Call for participants: Second Meeting of the Young EU Private International Law Research Network

This spring, the first meeting of the newly established Young EU Private International Law Research Network was held at the University of Würzburg (please find more information about this event here). The first research project and meeting in Würzburg dealt with the "Recognition/Acceptance of Legal Situations" in the EU.

The cooperation involving the young generation of private international lawyers is intended to be continued with annual conferences. The next meeting of the network will take place at **ELTE Eötvös Loránd University,Budapest** on 20 March 2020. The conference will focus on **overriding mandatory provisions**with particular regard to national legislation and court practice outside the scope of application of the EU private international law regulations. The provisions of the EU private international law regulations, and in particular the Rome I and II Regulations, on overriding mandatory provisions and the related case law received considerable attention among commentators. However, less attention has been devoted to the treatment of overriding mandatory provisions in the law of the Member States outside the scope of application of the EU private international law regulations. The areas concerned may include property law, family law, company law, etc. A comprehensive comparative study is missing in this field. In order to map the similarities and differences of the approaches of the private international law of the Member States, national reports will be prepared. Based on these national reports, a general report will be produced.

The conference will consist of a morning session where overriding mandatory rules will be discussed in a general way (e.g., the appearance of overriding mandatory provisions in property law, family law, arbitration, their interconnection with human rights, etc.) and an afternoon workshop where participants will discuss the outcome of the national reports and the conclusions

of the general report.

If you are interested in the research project or the activity of the Young EU Private International Law Research Network, please do not hesitate to contact us (youngeupil@gmail.com).

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 4/2019: Abstracts

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

S.A. Kruisinga: **Commercial Courts in the Netherlands, Belgium, France and Germany – Salient Features and Challenges**

A new trend is emerging in continental Europe: several states have taken the initiative to establish a new commercial court which will use English as the language of the proceedings. Other states have provided that the English language may be used in civil proceedings before the existing national courts. Several questions arise in this context. Will such a new international (chamber of the) court only be competent to hear international disputes, or only a specific type of dispute? Will there be a possibility for appeal? Will extra costs be involved compared to regular civil proceedings? Which provisions of the law of procedure will the court be required to follow? These questions will be answered in relation to developments in the Netherlands, Belgium, France and Germany. For example, in Belgium, a draft bill, which is now being discussed in Parliament, provides for the establishment of a new court that is still to be established: the Brussels International Business Court. In the Netherlands, as of 1 January 2019, the Netherlands Commercial Court has been established, which will allow to conduct civil proceedings in the English language.

K. de la Durantaye: **Same same but different? Conflict rules for same sex-marriages in Germany and the EU**

Conflict rules for same-sex marriages are as hotly disputed as the legal treatment of such marriages in general. The German rules on the topic contain multiple inconsistencies. This is true even after the latest amendments to the relevant statute (EGBGB) entered into force in January 2019. Things become even more problematic when the German rules are seen in conjunction with Rome III as well as the two EU Regulations on matrimonial property regimes and on property consequences of registered partnerships, both of which are applicable since January 29, 2019. Some instruments do treat same-sex marriages as marriages, others – notably the EGBGB – do not. Curiously, this leads to a preferential treatment vis-à-vis opposite-sex marriages. The EU Regulation on matrimonial property regimes does not define the term marriage and provides for participating member states to do so. At the same time, the ECJ extends its jurisdiction on recognition of personal statuses to marriages. Given all these developments, one might want to scrutinize the existing conflict rules for marriages as provided for in the EGBGB.

T. Lutzi: **Little Ado About Nothing: The Bank Account as the Place of the Damage?**

The Court of Justice has rendered yet another decision on the place of the damage in the context of prospectus liability. In addition to the question of international jurisdiction, it also concerned the question of local competence under Art. 5 No. 3 Brussels I (now Art. 7 No. 2 Brussels Ia) in a case where the claimant held multiple bank accounts in the same member state. The Court confirms that under certain circumstances, the courts of the member state in which these banks have their seat may have international jurisdiction, but avoids specifying which bank account designates the precise place of the damage. Accordingly, the decision adds rather little to the emerging framework regarding the localization of financial loss.

P.-A. Brand: **International jurisdiction for set-offs – Procedural prohibition of set-off and rights of retention in domestic litigation where the jurisdiction of a foreign court has been agreed for the claims of the Defendant**

The question whether or not a contractual jurisdiction clause entails an agreement of the parties to restrict the ability to declare a set-off in court proceedings to the forum prorogatum has been repeatedly dealt with by German courts. In a recent judgement – commented on below – the Oberlandesgericht München in a case between a German plaintiff and an Austrian defendant has held that the German courts may well have international jurisdiction under Article 26 of the Brussels Ia-Regulation also for the set-off declared by the defendant, even if the underlying contract from which the claim to be set-off derived contained a jurisdiction clause for the benefit of the Austrian courts. However, the Oberlandesgericht München has taken the view that the jurisdiction clause for the benefit of the Austrian courts would have to be interpreted to the effect that it also contains an agreement of the parties not to declare such set-off in proceedings pending before the courts of another jurisdiction. That agreement would, hence, render the set-off declared in the German proceedings as impermissible. The judgment seems to ignore the effects of entering into appearance according to Article 26 of the Brussels Ia-Regulation. That provision must be interpreted to the effect that by not contesting jurisdiction despite a contractual jurisdiction clause for the claim to be set-off, any effects of the jurisdiction clause have been repealed.

