4-6 April 2018, Seville: 60 Years of The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

On 4-6 April 2018 the Loyola University Andalusia in Seville (Spain) will host a conference to celebrate the 60th birthday of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Jointly organized by The United Nations Commission for International Trade Law (UNCITRAL), the Loyola University Andalusia, the University of Zaragoza and the Spanish Club of Arbitration (CEA) the conference analyses key issues and future challenges of the Convention and provides a unique opportunity to meet with professionals and academics from around the world.

Registration is now open via the conference website.

The program is available here and here.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1/2018: Abstracts

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

B. Heiderhoff: **The new EU Regulations on Matrimonial Property Regimes**

and on the Property Consequences of Registered Partnerships

The two new EU Regulations on matrimonial property regimes (2016/1103) and on property consequences of registered partnerships (2016/1104) will come into force on 29th January 2019. This contribution provides an introduction to the new acts and analyses their central provisions. Firstly, the material and personal scope of the Regulations are clarified. The author then considers the conflict of laws rules. Here, the Regulation is consistent with Rome III and the 2007 Hague Protocol in allowing a limited choice of law. It is highlighted that the habitual residence at the time of the marriage is of central importance, but that several issues will need further clarification. In particular, the exact time at which the habitual residence of the couple must be established under Article 26 para 1 needs to be fixed. Furthermore, the escape clause in Article 26 para 3 is described as being too narrow. It is then shown that the formal requirements for marriage contracts in Article 25 refer to the *lex causae* which may cause difficulty. Finally, the rules on jurisdiction are briefly described. The author ends with an overall positive assessment.

T. Koops: **Res judicata under the Brussels I Recast – Can the ruling in Gothaer Allgemeine Versicherung ./. Samskip GmbH be reconciled with the Brussels I Recast Regulation?**

In *Gothaer Allgemeine Versicherung ./. Samskip GmbH* the CJEU developed a European concept of res judicata, encompassing not only the operative part of the judgment, but also its *ratio decidendi*, based on the Brussels I Regulation. This article argues contrary to the CJEU, that today's European law of Civil Procedure cannot cope with a European concept of res judicata. Far from being a fully-fledged system of law it cannot furnish "its" concept of *res judicata* with a corresponding system of legal protection. An autonomous concept would sever the connection between the legal effect of a decision and the legal protection of the parties under national laws. Therefore, the effect of a decision, when recognized in another member state, should in principle be determined by the law of the state in which it was rendered. On the other hand, some of the provisions of what is now the Brussels I Recast do indeed require a uniform European concept of res judicata, albeit with a narrow scope. This leaves us with a European law of Civil Procedure under which the concept of res judicata should, but cannot be entirely based on national law.

P.F. Schlosser: **Agents acting on behalf of a corporate entity or debtors jointly and severally liable together with it personally bound by jurisdiction agreements in the contract?**

The opinion of the Court of Justice in its decision of June 26, 2017, case C-436/16, is correct and cannot be subject to any doubt. A jurisdiction agreement cannot by itself bind persons acting for the respective contract partner in the capacity of a managing director or holder of a power of attorney. The solution is corresponding to what is correct in the framework of arbitration. Persons acting on behalf of the respective contracting party may only be bound by an agreement relating to them specifically and meeting the form requirements of Art. II New York Convention of 1958 or Art. 25 Brussels Ibis Regulation, respectively.

R. Magnus: **The jurisdiction at the place of performance for the repayment of a loan**

This article comments on a recent decision of the Higher Regional Court in Hamm (Germany), in which the court ruled that for the repayment of a loan Art. 5 Nr. 1 lit. b Brussel I-Regulation conferred jurisdiction upon the courts at the seat of the lender or likewise the seat of the transferring credit institution. The Court decided that the decisive element that constitutes the place of performance in accordance with Art. 5 Nr. 1 lit. b Brussel I-Regulation is the location, where the lender initiated the transfer of the money to the borrower's bank account. This article discusses the implications of this decision, criticizes its reasoning and considers alternative foundations for the jurisdiction in the case at hand.

G. Schulze: **Attributability of a declaration of intent in cases of doubtful agency – triple relevance of the same fact (dreifach relevante Tatsache)**

The matter in question was whether a business woman's declaration of intent should be attributed to herself or to a Spanish joint-stock company (S.L.) which she was an agent of. This question was decisive for jurisdiction (jurisdiction clause, Art. 23, and special jurisdiction, Art. 5 Regulation (EC) No 44/2001) as well as the decision on the merits (payment of remuneration for work). Therefore, the ECJ's ruling in *Kolassa* applied (28.1.2015 C-375/13, IPRax 2016, 143) which allows accordingly to the *lex fori* different requirements for fact adjudication in "good arguable cases". Given the unional concept of res judicata in *Gothaer Versicherungs AG* (15.11.2012 C-456/11, IPRax 2014, 163) the ratio of this ruling

seems to be outdated, at least in cases within the Single Market.
In private international law the issue at stake is: Which law governs the consequences of a declaration of intent in cases of doubtful agency? Therefore, the German law applicable to contracts and the Spanish law applicable to companies should be considered. Multiple and indirect representation are both questions of substantive law of agency. Nevertheless, the issue should be characterized as a question of contract law: The heart of the problem is who should be a party to the contract. The recently enacted provision on the conflict of laws of agency does not contain any ruling on this problem (Art. 8 Introductory Act to the Civil Code). The Higher Regional Court held rightly that German contract law is applicable to the defendant's capacity to be sued and, *in casu*, this capacity was denied.

