Reminder: Registration deadline for young scholars‘ PIL conference in Bonn

The following reminder has been kindly provided by Dr. Susanne L. Gössl. LL.M. (Tulane), University of Bonn.

This is a short reminder that the registration deadline for the first German young scholars‘ PIL conference on April 6th and 7th 2017 at the University of Bonn (see our previous post here) is approaching.

The conference will be held in German. Its general topic is “Politics and Private International Law”.

Professor Dagmar Coester-Waltjen has kindly agreed to deliver our conference’s opening address. Consolidated in four panels with the topics “Arbitration”, “Procedural Law and Conflict of Laws/Substantial Law”, “Protection of Individual Rights and Conflict of Laws” and “Public Law and Conflict of Laws”, a total of eight presentations and one responsio will address current aspects of the relationship between politics and PIL and invite further discussion.

Participation is free, but a registration is required.

The registration deadline is **February 28th 2017**.

In order to register for the conference, please use this link. Please be aware that the number of participants is limited.

Further information may be found here.

We are looking forward to welcoming many participants to a lively and thought-provoking conference!

Kotuby & Sobota on “General Principles of Law and International Due Process”

This is a shameless plug for my new book. It is available for pre-order on the Oxford University Press website and on Amazon.com. I was fortunate enough to co-author this work with my friend and colleague Luke Sobota from Three Crowns.

This book is intended to be a modern update of Bin Cheng’s seminal book on general principles from 1953–identifying, summarizing and analyzing the core general principles of law and norms of international due process, with a particular focus on developments since Cheng’s writing. The aim is to collect and distill these principles and norms in a single volume as a practical resource for international law jurists, advocates, and scholars. The book includes a Foreward by Judge Stephen M. Schwebel.

We’ve been fortunate to receive some wonderful praise thus far. Judge Schwebel has called it “a signal contribution to the progressive development of international law, . . . [done] with scholarship, insight, and panache.” Pierre Marie Dupuy has deemed it a “most useful study on the place and role of general principles of law in contemporary international arbitration,” while Judge James Crawford expects it to become a “work that will benefit both scholars and practitioners.”

Droit des Contrats Internationaux, 1st edition

This book authored by M.E. Ancel, P. Deumier and M. Laazouzi, and published by Sirey, is the first manual written in French solely devoted to international

contracts examined through the lens of judicial litigation and arbitration. It provides a rich and rigorous presentation in light of the legal instruments recently adopted or under discussion in France, as well as at the European and international levels.

After an introduction to the general principles of the matter, the reader will be able to take cognizance of the regimes of the most frequent contracts in the international order: business contracts (sale of goods and intermediary contracts), contracts relating to specific sectors (insurance, transport), contracts involving a weaker party (labor and consumer contracts) or a public person.

Advanced students, researchers as well as practitioners will find in this volume the tools enabling them to grasp the abundant world of international contracts, to identify the different issues and to master the many sources of the discipline.

The ensemble is backed up by a highly developed set of case law and doctrinal references, updated on August 15, 2016.

More information about the book in traditional format is available here, and here for the e-book format.

Marie-Elodie Ancel is a professor at the University Paris Est Créteil Val de Marne (UPEC), where she heads two programs in International Business Litigation and Arbitration.

Pascale Deumier is a professor at the Jean Moulin University (Lyon 3), where she is a member of the Private Law Team and coordinates the research focus on the Sources of Law.

Malik Laazouzi is a professor at the Jean Moulin University (Lyon 3), where he heads the Master 2 of Private International and Comparative Law.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 6/2016: Abstracts

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

U. Magnus: **A Special Conflicts Rule for the Law Applicable to Choice of Court and Arbitration Agreements?**
The article examines whether the German legislator should enact a separate conflicts rule which determines the law that is applicable to the conclusion and validity of choice of court and arbitration agreements. With respect to choice of court agreements the national legislator's room for manoeuvre is anyway very limited due to the regulations in Art. 25 Brussels Ibis Regulation and Art. 5 Hague Convention on Choice of Court Agreements of 2005. There is no genuine need for an additional national conflicts rule, in particular since the interpretation and exact scope of the new conflicts rule in Art. 25 (1) Brussels Ibis Regulation still requires its final determination by the CJEU. After weighing all pros and cons the article recommends not to enact a separate conflicts provision. The same result is reached for arbitration agreements. Here, the international practice that in the absence of a choice the law at the place of arbitration applies should be fixed on the international or European level.

