The Impact of Art 6(1) of the ECHR on Private International Law

There is a substantial article by Professor James Fawcett (University of Nottingham, and co-author of Cheshire & North) in the new issue of the International & Comparative Law Quarterly on "**The Impact of Article 6(1) of the ECHR on Private International Law**" (Int Comp Law Q 2007 56: 1-48). The abstract reads:

> *An increasing trend in private international law cases decided by courts in the United Kingdom has been to refer to the European Convention on Human Rights and, in particular, to Article 6. This article will examine the impact of this provision on private international law. The article will go on to examine why the impact has been so limited and will put forward a new approach that takes human rights more seriously, using human rights law to identify problems and the flexibility inherent in private international law concepts to solve them.*

And a small extract from the conclusion to whet your appetite:

> *A new approach is needed which takes human rights more seriously. A hybrid human rights/private international law approach should be adopted. The first stage of this requires the court to ascertain whether, in the circumstances of a particular case, there has been, or there is a real risk that there will be, a breach of Article 6 standards in England or abroad. Human rights jurisprudence should be used to ascertain whether there is such a breach. The second stage involves solving the human rights problem that has been identified. The English courts should act in a way that ensures that they are not in breach of Article 6 standards. In the areas of greatest risk of encountering a breach of Article 6 standards, this can be achieved by using existing private international law concepts of public policy and the demands of justice.*

Those with a subscription to the Journal can download the full article from the ICLQ website.

Some Case Comments And Practitioner Articles in November

There are a few case comments and articles on private international law in various practitioner updates this month in the UK. These include:

1. "**Court authority over internet sites based abroad**" *E-Commerce Law and Policy* (E.C.L. & P. 2006, 8(10), 6-7) by Hubert Best and Martin Soames. Abstract:

> *Examines courts' jurisdiction, and which laws should apply, where wrongdoing is committed by web based companies or individuals based in other countries. Provides examples from the US and other countries of the differing criteria used to determine courts' jurisdiction. Highlights the refusal of UK based software company, Spamhaus, who have a website but no physical presence in the US, to comply with a US District Court injunction and order for damages for listing a US bulk emailing company as a spammer. Suggests that international harmonisation of internet laws is unlikely to keep pace with internet development.*

2. "**Marriage and non-marital registered partnerships: gold, silver and bronze in private international law**" *Private Client Business* (P.C.B. 2006, 6, 352-362) by Richard Frimston. Abstract:

> *Examines the extent to which private international law grants cross border recognition to civil and other non marital registered partnerships involving same sex couples. Reviews the definitions of "marriage", the countries in which same sex marriage is now lawful and the human rights implications of non recognition in EC Member States, highlighting the discrimination issues raised by the Family Division ruling in Wilkinson v Kitzinger. Considers the position regarding quasi marriages such as non marital registered relationships (NMRRs) or civil partnerships, including the registration requirements, the position where one party is a non national and the scope for mixed sex NMRRs.*

3. "**Stays of Proceedings: Foreign Arbitrations**" *Arbitration Law Monthly* (Arb. L.M. 2006, Nov, 1-3). Abstract:

> *Examines the Commercial Court judgment in Abu Dhabi Investment Co v H Clarkson & Co Ltd on the jurisdiction of the court under the Arbitration Act 1996 s.9 to stay UK proceedings brought contrary to an arbitration clause which was subject to foreign law. Considers the terms of a joint venture to run an express liner service, focusing on whether the arbitration agreement in the memorandum of association and the shareholders' agreement applied to allegations that the contract was induced by misrepresentation. Examines the interpretation of arbitration clauses under United Arab Emirates law.*

Court of Appeal for Ontario Refuses to Enforce American Letter of Request

In *Re Presbytarian Church of Sudan*, released September 26, 2006 (available here) the Court of Appeal for Ontario held that a letter of request from the United States District Court could not be enforced in Ontario. Residents and former residents of Sudan sued Talisman Energy Inc, a Canadian company, in the United States for acts of genocide, torture and other human rights violations, relying on the *Alien Tort Claims Act* for jurisdiction. Despite the government of Canada having formally expressed its concerns about the litigation proceeding in the United States, through a diplomatic note, the court held that the letter of request was not contrary to the public policy of Canada. However, the court refused the request on the basis that the evidence in support – an affidavit from New York counsel – was insufficient to establish that the evidence sought was relevant, necessary and not otherwise obtainable. The court described the affidavit as containing only "bald assertions" on these important elements of the test for giving effect to a foreign letter of request.