D. Martiny: **Jurisdiction and habitual residence in respect of a deceased cross-border commuter**

The case concerns a conflict of local jurisdiction between the Local Court of Pankow/Weißensee, where the succession-waiving daughter of the deceased had her domicile, and the Local Court of Wedding, in whose district the deceased had lived prior to relocating to Poland. The Berlin Court of Appeal (Kammergericht) rules that the deceased still had his habitual residence in Germany despite the fact that he lived in a flat in a rented storage depot in Poland. The court identifies the criteria relevant to the determination, particularly his activities as a "cross-border commuter" in and out of Germany and his not having integrated in Poland. The international competence and local jurisdiction of the Local Court of Pankow/Weißensee for the declaration of a waiver of succession is based on Art. 13 European Succession Regulation in conjunction with § 31 International Succession Proceedings Act (Internationales Erbrechtsverfahrensgesetz; IntErbRVG), independent of Art. 4 European Succession Regulation. Local jurisdiction of the Local Court of Wedding for protective measures can be based on the former habitual residence of the deceased in this district (§ 343 para. 2 Family Proceedings Act – *Familienverfahrensgesetz*; FamFG).

B. Haidmayer: **Parallel divorce proceedings in Germany and Switzerland**

The judgment deals with the issue of *lis alibi pendens* of parallel crossborder divorce proceedings. Under European Union law and domestic law, the first-in-time rule determines the precedence of a proceeding. The moment defining *lis*

alibi pendens is decisive for the priority rule; however, in this regard the two coordination systems of the supranational and the domestic jurisdiction diverge. This contribution analyses the approach taken by the court and particularly examines whether the Brussels IIbis Regulation contains any requirements for parallel divorce proceedings in non-member states.

H. Roth: **Vollstreckungsbefehle kroatischer Notare und der Begriff „Gericht" in der EuGVVO und der EuVTVO**

The two important decisions of the ECJ deserve approval. A Croatian notary, acting on the foundation of a "credible deed" by issuing a writ of execution is not a "court" within the meaning of the Brussels Ia Reg. Furthermore, a proceeding concerned with the enforcement of a judgment falls as a "civil matter" within the scope of Art. 1 (1) Brussels Ia Reg., even if a parking fee is charged for a public parking lot, which belongs to the property of the municipality.

K. Siehr: **Greek Reduction of Salaries and Employment Contracts Governed by German Law**

In some German cities there are Greek schools in which teachers teach the Modern Greek language. These teachers are employed by the Greek government which pays the teachers in Germany, accepts German law as the law governing the labour contracts and agrees to German jurisdiction. In 2009, Greece started to reduce the salaries of teachers and applied this legislation also to teachers in Germany. Some of these teachers sued the Greek Republic in Germany and asked for full payment without the reduction provided in recent legislation. The Federal Labour Court asked the European Court of Justice for a preliminary ruling on Art. 9 Rome I Regulation. The ECJ decided in the case of *Greece v. Nikiforidis* on 18/10/2016 that foreign overriding mandatory rules, except those of the country of performance (Art. 9 no. 3 Rome I Regulation), cannot be applied directly but may be indirectly taken into account by the substantive law governing the contract. The German Federal Labour Court on 26/4/2017 decided the payment claim of *Grigorios Nikiforidis* in his favour and declined to recognize Greek legislation of reduction of salaries directly and also decided that under German law no employee is obliged to accept a reduction of his salary without a new contract stipulated between the parties.

J. von Hein/B. Brunk: **Shall we let her go? Legal conditions for the cross-**

border movement of companies

The ECJ cases *Cartesio* (C-210/06) and *Vale* (C-378/10) established guidelines for cross-border changes of legal form within the EU. Subsequently, the German Higher Regional Courts Nuremberg and Berlin were confronted with the issue of cross-border movement of companies from other Member States to Germany. Conversely, the OLG Frankfurt judgment concerns the outward migration of a German company for the first time. The company's decision to transfer its statutory seat to Italy was refused to be registered by the German authorities for reasons of noncompliance with German transformation laws. The OLG Frankfurt allowed the company's appeal against this refusal arguing that it violated the company's freedom of establishment (Art. 49, 54 TFEU). The following article discusses the OLG Frankfurt judgment against the background of the ECJ Cases *Cartesio* and *Vale* while examining the premises posed by private international law and substantive law.

F. Heindler: **International Jurisdiction over Claims of Shareholders relating to the Dieselgate-Scandal**

The annotated judgement focuses on the international jurisdiction of Austrian courts for damage claims brought against *Volkswagen* in the aftermath of the Dieselgate scandal. *Volkswagen*, by cheating pollution emissions tests, allegedly was in breach of applicable ad-hoc announcement requirements and caused damages to shareholders situated in Austria. The Austrian Surpreme Court in Civil and Criminal Matters (*Oberster Gerichtshof*), however, referring inter alia to the place where the harmful event occurred, rejected jurisdiction of Austrian courts under the Brussels Ibis Regulation.

F. Koechel/B. Woldkiewicz: **Submission by appearance in European Procedural Law and lex fori**

Jurisdiction under Art. 26 of the Brussels Ibis Regulation is based on the defendant's entering of appearance – a procedural act under domestic law. Art. 26 of the Brussels Ibis Regulation and the *lex fori* are therefore closely interlinked. In a recent judgment, the Polish Supreme Court (*Sa¸d Najwyz?szy*, 3.2017 – II CSK 254/16) ruled on the interplay of Art. 26 of the Brussels Ibis Regulation and the national rules governing the status of a party and the legal capacity of a defendant. One can only enter an appearance within the meaning of

Art. 26 of the Brussels Ibis Regulation, if they are considered as the defendant under domestic law. The question arises, whether the defendant enters an appearance according to Art. 26 of the Brussels Ibis Regulation by submitting factual or legal allegations in writing with regard to his status as a party and his legal capacity. Contrary to the European Court of Justice's caselaw, the notion of the entering of an appearance should be interpreted autonomously, without unnecessary recourse to the law of the forum State. Generally, written submissions by the defendant on his status as a party to the proceedings and his legal capacity are to be considered as an entering of an appearance within the meaning of Art. 26 of the Brussels Ibis Regulation. Nevertheless, the determination of whether the defendant, in making such submissions implicitly contests the court's jurisdiction is one that needs to be examined carefully in each single case. The defendant is deemed to implicitly contest jurisdiction according to Art. 26 of the Brussels Ibis Regulation if, from the defendant's allegations it is objectively apparent for the court and the claimant that the defendant invokes the lack of jurisdiction.

