution and limiting the devolution to assets located in the EU and the inclusion of mechanisms for taking a foreign distribution into account.*

**GONZÁLEZ BEILFUSS, C.: “El Acuerdo franco-alemán instituyendo un régimen económico matrimonial común”, pp. 397-416.**

*In February 2010 France and Germany signed a bilateral Uniform law Convention on the property relations between spouses. This paper analyzes this agreement, which introduces a common matrimonial property regime of Participation in acquisitions into the respective substantive law, from the perspective of its eventual interest for Catalan law and as a possible model for European private law.*

**CARO GÁNDARA, R.: “(Des)confianza comunitaria a la luz de la jurisprudencia del Tribunal de Justicia sobre el Reglamento Bruselas II bis: algunas claves para el debate”, pp. 417-439.**

*The judgments handed down by the Court of Justice in 2010 relating to the interpretation to be given to the rules of the Brussels Regulation II bis concerning the custody of minors, have reinforced the principle of mutual trust as between the courts of the Member States exercising jurisdiction on the merits. The Court has indicated that no limits or exceptions are to apply to the mutual recognition of decisions, not even when this might result in a possible violation of a minor's rights under the Charter of Human Rights of the European Union. But the Court has also set down a premise: the principle of mutual trust presupposes the high degree of responsibility of the courts that hear the cases. If that condition is not satisfied, the judiciaries will not be trusted and their provisional measures will not produce their intended effect.*

*Countenancing training for the personnel assigned to the administration of Justice in the different Member States, along with the harmonization of rules of Civil Procedure, will help foster that level of trust required for the consolidation of a genuine common European space for Justice.*

**AÑOVEROS TERRADAS, B.: “Los pactos prematrimoniales en previsión de ruptura en el Derecho internacional privado”, pp. 441-469.**

*The significant social developments occurred in Family Law, and especially the increase of the so called mobile marriages, have rise the use of the so called pre-nuptial agreements, even before marriage, in order to establish in advance the economic consequences of divorce. The laws of the different jurisdictions with regard to such agreements vary considerably from one state to the other. Such legal disparities (both substantive and conflicts) may jeopardise the preventive character of the prenuptial agreement and create legal uncertainty. For this reason, a suitable Community private international law legislation is needed (both in the field of jurisdiction and with regard to the applicable law to the agreement) in order for the spouses to have guaranteed the enforceability and validity of the prenuptial agreement.*

**PAREDES PÉREZ, J.I.: “La incidencia de los derechos fundamentales en la ley aplicable al estatuto familiar”, pp. 471-490.**

*The universalist scope of human rights, instead of tempering the particularities among different legal systems, has widened the conflict among civilizations, and thus, the alteration of the role of international private law. Apart from the coordination role among legal systems, current international private law (IPL) has become an IPL of intercultural cooperation, more concerned with avoiding limping legal situations than with the classical goal of solution's international harmony. IPL in family matters becomes, in this sense, a real testing ground of the impact that fundamental rights have had, and still have, not only regarding goals of the IPL but also in the construction of the legal system and the functioning of the regulation techniques themselves.*

**GUZMÁN PECES, M.: “¿Hacia un Derecho dispositivo en materia de estatuto personal y familiar?. Reflexiones a la luz del Derecho**

**internacional privado español”, pp. 491-510.**

*This paper analyzes the recent legal reforms in matters of personal and family status to be induced if there is a trend to a law device in the current private international law both in the field of international jurisdiction and in the sector of applicable law. To this end, we analyze various legal institutions such as parenthood, marriage and marital crisis and maintenance obligations.*

**NAGY, C.I.: “El Derecho aplicable a los aspectos patrimoniales del matrimonio: la ley rectora del matrimonio empieza donde el amor acaba”, pp. 511-529.**

*The matrimonial property regimes and maintenance are questions which have a great practical importance in the international litigations derived from the dissolution of the marriage. These questions carry problems of characterization and problems of context, because they change according to the system to which there belongs the jurisdiction that knows about the case (common Law or civil law). After analyzing some conceptual aspects of the Draft Regulation on Matrimonial Property, one can conclude that it, though with some exceptions, introduces uniform rules of conflict of law throughout the European Union in this matter. Nevertheless, this instrument does not serve to break with the national diversity that in this field exists in Europe – from a theoretical point of view–, since it does not address the issue of characterization and inter-relation. In order to achieve the wished result it might be tried by two ways: through of party autonomy, or with the insertion of escape clauses (option not foreseen in the Draft Regulation on Matrimonial Property).*