German Court refuses Recognition of Same-Sex Marriages

(*VG Karlsruhe, judgment of 9 September 2004 – 2 K 1420/03; (2006) 3 IPRax, 284*)

The *VG Karlsruhe* (Administrative Court) decided in this judgment that a non-resident of the EU who has contracted a same-sex marriage with an EU resident is not a spouse in terms of Art.10 (1) lit. a Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. Therefore the permit of residence was not granted for the length it has been applied for. The court refers in its explanations *inter alia* to a decision of the ECJ from 2001 (joined cases C-122/99 P and C-125/99 P), where the ECJ states that the term "marriage" characterizes – according to the definitions applying in the Member States – only a partnership of two persons of different sexes. Since then, only two Member States had changed their definition of "marriage" and included also partnerships between couples of the same sex, namely Belgium and the Netherlands (remark: after the judgment had been passed, Spain also began to allow same-sex marriages in July 2005). The court argues now that a different interpretation of the term "spouse" was only justified if there had been already a social change in the whole EU – and not only in a few Member States. According to the *VG,* same-sex marriages can only be recognized if the State of recognition treats them as equivalent to traditional marriages. Since this is not the case in Germany (as only a registered partnership is possible between partners of the same sex), a recognition was not possible.

This decision has been discussed affirmative by *Röthel* (2006) 3 *IPRax*, 250, who argues that there is no obligation of the Member States to recognize the personal status of a person which has been obtained in another Member State which can be derived from the fundamental freedoms.

Comment: Another decision of interest in this context is one from the Tribunal administratif du Grand-Duché de Luxembourg of 3 October 2005 (N° 19509).

Here the court held – in contrast to the German court – that a same-sex marriage which has been concluded in Belgium between a Belgian and a Madagascarian has to be recognized in Luxembourg according to Art.8 of the European Convention on Human Rights – despite the fact that same-sex marriages are unknown to Luxembourgian law.

Registration Now Open: The Hague Academy of International Law's Winter Courses 2025

THE HAGUE ACADEMY OF INTERNATIONAL LAW

2025

WINTER COURSES
ON INTERNATIONAL LAW

6 - 24 January 2025

Inaugural Lecture **International Law and Global Justice**	**Bhupinder Singh CHIMNI** Distinguished Professor at the O.P. Jindal Global University
* **General Course** **International Law in the Time of Globalization. Contexts, Networks, Practices**	**Mónica PINTO** Emeritus Professor at the University of Buenos Aires
Good Faith and Neighbouring Concepts: Navigating beyond the Civil-Common Law Divide in International Law	**Mohamed S. ABDEL WAHAB** Professor at Cairo University, Dean of Africa Arbitration Academy
Crimes against Humanity and Genocide: Defining the Ultimate Crime	**Payam AKHAVAN** Chair in Human Rights at Massey College at the University of Toronto
* **Human Persons and the Law of the Sea**	**Niki ALOUPI** Professor at the University of Paris-Panthéon-Assas
The Relevance of the Principle of Effectiveness in International Law	**Enrico MILANO** Professor at the University of Verona
The Concept of Arbitrator Impartiality	**Catherine ROGERS** Professor at Bocconi University
* **The Relative Approach to Torture and to Cruel, Inhuman or Degrading Punishments or Treatment**	**Sébastien TOUZÉ** Professor at the University of Paris-Panthéon-Assas

* Lecture delivered in French, simultaneously interpreted into English

DIRECTED STUDIES FOR DIPLOMA EXAM CANDIDATES AND ADVANCED STUDENTS

Directors of Studies:

English-speaking section:
Maria Carmelina LONDONO LAZARO, Professor at the University of La Sabana

French-speaking section:
Emanuel CASTELLARIN, Professor at the University of Strasbourg

REGISTRATION

All applicants are required to register online. A limited amount of scholarships is available.