P. Ostendorf: **(Conflict of laws-related) stumbling blocks to damage claims against German companies based on human rights violations of their foreign suppliers**

In an eagerly awaited verdict, the Regional Court Dortmund has recently dismissed damage claims for pain and suffering against the German textile discounter KiK Textilien und Non-Food GmbH („KiK“) arising out of a devastating fire in the textile factory of one of KiK’s suppliers in Pakistan causing 259 fatalities. Given that the claims in dispute were in the opinion of the court already time-barred, the decision deals only briefly with substantial legal questions of liability though the latter were upfront hotly debated both in the media as well as amongst legal scholars. In contrast, many conflict-of-laws problems arising in this setting were explicitly addressed by the court. In summary, the judgment further stresses the fact that liability of domestic companies for human rights violations committed by their foreign subsidiaries or independent suppliers is – on the basis of the existing framework of both Private International as well as substantive law – rather difficult to establish.

M. Thon: **Overriding Mandatory Provisions in Private International Law – The Israel Boycott Legislation of Arab States and its Application by German Courts**

The application of foreign overriding mandatory provisions is one of the most discussed topics in private international law. Article 9 (3) Rome I- Regulation allows the application of such provisions under very restrictive conditions and confers a discretionary power to the court. The Oberlandesgericht Frankfurt a.M. had to decide on a case where an Israeli passenger sought to be transported from Frankfurt a.M. to Bangkok by Kuwait Airways, with a stop over in Kuwait City. The Court had to address the question whether to apply such an overriding mandatory provision in the form of Kuwait's Israel-Boycott Act or not. It denied that because it considered the provision to be "unacceptable". However, the Court was not precluded from giving effect to the foreign provision as a matter of fact, while applying German law to the contract. Since the air transport contract had to be performed partly in Kuwait, the Court considered the performance to be impossible pursuant to § 275 BGB. The judgement of the Court received enormous media coverage and was widely criticized for promoting discrimination against Jews.

C.F. Nordmeier: **The inclusion of immoveable property in the European Certificate of Succession: acquisition resulting from the death and the scope of Art. 68 lit. l) and m) Regulation (EU) 650/2012**

The European Certificate of Succession (ECS) has arrived in legal practice. The present article discusses three decisions of the Higher Regional Court of Nuremberg dealing with the identification of individual estate objects in the Certificate. If a transfer of title is not effected by succession, the purpose of the ECS, which is to simplify the winding up of the estate, cannot be immediately applied. Therefore, the acquisition of such a legal title in accordance with the opinion of the OLG Nuremberg is not to be included in the Certificate. In the list foreseen by Art. 68 lit. l and m Regulation 650/2012, contrary to the opinion of the Higher Regional Court of Nuremberg, it is not only possible to include items that are assigned to the claimant „directly" by means of a dividing order, legal usufruct or legacy that creates a direct right in the succession. Above all, the purpose of the ECS to simplify the processing of the estate of the deceased is a central argument against such a restriction. Moreover, it is not intended in the wording of the provision and cannot constructively be justified in the case of a

sole inheritance under German succession law.

J. Landbrecht: **Will the Hague Choice of Court Convention Pose a Threat to Commercial Arbitration?**

Ermgassen & Co Ltd v Sixcap Financials Pte Ltd [2018] SGHCR 8 is the first judicial decision worldwide regarding the Hague Choice of Court Convention. The court demonstrates a pro-enforcement and pro-Convention stance. If other Contracting States adopt a similar approach, it is likely that the Convention regime will establish itself as a serious competitor to commercial arbitration.

F. Berner: **Inducing the breach of choice of court agreements and "the place where the damage occurred"**

Where does the relevant damage occur under Article 7 (2) of the Brussels I recast Regulation (Article 5 (3) of the Brussels I Regulation), when a third party induces a contracting party to ignore a choice of law agreement and to sue in a place different from the forum prorogatum? The UK Supreme Court held that under Article 5 (3) of the Brussels I Regulation, the place where the damage occurs is not the forum prorogatum, but is where the other contracting party had to defend the claim. This case note agrees, but argues that the situation is now different under the Brussels I recast Regulation because of changes made to strengthen choice of court agreements. Thus, under the recast Regulation, the place where the damage occurs is now the place of the forum prorogatum. Besides the main question, the decision deals implicitly with the admissibility for claims of damages for breach of choice of law agreements and injunctions that are not antisuit injunctions. The decision also raises questions about the impact of settlement agreements on international jurisdiction.