Annual Survey of American Choice-of-Law Cases

Symeon Symeonides has posted on SSRN his 31st annual survey of American choice-of-law cases. The survey covers appellate cases decided by American state and federal courts during 2017. It can be found here https://ssrn.com/abstract=3093709 The table of contents is reproduced below.

Symeonides has also posted his annual Private International Law Bibliography for 2017. It can be found here https://ssrn.com/abstract=3094215.

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Save the Date: Second German Conference for Young PIL Scholars "Private International Law between Tradition and Innovation" on 4/5 April 2019

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

In light of the success of the first German conference for young PIL scholars, held in April 2017 in Bonn (see the recent announcement of the conference volume as well as the conference report), we would like to continue the academic and personal exchange with a second conference. It will take place on **4 and 5 April 2019** at the University of Würzburg (Germany). The key note will be given by Professor *Jürgen Basedow* (emeritus director at the Max Planck Institute for Comparative and International Private Law).

The conference theme will be

"Private International Law between Tradition and Innovation"
– German title: "IPR zwischen Tradition und Innovation" –

Today, anyone working on questions of private international law finds an area of law that is highly differentiated, shaped by theory, and characterized by a complex network of legal sources. It is up to young scholars in particular to question these structures, mechanisms and methods, which have been consolidated in over a hundred years of academic discourse and legal evolution. New political, social, and technological developments also provide an opportunity to take a fresh look at established approaches and possibly outdated solutions. In short, the relationship between tradition and innovation in private international law requires close scrutiny.

Against this backdrop, we are inviting contributions that address the tension inherent in the conference theme, that question dated rules and methodological approaches, or that engage with new problems and challenges for PIL, such as mass migration, digitization, gender identities or modern forms of family. For this purpose, we understand PIL in a broad sense that includes questions of conflict of laws, international civil procedure, arbitration and uniform law.

Papers that are selected for presentation will be published in a conference volume by Mohr Siebeck. Presentations should take about 30 minutes and ideally be in German. The call for papers will be published in spring 2018.

Questions may be directed to ipr-nachwuchstagung@jura.uni-wuerzburg.de. For further information, please visit https://www.jura.uni-wuerzburg.de/lehrstuehle/rupp/tagungen/ipr_nachwuchstagung/.

Politik und Internationales Privatrecht [English: Politics and Private International Law]

edited by Susanne Lilian Gössl, in Gemeinschaft m. Rafael Harnos, Leonhard Hübner, Malte Kramme, Tobias Lutzi, Michael Florian Müller, Caroline Sophie Rupp, Johannes Ungerer

More information at: https://www.mohr.de/en/book/politik-und-internationales-privatrecht-9783161556920

The first German conference for Young Scholars of Private International Law, which was held at the University of Bonn in spring 2017, provides the topical content for this volume. The articles are dedicated to the various possibilities and aspects of this interaction between private international law and politics as well

as to the advantages and disadvantages of this interplay. “Traditional” policy instruments of private international and international procedural law are discussed, such as the public policy exception and international mandatory rules (*loi de police*). The focus is on topics such as human rights violations, immission and data protection, and international economic sanctions. Furthermore, more “modern” tendencies, such as the use of private international law by the EU and the European Court of Justice, are also discussed.

The content is in German, but abstracts are provided in English here:

“Presumed dead but still kicking” – does this also apply to traditional Private International Law?

Dagmar Coester-Waltjen

The opening address defines the concept of “traditional” private international law. Subsequently, it alludes to different possibilities politics have and had to influence several aspects of this area of law. Even the “classic” conflict of laws approach based on Savigny and others was never free from political and other substantive values, as seen in the discussion about international mandatory law and the use of the public policy exception. Moreover, the paper reviews past actual or presumable “revolutions” of traditional private international law, especially the so-called “conflicts revolution” in the US and, lately, the European Union. The author is critical with the term “revolution”, as many aspects of said “revolutions” should better be regarded as a shy “reform” and further development of aspects already part of the traditional private international law. Finally, the paper concludes with an outlook on present or future challenges, such as questions of globalisation and mobility of enterprises and persons, technical innovations and the delocalisation and diversification of connecting factors.

Politics Behind the “ordre public transnational” (Focus ICC Arbitral Tribunal)

Iina Tornberg

This paper examines transnational public policy as a conflict of laws phenomenon in international commercial arbitration beyond the legal framework of nation-state centered private international law. Taking account of the fact that overriding mandatory rules and public policy rules can be considered as general instruments of private international law to pursue political goals, this paper

analyzes the policies according to which international arbitrators accept them as transnational ordre public. The focus is on institutional arbitration of the ICC (International Chamber of Commerce) International Court of Arbitration. ICC cases that involve transnational and/or international public policy are discussed.

Between Unleashed Arbitral Tribunals and European Harmonisation: The Rome I Regulation and Arbitration
Masud Ulfat

According to prevailing legal opinion, the European Union exempts the qualitatively and quantitatively highly significant field of commercial arbitration from its harmonisation efforts. Free from the constraints that the Rome I Regulation prescribes, arbitral tribunals are supposed to be only subject to the will of the parties when determining the applicable law. This finding is surprising given the express goals of the Rome I Regulation, namely the furtherance of legal certainty in the internal market and the enforcement of mandatory rules, in particular mandatory consumer protection laws. In light of these aims, the prevailing opinion's liberal stance on the applicability of the Rome I Regulation in arbitral proceedings seems at least counterintuitive, which is why the article reassesses whether arbitral tribunals are truly as unbound as prevailing doctrine holds. In doing so, apart from analysing the Rome I Regulation with a view to its genesis and its position within the wider framework of EU law, the article will pay particular attention to the policy considerations underlying the Rome I Regulation.