K. Bälz: **Failing states as parties in international commercial disputes: public international law and conflict of laws**
In the aftermath of the "Arab Spring" a number of states in the immediate vicinity of Europe have turned into failing states. Using the Libya cases of the English High Court as a starting point, this article examines the practical questions that arise in commercial disputes involving failing states. The key question is how to implement the international law principles on regime change and state failure in international disputes.

U.P. Gruber: **The new international private law on the equalization of pension rights – a critical assessment**
German international private law contains an extremely complicated rule on the

equalization of pension rights. Under this rule, the equalization of pension rights of husband and wife shall be subject to the law applicable to the divorce according to the Rome III Regulation; however, an equalization shall only be granted if accordingly German law is applicable and if such equalization is recognized by the law of one of the countries of which the spouses were nationals at the time when the divorce petition was served. If one of the spouses has acquired during the subsistence of the marriage a pension right with an inland pension fund and carrying out the equalization of pension rights would not be inconsistent with equity, the equalization of pension rights of husband and wife shall be carried out pursuant to German law on application of a spouse.
Lately, Art. 17 (3) *EGBGB* was amended. Whereas in former times, Art. 17 (3) *EGBGB* referred to the law applicable to divorce determined by an autonomous German rule, the provision now makes referral to the Rome III Regulation. In the legislative process, this amendment was neither discussed nor justified. At a closer look, however, the new rule has serious flaws and should be changed.

C. Heinze/B. Steinrötter: **When does a contract fall within the scope of the „directed activity" as provided for in Art. 15 (1) (c) Regulation (EC) No 44/2001 (= Art. 17(1) (c) Regulation [EU] No 1215/2012)?**
This contribution analyses the recent *Hobohm*-judgment of the European Court of Justice (ECJ), which concerns the requirement "contract falls within the scope of such activities" in Art. 15 (1) (c) Regulation (EC) No 44/2001 (= Art. 17 (1) (c) Regulation [EU] No 1215/2012). The CJEU decided that the rules on jurisdiction over consumer contracts are applicable even if the respective contract on its own does not fall within the scope of the professional activity which has been directed to the consumer's home state, provided that it is closely linked to an earlier contract falling under Art. 17 (1) (c). The *authors* analyse the elements of this test of close connection and place it into the more general context of the jurisdiction rules for consumer disputes.

T. Lutzi: **Qualification of the claim for a 'private copying levy' and the requirement of seeking to establish the liability of a defendant under Art. 5 No. 3 Brussels I (Art. 7 (2) Brussels I recast)**
Seized with the question whether a claim for the "blank-cassette levy" under § 42b of the Austrian *Urheberrechtsgesetz* (which transposes Art. 5 (2) b of the European Copyright Directive) qualifies as delictual within the meaning of Art. 5 No. 3 of the Brussels I Regulation (Art. 7 (2) of the recast Regulation), the Court

of Justice had an opportunity to refine its well-known *Kalfelis* formula, according to which an action falls under Art. 5 No. 3 if it "seeks to establish the liability of a defendant" and is "not related to a 'contract' within the meaning of Art. 5 No. 1". Holding that the claim in question sought to establish the liability of the defendant "since [it] is based on an infringement […] of the provisions of the UrhG", the Court seems to have moved away from the more restrictive interpretation of this criterion it has applied in the past. Yet, given the implications of such a broad understanding of Art. 5 No. 3, not least for claims in unjust enrichment, a restrictive reading of the decision is proposed.

L. Hübner: **Effects of cross-border mergers on bonds**
The article deals with the complex interplay of international contract law and international corporate law exemplified by the ECJ decision in the *KA Finanz* case. Three issues will be focused on: (i) the law applicable to a bond indenture after a cross-border merger of one of the contracting parties with a third party; (ii) the law applicable to the legal consequences of such a merger (legal and asset succession as well as creditor protection); and (iii) the application of Art. 15 of Directive 78/855 to securities to which special rights are attached.

C. Thomale: **Multinational Corporate Groups, Secondary insolvency proceedings and the extraterritorial reach of EU insolvency law**
In its preliminary ruling on the *Nortel Networks* insolvency dispute, the ECJ has made important assertions on procedural and substantive aspects of secondary insolvency proceedings and their coordination with the main proceedings as well as their reach to extraterritorial assets of the debtor. At the same time, the decision fuels the general regulatory debate on corporate group insolvencies. This comment analyses the decision and develops an alternative approach.