- Registration period for full fee applicants: May 1st – October 1st, 2024
- Registration period for scholarship applicants: May 1st – July 31st, 2024

Selected attendees of the Winter Courses will also be able to participate in the doctoral networking sessions, additional afternoon lectures, embassy visits, social activities, and to register for an exceptional event: the "Hours of Crisis" Simulation Exercise (subject to acceptance). The simulation will be conducted in English only.

The Hague Academy of International Law, Peace Palace, Carnegieplein 2, 2517 KJ THE HAGUE, The Netherlands

For all information, please visit the **website: http://www.hagueacademy.nl**

Registration for the 2025 programme of The Hague Academy of International Law's renowned **Winter Courses on International Law** (6-24 January 2025) is now open. In contrast to the summer courses, this program combines aspects of **both Public and Private International Law** and therefore provides for a particularly valuable academic experience.

Following the **Inauguaral Lecture** by **Bhupinder Singh Chimni** (O.P. Jindal Global University), this year's General Course in Private International Law will focus on "**International Law in the Times of Globalization: Contexts, Networks, Practices**" and will be delivered by **Mónica Pinto** (University of Buenos Aires). Furthermore, Special Courses will be offered in English by **Mohamed S. Abdel Wahab** (Cairo University), **Payam Akhavan** (University of Toronto), **Enrico Milano** (University of Verona) and **Catherine Rogers** (Bocconi University), while **Niki Aloupi** and **Sébastien Touzé** (Paris-Panthéon-Assas) will deliver their presentations in French. As always, all lectures will be simultaneously interpreted into English or French and *vice versa*. If you are interested in alternative dispute resolution, the lecture on **"The Concept of Arbitrator Impartiality"** seems particularly interesting.

Advanced Students, especially those who are ambitious to sit for the prestigious **Diploma Exam**, are highly encouraged to apply for the Academy's **Directed Studies** as well. The French edition of these interactive afternoon seminars will be directed by **Emanuel Castellarin** (University of Strasbourg), while English-speaking candidates are taught by **María Carmelina Londoño Lázaro** (University of La Sabana).

Registration is open from **1 May 2024 to 1 October 2024** via the institution's own Online Registration Form . Students who whish to apply for the **Academy's scholarship opportunities** need to submit their application by **31 July 2024**. For **further information** on the HAIL 2024 Winter courses and the Academy in general, please consult the HAIL Homepage or refer to the attached PDF Programme.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 2/2024: Abstracts

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

H.-P. Mansel/K. Thorn/R. Wagner: **European Conflict of Law 2023: Time of the Trilogue**

This article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from January 2023 until December 2023. It presents newly adopted legal instruments and summarizes current projects that are making their way through the EU legislative process. It also refers to the laws enacted at the national level in Germany as a result of new European instruments. Furthermore, the authors look at areas of law where the EU has made use of its external competence. They discuss both important decisions and pending cases before the CJEU as well as important decisions from German courts pertaining to the subject matter of the article. In addition, the article also looks at current projects and the latest developments at the Hague Conference of Private International Law.

H. Kronke: **The Fading of the Rule of Law and its Impact on Choice of Court Agreements and Arbitration Agreements**

Against the background of declining standards of the rule of law in an increasing number of jurisdictions, the article identifies and discusses problematic choices of a forum or of an arbitral seat as well as solutions developed by courts and legal doctrine in private international law, civil procedure and arbitration law. Businesses and their legal advisers are encouraged to anticipate risks and consider appropriate measures when drafting contracts.