The Applicable Law in Arbitration Proceedings – A *responsio*
Reinmar Wolff

Sect. 1051 German Code of Civil Procedure (ZPO) concisely determines the rules under which the arbitral tribunal shall decide on substance. The article discusses two unwritten limits to the law thus defined that are often postulated, namely the Rome I Regulation and transnational public policy. The Rome I Regulation does not apply in arbitral proceedings since it depends on the chosen dispute resolution mechanism if and which law applies. The law explicitly allows for arbitral decisions on the basis of non-state regulations or even ex aequo et bono. It thereby demonstrates that arbitration is not comprehensively bound by law. There are no gaps in protection, and be it only because the arbitral award is subject to a public policy examination before enforcement. Consistent application

throughout the Union would be out of reach for the Rome I Regulation in any event if for no other reason than the fact that it is superseded by the European Convention in arbitral proceedings. Similarly, transnational public policy – which is little selective – does not restrict the applicable law in arbitral proceedings, as the implication would otherwise be that the arbitral tribunal is being called upon to defend something like the international trade order by applying transnational public policy. The party agreement, as the only source of the arbitral tribunal's power, is no good for this purpose. The arbitral tribunal is rather no more required to test the applicable law for public policy violations under sect. 1051 ZPO than the state court has to test its lex fori. Sufficient protection is again accomplished by the subsequent review of the arbitral award for public policy violation on the recognition level. In contrast to current political tendencies, arbitration ultimately requires more courage to be free, including when determining the applicable law.

How Does the ECJ Constitutionalize the European PIL and International Civil Procedure? Tendencies and Consequences
Dominik Düsterhaus

Politics and law naturally coincide in the deliberations of the highest courts, both at national and international levels. Assessing the relationship of politics and private international law in the EU thus requires us to look at how the Court of Justice of the European Union as the supreme interpreter deals with the matter. In doing so, this contribution portrays three complementary avenues of what may be called the judicial constitutionalisation of EU private international law, i.e. the implementation of principles and values of EU integration by means of a purposive interpretation of the unified private international law rules. It is submitted that, in order to avoid uncertainty such an endeavour should be accompanied by an intensified dialogue with national courts via the preliminary ruling procedure.

Proceedings in a Foreign forum derogatum, Damages in a Domestic forum prorogatum – Fair Balancing of Interests or Unjustified Intrusion into Foreign Sovereignty?
Jennifer Antomo

Parties to international commercial contracts often agree on the exclusive jurisdiction of a certain state's courts. However, such international choice of court

agreements are not always respected by the parties. Remedies, such as anti-suit injunctions, do not always protect the party relying on the agreement from the consequences of being sued in a derogated forum. The article examines its possibility to claim damages for the breach of an international choice of court agreement.

Private International Law and Human Rights – Questions of Conflict of Laws Regarding the Liability for "Infringements of Human Rights"
Friederike Pförtner

The main conflict between private international law (PIL) and the enforcement of human rights through civil litigation consists in the existence of the principle of equality of all the jurisdictions in the world on the one hand and the efforts of some states to create their own human rights due diligence rules for domestic corporations on the other hand. Basically, the principle of equality of jurisdictions has to be strictly defended. Otherwise, PIL is in danger of being excessively used or even misused for policy purposes. However, due to the importance of the state's duty to protect human rights an exception of the principle of equality of jurisdictions might be indicated either by creating a special conflict of laws' rule or by using mandatory rules or even if there is no other way by referring to the public policy exception. Thus, the standards for liability of a corporation's home state can be applied in the particular case concerned. Nevertheless, in the highly controversial issue of transnational violations of human rights the means of PIL mentioned above have to be used very carefully and only in extreme cases.

Cross-Border Immissions in the Context of the Revised Hungarian Regulation for Private International Law
Réka Fuglinszky

This paper has a focus on cross-border nuisances from the perspective of the private international law legislation of an EU Member State with external Community borders. The new Hungarian Act XXVIII of 2017 on the Private International Law from 4 April 2017 gives rise to this essay. The article sketches the crucial questions and tendencies regarding jurisdiction (restriction of the exclusive venue of the forum rei sitae); applicable law (unity between injunctions and damage claims) and the problem of the effects of foreign administrative authorization of industrial complexes from the viewpoint of European and Hungarian PIL.

Long Live the Principle of Territoriality? The Significance of Private International Law for the Guarantee of Effective Data Protection
Martina Melcher

According to its Article 3, the new General Data Protection Regulation (GDPR) (EU) 2016/679 applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EU as well as (under certain conditions) to the processing of personal data of data subjects who are in the EU by a controller or a processor not established in the EU. Given that the GDPR contains public and private law, Article 3 must be qualified not only as a rule of public international law, but also as a rule of private international law (PIL). Unfortunately, the PIL nature of Article 3 and its predecessor (Article 4 Data Protection Directive 95/46/EC) is often overlooked, thus (erroneously) limiting the impact of these rules to questions of public law. Besides this relative ignorance, Article 3 GDPR presents further challenges: First, as a special PIL rule it sits uneasily in the context of the general EU PIL Regulations, in particular Rome I and II, and the interaction with these regulations demands further attention. Second, its overly broad scope of application conflicts with the principle of comity. In view of these issues, it might be preferable to incorporate a general (two-sided) PIL rule on data protection into the Rome Regulations. Such a rule could determine the law applicable by reference only to the place where the interests of the data subjects are affected. Concerns regarding potential violations of the EU fundamental right to data protection due to the application of foreign substantive law could be effectively addressed by public policy rules.

Economic Sanctions in Private International Law
Tamás Szabados

Economic sanctions are an instrument of foreign policy. They may, however, affect the legal – first of all contractual – relations between private parties. In such a case, the court or arbitral tribunal seised has to decide whether to give effect to the economic sanction. It is private international law that functions as a ‘filter’ or a ‘valve’ that transmits economic sanctions having a public-law origin to the realm of private law. The uniform application of economic sanctions would be desirable in court proceedings in order to ensure a uniform EU external policy approach and legal certainty for market players. Concerning EU sanctions, uniformity has been created through the application of EU Regulations as part of the law of the forum. Uniformity is, however, missing among the Member States

when their courts have to decide whether to give effect to sanctions imposed by third states. When deciding about non-EU sanctions, private law and private international law cannot always exclude foreign-policy arguments.