D. Otto: **No enforcement of specific performance award against foreign state**

Sovereign immunity is often raised as a defence either in enforcement proceedings or in suits against foreign states. The decision of the U.S. District Court for the District of Columbia deals with a rarely discussed issue, whether an arbitration award ordering a foreign state to perform sovereign acts can be enforced under the New York Convention. The U.S. court held that in general a foreign state cannot claim immunity against enforcement of a Convention award, however that a U.S. court cannot order specific performance (in this case the

granting of a public permit) against a foreign state as this would compel a foreign state to perform a sovereign act. Likewise, enforcement of an interest or penalty payment award has to be denied for sovereign immunity reasons if the payment does not constitute a remedy for damages suffered but is of a nature so as to compel a foreign state to perform a sovereign act. Whilst some countries consider sovereign immunity to be even wider, the decision is in line with the view in many other countries.

A. Anthimos: **No application of Brussels I Regulation for a Notice of the National Association of Statutory Health Insurance Physicians**

The Greek court refused to declare a Notice of the National Association of Statutory Health Insurance Physicians in Rhineland-Palatinate enforceable. The Greek judge considered that the above order is of an administrative nature; therefore, it falls out of the scope of application of the Brussels I Regulation.

C. Jessel-Holst: **Private international law reform in Croatia**

This contribution provides an overview over the Private International Law Act of the Republic of Croatia of 2017, which applies from January 29, 2019. The Act contains conflict-of-law rules as well as rules on procedure. In comparison to the previous Act on Resolution of Conflicts of Laws with Provisions of Other States in Certain Matters which had been taken over after independence from former Yugoslavia in 1991, nearly everything is new. Full EU-harmonization was a key purpose of the reform. The 2019 Act also refers to a number of Hague Conventions. Habitual residence has been introduced as a main connecting factor. Renvoi is as a rule excluded. Many issues are addressed for the first time. For the recognition of foreign judgments, the reciprocity requirement has been abandoned.

G. Ring/L. Olsen-Ring: **New Danish rules of Private International Law applying to Matrimonial Property Matters**

The old Danish Law on the Legal Effects of Marriage, dating back to the year 1925, has been replaced by a new Law on Economic Relations Between Spouses, which was passed on May 30, 2017. The Law on Economic Relations Between Spouses entered into force on January 1, 2018. There is no general statutory codification of private international law in Denmark. The Law on Economic Relations Between Spouses, however, introduces statutory rules on private

international law relating to the matrimonial property regime. The Danish legislature was inspired by the EU Matrimonial Property Regulation, but also developed its own approach. The EU Matrimonial Property Regulation is not applied in Denmark, as Denmark does not take part in the supranational cooperation (specifically the enhanced cooperation) in the field of justice and home affairs, and no parallel agreement has been concluded in international law between the European Union and Denmark. The rules set out in the Danish Law on Economic Relations Between Spouses are based on the principle of closest connection. The main connecting factor is the habitual residence of both spouses at the time when their marriage was concluded or the first country in which they both simultaneously had their habitual residence after conclusion of the marriage. The couple is granted a number of choice-of-law options. In case both spouses have had their habitual residence in Denmark within the last five years, Danish law automatically applies.

The Future of International Dispute Settlement, June 27th, Sydney

The International Law Association and New South Wales Young Lawyers association are hosting a half-day conference next week. It will cover a range of topical issues of international law in the settlement of international disputes, including international commercial arbitration. A copy of the programme is available here. Interested attendees may register via this link.

Recent private international law titles offering common law perspectives

Private International Law in Australia
The 4th edition of this leading book authored by Professors Reid Mortensen, Richard Garnett and Mary Keyes has been published with Lexis Nexis and is available for purchase as a paperback or an eBook here. Significant recent developments in the private international law of Australia, including legislative reforms and important case law, are examined in this edition. In addition to a detailed analysis of the principles applicable to jurisdiction, choice of law and the recognition and enforcement of foreign judgments, the authors give dedicated attention to international arbitration, family law and company law. This edition also features a brand-new chapter on the choice of law rules applicable to equitable claims and trusts. This book will be a valuable addition to the library of anyone with an interest in the private international law principles applicable in common law jurisdictions, particularly in Australia.

Commercial Issues in Private International Law: A Common Law Perspective
This collection, edited by Mr Michael Douglas and Professors Vivienne Bath, Mary Keyes and Andrew Dickinson, has just been published in Hart Publishing's series, *Studies in Private International Law*. It is the culmination of the successful and enjoyable conference held at the University of Sydney in February of last year. The authors include judges, scholars and practitioners from Australia, New Zealand, Singapore and the United Kingdom. Their chapters deal with a range of contemporary topics, including rules for service out of the jurisdiction; case management stays; rules governing the recognition and enforcement of foreign judgments and their relationship with jurisdiction; arbitration; (overriding) mandatory rules; proof of foreign law and party autonomy, among others. The Honourable William MC Gummow, a retired justice of Australia's highest court, remarks in the foreword that "Legal advisers, advocates, judges, scholars and students will find in these pages much to engage them and stimulate further thought.". The book is available for purchase as a hardback or an eBook here.