**BOUTIN I., G.: “El fideicomiso-testamentario en el Derecho internacional privado panameño y comparado”, pp. 531-546.**

*The testamentary trust in the Panamanian private international and comparative law summarizes the development of this evolution from the common law and how it will be assimilated by the Spanish-American coded systems, thanks to the conceptualization from Alfaro and Garay, who introduce the notion of trust in the Region. Similarly, the applicable law is interpreted and the recognition of the trust will, based on the rule of conflict of the self-registration autonomy and the subsidiary rule of the law of*

*administration of trust, without neglecting the issue of jurisdiction or conflict of jurisdiction based on two potential options at the arbitral forum and the attributive clause forum of the jurisdiction; both figures regulated by the autonomy of the settlor.*

**ARENAS GARCÍA, R.: “Condicionantes y principios del Derecho interterritorial español actual: desarrollo normativo, fraccionamiento de la jurisdicción y perspectiva europea”, pp. 547-593.**

*Spanish Civil Law is a complex system. Not only Central State, but also some Autonomous Communities have legislative competence in the field of Civil Law. During the past thirty years, Spanish Autonomic Communities have developed their own civil laws. This development has exceeded the lines drawn by the Spanish Constitution of 1978 and caused some tension. This tension affects the articulation of the different Spanish Civil Laws and the unity of jurisdiction. The increasing relevance of the UE in PIL is another factor to take into consideration, thus the personal and territorial scope of the Spanish civil laws is affected by the UE Regulations.*

**ÁLVAREZ RUBIO, J.J.: “Hacia una vecindad vasca: la futura ley de Derecho civil vasco”, pp. 595-614.**

*Given the diversity that characterizes the internal regulations Basque Civil Law, the purpose of these reflections is directed from a historical angle to an appreciation of the Basque regional legislature’s intention of trying to adapt to their particular circumstances, which require specific policy responses. These are articulated through rules that have a special role within the inter-law, framed in a subcategory that might be described as interlocal law in a spring ad intra of the system, with the aim of responding to the specific features of the fragmentation of Legislative jurisdiction and diversity that characterizes the Basque regional civil law.*

**PÉREZ MILLA, J.: “Una perspectiva de renovación y dos parámetros de solución en los actuales conflictos internos de leyes españolas”, pp. 615-637.**

*Spain is a plural Legal system that is organized territorially. However, the territoriality has created inefficiencies that are compounded both by the expansion of Regional Law as well as the economic crisis. This study analyzes*

*how to overcome the distortions of territoriality with two parameters. First, from a constitutional point of view, strengthening the balance of the multi Legal organization; second, implementing a new principle of action that comes from the Services Directive. The stated purpose of the study is to facilitate the communication between the different Spanish territories and develop sufficiently the internal Spanish Conflicts of Law system.*

**RODRÍGUEZ-URÍA SUÁREZ, I.: “La propuesta de reglamento sobre sucesiones y testamentos y su posible aplicación al Derecho interregional: especial consideración de los pactos sucesorios”, pp. 639-665.**

*This contribution analyzes the possibility of resolving Spanish interregional conflicts related to agreements as to succession through an European rule of law. At a first stage, we apply both the Proposal for a Regulation of successions and wills and also art. 9.8º of the Spanish Civil Code (hereinafter, Cc) to three different cases with an interregional factor involving agreements as to succession. Secondly, we deal with the feasible solutions under the point of view of the interests of agreements as to succession and the requirements of the interregional law system. We conclude reaching our own decision and suggesting new ways of possible interpretations of art. 9.8º Cc.*

**HSU, Yao-Ming: “Los nuevos códigos de Derecho internacional privado de China y Taiwán de 2010-especial referencia a la materia de familia”, pp. 669-689.**

*We briefly summarize the respective amendment or new codification of private international law in Taiwan and in China. These new regulations both ambitiously show the intention to cope with the newest international regulatory trends but also carefully keep their own specificities. Especially in the domain of lex personalis, Taiwan keeps the choice of lex patriae, but China chooses the path of habitual residence as connecting factor. This difference in legislative principle result in the diverse applicable law in family matters on both sides of the strait. After their promulgation of the new laws, from the 26 May 2011 on in Taiwan and from the first April 2011 on in China, these differences will probably create other divergences for resolving the cross-strait family matters, even though on both sides there exists other specific regulation for the interregional conflict of laws. Besides, there exist*

*some ambiguities in some provisions both in Taiwanese and Chinese new codes. More jurisprudences and doctrinal explanations would be needed for the future application.*

**ASAMI, E.: “La ley japonesa sobre las normas generales de aplicación de las leyes (Ley 78/2006 de 21 de junio)”, pp. 691-705.**