D.-C. Bittmann: **Requirements regarding a legal remedy in terms of art. 19 of Regulation (EC) No. 805/2004 and competence for carrying out the certification of a judgment as a European Enforcement Order**
The following article examines a judgment of the ECJ, which deals with several problems regarding the interpretation of Regulation (EC) No. 805/2004 creating a European Enforcement Order (EEO) for uncontested claims. The first part of the decision regards the requirements established by Art. 19 of the regulation. The ECJ rules, that Art. 19 (1) of Regulation (EC) No. 805/2004 requires from the national legal remedy in question that it effectively and without exception allows for a full review, in law and in fact, of a judgment in both of the situations

referred to in that provision. Furthermore the EJC rules, that this legal remedy must allow the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of force majeure, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question (Art. 19 (1) (b)). In the second part of the decision the ECJ rules, that the certification of a judgment as an EEO, which may be applied for at any time, can be carried out only by a judge and not by the registrar. The latter is only allowed to carry out the formal act of issuing the standard form according to Art. 9 of Regulation (EC) No. 805/2004 after the decision regarding certification as an EEO has been taken by the judge.

S. Arnold: **Contract, Choice of Law and the Protection of the Consumer abroad when lured into business premises**

Consumer protection is a cornerstone of European Law – just like party autonomy. Even in consumer contracts, parties can choose the applicable law. Yet the choice must not be to the detriment of the consumer. This is the core idea of Art. 6 (2) Rome I-Regulation. The *OLG Stuttgart* (Higher Regional Court of Stuttgart) addressed the range of that provision which is a central tool of consumer protection through conflict of laws. During a package holiday in Turkey, an 85 year old lady had bought a carpet. Turkish substantive Law did not allow for the lady to withdraw from the contract, German substantial Law, however, did. The *OLG Stuttgart* decided that the lady could withdraw from the contract on the basis of German substantial Law. The *OLG Stuttgart* found that the Turkish seller had worked together with the German travel agency in order to lure tourists from Germany into his business premises.

C. Wendelstein: **Cross-border set-off based on counterclaim governed by Italian law**

In the context of an international set-off the German Federal Court of Justice had to deal with various questions in the field of conflict of laws. For the first time the Court had to adjudicate upon the characterization of the notion of *liquidità* in Italian law (Art. 1243 *Codice civile* = Cc). According to the Federal Court of Justice this question has to be answered by the law designated by Art. 17 Rome I Regulation. The author agrees with this finding.

G. Schulze: **The personal statute in case of ineffective dual nationalities (case note on a judgment given by the Federal Court of Justice of Germany on 24th June 2015 – XII ZB 273/13)**

The applicant had been living in Germany since his birth. As he had a double name (according to Spanish customs) registered in the civil registry in Spain he wanted to go by his Spanish family name in Germany as well. The case raises the question of how to determine the personal statute of a multinational person having both a Spanish and a Moroccan nationality if the person has no connections whatsoever to the countries in question. The Federal Court of Justice of Germany (*Bundesgerichtshof, BGH*) held: That in default of an "effective" citizenship the law of habitual residence shall be applicable, *in casu*: German law. That the "limping" name does not violate EU law. There are doubts about this solution: The effectiveness of nationality does not form a part of the elements of Art. 10 (1) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB*). Effectiveness serves only to clearly define the personal statute for given connecting factors, viz. in order to choose between several citizenships in Art. 5 (1) sentence 1 or to determine the (closer connected) habitual residence in Art. 5 (2) *EGBGB*. *De lege lata* there is no well-founded basis for a supported rejection of the application of law of nationality. However the general tendency to apply the law of habitual residence is not a reason to apply Art. 5 (2) *EGBGB* in analogy given multiple ineffective nationalities. It is not suitable to extend the escape clause in Art. 5 (2) *EGBGB*. In any case it is not a solution if the nationalities are EU nationalities. A former opportunity for choice of law which was unknown by the tenants does not eliminate an infringement of Art. 18 TEU (discrimination) and 21 TEU (freedom of movement).

M. Andrae: **The matrimonial property regime of the spouses with former Yugoslav nationality**

For the determination of the law applicable to matrimonial property referring to spouses who had at the time of marriage the Yugoslav nationality, two principles have a special significance: 1. The law of the former Yugoslavia shall not apply, including its interregional law and its conflict of laws principles. 2. An automatic change of the applicable law must be avoided, if possible and if it is not the consequence of a choice of law. Priority is given to the first principle. The connecting factor of the common nationality pursuant to Art. 15 (1) and 14 (1) No. 1 *EGBGB* must be supplemented. For this it is suitable to use the principle of closest connection by analogy to Art. 4 (3) sentence 2 *EGBGB*. Reference is made to the right of a successor State, if the spouses have had at the time of entering the marriage the Yugoslav nationality and a common closest connection to an area of the former Yugoslavia, which is now the territory of successor state. If

such a connection is absent, then the applicable law has to be determined in accordance with Art. 15 (1) and 14 (1) No. 2 of the *EGBGB*, if necessary by Art. 14 (1) No. 3 *EGBGB*.