Singapore Court of Appeal Affirms Party Autonomy in Choice of Court Agreements

Professor Yeo Tiong Min, SC (honoris causa), Yong Pung How Professor of Law at Singapore Management University, has kindly provided the following report:

"The Singapore Court of Appeal has recently affirmed the significance of giving effect to party autonomy in the enforcement of choice of court agreements under the common law in three important decisions handed down in quick succession, on different aspects of the matter: the legal effect of exclusive choice of court agreements, the interpretation and effect of non-exclusive choice of court agreements, and the effect of exclusive choice of court agreements on anti-suit injunctions.

In *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] SGCA 65, proceedings were commenced in Singapore in respect of an alleged breach of a commercial sale contract containing an exclusive choice of English court agreement. The agreement was dated before the Hague Convention on Choice of Court Agreements took effect in English law, so the Convention was not engaged. Like many other common law countries, the Singapore courts would give effect to the agreement unless strong cause can be demonstrated by the party seeking to breach the agreement. A complication arose because there had been four previous decisions of the Court of Appeal in the shipping context where proceedings had been allowed to continue in Singapore in the face of an exclusive choice of foreign court agreement because the court had found that the defence was devoid of merits. The claimant's argument that based on these decisions the Singapore court should hear the case because there was no valid defence to its claim succeeded before the High Court.

Sitting as a coram of five on the basis of the significance of the issue, the Court of Appeal unanimously reversed the decision. It decided that the merits of the case

were not a relevant consideration at the stage where the court was determining whether to exercise its jurisdiction, and departed from its previous decisions to the extent that they stood to the contrary. While affirming the continuing validity of the strong cause test, the court placed considerable emphasis on the element of contractual enforcement. Thus, factors that were reasonably foreseeable at the time of contracting would generally carry little or no weight. In particular, the court recast one of the traditional factors in the strong cause test, "whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages", as an inquiry into whether the party seeking to enforce the choice of court agreement was acting abusively in the context of cross-border litigation. In the view of the court, the genuine desire for trial in the contractual forum has been adequately expressed in the choice of court agreement itself, and it is legitimate to seek the procedural advantages in the contractual forum. The court considered that strong cause would generally need to be established by either proof that the party seeking trial in the contractual forum was acting in an abusive manner (which is said to be a very high threshold), or that the party evading the contractual forum will be denied justice in that forum (ignoring the foreseeable factors), for example if war had broken out in that jurisdiction.

The court left open the question whether the same approach would be taken if the choice of court agreement had not been freely negotiated, taking cognisance of situations, especially in the shipping context, where contracting parties may find themselves bound by clauses the contents of which they have had no prior notice. The court expressed the tentative view that as a matter of consistency, the same approach should be adopted.

In *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] SGCA 11, the Court of Appeal was faced with an unusual clause: "This Agreement shall be governed by the laws of Singapore/or People's Republic of China and each of the parties hereto submits to the non-exclusive jurisdiction of the Courts of Singapore/or People's Republic of China." The High Court found the choice of law agreement to be meaningless as a purported floating choice of law, and that the choice of court agreement was invalid as it could not be severed from the choice of law agreement. The court then applied the natural forum test and declined to exercise jurisdiction on the basis that China was the clearly more appropriate forum for the dispute. On appeal, the Court of Appeal agreed with the finding that the choice of law agreement was invalid, but held that the choice of court agreement

could be severed from the choice of law agreement.

In a prior decision, the Court of Appeal in *Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala* [2012] SGCA 16, had considered a non-exclusive choice of court clause to be relevant at the very least as a factor in the natural forum test, and that the weight to be accorded to the factor depended on the circumstances of each case. It also considered that there was another possible approach to such clauses based on contractual enforcement principles, which it did not fully endorse as the parties had not raised arguments based on contractual intentions.

In *Shanghai Turbo*, the Court of Appeal had to face this issue squarely, and affirmed that if there is a contractual promise in the non-exclusive choice of court clause, the party seeking to breach the agreement had to demonstrate strong cause why it should be allowed to do so. The court went on to hold that, generally, where Singapore contract law is applicable, the "most commercially sensible and reasonable" construction of an agreement to submit, albeit non-exclusively, to a court is that the parties have agreed not to object to the exercise of jurisdiction by the chosen court. This inference does not depend on there being an independent basis for the chosen court to assume jurisdiction (eg, by way of choice of law agreement), or on the number of courts named in the clause. Conversely, there is generally no inference that the parties have agreed that the chosen court is the most appropriate forum to hear the case.

Thus, practically, where there is a non-exclusive choice of Singapore court clause, in general the Singapore will hear the case unless strong cause (the same test elucidated in *Vinmar*) is demonstrated by the party objecting to the exercise of jurisdiction by the Singapore court, but where there is a non-exclusive choice of foreign court clause, this is merely a factor in the natural forum test, as the party seeking trial in Singapore is not in breach of any agreement. On the facts, the court held that jurisdiction should be exercised because the defendant could not demonstrate strong cause.

It is to be noted these are canons of construction under Singapore law. Under Singapore private international law, the choice of court agreement is governed by the law that governs the main contract unless the parties have indicated otherwise. However, Singapore law will apply in default of proof of foreign law. Moreover, canons of construction may be displaced by evidence of contrary intention. The court left open the question – expressing no tentative view –

whether the same approach would be taken for contracts which are not freely negotiated. However, as this is a question of interpretation, the context of negotiation could be a relevant indication of the true meaning of contractual terms.