L. van Vliet/J. van der Weide: **The Crimean treasures**

In 2013, a collection of highly important archaeological objects, the "Crimean treasures" had been loaned by four Crimean museums to the LVR-Landesmuseum in Bonn, Germany, and the Allard Pierson Museum in Amsterdam for exhibition purposes. During the exhibition at the Allard Pierson Museum, the Crimean Peninsula was illegally annexed by the Russian Federation. The question then arose to whom the Crimean treasures should be returned by the Allard Pierson Museum: to the Crimean museums (de facto in possession of the Russian Federation) or to the State of Ukraine? The legal proceedings concentrated on the interpretation of the notion of "illicit export" in the UNESCO Convention 1970 and on the application of the concept of overriding mandatory rules in the area of property law. As to the UNESCO Convention 1970, the question was whether the concept of illicit export includes the case where protected cultural property is lawfully exported on the basis of a temporary export licence and is not returned to the country that issued the licence after the expiry of the term in the licence. The drafters of the UNESCO Convention did not consider this case. These proceedings are most probably the first to raise and answer this question. The 2015 Operational Guidelines to the UNESCO Convention contain a definition of illegal export that explicitly includes the case of non-return after temporary export. In our opinion, this allows for a broad interpretation of the UNESCO Convention.

The Dutch courts had international jurisdiction because the claims of the Crimean museums were based on the loan agreements and the real right of operational management falling within the scope of the Brussels I Regulation. For the claims of the State of Ukraine, a clear basis for international jurisdiction does not exist when it acts in its state function. Claims iure imperii do not fall under Brussels I or Brussels I bis.

Having ruled that there was no illicit export, the Court of Appeal Amsterdam had to decide whether the contractual and property rights of the Crimean museums to restitution might be set aside by Ukrainian laws and regulations, including Order no. 292 requiring that the Crimean treasures be temporarily deposited with the National Museum of History of Ukraine in Kiev. The Court held that this Order applied at least as an overriding mandatory rule within the meaning of art. 10:7 of the Dutch Civil Code. The Dutch Supreme Court upheld the Court of Appeal's

judgment, agreeing with the Court of Appeal's application of the concept of overriding mandatory rules. However, the Supreme Court could not give its view on the interpretation of the UNESCO Convention 1970.

W. Hau: **Litigation capacity of non-resident and/or foreign parties in German civil proceedings: current law and reform**

This article deals with the litigation capacity (Prozessfähigkeit) of non-resident and/or foreign parties in German civil proceedings, both de lege lata and de lege ferenda. This question can arise for minors and for adults who are under curatorship or guardianship. Particular attention is paid here to the determination of the law applicable to the litigation capacity in such cases, but also to the relevance of domestic and foreign measures directed to the protection of the party.

S. Schwemmer: **Jurisdiction for cum-ex liability claims against Non-EU companies**

In the context of an action for damages brought by investors in a cum-ex fund against the Australian bank that acted as leverage provider, the German Federal Supreme Court (BGH) had to deal with questions regarding the application of the Brussels Ibis Regulation to non-EU companies. The court not only arrived at a convincing definition of the concept of principal place of business (Article 63 (1) c) Brussels Ibis-Regulation), but also ruled on the burden of proof with regard to the circumstances giving rise to jurisdiction. However, one core question of the case remains open: How should the conduct of third parties, especially senior managers, be taken into account when determining the place of action in the sense of Article 7(2) of the Brussels Ibis Regulation?

M. Fehrenbach: **In the Thicket of Concepts of Establishments: The Principal Place of Business within the Meaning of Art. 3 (1) III EIR 2017**

The Federal Court of Justice (Bundesgerichtshof) referred to the CJEU, among other things, the question whether the concept of principal place of business

(Hauptniederlassung) within the meaning of Art. 3 (1) III EIR 2017 presupposes the use of human means and assets. This would be the case if the principal place of business were to be understood as an elevated establishment (Niederlassung) within the meaning of Art. 2 (10) EIR 2017. This article shows that the principal place of business within the meaning of Art. 3 (1) III EIR 2017 is conceived differently from an establishment within the meaning of Art. 2 (10) EIR 2017. Neither follows a requirement of the use of human means and assets from the desirable coherent interpretation with Art. 63