A. Reinstadler/A. Reinalter: **The decision opening the debtor-in-possession proceeding pursuant to § 270a German Insolvency Act is not an insolvency proceeding pursuant to the European Insolvency Regulation (2002)**
The Court of Appeal of Trento, local section of Bolzano (Italy) had to rule on the question whether the debtor-in-possession proceeding/*Verfahren auf Eigenverwaltung* (§ 270a German Insolvency Act) can be qualified as decision opening an insolvency proceeding pursuant to art. 16 European Insolvency Regulation (2002) and has, therefore, to be recognized automatically by operation of law by the courts of other Member States. Judge-Rapporteur *Elisabeth Roilo* concluded (implicitly referring to the *Eurofood*-formula) that the decision issued by the German district court in which opened the debtor-in-possession proceeding pursuant to § 270a German Insolvency Act is neither listed in Annex A of the Regulation nor is the appointed provisional liquidator (*vorläufiger Sachwalter*) included in Annex C of the Regulation. Since the decision, furthermore, foresees neither the divestment of debtor's assets nor the forfeiture of the powers of management which he has over his assets, the criteria set down in the *Eurofood*-judgment are not fulfilled. The result is that the decision may not be qualified as a decision opening an insolvency procedure under the terms of art. 16 European Insolvency Regulation (2002).

New Trends in Collective Redress Litigation: International Seminar in Valencia

Professor Dr. Carlos Esplugues Mota (University of Valencia) has organized an international seminar on new trends in collective redress litigation that will take place on 25 November 2016 at the University of Valencia (Spain). The seminar

will be held in English and Spanish. Topics and speakers will include:

Collective actions in private international law and Spanish legal practice (Prof. Dr. Laura Carballo Piñeiro, Universidad de Vigo)

International Mass Litigation in Product Liability Cases (Prof. Dr. Jan von Hein, University of Freiburg)

Protection of mortgagors (consumers) in the EU (Prof. Dr. Blanca Vila Costa, Universitat Autònoma de Barcelona)

Class actions and arbitration (Prof. Dr. Ana Montesinos García, Universitat de València)

The New European Framework for ADR and ODR in the area of consumer protection (Prof. Dr. Fernando Esteban de la Rosa, Universidad de Granada)

An Approach to Consumer Law and Mass Redress from Civil Law (Prof. Dr. Mario Clemente Meoro, Universitat de València).

The panels will be chaired by Professor Dr. Esplugues Mota and Professor Dr. Carmen Azcárraga Monzonís. Participation is free of charge, but requires prior registration with Prof. Maria Jose Catalán Chamorro (Maria.Jose.Catalan@uv.es). The full programme with further details is available here.

Conference Report: "The Impact of Brexit on Commercial Dispute Resolution in London"

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

On 10 November 2016, the Academy of European Law (ERA), in co-operation with

the European Circuit, the Bar Council and the Hamburgischer Anwaltverein, hosted a conference in London on "The Impact of Brexit on Commercial Dispute Litigation in London". The event aimed to offer a platform for discussion on a number of controversial issues following the Brexit referendum of 23 June 2016 such as the future rules governing recognition and enforcement of foreign judgements in the UK, the impact of Brexit on the rules determining the applicable law and London's role in the international legal world.

Angelika Fuchs (Head of Section – Private Law, ERA, Trier) and Hugh Mercer QC (Barrister, Essex Court Chambers, London) highlighted in their words of welcome the significant impact of Brexit on business and the practical necessity to find solutions for the issues discussed.

In the first presentation, Alexander Layton QC (Barrister, 20 Essex Street, London) scrutinised Brexit's "Implications on jurisdiction and circulation of titles". He noted that the Brussels I Regulation Recast will cease to apply to the UK after its withdrawal from the EU and examined possible ways to fill the resulting void. Because an agreement between the UK and the EU on retaining the Brussels I Regulation Recast seemed very unlikely, not least because of the ECJ's jurisdiction over questions of interpretation of the Regulation, he favoured a special agreement between the UK and the EU in regard to the application of the Brussels I Regulation Recast based on the Danish model. The ECJ's future role in interpreting the Regulation could be addressed by adopting a provision similar to Protocol 2 to the 2007 Lugano Convention. Yet it was disputed whether or not the participation of the UK in the Single Market would be a political prerequisite for such an arrangement. He argued that there would be no room for a revival of the 1988 Lugano Convention since the 2007 Lugano Convention terminated its predecessor. Furthermore, neither a revival of the 1968 Brussels Convention nor the accession to the 2007 Lugano Convention would lead to a satisfactory outcome as this would result in the undesired application of outdated rules. In a second step Layton discussed from an English point of view the consequences on jurisdiction and on the recognition and enforcement of judgements if at the end of the two year period set out in Article 50 TEU no agreement would be reached. Concerning jurisdiction the rules of the English law applicable to defendants domiciled in third States would also apply to cases currently falling under the Brussels I Regulation Recast. In regard to the recognition and enforcement of judgements rendered in an EU Member State pre-Brussels bilateral treaties