*The beginning of the Japanese private international law dates back to the late 19<sup>th</sup> century when the Japanese jurists, under the guidance of European experts, prepared the “Act on the Application of Laws” known as Horei. After more than 100 years of existence, Horei has been entirely reformed and in 2006 culminated in the enactment of the “Act on General Rules for Application of Laws”. This is a special code which contains only the choice-of-law rules, whereas the rules regarding the international jurisdiction as well as the recognition and enforcement of foreign judgements are found in the Code of Civil Procedure. The most notable change is the modernization of Japanese language which is considered to be a big progress. It will contribute to raise awareness of Japanese law internationally, thanks to the more comprehensive writing of the Japanese language. This article explores the background of the reform and highlights features of the new law.*

**ELVIRA BENAYAS, M.J.: “Matrimonios forzosos”, pp. 707-715.**

*Multicultural societies are faced with situations that are alien, but that affect its members. This is the case of forced marriages involving significant numbers of women and girls in the world and demand of these societies, sometimes an overwhelming response to a practice that involves the violation of Fundamental Rights and Freedoms. Response must be multidisciplinary, with a required preventive function, but also care and legal assistance to victims, where there are several trends that include both the intervention of criminal law, civil law and private international law.*

**STAATH, C.: “La excepción de orden público internacional como fundamento de denegación del reconocimiento del repudio islámico”, pp. 717-729.**

*When it comes to the recognition of foreign judgments or legal situations, the public policy exception constitutes the last legal tool to ensure the protection*

*of the fundamental values of the forum's legal order, which include Human Rights. This has been perfectly illustrated by the case law on recognition of Islamic talaq divorces in occidental countries. The talaq is a unilateral act that consists of the dissolution of the bond of matrimony under the exclusive and discretionary initiative of the husband. In Europe, various courts have denied recognition of the talaq for its incompatibility with the principle of equality between spouses as embodied in article 5 of the 7th additional Protocol to the European Convention on Human Rights, on the grounds of the public policy exception. Although a talaq could not normally be pronounced in Europe, some courts, such as the French ones, have sometimes accepted to recognize a foreign talaq depending on the degree of connection between the legal situation and the forum. However, such a difference of treatment based on the residence and/or nationality of the parties is not legitimate when it comes to the protection of Human Rights, especially when they are of universal reach, as in the case of the principle of equality between spouses.*

**GUZMÁN ZAPATER, M.: “Gestación por sustitución y nacimiento en el extranjero: hacia un modelo de regulación (sobre la Instrucción DGRN de 5 de octubre de 2010)”, pp. 731-743.**

*The Instrucción (resolution) of the Dirección General de los Registros y del Notariado of October 5th 2010 is meant to reduce the difficulty to access to Spanish (consular) registries to those born from surrogate mothers in a foreign country. Said Instrucción introduces changes from the previous case law in order to provide a greater protection in these cases in the interest of the child and of the mother through the judicial control of the surrogation contract. Access to the Spanish registry is hereinafter possible only when judicial control has taken place. The Instrucción also creates the legal regime for recognition of the foreign judicial decision. Yet several difficulties remain in place which would make a review of the system advisable.*

**SÁNCHEZ-CALERO, J. y FUENTES, M.: “La armonización del Derecho europeo de sociedades y los trabajos preparatorios de la European Model Company Act (EMCA)”, pp. 745-758.**

*This paper aims to expose the initiative for a few years developed with regard to the elaboration of a European Model Company Act (EMCA), intended to be inserted in the construction of European company law. This is a project led by*

*renowned academics from across Europe, which aims to develop a kind of law-model (following the paradigm of the U.S. Model Business Corporation Act) on corporations. For now, the several draft chapters already made, show the approach to be made: dispositive rules, information, and a wide range of self-regulation. The working method followed is that of comparative law, so that the EMCA keep in mind the differences and similarities of the European legal systems.*

**IRURETAGOIANA AGIRREZABALAGA, I.: “Los APPRI en la Unión Europea post-Lisboa”, pp. 759-791.**

*In the European Union, the debate on the future of Bilateral Investment Treaties (intra-EU and extra-EU BITs) is more alive than ever. The Lisbon Treaty has included the subject of foreign direct investment within the Common Commercial Policy, stating the exclusive competence of the Union to conclude treaties in this field with third countries. In this new scenario, the EU is taking the first steps to design a common investment policy, which will gradually replace the network of extra-EU BIT still in force. On the other hand, intra-EU BITs require differentiated analysis. The coexistence of these BIT and EU law raises questions difficult to answer, both from the perspective of international law and from the perspective of EU law. In short, the following question is made: Will the EU be an area without BITs in the near future?*

**BORRÁS, A.: “La aplicación del Reglamento Bruselas I a domiciliados en terceros Estados: los trabajos del Grupo Europeo de Derecho Internacional Privado”, pp. 795-814.**