The third case is on arbitration, but the Court of Appeal also made comments relevant to choice of court agreements. In *Sun Travels & Tours Pvt Ltd v Hilton International (Maldives) Pvt Ltd* [2019] SGCA 10, an injunction was sought to prevent reliance on a foreign judgment obtained in proceedings commenced in breach of an arbitration agreement. The court correctly identified the remedy sought as an anti-enforcement injunction, but nevertheless also discussed the anti-suit injunction because the case was argued on the basis that the injunction sought followed from an entitlement to an anti-suit injunction. The court clarified that an anti-suit injunction would generally be granted to enforce a choice of court agreement unless strong cause is demonstrated why it should be denied, and that there is no need to demonstrate vexatious or oppressive conduct independently. Thus, the law in this area is the mirror image of *Vinmar*. This case is particularly significant for Singapore because statements in the previous Court of Appeal decision in *John Reginald Stott Kirkham v Trane US Inc* [2009] SGCA 32 could be read as suggesting that the breach of contract is merely one factor to consider in determining whether the conduct of foreign proceedings abroad was vexatious.

These common law developments are highly significant in bringing greater consistency with developments elsewhere where party autonomy has come to assume tremendous significance. One is the Hague Convention on Choice of Court Agreements which took effect in Singapore law on 1 October 2016. Two critical aspects of this Convention are that a choice of the court of a Contracting State is deemed to be exclusive unless there are express provisions to the contrary, and that the chosen court should assume jurisdiction unless the choice of court clause is invalid. The second is the Singapore International Commercial Court (SICC) established in 2015. Where there is a choice (whether exclusive or not) of SICC clause, the SICC will assume jurisdiction unless the case is not an appropriate one having regard to the court's character as an international commercial court. In addition, under the Rules of Court, a choice of the Singapore High Court made on or after 1 October 2016 is presumed to include the SICC unless expressly indicated otherwise. In both situations, the common law is not relevant, and to

that extent, the practical effects of *Vinmar* and *Shanghai Turbo* will be limited. However, the extent to which anti-suit injunctions will be consistent with the Hague Convention on Choice of Court Agreements remains an open question, and it is certainly an area for watch for further developments."

A more detailed discussion of the cases mentioned above can be found at: https://cebcla.smu.edu.sg/sites/cebcla.smu.edu.sg/files/Paper2019.pdf

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14 June 2019: Symposium on the Attractiveness of the Paris International Commercial Chambers

The Paris Court of Appeal will host a symposium on "*L'attractivité de la place de Paris: Les chambres commerciales internationales: fonctionnement et trajectoire*" (The attractiveness of Paris's jurisdiction. The international Commercial Chambers: functioning and future trends) on June 14, 2019 (2pm-6pm).

Readers of this blog will remember that on February 7, 2018, the International Commercial Chamberof the Paris Court of Appeal was inaugurated.

The establishment of this specialized appellate international Commercial Chamberfollows the creation of the first International Chamber of the Paris Commercial Court of First Instance ("*Chambre de Droit International du Tribunal de Commerce*") and fits well in the current developments of the international business courts all over Europe (and out of Europe too).

The international chambers of the Paris Commercial Court and Court of Appeal (hereafter referred to as the "International Commercial Courts of Paris" or the "ICCP") are the latest examples of the modernization of French Legal System with respect to dispute resolution in commercial matters.

In the context of Brexit, the creation of the ICCP aims at enhancing the attractiveness and international competitiveness of French courts, combining flexibility, high quality and low costs.

The Paris Court of Appeal and the Faculty of Law of the *Université de Paris Est Créteil* (UPEC) will organize a symposium on June 14, 2019 at the Paris Court of Appeal. The conference will discuss the attractiveness of the Paris courts taking into account its latest evolution: the creation of the International Commercial Courts of Paris, with a focus on how these courts work in practice.

After the opening by Chantal Arens, first president of the Paris Court of Appeal and Gilles Cuniberti, professor of law at the University of Luxembourg, the event will be divided into three parts:

1. Origins and creation of the ICCP, with a comparative approach to other commercial courts in Europe.
2. Analysis of the mechanisms allowing access to the ICCP, with practical insight into the drafting and interpretation of choice of court clauses, the types of disputes that may fall within the scope of the Chambers and the relationships with arbitration.
3. Analysis of the procedural rules before the Chambers, with a specific focus on how the Chambers work in practice, the use of the English language, the available tools for the parties, and the current rules of practice established or being discussed in the Chambers.

The conference, led by the judges sitting in the Paris international chambers, will provide a valuable feedback of 18 months of existence of the International Commercial Chamber of the Paris Court of Appeal. The future trends of the French ICCP, and their interaction with other courts in Europe will also be debated.

Emmanuel Gaillard, Visiting Professor at Yale Law School and Harvard Law School, will give the closing speech.

A detailed description of the afternoon's program can be found on the Paris Court of Appeal's website (*in French only/English version to be published soon*).