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

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

Although Brexit may cause uncertainty to litigants in the UK, a survey suggests that the EU judicial cooperation scheme is not the main reason for international parties choosing London to resolve their disputes. The top two factors that attract international litigants to London are the reputation and experience of English judges and combination of choice of court clauses with choice of law clauses in favor of English law, followed by efficient remedies, procedural effectiveness, neutrality of the forum, market practice, English language, effective UK-based counsel, speed and enforceability of judgments. Furthermore, Brexit will not affect the New York Convention and would less likely affect London as an arbitration centre. It may be more reasonable to suggest that the main purpose of BIBC is not to compete with London at the international level, but to offer

additional judicial tool and become a new commercial dispute resolution centre within the EU to attract companies and businesses to Brussels.

Conference Report: 9th Transnational Commercial Law Teachers‘ Meeting at Radboud University, Nijmegen

On 2 and 3 November 2017, the Radboud University at Nijmegen hosted the 9th Transnational Commercial Law Teachers’ Meeting. In these meetings, teachers of transnational commercial law from all over the world gather to discuss fundamental issues and core instruments of unified or harmonized commercial law as laid down in the “bible” of transnational commercial law by Roy Goode, Herbert Kronke and Ewan McKendrick (see here), but also current trends and teaching methods.

This time, the meeting focused on “Transnational Commercial Law and Natural Resources”. After the opening by the President of the University Daniel Wigboldus, Herbert Kronke (Iran-US Claims Tribunal, emeritus of Heidelberg University, former Secretary-General of UNIDROIT) and Thomas Keijser (Radboud University), in a first panel chaired by Charles Mooney, University of Pennsylvania Law School, several speakers addressed the latest developments of UNIDROIT’s Cape Town Convention on International Interests in Mobile Equipment and its latest Protocol on Mining, Agriculture and Construction Equipment (MAC Protocol) as well as further potential areas of application such as e.g. renewable energy machinery but also with a view to other types of cross-border secured transactions (Howard Rosen, Rail Working Group, Benjamin von Bodungen, German Graduate School of Management and Law, Teresa Rodríguez de las Heras Ballell, Universidad Carlos III de Madrid, Ole Börger, Judge at the *Oberlandesgericht* at Bremen, Peter Winship, Southern Methodist University

School of Law, Louise Gullifer, University of Oxford/Radboud University, Jeffrey Wool, Aviation Working Group, University of Washington School of Law, University of Oxford).

A second panel chaired by Anna Veneziano, Secretary-General of UNIDROIT ad interim, University of Teramo, dealt with UNIDROIT's projects on contract farming, in particular its Legislative Guide, discussed by Henry Gabriel, Elon School of Law and Bruno Zeller, University of Western Australia.

In the following Athanassios Kaissis (Aristotle University and International Hellenic University of Thessaloniki) shortly presented the concept and the didactics of his LL.M. in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law, and the author of these lines did likewise on the semester abroad program of EBS University in Wiesbaden "EBS Law Term: Transnational Commercial Law".

Chaired by Herbert Kronke, Hector Tsamis (PhD student of the International Hellenic University), Hannah Buxbaum (Indiana, Maurer School of Law), and Charles Mooney presented legal and regulatory approaches towards sustainable finance and sustainability reporting and securities disclosure regimes. It became clear that sustainability is being more and more supported on all levels including capital markets regulation (financial disclosure requirements) and corporate governance (non-financial accounting standards). The first day closed with an inspiring dinner speech by Roy Goode.

The second day focused on private law in general in respect to responsibilities, liabilities and litigation. On the first panel chaired by Hannah Buxbaum, Hans van Loon (Former Secretary-General of the Hague Conference) presented principles and building blocks for a global legal framework for civil litigation in environmental matters. He referred to international instruments bringing about a shift of paradigm such as e.g. the UN 2030 Agenda for Sustainable Development or the Ruggie Principles taken up more and more in strategic litigation such as the lawsuit against RWE in Germany by a Peruvian farmer at the city of Huaraz on the delictual responsibility for contributing to climate change and thus threatening the livelihood of the claimant. This case (see e.g. the report by the NGO Germanwatch) will be decided upon appeal by the Upper Regional Court of Hamm on 13 November 2017, a timely moment during the UN Climate Change Conference in Bonn. Jaap Spier (retired Advocate-General in the Supreme Court

of the Netherlands, Universities of Amsterdam and Stellenbosch) continued the topic with a view on enterprise principles. Marc Loth (Tilburg University) drew some lessons from the Urgenda case, a Dutch case raising the issue of state liability for climate change (Urgenda Foundation v. The State of the Netherlands, see e.g. here) and Jan van Dunné, Erasmus University Rotterdam, analyzed liability issues in gas and coal mining for damages caused by soil subsidence, earthquake and subsoil water management under Dutch law. Finally, Tedd Moya Mose (PhD student of Queen Mary University of London), presented on international financing of renewable energy.

After a second interlude on didactics by Camilla Anderson (University of Western Australia) and Caslav Pejovic (Kyushu University), Athanassios Kaissis took the chair for the afternoon panel on dispute resolution. Pauline Ernst (Radboud University) and Gerard Meijer (NautaDutilh) presented on experiences from practice on arbitration and energy sector, both commercial and investor-state. Anna Marhold (Tilburg University) reported on dispute resolution mechanisms and the role of the industry in European regulatory agencies for energy. Vesna Lazic (Utrecht University) spoke about the "enforcement" of annulled arbitral awards in light of the Pemex and (one of the several) Yukos cases. Finally, the author of these lines presented on a recent type of cases in environmental litigation in which claimants seek to draw the foreign, in particular African, subsidiaries of European groups of companies into European courts in order not only to get damages but also to get injunctive relief against the subsidiary to stop them from further pollution or to have them taking measures immediately to protect the local population.