*The European Group for Private International Law / Group Européen de Droit international privé (GEDIP) is working on the revision of the Brussels I Regulation: a revision that will also lead to the modification of the Lugano Convention in its amended version of 2007. A paramount element in this revision is the extension of the scope of application of the Regulation, so that it could be applied also when the defendant is domiciled in a third country. This modification is a step forward in the communitarization or –in more accurate terms nowadays– the europeization of the rules on jurisdiction and recognition and enforcement of decisions in civil and commercial matters. It is the time now to assess whether member States are willing to take the step or,*

*on the contrary, this part of the revision must be postponed, as it will probably happen with other elements. Some clear examples might be seen in the GEDIP proposal: in particular, concerning the introduction of “mirror rules” in matters of exclusive grounds of jurisdiction and prorogation clauses, and the settlement of rules on recognition and enforcement of the decisions of third countries.*

**SALVADORI, M.: “El Convenio sobre acuerdos de elección de foro y el Reglamento Bruselas I: autonomía de la voluntad y procedimientos paralelos”, pp. 829-844.**

*The Hague Convention of 30 June 2005 on Choice of Court Agreements, not yet entered into force, offers a new international instrument to enhance legal certainty and predictability with respect to choice of court agreements in international commercial transactions. The Convention is limited to “exclusive choice of court agreements concluded in civil or commercial matters” and excludes consumer and employment contracts and other specific subject matters. The Convention contains three main rules addressed to different courts: the chosen court must hear the case if the choice of court agreement is valid according to the standards established by the Convention (in particular there is no possible forum non conveniens in favour of courts of another State); any court seized but not chosen must dismiss the case unless one of the exceptions established by the Convention applies; any judgment rendered by the court of a Contracting State which was designated in an exclusive choice of court agreement that is valid according to the standards established by the Convention must be recognised and enforced in other Contracting States unless one of the exceptions established by the Convention applies. Between the Choice of Court Agreements Convention and the Brussels I Regulation important differences rise when the operational systems of the two instruments are compared. In this context the Recast of Brussels I Regulation (December 2010) enhance of the effectiveness of choice of court agreements: giving priority to the chosen court to decide on its jurisdiction, regardless of whether it is first or second seized, and introducing a harmonised conflict of law rule on the substantive validity of choice of court agreements. Thereby it will be easy the conclusion of this Convention by the European Union.*

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# **International Workshop on “Private International Law in the Context of Globalization”**

On October 22 and 23 the China University of Political Science and Law (CUPL) will host an international workshop on “Private International Law in the Context of Globalization: Opportunities and Challenges” in Beijing. The workshop will bring together leading conflict of laws scholars from Belgium, China, Germany, the Netherlands, Sweden, Switzerland and the United States. Here is the programme:

## **Saturday, October 22, 2011**

### **Morning**

**8:15-8:30 Registration**

**8:30-9:50 Opening Ceremony**

Chair: Prof. Xinli Du, Vice Dean of Faculty of International Law, CUPL; Director of the Organizing Committee of the Workshop

### *Opening Remarks:*

- Prof. Jin Huang, President of Chinese Society of Private International Law & President of CUPL
- Prof. Zhongyi Fei, Honorary Chairman of Chinese Society of Private International Law
- Prof. Andrea Bonomi, Vice Dean of Law Faculty of University of Lausanne

**9:50-10:10 Taking Group Photo, Tea & Coffee**

**10:10-12:00 Unification of Private International Law and Chinese Private International Law**

Chair: Prof. Xianglin Zhao, Ex Vice President of CUPL

**10:10-10:30** Shengming Wang, Vice Direct of Legislative Committee of National People's Congress of PRC: *The Guiding Principle of the Enactment of the New Conflict of Laws Act of the PRC*

**10:30-10:50** Laura E. Little, Professor at Temple University's Beasley School of Law: *Internet Choice of Law Governance: An Opportunity for Learning New Perspectives*

**10:50-11:10** Prof. Jin Huang, President of Chinese Society of Private International Law: *The Present and Future of Chinese Legislation on Private International Law*

**11:00-11:30** Prof. Andrea Bonomi, Vice Dean of Law Faculty of University of Lausanne: *Parallel Proceedings in International Litigation and Arbitration*

**11:30-11:50** Judge Guixiang Liu, Chief Judge of the Fourth Civil Court of the Supreme Court of PRC: *Title to be confirmed*

**11:50-12:10** Prof. Mel Kenny at University of Leicester and Prof. James Devenney at Durham University, U.K.: *The EU "Optional Instrument": bypassing Private International Law*

**12:10-12:20 Discussion**

**12:20-14:00 Lunch Buffet at Siji (Four Seasons) Hall**

**Afternoon**

**14:00-16:00 New Development of Private International Law in the United States, Europe and Other Parts of the World**

Chair: Zheng Tang, Professor at University of Aberdeen, U.K.