M. Lieberknecht: **Jurisdiction by virtue of perpetuatio fori under the Insolvency Regulation**

In this decision, the German Federal Supreme Court weighs in on the doctrine of perpetuatio fori in the context of international insolvency law. The court confirms that, once the insolvency filing is submitted to a court in the Member State that has international jurisdiction under Art. 3(1) EU Insolvency Regulation, the courts of that Member State remain competent to administer the insolvency proceedings even if the debtor shifts its centre of main interest (COMI) to a different Member State at a later point in time. In line with the EJC's recent decision in the Galapagos case, the ruling continues the approach to perpetuatio fori established under the previous version of the EU Insolvency Regulation. In addition, the court clarifies that international jurisdiction established by way of perpetuatio fori remains unaffected if the initial insolvency filing has been submitted to a court lacking local jurisdiction under the respective national law.

D. Martiny: **Arbitral agreements on the termination of sole distribution agreements in Belgium**

The Belgian Supreme Court has ruled that disputes on the termination of sole distribution agreements can be submitted to arbitration (April 7, 2023, C.21.0325.N). The Court followed the reasoning of the Unamar judgment of the European Court of Justice of 2013 and applied it to the relevant provisions of Article X.35–40 of the Belgian Code of Economic Law. According to the judgment, these provisions mainly protect "private" interests. Since they are not essential for safeguarding Belgian fundamental public interests, they are therefore not to

be considered as overriding mandatory provisions in the sense of Article 9 para. 1 Rome I Regulation. Hence, the question whether a dispute can be subject to arbitration does not depend on whether the arbitrator will apply Belgian law or not. It is also not necessary that foreign law gives the distributor the same level of protection as Belgian law. This means that disputes on the termination of exclusive distribution agreements with Belgian distributors are now arbitrable and that choice of law clauses will be respected.

Th. Granier: **The Strabag and Slot judgments from the Paris Court of Appeal: expected but far-reaching decisions**

In two decisions issued on 19.4.2022, the Paris Court of Appeal held that it was sufficient for an investment protection agreement not to expressly exclude the possible application of laws of the European Union to establish the incompatibility of dispute settlement clauses in investment protection treaties with laws of the European Union. That incompatibility therefore applies to all clauses in those treaties that do not expressly exclude the application of the laws of the European Union by the arbitral tribunal. The Court of Appeal followed decisions of the ECJ in Achmea, Komstroy and PL Holding, by which it is bound. These decisions highlight the increasing difficulties in the recognition and enforcement of arbitral awards rendered pursuant to investment treaties in the European Union.

E. Schick/S. Noyer: **Acquisition of property according to the law applicable to contracts? A critical analysis of thte existing French private international property law in the light of oft he 2022 draft law**

While the private international law of contracts is unified in the Rome I Regulation, the conflict of laws rules for property are still defined individually by member states of the European Union. Autonomous French private international law remains largely uncodified and the product of the jurisprudence of the Cour de cassation, with significant regulatory gaps. The draft legislation for private international law issued by the responsible committee on 31.3.2022 aims to codify large parts of this established jurisprudence and therefore also sheds new light on the conflict rules applicable in France de lege lata. In the field of private international property law, the proposed art. 97–101 feature conflicts rules which

do not only appear to the German jurist as exotic, but even raise questions as to the scope of application of the Rome I Regulation. Focusing on the contractual transfer of movable property – an area where contract law and property law are intricately linked – this article offers an account of the applicable French conflicts of laws rules by examining the relevant jurisprudence and scholarly doctrine. The codification proposal and the problems it creates will also be critically analysed.