The primary example at the moment is Royal Dutch Shell and its Nigerian subsidiary Shell Petroleum Development Company of Nigeria Ltd. In the UK, this is the case of *Okpabi & Ors v Royal Dutch Shell Plc & Anor,* [2017] EWHC 89 (TCC), 26 Jan 2017, appeal pending. Similar case against other UK parents are *Lungowe & Ors v Vedanta Resources Plc & Anor,* [2016] EWHC 975 (TCC), 27 May 2016, appeal dismissed 13 October 2017, [2017] EWCA Civ 1528, and *AAA & Ors v Unilever Plc & Anor*, [2017] EWHC 371 (QB), 27 February 2017. For the respective ligitation against Shell in the Netherlands see *A.F. Akpan v. Royal Dutch Shell, plc*, District Court of the Hague (*Rechtbank*), 30 January 2013, confirmed on the jurisdictional issues by the Court of Appeal (*Gerechtshof)* of the Hague, judgment of 17 December 2015). As opposed to most English decisions,

the Dutch Court of Appeal signalled a willingness to further develop the applicable Nigerian tort law in light of (the similar) English law on the parent's duties of care for its subsidiaries towards a liabililty, but the appeal on the merits is still pending. This evolving case law meets with legislative initiatives (e.g. France, the Netherlands, Switzerland, EU in respect to conflict minerals) that seek to establish more clearly a direct delictual liability of the parent company that in turn is the key requisite for establishing "annex" jurisdiction ("forum connexitatis") under a "real case" or proximity analysis for the foreign subsidiary located in third states to which Article 8 no. 1 Brussels Ibis Regulation does not apply, but rather the respective for a connexitatis under national jurisdictional law. Such forum connexitatis does not exist under German national procedural law which might be the explanation why this type of case has not arisen in Germany, but one might of course think of delictual jurisdiction for both the parent and the foreign subsidiary by mutual attribution of delictual actions as joint tortfeasors, a concept that is interpreted broadly under section 32 German Code of Civil Procedure but of course again requires such a delictual claim against the parent under the applicable tort law in the first place.

After some input on space law by Frans van der Dunk (University of Nebraska-Lincoln, College of Law) the conference was closed by Dean Steven Bartels. The conference expressed its gratitude and appreciation to him and in particular to Thomas Keijser and his splendid team for inviting the 9th TCL Teachers' Meeting to Radboud University and for the great hospitality of one of the best universities of the country (at [one of?] the oldest cities in what is today the Netherlands and a Member of the Hanse, i.e. the Hanseatic League, as of 1402).

Privatizing Dispute Resolution and its Limits.Third IAPL-MPI

Luxembourg Summer-School

It is our pleasure to announce the third edition of the **International Association of Procedural Law (IAPL) – Max Planck Institute Luxembourg Summer-School,** which will take place in Luxembourg from the 1st to the 4th of July 2018.

The 3rd edition of the Summer School has chosen to explore the topic of "Privatizing Dispute Resolution and its Limits", where "privatizing" is understood in a broad sense. Different avenues can be envisaged thereto related. The first one focuses on the defense of public interests by means of private litigation; a second comprises the mechanisms for dispute resolution alternative to State justice; the third one deals with the commercialization of the judicial system. Applications under the first prong shall address the case of litigation in the interest of the broader (public) interest of the law: a regulatory approach that in Europe has been adopted in the context of competition law, intellectual property law, consumer protection, data protection and to some extent, also for the defense of the environment, in the search of avenues for the extraterritorial application of mandatory law. Under the second prong applications shall refer to commercial and investment arbitration, sports arbitration, consumer ADR, online dispute resolution for domain names controversies and the like. The third prong candidates shall focus on the development of private access to justice (litigation insurance, third party funding, etc), "marketization" of the bar activity, emergence of new private actors with the legaltech, etc. Proposals must take into account that for different reasons all the phenomena alluded to are subject to limits: to be feasible, the extraterritorial application of mandatory national or regional law requires procedural and substantial preconditions such as international jurisdiction over the defendant, or the support of an appropriately designed choice of law rule. As for alternative mechanisms of dispute resolution, in spite of their detachment from the control of State courts important interfaces remain, as demonstrated by the possibilities to apply for the annulment of the arbitral award or its non-recognition; or by the on-going contestation of CAS decisions before the ECHR. Finally, although schemes of third party funding and the like facilitate access to justice for single claims that wouldn't be brought individually to the court, they raise many controversies and challenges while remaining unregulated.

All papers submitted to the 2018 Summer School should delve into one or several

of these issues.

Up to 20 places will be available for applicants having procedural law and/or dispute resolution mechanisms as their main field of academic interest and meeting the conditions explained in the dedicated website.

Please follow this link for the online application.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 6/2017: Abstracts

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

P. Mankowski: **The German Act on Same-Sex Marriages, its consequences and its European vicinity in private international law**

Finally, Germany has promulgated its Act on Same-Sex Marriages. In the arena of private international law the Act calls for equal treatment of same-sex marriages and registered partnerships whereas in German substantive law it aligns same-sex marriages with traditional marriages and institutionally abandons registered partnerships pro futuro. In private international law the Act falls short of addressing all issues it should have addressed in light of its purpose. In particular, it lacks provisions on the PIL of kinship and adoption – and does not utter a single word on jurisdiction or recognition and enforcement of foreign judgments. In other respects it is worthwhile to have a closer look at its surroundings and ramifications in European PIL (Brussels IIbis, Rome III, Matrimonial Property, and Partnership Property Regulations), i.e. at the coverage which European PIL exacts to same-sex marriages.

P.F. Schlosser: **Brussels I and applications for a pre-litigation preservation**

of evidence

The judgement is revealing a rather narrow finding. An application for a pre-litigation preservation of evidence is within the meaning of Art. 32 Brussels Ia Regulation not tantamount to "the document instituting the proceedings or an equivalent document". The commentator is emphasizing that this solution cannot be subject to any reasonable doubt. He further explains, however, that the Regulation is applicable to such applications and the ensuing proceedings to the effect that the outcome of such a preservation of evidence must be recognized to the same degree as a domestic preservation is producing effects in the main proceedings. In particular is it clear for him, that such recognition must not be restricted by the German numerus clausus of legally recognized means of evidence.