**14:00-14:20** Prof. Mathijs Huibert ten Wolde, Professor at University of Groningen: *Fundamental Questions Regarding Codification of Private International Law: Does Book 10 Civil Code on the Dutch Conflict of Laws Fit in a World Order*

**14:20-14:40** Juan Shen, Professor at Institute of law of Chinese Academy of

Social Sciences: *The Choice of Law in Succession? Scission System or Unitary System*

**14:40-15:00** Volker Behr, Professor at Law Faculty of University of Augsburg: *Predictability and Flexibility in Choice of Law in Contracts and Torts – Chinese Conflicts Act, E.U. Regulations and U.S. Private International Law Evaluated*

**15:00-15:20** Zhengxin Huo, Associate Professor of CUPL: *An Imperfect Improvement: The New Conflict of Laws Act Of The PRC*

**15:20-15:40 Comments**

- Commentator 1: Prof. Yongping Xiao, Dean of Wuhan University School of Law
- Commentator 2: Prof. Qingsen Xu, Professor at Renmin University School of Law

**15:40-16:00 Discussion**

**16:00-16:15 Tea & Coffee**

**16:15-18:00 New Development in Contract and Torts Choice-of-law Rules**

Chair: Prof. Han Wang, Vice President of Northwest University of Politics and Law

**16:15-16:35** Prof. Dr. Jan von Hein, Professor at Law Faculty of University of Trier: *The European Private International Law on Investor Protection and its Impact on Relations with Third States*

**16:35-16:55** Prof. Michael Bogdan, Professor at Law Faculty of Lund University Sweden: *Contracts and Torts in Cyberspace in View of the European Regulations Rome I and Rome II*

**16:55-17:15** Prof. Xianbo Li, Dean of Law Faculty of Hunan Normal University: *Development of the Principle of Lex Loci delicti*

**17:15-17:35** Associate Prof. Keyu Wang, Associate Professor at China Central University of Finance and Economics

## **17:35-18:05 Comments**

- Commentator 1: Prof. Renshan Liu, Dean of Law Faculty of Zhongnan University of Economics and Law
- Commentator 2: Ms Jane Willems, Arbitrator of the CIETAC

## **18:05-18:30 Discussion**

## **18:30-20:00 Banquet**

## **Sunday, October 23, 2011**

### **Morning**

## **8:30-10:20 Judicial Assistance in Civil and Commercial Area in a Globalized World**

Chair: Knut B. Pissler, Professor at Max Planck Institute for Comparative and International Private Law

**8:30-8:50** Kwang Hyun SUK, Professor at Seoul National University: *Comparative Analysis of the Chinese Private International Law Act and the Taiwanese Private International Law Act: Korean Perspective.*

**8:50-9:10** Johan Erauw, Professor at University of Ghent: *The Section On Goods And Property Rights In The Chinese Law On Private International Law of 28 October 2010 in Comparison With Other Codes*

**9:10-9:30** Xiangquan Qi, Professor at School of International Law of CUPL: *The Latest Development of the Legislation regarding to the Application of Laws Concerning Foreign-related Marriage and Family Relations*

**9:30-9:50** Xiao Song, Associate Professor at Nanjing University School of Law: *Party Autonomy and Conflicts Law in Property*

## **9:50-10:10 Comments**

- Commentator 1: Mo Zhang, Professor at Temple University
- Commentator 2: Chen Weizuo, Associate Professor at Tsing Hua

University

**10:00-10:20 Discussion**

**10:20-10:35 Tea & Coffee**

**10:35-12:00 Resolutions to International Civil and Commercial Disputes  
(Litigation, Arbitration, and Negotiation)**

Chair: Prof. Zengyi Xuan, Dean of College of International Students of CUPL

**10:35-10:55** Assistant Prof. Kun Fan, Assistant Prof. at Chinese University of Hong Kong, Senior Consultant of Arbitration Asia: *Developments of the Enforcement of Foreign-related and Foreign Awards in China*

**10:55-11:15** Lianbin Song, Professor at Wuhan University School of Law: *Development of China's Arbitration after the Establishment of Arbitration Law of the People's Republic of China*

**11:15-11:30** Yongfu Chen, Beijing Arbitration Committee: *Topic to be confirmed*

**11:30-11:45** Yun Zhao, Associate Professor at the Law Faculty of University of Hong Kong: *Discussions on Mediation Legislation in Hong Kong-Reflections from Mainland's People's Mediation Law*