dealing with these questions would revive, since they were not terminated by the Brussels I Regulation and its successor. Absent a treaty between the UK and the EU Member State in question the recognition and enforcement would be governed by English common law. Likewise, the recognition and enforcement of English judgements in EU Member States would be governed by bilateral treaties or the respective national laws. In Layton's opinion, the application of these rules might lead to legal uncertainty. He concluded that both the 2005 Hague Choice of Court Convention and arbitration could cushion the blow of Brexit, but limited to certain circumstances.

Matthias Lehmann (Professor at the University of Bonn) analysed the "Consequences for commercial disputes" laying emphasis on the impact of Brexit on the rules determining the applicable law to contracts and contracts related matters, its repercussions on pre-referendum contracts and potential pitfalls in drafting new contracts post-referendum. Turning to the first issue, he summarised the current state of play, meaning the application of the Rome I Regulation and Rome II Regulation, and stated that these Regulations would cease to apply to the UK after its withdrawal from the EU. In regard to contractual obligations this void could be filled by the 1980 Rome Convention, since the Rome I Regulation had not replaced the Convention completely. Still, this would lead to the application of outdated rules. He therefore recommended to terminate the 1980 Rome Convention altogether. Regarding non-contractual obligations the Private International Law (Miscellaneous Provisions) Act 1995 would apply. Lehmann noted that – unlike the Rome II Regulation – this Act contained no clear-cut rules on issues such as competition law or product liability. Because of these flaws he scrutinised three alternative solutions and favoured a new treaty between the UK and the EU on Private International Law. Even though disagreements over who should have jurisdiction over questions of interpretation could hinder the conclusion of such an arrangement the use of a provision similar to Protocol 2 to the 2007 Lugano Convention could be a way out. If this option failed, the next best alternative would be to copy the rules of the Rome I Regulation and the Rome II Regulation into the UK's domestic law and to apply them unilaterally. As a consequence, the UK courts would not be obliged to follow the ECJ's interpretations of the Regulations causing a potential threat to decisional harmony. Furthermore, the implementation could cause some difficulties because the Regulations' rules are based on autonomous EU law concepts. Finally, he rejected a complete return to the common law as this would lead to legal

uncertainty and potential conflicts with EU Member States' courts. Lehmann subsequently discussed Brexit's repercussions on pre-referendum contracts governed by English law. He submitted that in principle Brexit would not lead to a frustration of a contract. By contrast, hardship, force majeure or material adverse change clauses could cover Brexit, depending on the precise wording and the specific circumstances. Concerning the drafting of new contracts he pointed out that it would be unreasonable not to take Brexit into account. Attention should be paid not only to drafting provisions dealing with legal consequences in the case of Brexit but also to Brexit's implications on the contract's territorial scope when referring to the "EU". If the contract contained a choice-of-law clause in favour of English law, Lehmann suggested using a stabilization clause because English law might change significantly due to Brexit.

The conference was rounded off by a round table discussion on "The future of London as a legal hub", moderated by Hugh Mercer QC and with the participation of Barbara Dohmann QC (Barrister, Blackstone Chambers, London), Diana Wallis (Senior Fellow at the University of Hull; President of the European Law Institute, Vienna and former Member of the European Parliament), Burkhard Hess (Professor and Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg), Alexander Layton QC, Matthias Lehmann, Ravi Mehta (Barrister, Blackstone Chambers, London) and Michael Patchett-Joyce (Barrister, Outer Temple Chambers, London). Regarding the desired outcome of the Brexit negotiations and London's future role in international dispute resolution the participants agreed on the fact that a distinction had to be made between the perspectives of the UK and the EU. Concerning the latter, the efforts of some EU Member States to attract international litigants to their courts were discussed and evaluated. Moreover, Hess stressed London's role as an entry point for international disputes into the Single Market – an advantage London would likely lose after the UK's withdrawal from the EU. Patchett-Joyce argued that Brexit was not the only threat to London's future as a legal hub but that there were global risks that had to be tackled on a global level. In regard to the Brexit negotiations there was widespread consensus that the discussion on the future role of the ECJ would be decisive for whether or not an agreement between the UK and the EU could be achieved. Wallis argued that Brexit might have a very negative impact on access to justice, not least for consumers. To mend this situation, Lehmann expressed his hope to continue the judicial cooperation between the EU Member States and the