T. Lutzi: **Jurisdiction at the Place of the Damage and Mosaic Approach for Online Acts of Unfair Competition**

Once again, the Court of Justice was asked to determine the place of the damage under Art. 5 No. 3 Brussels I (now Art. 7(2) Brussels Ia) for a tort committed online. The decision can be criticised both for its uncritical reception of the mosaic approach and for the way in which it applied the latter to the present case of an infringement of competition law through offers for sale on websites operated in other member states. Regardless, the decision confirms the mosaic approach as the general rule to identify the place of the damage for torts committed through the internet.

K. Hilbig-Lugani: **The scope of the Brussels IIa Regulation and actions for annulment of marriage brought by a third party after the death of one of the spouses**

The ECJ has decided that an action for annulment of marriage brought by a third party after the death of one of the spouses falls within the scope of Regulation (EC) No 2201/2003. But the third party who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in the fifth and sixth indents of Art. 3(1)(a) of Regulation No 2201/2003. The ECJ does not differentiate between actions for annulment brought after the death of one of the spouses and an action for annulment brought by a third party. The decision raises several questions with regard to the application of Art. 3 of Regulation No 2201/2003.

J. Pirrung: **Forum (non) conveniens – Application of Article 15 of the Brussels IIbis Regulation in Proceedings Before the Supreme Courts of Ireland and the UK**

On a reference submitted by the Irish Supreme Court, the ECJ ruled that Art. 15 of Council Regulation (EC) No 2201/2003 (Brussels IIa) is applicable where a child protection application brought under public law concerns the adoption of measures relating to parental responsibility, (even) if it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other State thereafter commence proceedings separate from those brought in the first State, pursuant to its own domestic law and possibly relating to different factual circumstances. In order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction must be satisfied that the transfer of the case to the other court is such as to provide genuine and specific added value to the examination of the case, taking into account the rules of procedure applicable in the other State. In order to determine that such a transfer is in the best interests of the child, the court having jurisdiction must be satisfied that the transfer is not liable to be detrimental to the situation of the child, and must not take into account, in a given case relating to parental responsibility, the effect of a possible transfer of the case to a court of another State on the right of freedom of movement of persons concerned other than the child, or the reason why the mother exercised that right, prior to the court being seised, unless those considerations are such that there may be adverse repercussions on the situation of the child. The judgment is juxtaposed to the decision of the UK Supreme Court – pronounced some months before that of the ECJ – in re N, an Art. 15 case concerning a different situation without freedom of movement questions. Both jurisdictions have found acceptable results, the UKSC, though happily much faster than the ECJ, perhaps not entirely without one or the other risk concerning its treatment of procedural questions

A.-R. Börner: **News on the competence-competence of arbitral panels under German law – Simultaneously a note on the Federal High Court decision of August 9, 2016, I ZB 1/15**

The Federal Court of Justice of Germany has decided that the arbitration clause even survives the insolvency of a party (severability), unless stipulated to the contrary or in case of the existence of reasons for the nullity or termination of the

arbitral agreement, such reasons either existing separately or resulting from the main contract. Under the German Law of Civil Procedure, the challenge to the state court that – contrary to an early decision of the arbitration panel affirming its competency – the panel has no competency, must be raised within the very short timeframe of one month, otherwise the judicial review will be forfeited. The Federal Court of Justice had held until now that in case of a (supervening) final award the state court procedure ended and that the arguments against the competency had to be raised anew in the procedure on the enforceability of the award. The Court has now accepted the criticism by the scientific literature that this places an undue burden on the challenging party. So it now holds that the second procedure (on enforceability) will be stayed until the first procedure (on competency) is terminated, as its result takes precedence.

B. Köhler: **Dual-use contracts as consumer contracts and no attribution of consumer status of a third party to the proceedings under Brussels-I Regulation**

The determination of the scope of the provisions on jurisdiction over consumer contracts in Art. 15 to 17 Brussels I Regulation is one of the most controversial problems in international procedural law. The German Federal Supreme Court's decision raises two interesting questions in this respect. The first controversial issue concerns the classification of contracts for both professional and private purposes as consumer contracts. In its judgment Gruber, the European Court of Justice had held that such a dual-purpose contract can only be considered a consumer contract if the role of the professional purpose is marginal. However, the European legislator adopted the criterion of predominant purpose in recital 17 to the Consumer Rights Directive (2011/83/EU). Regrettably, the German Federal Supreme Court missed an opportunity to clarify the classification of dual-purpose contracts within the Brussels I Regulation. The Court applied the criterion laid down by the ECJ in Gruber without further discussion. In a second step, the Court held – convincingly – that Art. 16 (2) Brussels I Regulation presupposes that the consumer is a party to the proceedings. The capacity of consumer of a third party cannot be attributed to a defendant who, him- or herself, is not a consumer.

L. Hübner: **The residual company of the deregistered limited**

The following article deals with the consequences of the dissolution of companies

from a common law background having residual assets in Germany. The prevailing case law makes use of the so-called “Restgesellschaft” in these cases. By means of three judgments of the BGH and the Higher Regional Court of Brandenburg, this article considers the conflicts of laws solutions of these courts and articulates its preference for the application of German company law on the “Restgesellschaft”. It further analyses the subsequent questions as regards the legal form and the representation of the “Restgesellschaft“, and the implications of the restoration of the foreign company.

D. Looschelders: **Temporal Scope of the European Succession Regulation and Characterization of the Rules on the Invalidity of Joint Wills in Polish Law**

Joint wills are not recognized in many foreign legal systems. Therefore, in cross-border disputes the use of joint wills often raises legal problems. The decision of the Schleswig-Holstein Higher Regional Court concerns the succession of a Polish citizen, who died on 15 October 2014 and had drawn up a joint will along with his German wife shortly before his death. The problem was that joint wills are invalid under Polish law of succession. First, the court dealt with the question whether the case had to be judged according to the European Succession Regulation or according to the former German and Polish private international law. The court rightly considered that in Germany the new version of Art. 25 EGBGB does not extend the temporal scope of the European Succession Regulation. Hereafter the court states that the invalidity of joint wills under Polish law is not based on a content-related reason but is a matter of form. Therefore, the joint will would be valid under the Hague Convention on the Form of Testamentary Dispositions. This decision is indeed correct, but the court’s reasoning is not convincing in all respects.