**11:45-12:05 Comments**

- Commentator 1: Song Lu, Professor at China Foreign Affairs University
- Commentator 2: Hailing Shan, Professor at Shanghai University of Finance and Economics

**12:05-12:30 Closing Ceremony & The Announcement of Beijing Declaration on Private International Law**

Chair: Prof. Yongping Xiao, Dean of Wuhan University School of Law

**The Announcement of Beijing Declaration on Private International Law**

*Closing Remarks:*

- Prof. Jin Huang, President of Chinese Society of Private International Law

- Prof. Johan Erauw, Professor at University of Ghent
- Prof. Mathijs Huibert ten Wolde, Professor at University of Groningen

**12:30-14:00 Lunch at Siji (Four Seasons) Hall**

More information (mostly in Chinese) is available on the conference website.

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# **Italo-German Cooperation in the Brussels I Recast: Conference in Milan (25-26 November 2011)**

The University of Milan will host a **two-day conference on 25 and 26 November 2011 on the review of the Brussels I regulation**, organized with the University of Padova, the University of Heidelberg and the Ludwig-Maximilians-Universität München: “**Cooperazione Italo-Tedesca nella revisione del Regolamento Bruxelles I - Deutsch-Italienische Kooperation im Rahmen der Neufassung der Brüssel I-Verordnung**”. The working languages will be English, Italian and German. Here’s the programme (.pdf):

**I Session: Friday 25 November 2011, 10h00**

Saluti introduttivi – Grußworte: *Prof. Dr. Marino Regini* (Università degli Studi di Milano); *Prof. Dr. Angela Lupone* (Università degli Studi di Milano)

**Chair: Prof. Dr. Ilaria Viarengo (University of Milan)**

- *Prof. Dr. Rainer Hausmann* (Universität Konstanz): L’ambito di applicazione del regolamento – Der Anwendungsbereich der Verordnung;
- *Prof. Dr. Andrea Gattini* (Università degli Studi di Padova): I rapporti con le convenzioni internazionali – Das Verhältnis zu internationalen

Abkommen;

- *Prof. Dr. Burkhard Hess* (Universität Heidelberg): La competenza in materia di liti patrimoniali- Die Gerichtsbarkeit für vermögensrechtliche Streitigkeiten;
- *Prof. Dr. Ruggiero Cafari Panico* (Università degli Studi di Milano): Il forum necessitatis – Die Notzuständigkeit (forum necessitatis).

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## **II session: Friday 25 November 2011, 14h00**

**Chair: Prof. Dr. Peter Kindler (Ludwig-Maximilians-Universität München)**

- *Prof. Dr. Claudio Consolo* (Università degli Studi di Padova): La proposta di revisione del Regolamento Bruxelles I e l'arbitrato – Der Vorschlag zur Revision der Brüssel I-Verordnung und die Schiedsgerichtsbarkeit;
- *Prof. Dr. Christian Kohler* (Universität Saarbrücken) – *Prof. Dr. Ilaria Queirolo* (Università degli Studi di Genova): Gli accordi di proroga della giurisdizione nella proposta di revisione del regolamento Bruxelles I – Die Gerichtsstandsvereinbarung im Vorschlag zur Neufassung der Brüssel I-Verordnung;
- *Prof. Dr. Luigi Fumagalli* (Università degli Studi di Milano): La litispendenza – Die Rechtshängigkeit.

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## **III session: Saturday 26 November 2011, 9h00**

**Chair: Prof. Dr. Kurt Siehr (Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg)**

- *Prof. Dr. Marco De Cristofaro* (Università degli Studi di Padova) – *Prof. Dr. Thomas Pfeiffer* (Universität Heidelberg): L'abolizione dell'exequatur – Die Abschaffung des Exequaturverfahrens;
- *Prof. Dr. Manlio Frigo* (Università degli Studi di Milano): Il riconoscimento e l'esecuzione delle decisioni in materia di diffamazione – Die Anerkennung und Vollstreckung von Entscheidungen bei Verleumdungsklagen;
- *Prof. Dr. Stefania Bariatti* (Università degli Studi di Milano): Il

riconoscimento e l'esecuzione delle decisioni rese a seguito di class action  
- Die Anerkennung und Vollstreckung von Entscheidungen ergangen  
aufgrund einer Sammelklage (class action).