UK even post-Brexit. An accession to the 2005 Hague Choice of Court Convention was also advocated, though the Convention's success was uncertain. Turning to arbitration, since, as Mehta noted, its use increased significantly in numerous areas of law, and on a more abstract level to the privatisation of legal decision-making, Wallis and Patchett-Joyce addressed the problem of confidentiality and its repercussions on the development of the law. Furthermore, Dohmann stated that it was the duty of the state to provide an accessible justice system to everybody. It would not be enough to refer parties to the possibility of arbitration. Finally, Layton argued that in contrast to the application of foreign law which would create significant problems in practise, the importance of judgement enforcement would be overstated because most judgements were satisfied voluntarily.

It comes as no surprise that these topics sparked lively and knowledgeable debates between the speakers and attendees. Though these discussions indicated possible answers to the questions raised by the Brexit referendum it became clear once more that at the moment one can only guess how the legal landscape will look like in a post-Brexit scenario. But events like this ensure that the guess is at least an educated one.

Report: BREXIT Issue Launch

On 29 September 2016, Wilmer Cutler Pickering Hale and Dorr LLP and Wolters Kluwer co-hosted a seminar in London to mark the launch of the special BREXIT issue of the Kluwer *Journal of International Arbitration*. The speakers comprised of the authors of the articles within the BREXIT issue, who discussed varied topics relating to Brexit and private international law. Leading the seminar were Professor Dr Maxi Scherer, special counsel at Wilmer Cutler Pickering Hale and Dorr LLP and the journal's general editor, and Dr Johannes Koepp, partner at Baker Botts LLP and the special issue editor.

The speakers, who were of both academic and professional acclaim, provided interesting insights and lively debate on the multifaceted impacts that Brexit

could have on the UK's legal landscape. Topics included Brexit's effect on: London as a seat for international dispute resolution; recognition and enforcement of foreign judgments; UK competition litigation and arbitration; and intellectual property disputes.

This post, which has been kindly sent to me by **Reyna** Ge (BCL Candidate, University of Oxford) serves to provide an overview of the presentations and issues raised. A full recording of the seminar is available **here**, with a shortened version including the highlights of the event **here**.

London as a Seat of International Dispute Resolution in Europe

Michael McIlwrath, Global Chief Litigation Counsel of GE Oil & Gas, presented via videoconference "An Unamicable Separation: Brexit Consequences for London as a Premier Seat of International Dispute Resolution in Europe". In determining the impact that Brexit might have on London as a seat for international commercial arbitration, he suggested that London would lose cases in the short- to medium- term, while long-term growth would be subject to other assumptions. However, he also noted that Brexit would most likely not impact the trend of increased growth in the appointment of UK arbitrators.

EU Law and Constitutional Law Questions

Dr Holger Hestermeyer, Shell Reader in International Dispute Resolution, King's College London, presented "How Brexit Will Happen: A Brief Primer on EU Law and Constitutional Law Questions Raised by Brexit". Dr Hestermeyer explained that Article 50 of the Treaty of the European Union required a Member State to make a decision to withdraw from the EU in accordance with that State's constitutional law, with the conclusion that the referendum itself was not legally binding. It is controversial whether a binding decision ought to be made by the Government on the basis of royal prerogative (as argued by the UK Government) or on the basis of a Parliamentary decision. Dr Hestermeyer also explored the process of leaving the EU, which would comprise negotiations for a "divorce agreement" and "future agreement". This raised questions concerning the conduct of negotiations, the need for ratification of such agreements by the EU Member States and the UK, and the potential involvement of the European Free Trade Association States ("EFTA States").

Brexit and the Brussels Regime

Sara Masters QC and Belinda McRae, barristers practising at 20 Essex Street Chambers in London, presented "What Does Brexit Mean for the Brussels Regime?" They examined what would be the effect of Brexit on the two main instruments on the allocation of jurisdiction and on the recognition and enforcement of foreign judgments, the Brussels I Regulation (Recast) ("Recast Regulation") and the Lugano II Convention.

McRae explained the three academic possibilities that could arise if no agreement or decisions be made in this area, and concluded that a lack of action by the government concerning this framework would be very concerning for commercial parties.

Masters QC stated that the best outcome would be to negotiate a regime that is as close to the Recast Regulation as possible. The next best alternative would be to accede to the Lugano II Convention, even though this would mean that the innovations introduced by the Recast Regulation would not be present. Otherwise, the UK could accede to the Hague Choice of Court Convention, which could be a good short-term solution as it has the advantage of not being dependent on the reciprocity of the EU.