You can register by writing an email to: colloque.ca-paris@justice.fr

Links to previous relevant posts:

https://conflictoflaws.de/2011/paris-commercial-court-creates-international-division/

https://conflictoflaws.de/2018/doors-open-for-first-hearing-of-international-chamber-at-paris-court-of-appeal/

https://conflictoflaws.de/2018/the-domino-effect-of-international-commercial-courts-in-europe-whos-next/

New Book: "Contracts for the International Sale of Goods: A Multidisciplinary Perspective"

Contracts for the International Sale of Goods: A Multidisciplinary Perspective is set to be released by Thomson Reuters (Hong Kong) Limited at the end of July 2019. Edited by Dr Poomintr Sooksripaisarnkit, Lecturer in Maritime Law, Australian Maritime College, University of Tasmania, and Dr Sai Ramani Garimella, Senior Assistant Professor, Faculty of Legal Studies, South Asian University, this book has the following unique features:

- On the 30th anniversary of the implementation of the CISG (in the year 2018) and almost the 40th anniversary of the adoption of the text of the

CISG (in the year 2020), this title at the right time provides value added content for students and practitioners alike considering CISG and its intersection with public domestic and international law;
- Unique and jurisdictionally relevant thought-leadership content – presents national perspectives;
- Providing fresh critiques on core principles as well as forecasting on potential areas for reform or improvement
- Multi-country author team providing perspectives from across diverse global jurisdictions as well as contributions from members of the Permanent Court of Arbitration (The Hague) and The Secretariat of the United Nations Commission on International Trade Law (UNCITRAL)

Contributors include:

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Details of the book shall be available soon from the publisher's website: www.sweetandmaxwell.com.hk

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For more information about the book, you can contact Dr Poomintr Sooksripaisarnkit (poonmintr@icloud.com) or Dr Sai Ramani Garimella (ramani@sau.ac.in)

Viewing the "Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region" as a Window onto the New Legal Hubs

Written by Matthew S. Erie, Associate Professor of Modern Chinese Studies and Fellow at St. Cross College, University of Oxford

On April 2, 2019, the Government of the Hong Kong Special Administrative Region ("HKSAR") and the Supreme People's Court of the People's Republic of China" ("Supreme People's Court") signed an Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR (hereinafter, "the Arrangement Concerning Mutual Assistance," see English translation here). This is a momentous development in the growth of international commercial arbitration in both mainland China (also, the "PRC") and Hong Kong as it is the first time that such a mechanism has been put in place to allow Chinese courts to render interim relief to support arbitrations seated outside of the PRC.

Historically, non-Chinese parties have been concerned about doing business with Chinese parties given the lack of the ability to ensure that the status quo of the assets of the Chinese party in question is not altered pending the outcome of the arbitration and the tribunal's issuance of the final award. As a result of the Arrangement Concerning Mutual Assistance, foreign parties will have more

comfort in entering into such agreements with Chinese parties; further, the attractiveness of both Hong Kong as a seat of arbitration and the PRC will be enhanced. More generally, the Arrangement Concerning Mutual Assistance demonstrates the close cooperation between legal, judicial, and arbitral authorities in the PRC and Hong Kong. The Arrangement Concerning Mutual Assistance builds on such soft law sources as the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR Pursuant to the Choice of Court Agreements Between Parties Concerned, signed on July 14, 2006, and the Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the HKSAR, signed on June 21, 1999. These sources of soft law position Hong Kong as a major legal hub for Chinese companies investing outside of mainland China. This is particularly so in the context of the Belt and Road Initiative, a multi-trillion dollar project affecting some two-thirds of the world's population, announced by PRC President Xi Jinping in 2013, to connect mainland China's economy with those of states throughout Eurasia.

Mainland China's soft law agreements with Hong Kong are not surprising given that Hong Kong is a "special administrative region" of the PRC, a relationship often summarized as "one country two systems." Nor is it surprising that Hong Kong should function as a legal hub for Chinese companies. Yet Hong Kong is just one of many such hubs emerging throughout a number of jurisdictions across the Eurasian landmass that are jockeying to provide legal services, and particularly dispute resolution services, to not just Chinese companies but also Japanese, Indian, and those of GCC and ASEAN states. The diversity of parties notwithstanding, with some of the largest multi-national companies in the world backed by strong central government support, China is the dominant economy of the region. China is not only creating soft law with other jurisdictions but also onshoring disputes by building its own NLHs in Shanghai and Shenzhen. As a consequence, emergent economies in Asia are accounting for an ever-larger number of cross-border commercial disputes, and jurisdictions in Asia are building capacity to handle those disputes. Soft law, international arbitration houses, international commercial courts, business mediation, transplanted English common law procedural rules, English language, and lawtech—these are all constitutive elements of what I call "new legal hubs" ("NLHs"), one-stop shops for cross-border commercial dispute resolution, in financial centers, promoted as an official policy by nondemocratic or hybrid regimes.