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**Round Table: Saturday 26 November 2011, 11h15**

**Tavola rotonda sull'impatto della revisione del Regolamento  
sull'ordinamento italiano e sull'ordinamento tedesco - Podiumsdiskussion  
zu den Auswirkungen der Revision der Verordnung auf das italienische  
und das deutsche Recht**

**Chair: Prof. Dr. Fausto Pocar (Università degli Studi di Milano)**

- Prof. Stefano Azzali (Camera Arbitrale di Milano)
- Prof. Dr. Sergio M. Carbone (Università degli Studi di Genova)
- Prof. Dr. Herbert Kronke (Universität Heidelberg)
- Prof. Dr. Riccardo Luzzatto (Università degli Studi di Milano)
- Prof. Dr. Alexander R. Markus (Universität Bern)
- Prof. Dr. Marco Ricolfi (Università degli Studi di Torino - Studio Tosetto,  
Weigmann & Associati)


The event is organized under the patronage of the Italo-German Chamber of Commerce and Chamber of arbitration of Milan, and with the financial support of: Ateneo Italo-Tedesco; Law firm *Gebhard* (Milan, Stuttgart); Law firm *Tosetto, Weigmann & Associati* (Turin, Milan, Rome); "Associazione per gli scambi culturali tra giuristi italiani e tedeschi".

For further information and registration, see the programme and the conference's webpage.

*(Many thanks to Prof. Francesca Villata, University of Milan, for the tip-off)*

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# Ruehl on Statut und Effizienz: Ökonomische Grundlagen des Internationalen Privatrechts

Giesela Ruehl (Friedrich-Schiller University Jena and our new editor for  Germany) has published her *Habilitationsschrift* on **Statut und Effizienz: Ökonomische Grundlagen des Internationalen Privatrechts [Applicable Law and Efficiency. Economic Foundations of Private International Law]**. Here's an English description (the monograph itself is in German):

*Is private international law an efficient answer to the problems of international transactions? In her recent book on the economic foundations of private international law, Giesela Rühl explores this question in great detail.*

*She analyses choice of law-rules on a broad comparative basis and uses economic theory to tackle fundamental conceptual issues just as well as specific problems in the private international law of contracts and torts. Focusing on the recently adopted Rome I- and Rome II-Regulations she contributes to the understanding of the developing European private international law.*

*The book is organized in four parts. In the first part, the author analyses the problems of international transactions from an economic perspective. She takes a closer look at the specific problems associated with international transactions and asks whether private international law – as compared to other governmental, non-governmental, regulatory or non-regulatory mechanisms – is a suitable or at least necessary instrument to deal with these problems. In the second part, the author lays the theoretical foundation for an economic analysis of private international law. She explores whether economic theory may be used to analyse issues in private international law and whether the basic assumptions and assessment criteria of economic theory may claim application. In the third part, the author re-conceptualises private international law from an economic perspective. She develops a general economic framework for the determination of the applicable law essentially based on free choice of law. In the fourth and final part, the author applies this framework to specific issues in choice of law, most importantly contracts and torts.*

# Cuadernos de Derecho Transnacional, Issue 2/2011

✖ The second issue for 2011 of the Cuadernos de Derecho Transnacional, the Spanish journal published twice a year by the Área de Derecho Internacional Privado of Univ. Carlos III of Madrid under the editorship of *Alfonso Luis Calvo-Caravaca* (Univ. Carlos III) and *Javier Carrascosa-González* (Univ. of Murcia), has been recently published. It contains seventeen articles, shorter articles and casenotes, encompassing a wide range of topics in conflict of laws, conflict of jurisdictions and uniform law, all freely available for download. The journal's website provides a very useful search function, by which contents can be browsed by issue of publication, author, title, keywords, abstract and fulltext.

Here's the table of contents of issue 2/2011 (each contribution is accompanied by an abstract in English):

## Estudios

- *José M<sup>a</sup> Alcántara, Frazer Hunt, Svante O. Johansson, Barry Oland, Kay Pysden, Milos Pohunek, Jan Ramberg, Douglas G. Schmitt, William Tetley, C.M.Q.C, Julio Vidal*, A Blue Print for a Worldwide Multimodal Regime;
- *Nuno Andrade Pisarra*, Breves considerações sobre a lei aplicável ao contrato de seguro;
- *María José Cervell Hortal*, Pacientes en la Unión Europea: libertad restringida y vigilada;
- *Sara Lidia Feldstein de Cárdenas, Luciane Klein Vieira*, La noción de consumidor en el Mercosur;
- *Pietro Franzina*, The law applicable to divorce and legal separation under Regulation (EU) no. 1259/2010 of 20 December 2010;
- *Federico F. Garau Sobrino*, Las fuentes españolas en materia de

obligaciones alimenticias. ¿Hacia un Derecho Internacional Privado extravagante?;

- *Cesáreo Gutiérrez Espada*, La adhesión española (2011) a la Convención de las Naciones Unidas sobre las inmunidades jurisdiccionales de los Estados y de sus bienes (2005);
- *Francesco Seatzu*, La proposta per la riforma del Regolamento «Bruxelles I» e i provvedimenti provvisori;
- *Sara Tonolo*, L'Italia e il resto del mondo nel pensiero di Pasquale Stanislao Mancini.