C. Thomale: **The anticipated best interest of the child – Strasburgian thoughts of season on mother surrogacy**

The ECtHR has reversed its opinion on Art. 8 ECHR. The protection of private and family life as stipulated therein is subject to a margin of appreciation far wider than hitherto expected. In stating this view, the ECtHR also takes a critical stand towards mother surrogacy: Restricting the human right to procreate, national legislators are given room to protect the child’s best interest inter alia through deterrence against surrogacy. The article investigates some implications of this

new landmark decision, which is being put into the context of ongoing debates on international surrogacy.

K. Thorn/P. Paffhausen: **The Qualification of Same-sex Marriages in Germany under Old and New Conflict-of-law Rules**

In its decision in case XII ZB 15/15 (20th April 2016) the German Federal Court of Justice recognized the co-motherhood of a female same-sex couple, registered in South Africa, for a child born by one of the women. While underlining that the result of the decision – the legal recognition of the parenthood – is right, the authors point out the methodological weaknesses of the reasoning. In their opinion, a same-sex marriage celebrated abroad had to be qualified as a "marriage" in Art. 13 EGBGB and not – as the Court held – as a "registered life partnership" in Art. 17b EGBGB (old version). Also, they demonstrate that the Court's interpretation of Art. 17b para. 4 EGBGB (old version) as well as the reasoning for the application of Art. 19 para. 1 s. 1 EGBGB are not convincing. Following the authors' opinion, the right way to solve the case would have been the legal recognition of the parenthood (as an individual case) because of Art. 8 ECHR. As Germany recently legalized same-sex marriage, the authors also show which impacts the new law will have on Germany's international matrimonial law. In particular, they point out the new (constitutional) questions risen by the new conflict-of-law-rule for same-sex marriages in Art. 17b EGBGB (new version).

D. Martiny: **Modification and binding effect of Polish maintenance orders**

The two decisions of the German Courts of Appeal concern everyday problems in modifying maintenance orders given in the context of Polish divorce decrees. In both cases the Polish district courts ordered the fathers to pay child maintenance. At that point in time, the children already lived in Germany. The foreign orders did not state the grounds for the decision in respect of either the conflict-of-law issue or the substantive law issue. The recognition of the orders under the Maintenance Regulation in the framework of the German modification proceedings (§ 238 Family Proceedings Act – Familienverfahrensgesetz; FamFG) did not pose any difficulty. However, according to established German practice, foreign decisions have a binding effect as to their factual and legal basis. Whereas the Frankfurt court's interpretation of the Polish decision concluded that it was based on German law, the Bremen court assumed in its proceedings that the foreign decision was based on Polish law. The Bremen court stated a binding

effect existed even if the foreign decision applied the incorrect law. The Bremen court then gave some hints as to how the assessment of maintenance should be made in the German proceedings under Polish substantive law.

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

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

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

Professor Karsten Thorn's presentation on "European Private International Law after Brexit" was divided into two parts. In the first part he discussed direct legal consequences of Brexit on Private International Law in relations between the

United Kingdom (in particular England) and Germany. He highlighted the importance of Union Law and especially the duties to recognise derived from the fundamental freedoms for the rise of England as a legal hub. Therefore, Brexit would have grave consequences for the attractiveness of England in a number of legal areas. This would apply, for example, to company law. Whereas under Union Law the recognition of a company established in accordance with the law of one Member State must not be refused by another Member State, each Member State would apply its own rules on this issue post-Brexit. This could also impact companies established before Brexit, although it was disputed whether this would infringe their legitimate expectations and if so, whether this protection was subject to a certain time limit. In any event, the companies should act rather sooner than later to avoid any legal uncertainty. Comparable issues would arise in insolvency law. First and foremost, there would be – in contrast to the current legal situation – no duty for a Member State's court to recognise a decision of an English court on the existence of the centre of the debtor's main interests (COMI) in England anymore. Again, each Member State would apply its national rules on the recognition of foreign insolvency proceedings. Secondly, an English scheme of arrangement, a court-approved private debt restructuring solution, would likely not be recognised by the Member States after Brexit. By contrast, fewer negative consequences would arise with regard to the right to a name because even now Article 21 TFEU only guaranteed the recognition of a name rightfully obtained in the EU citizen's State of nationality or residence and this freedom is further limited by the Constitution of the recognising Member State. Finally, he highlighted the negative impact of Brexit on procedural law. Post-Brexit, English decisions will no longer benefit from mutual trust in the EU Member States. A revival of bilateral treaties with Member States or instruments of the Hague Conference could only serve as sectoral solutions. Under these conditions, he presumed an increased usage of arbitration in the UK post-Brexit, not least because the United Kingdom is a Contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, he pointed out that English courts would return to traditional instruments of the English procedural law such as anti-suit injunctions. The second part of his presentation dealt with indirect consequences of Brexit on the European Private International Law. Firstly, he submitted that a number of provisions in EU legislation can be regarded as legal transplants from English law. This applies, e.g., to Article 9 paragraph 3 Rome I Regulation and Article 6 lit. a EU Succession Regulation. In his opinion, post-Brexit at least the former provision will be

discarded after a revision of the respective EU legislation. Secondly, he turned to the question of the usage of English as working language of the EU bodies. He stated that most EU legislation was drafted in English. Because legal English was very different to the legal language used in all other Member States this was still noticeable in the official translations. Therefore, English shaped the spirit of the EU legislation. Although he believed that English would still be the dominant language in the EU bodies after Brexit, he argued that the continental legal thinking could gain more significance.

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

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

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