UK Competition Litigation and Arbitration

Paul Gilbert, Counsel at Cleary Gottlieb Steen & Hamilton LLP, presented "Impact of Brexit on UK Competition Litigation and Arbitration". Gilbert commented that there were signs that the UK government was moving toward a "hard Brexit" in relation to competition law. This would mean that more cases would be looked at within the UK, instead of providing Brussels with the sole jurisdiction over cases such as cartels.

Gilbert noted that the effect on competition litigation, in the form of follow-on actions, would be more difficult to predict. Following Brexit, EU cases would no longer be binding. Even if the UK decides to apply UK competition law consistently with EU law, future EU Commission decisions may not make further reference to the position in the UK on competition matters and thus make alignment difficult. Additionally, it was unclear what information would be released to claimants, and a finding of infringement pursuant to EU law may not necessarily be a basis for bringing a damages claim in a UK court. The implementation of the Damages Directive in the EU would also impact

competition law.

Intellectual Property Litigation and Arbitration

Annet van Hooft, Partner at Bird & Bird LLP, presented "Brexit and the Future of Intellectual Property Litigation and Arbitration". She noted that Brexit has impacted the creation of the Unitary Patent Court ("UPC"). Whether the UK would ratify the UPC regime and the future of the subdivision of the UPC that was to be located in London are two examples of issues arising from Brexit. The UPC, therefore, would experience delays in implementation.

Regarding trademarks and designs, while UK trademarks and designs would be unaffected, there would be uncertainty concerning the future treatment of community trademarks and designs in the UK. Van Hooft noted further uncertainty concerning database rights, the enforcement of pan-EU relief for unitary rights, exhaustion and licenses.

Intra- and Extra-EU Bilateral Investment Treaties

Markus Burgstaller, Partner at Hogan Lovells International LLP, presented "Possible Ramifications of the UK's EU Referendum on Intra- and Extra-EU BITs". With regard to intra-EU BITs, Burgstaller argued that such BITs would likely be found to be incompatible with EU law, and noted that the European Commission had called for the termination of the intra-EU BITs as early as in 2006. However, many States had not terminated these BITs, as was the case with the UK. Currently, the ECJ is set to rule upon the compatibility of intra-EU BITs in the case of the Netherlands-Slovakia BIT. Upon UK withdrawing from the EU, the intra-EU BITs would lose their intra-EU character.

Comments and discussion

Following presentation by the speakers, lively debate was entertained concerning the topics. The speakers and participants highlighted the importance of seeking agreement on matters such as BITs and the replacement for the Brussels Regime with the EU, for the purpose of promoting legal certainty. The potential for growth in the use of international arbitration, for the purposes of capitalising on the recognition and enforcement framework provided by the New York Convention, was also raised.

Young Scholars' PIL Conference: "Politics and Private International Law (?)" – Program

The following invitation regarding the upcoming young scholars' PIL conference in Bonn 2017 (see our previous post here) has been kindly provided by Dr. Susanne Gössl, LLM (Tulane), University of Bonn.

We cordially invite all young scholars interested in questions of Private International Law (PIL) to the first young scholars' PIL conference which will be held on April 6th and 7th 2017 at the University of Bonn.

The conference will be held in German.

The general topic will be

Politics and Private International Law (?)

As our call for papers elicited a large number of highly qualified and interesting responses, selecting the presentations for the conference programme was not easy. In a double-blind peer review procedure, we finally identified nine contributions leading to the following program:

Thursday, 6 April, 2017

2:00 pm: welcome

2:15 pm: opening address
Prof. em. Dr. Dagmar Coester-Waltjen, LL.M. (Mich.), University of Göttingen

3:00 pm: Panel I – Arbitration

3:00 pm: Politics Behind the “ordre public transnational” (Focus ICC Arbitral Tribunal)
Iina Tornberg, Helsinki

3:30 pm: Between Unleashed Arbitral Tribunals and European Harmonisation: The Rome I Regulation and Arbitration
Masud Ulfat, Marburg

4:00 pm: The Applicable Law in Arbitration Proceedings – A *responsio*
Dr. Reinmar Wolff, Marburg

4:10 pm: discussion

4:40 pm: coffee break

5:00 pm: Panel II – Procedural Law and Conflict of Laws/Substantial Law

5:00 pm: How Does the ECJ Constitutionalize the European PIL and International Civil Procedure? Tendencies and Consequences
Dominik Düsterhaus, Luxemburg