## Varia

- *Ana-Paloma Abarca Junco, Marina Vargas-Gómez Urrutia*, Vecindad civil de la mujer casada: nuevas reflexiones en torno a la inconstitucionalidad sobrevenida del art. 14.4 C.c. y la retroactividad de la Constitución española en relación a los modos de adquisición de su vecindad civil;
- *Elisa Baroncini*, La politica cinese sulle esportazioni dinanzi al sistema di risoluzione delle controversie dell'OMC: il report del Panel nel caso China – Raw Materials;
- *Pilar Juárez Pérez*, La inevitable extensión de la ciudadanía de la Unión: a propósito de la STJUE de 8 de marzo de 2011 (asunto Ruiz Zambrano);
- *Carlos Llorente Gómez de Segura*, “Forum non conveniens” revisited: el caso Spanair;
- *Pilar Maestre Casas*, El pasajero aéreo desprotegido: obstáculos a la tutela judicial en litigios transfronterizos por incumplimientos de las compañías aéreas (A propósito de la STJUE de 9 julio 2009, Rehder, As. C-204/08);
- *María Dolores Ortiz Vidal*, Ilonka Fürstin von Sayn-Wittgenstein: una princesa en el Derecho internacional privado;
- *Esther Portela Vázquez*, La Convención de la UNESCO sobre la Protección del Patrimonio Subacuático. Principios Generales;
- *Alessandra Zanobetti*, Employment contracts and the Rome Convention: the Koelzsch ruling of the European Court of Justice.

*(Many thanks to Federico Garau, Conflictus Legum blog, for the tip-off)*

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# Kuipers on Cross-Border Infringement of Personality Rights

Jan-Jaap Kuipers, an Assistant Professor of European Law at the Radboud Universiteit Nijmegen, has written an interesting article on cross-border infringement of personality rights. It has just been published in the German Law Journal and can be downloaded [here](#). The abstract reads as follows:

*Globalization has led to the emergence of broadcasting services and books aimed at a global audience. Authors of books, journals, and articles have gained readers worldwide. Due to the Internet, the spreading of ideas on a global level has never been easier. The other side of the coin is that authors run a risk of being exposed to civil proceedings in many jurisdictions. What is considered to be proactive journalism, or a provocative academic comment in some jurisdictions is considered to be libel or defamation in others. Although both the freedom of speech and the right to private life have received constitutional protection in all Member States, different balances have been struck between the competing fundamental rights. In a cross-border context, the infringement of the right to private life by foreign media becomes an international horizontal conflict between fundamental rights. The issue is therefore extremely sensitive and during the Rome II negotiations no consensus could be reached on the appropriate conflict of laws rule. The infringement of personality rights was therefore excluded from the scope of that Regulation. The present paper attempts to analyze to what extent it is necessary to revise the “defamation exclusion” of Rome II. If it would be necessary to include defamation in Rome II, what would be the most appropriate conflict of laws rule?*

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# Twenty Years' Work by GEDIP

A new book gathering 20 years of work by the European Group for Private International Law has just been published. Building European Private International Law. Twenty Years' Work by GEDIP was edited by Marc Fallon, Patrick Kinsch and Christian Kohler.

*During the last 20 years, private international law has been significantly transformed in Europe. Since its creation in 1991, the European Group for Private International Law (EGPIL, also commonly known as GEDIP) sustained this evolution. Composed of specialists in private international law who are also interested in European law, the GEDIP focuses on the interaction between these two fields of research. The work of the GEDIP focuses on international instruments of various nature – in particular, those of the Hague Conference on Private International Law, and the European Convention for the protection of human rights and fundamental freedoms. The issues covered by the annual meetings are chosen and analyzed in an independent way without a mandate from European or international institutions. The aim is to foster progress of knowledge by using an issue-by-issue method. This working method allowed the GEDIP to develop new tools which turned out to sustain the preparation of several European acts in civil and commercial matters – namely, the Regulations Brussels II, Rome I, Rome II, and Rome III, as well as possibly the forthcoming regulation on succession or the revision of the Brussels I Regulation. GEDIP documents reflect the evolving debate on private international law in Europe for 20 years. Their publication into a monograph at the occasion of the GEDIP's 20th anniversary aims to improve their dissemination and is accompanied by a detailed index to facilitate their consultation.*

The full table of content is available [here](#). More details are available [here](#).