Over the course of two years, I conducted ethnographic fieldwork on six NLHs in four countries, including in Hong Kong, Singapore, Dubai, Kazakhstan, and China. The result of my research, "The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution" (see here), is forthcoming in the *Virginia Journal of International Law*. The article analyses NLHs at two levels: their impact on the host states in which they are embedded and interhub connections as a form of transnational ordering. This article finds that, first, legal hubs are engines of doctrinal, procedural, and technological experimentation, but they have had limited impact on the reform of the wider jurisdictions within which they are embedded. Second, through relationships of competition and complementarity, legal hubs function to enhance normative settlement. However, many of the innovations (e.g., intrahub cross-institutional mechanisms between courts and arbitration institutions and interhub soft law such as memoranda of understanding) are untested, vulnerable to state politics, or even unlawful. Consequently, NLHs demonstrate the potential and fragility of "rule of law" in nondemocratic states that promote globalization against trends in the West.

The article begins with an introduction that defines NLHs, identifies their significance as jurisdictional carve-outs to otherwise weak legal systems of host states, and proposes an anthropology of legal hubs. Part I sets the analysis of NLHs against the backdrop of a partially deglobalizing Euro-American liberal legal order and a globalizing "Inter-Asian" one. Part II describes the methodology of "para-ethnography." Part III provides a theory of NLHs. Part IV builds on this theory to generate a continuum of NLHs. Part V assesses how NLHs and their host states affect each other, including hubs' positive spillover effects and host state pushback. Part VI examines the possibilities for interhub ordering.

The International Business Courts saga continued: NCC First

Judgment – BIBC Proposal unplugged

Written by Georgia Antonopoulou and Xandra Kramer, Erasmus University Rotterdam (PhD candidate and PI ERC consolidator project Building EU Civil Justice)

1. Mushrooming International Business Courts on the Eve of Brexit

Readers of this blog will have followed the developments on the international business courts and international commercial chambers being established around Europe and elsewhere. While many of the initiatives to set up such a court or special chamber date from before the Brexit vote, it is clear that the UK leaving the EU has boosted these and is considered to be a big game changer. It remains to be seen whether it really is, but in any case the creation of courts and procedures designed to deal with international commercial disputes efficiently is very interesting!

The Netherlands was one of the countries where, after the Senate came close to torpedoing the proposal (see our earlier blogpost), such an international commercial court (chamber) was created. The Netherlands Commercial Court (NCC) opened its doors on 1 January 2019, and it gave its first judgment on 8 March 2019 (see 2). Meanwhile, in Belgium the proposal for the Brussels International Business Court (BIBC) seems to be effectively unplugged due to lack of political support (see 3).

2. The First NCC Judgment

As reported earlier on this blog, on 18 February 2019 the Netherlands Commercial Court (NCC) held its first hearing (see here). The NCC' s first case *Elavon Financial Services DAC* v. *IPS Holding B.V. and others* was held in summary proceedings and concerned an application for court permission to privately sell pledged shares under Article 3:251 (1) Dutch Civil Code. The NCC scheduled a second hearing on 25 February 2019, offering the interested parties that did not appear before court the opportunity to be heard. However, these notified the court about their intention not to attend the hearing and leave the application uncontested. As a result, the NCC cancelled the planned hearing and

gave its first judgment granting the requested permission on 8 March 2019 (see here). Our discussion will focus on the NCC's judgment regarding the four main jurisdictional requirements and aims at offering a sneak preview on the Court's future case law on the matter.

(a) Jurisdiction of the Amsterdam District Court

Unlike what the name suggests, the NCC is not a self-standing court but a chamber of the Amsterdam District Court (see the new Article 30r (1) Dutch Code of Civil Procedure (DCCP) and Article 1.1.1. NCC Rules). Therefore, the jurisdiction of the NCC depends on the jurisdiction of the Amsterdam District Court (Article 30r (1) DCCP and Article 1.3.1. (a) and (c) NCC Rules). The Court confirmed its international and territorial jurisdiction based on a contractual choice-of-court agreement in favour of the Amsterdam District Court (Article 25 (1) Brussels Regulation Recast). With regard to the interested parties that were not a party to the agreement, the Court based its jurisdiction on the fact that they either entered an appearance or sent a notice to the Court acknowledging its jurisdiction without raising any objections (Article 26 (1) Brussels Regulation Recast and Article 25 Lugano Convention). Regarding the subject-matter jurisdiction of the Amsterdam District Court, Article 3:251 (1) Dutch Civil Code explicitly places applications for the private sell of pledged assets under the jurisdiction of the provisional relief judge of the District Court.

(b) Civil or commercial matter within the parties' autonomy

Second, the dispute concerned a civil or commercial matter that lies within the parties' autonomy (Article 30r (1) Dutch Code of Civil Procedure and Article 1.3.1. (a) NCC Rules).