5:30 pm: Proceedings in a Foreign forum derogatum, Damages in a Domestic forum prorogatum – Fair Balancing of Interests or Unjustified Intrusion into Foreign Sovereignty?
Dr. Jennifer Lee Antomo, Mainz

6 pm: discussion (until ca. 6:30 pm)

8:00 pm: dinner

Friday, 7 April, 2017

9:30 am: opening

9:45 am: Panel III – Protection of Individual Rights and Conflict of Laws

9:45 am: Private International Law and Human Rights – Questions of Conflict of Laws Regarding the Liability for “Infringements of Human Rights”
Friederike Pförtner, Konstanz

10:15 am: Cross-Border Immissions in the Context of the Revised Hungarian

Regulation for Private International Law
Reka Fuglinszky, Budapest

10:45 am: discussion

11:15 am: coffee break

11:45 am: Panel IV – Public Law and Conflict of Laws

11:45 am: Long Live the Principle of Territoriality? The Significance of Private International Law for the Guarantee of Effective Data Protection
Dr. Martina Melcher, Graz

12:15 pm: Economic Sanctions in Private International Law
Dr. Tamás Szabados, Budapest

12:45 pm: discussion

1:15 pm: final discussion and conclusion of the conference

ca. 2:00 pm: closing

Participation is free, but a registration is required.

In order to register for the conference, please use this link: https://nachwuchstagungipr.typeform.com/to/qy1Obh. The registration deadline is February 28th 2017. Please be aware that the number of participants is limited and registrations will be processed in the order in which they are received. For reserving a hotel from our hotel contingent, please use the following link (http://www.bonn-region.de/events/nachwuchs-ipr.html).

For more information, please visit https://www.jura.uni-bonn.de/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/ipr-tagung/.

If you have any further questions, please contact Dr. Susanne Gössl (sgoessl@uni-bonn.de).

We are looking forward to welcoming many participants to a lively and thought-provoking conference!

Yours faithfully,
Susanne Gössl, Rafael Harnos, Leonhard Hübner, Malte Kramme, Tobias Lutzi, Michael Müller, Caroline Rupp, Johannes Ungerer

---

Utrecht Journal of International and European Law: Call for Papers

Utrecht Journal of International and European Law is issuing a Call for Papers to be published in its 85th edition in the summer of 2017 on 'General Issues' within international and European law.

The Board of Editors invites submissions addressing any aspect of international and European law; topics may include, but are not limited to, the field of Private International Law. More specifically, papers dealing with *e.g.* the following issues are welcomed: jurisdictional disputes (*e.g.* forum selection, renvoi, *etc*), choice of law, recognition of foreign judgments, UNCITRAL model law(s), online dispute resolution, international arbitration, electronic commerce, or any other relevant topic.

Authors are invited to address questions and issues arising from the specific area of law relating to their topic. All types of manuscripts, from socio-legal to legal technical to comparative, will be considered for publication. However, please note that any analysis solely limited to a national legal system will fall outside the scope of the Journal. *An international or European legal dimension is imperative*.

The Board of Editors will select articles based on quality of research and writing, diversity, and relevance of topic. The novelty of the academic contribution is also an essential requirement. Prospective articles should be submitted online and should conform to the journal style guide on our website. Utrecht Journal has a word limit of 15,000 words including footnotes. For further information, or for consultation on a potential submission, you can contact the Editor-in-Chief at utrechtjournal@urios.org.

DEADLINE FOR SUBMISSIONS:

18 April 2017

Utrecht Journal is the student-led, peer-reviewed biannual law journal of Urios, the Utrecht Association for International and European Law. The Journal was founded in 1981 as Merkourios. In the years since, the Journal has expanded its readership and is now distributed all over the world through databases such as HeinOnline and the Directory of Open Access Journals.

TDM Journal, Special Issue

The Arbitration Institute of the Stockholm Chamber of Commerce will turn 100 years in 2017. As part of the celebrations in January, a book about the history of arbitration will be published, where lawyers and diplomats from all over the world each write about one particular dispute.

One of the contributions is written by the winner of a large competition initiated by the SCC and aimed at young lawyers. The competition inspired many highly qualified contributions and several were so well-written that they will now be published in a separate edition of Transnational Dispute Management Journal (TDM).

The four texts deal with four different arbitrations that affected international relations: from a border dispute between the United States and Great Britain in what is now Canada, via an early ISDS case from the year 1900 over a Portuguese railway project and a relatively recent arbitration between Singapore and Malaysia, which was concluded at the Permanent Court of Arbitration in 2014.

You can read more about the publication, including the foreword by SCC Secretary-General Annette Magnusson, clicking here.