(c) Internationality

Third, the NCC solely deals with international, cross-border disputes. So as to define the notion of internationality, the Explanatory Notes to Article 1.3.1. (b) NCC Rules entail a list of alternative, broad criteria that gives the dispute the required internationality (see Annex I, Explanatory Notes). The application in question was filed by Elavon Financial Services DAC, a company established in Ireland, and some of the interested parties are Dutch subsidiaries of a Swiss parent company (Explanatory Notes to Article 1.3.1. (b)). Although, pursuant to the Explanatory Notes, these circumstances were sufficient to establish the

matter's international character, the court went on to address other cross-border elements present in the case. Based on a broad understanding of a dispute's international character, the court underlined that some of the interested parties are internationally active, operate or at least plan to operate business abroad (see also The Hague Court of Appeal, ECLI:NL:GHSGR:2011:BR1381). Similar to the rules of other countries' international commercial courts, the NCC Rules qualify a case as international when the dispute arises from an agreement prepared in a language other than Dutch. Since the documents related to the application were drafted in English, the NCC regarded the English language of the contract as another international element.

(d) NCC Agreement

The fourth requirement for the NCC's jurisdiction is that the parties should have expressly agreed in writing for the proceedings to be in English and according to the NCC Rules (Article 30r (1) Rv and Article 1.3.1. (d) NCC Rules). Since the NCC, unlike the rest of the Dutch courts, conducts proceedings entirely in English and applies its own rules of civil procedure the parties' agreement justifies such a deviation and ensures that the parties wilfully found themselves before the newly established chamber. In the present matter, the parties signed a pre-application agreement and expressly agreed on the NCC' s jurisdiction to hear their case. Although, two of the interested parties were not signatories to that agreement one of them appeared before the court leaving the NCC' s jurisdiction uncontested and the other did not raise any objections against the chamber' s jurisdiction in its communication with the court (see also Article 2.2.1 NCC Rules and the Explanatory Rules).

(3) The Fate of the Belgian BIBC Proposal

As reported on this blog, the proposal to create the Brussels International Business Court was brought before Parliament in May 2018. Interesting features of this proposal are that the rules of procedure are based on those of the UNCITRAL Model Law on International Commercial Arbitration and that cases are heard by three judges, including two lay judges. The proposal has been criticized from the outset (see for some interesting initial thoughts Geert Van Calster's blogpost). As in the Netherlands, many discussions evolved around the fear for a two-tiered justice system, giving big commercial parties bringing high value claims a preferential treatment over ordinary court cases (see for the

discussions in the Netherlands our earlier blogpost). The Belgian Ministry of Justice and Prime Minister presented the English language court as an asset in times of Brexit and efforts were made to adjust the proposal to get it through.

Over the last week it became clear that there is insufficient political backing for the proposal after one of the big parties withdrew its support (see De Standaard). Other – mostly left-wing parties – had expressed their concerns earlier and the proposed court has been referred to as a 'caviar court' and a 'court for the super rich'. But probably the most fierce opponent is the judiciary itself. Arguments range from principled two-tiered justice fears (including for instance by the First President of the Court of Cassation) to concerns about the feasibility to attract litigation in the Brussels courts and the costs involved in establishing this new 'vip court'. The message seems to be: we have enough problems as it is. Referring to the Dutch NCC and the French International Commercial Chamber, the Minister of Justice, Koen Geens, said that withdrawing the BIBC proposal would be a missed opportunity and that he can counter the arguments against the establishment of the BIBC. However, as it looks now it seems highly unlikely that Belgium will be among the countries that will have an international business court in the near future.

New Article on International Commercial Courts in the Litigation Market

Prof. Dr. Marta Requejo Isidro (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) recently posted a new paper in the MPI*Lux* Research Paper Series, titled International Commercial Courts in the Litigation Market.

Here is an overview provided by the author.

The expression "international commercial courts" refers to national judicial

bodies set up in the last fifteen years in several jurisdictions throughout the world -Asia, Middle East, Europe- to suit the specific demands of international commercial litigation. The courts and the proceedings before them share unique features often imported from the common law tradition and the arbitration world, with a view to providing a dispute resolution mechanism tailored to the subject-matter. This notwithstanding there is no single model of international commercial court: on the contrary, each of them presents distinctive characteristics, which determine their greater or lesser capacity to fulfil the objective of serving international commercial litigation. By way of example: in their origin the courts of Dubai and Abu Dhabi were created not so much to reproduce a successful model of international commercial litigation, as to separate – and complement at the same time – the local legal system of the Emirates, based on Sharia and the tradition of civil law and with Arabic as the official language. In the wish to capture in as much as possible the advantages of international arbitration, parties before the Dubai International Financial Centre Courts are given the possibility of "converting" a DIFC Court's decision into an arbitral award; no other court offers this chance. The authorization to use English as the language of the process varies from court to court in Continental Europe. In the Old Continent only the (still pending) Brussels International Business Court would be staffed with foreign judges.

This paper summarizes the main traits of several international commercial courts prior to exploring their relationship with international arbitration, on the one hand, and among them, on the other, at a time when the term "litigation market" is used matter-of-factly, and the "competition" among dispute resolution mechanisms is regarded as an incentive for the improvement within justice systems at a global level. In this context, elements such as the language of the process, the possibility of being represented by a foreign lawyer, the facilities to apply English law to the merits of the case, or the existence of a network of instruments for the enforcement of decisions abroad, may prove decisive in the choice of the users to file a claim with an international commercial court (and which one among them), or going to arbitration.