N. Dewitte/L.Theimer: **A century of the Hague Academy, 31 July to 18 August 2023, The Hague.**

"Digital Assets and Private International Law" – Conference in Vienna on 11 and 12 April 2024

On 11 and 12 April 2024, an international conference on the current topic of the appropriate approach to digital assets in PIL cases will take place at the University of Vienna in a hybrid format. For the impressive speakers list, including internationally renowned academics as well as representatives from UNIDROIT and the HCCH, please refer to the conference announcement below, which was kindly provided by the organizers:

Digital Assets and Private International Law

Conference

11 and 12 April 2024 in Vienna

Outline

Digital assets, such as cryptocurrencies, stablecoins and other tokens, have become important as objects of investment and trade. They are recorded on the blockchain, an electronic ledger held in identical form on servers (nodes) all over the world. Therefore, the determination of the governing law presents particular challenges. This conference will explore whether Private International Law methodology can be successfully applied to digital assets or whether it needs to be changed in light of the 'blockchain revolution'.

Date 11 and 12 April 2024

Place Juridicum, Schottenbastei 10-16, A-1010 Vienna, roof top floor

Format

The conference will take place in a **hybrid format**. Speakers and participants will meet in the Juridicum. The proceedings will be streamed simultaneously online. **Registration** (both for physical attendance and online participation) can be made **until 6 April 2024** by email at the following address: service.rechtsvergleichung@univie.ac.at. **Participation is free** but registration compulsory.

Programme

Thursday, 11 April 2024

Time	Topic	Speaker
13.00	*Registration and Coffee*	
14.00	**Inauguration**	Prof. Brigitta Zöchling-Jud, Dean of the Law School of the University of Vienna
14.10	**Welcome Address**	Dr. Thomas Gstädtner, President of Supervisory Board, EBI
14.15	**Introduction**	Prof. Matthias Lehmann, University of Vienna and Radboud University of Nijmegen
Part 1 – Overarching Issues		
14.30	Do We Need a 'Blockchain Revolution' in Private International Law?	Prof. Andrea Bonomi, University of Lausanne
14.45	Proprietary Rights in Digital and Other Assets and the Conflict of Laws	Prof. Christiane Wendehorst, University of Vienna
15.00	The Law Applicable to Payments, Tokenisation and Contracting on Cross-border Digital Platforms	Prof. Dr. Gérardine Goh Escolar, Hague Conference on Private International Law
15.15	Which Role for Consumer Law in Blockchain Transactions?	Prof. Teresa Rodriguez de las Herras Ballell, UNIDROIT/University Carlos III Madrid
15.30	Discussion	
16.00	*Coffee Break*	
Part 2 – Law Applicable to Digital Assets		
16.30	Money or Securities as the Paradigm for Digital Assets?	Dr. Burku Yüksel, University of Aberdeen

16.45	A Single Law for the Blockchain vs. Layer-, Protocol- or Asset-Specific Law	Dr. Augustin Gridel, University of Lorraine
17.00	Choice of Law for Digital Assets –Technical Possibilities and Legal Conditions	Prof. Florian Heindler, Sigmund Freud University Vienna
17.15	Discussion	
17.45	**Summary and Conclusion of the First Day**	Prof. Matthias Lehmann, University of Vienna and Radboud University of Nijmegen
19.00	*Speakers' Dinner*	

Friday, 12 April 2024

Time	**Topic**	**Speaker**
08.30	*Coffee*	
Part 3 – Law Governing Blockchain Transactions		
09.00	The Determination of the Law of Custody and Its Importance for Digital Assets	Prof. Matthias Haentjens, University of Leiden
09.15	Secured Transactions in Digital Assets	Prof. Spiridon Bazinas, Sigmund Freud University Vienna (online)
09.30	The Law Applicable to Staking	Dr. Fabio Andreotti, Bitcoin Suisse AG
09.45	Decentralized Finance (DeFi) – Which Law is Governing the Entities, which the Transactions?	Dr. Pascal Favrod-Coune, Aegis Partners
10.00	Discussion	
10.30	*Coffee Break*	

Part 4 – Law Governing Particular Issues		
11.00	The Law Governing Private Relations and Liability on the Network	Prof. Tobias Lutzi, University of Augsburg
11.15	The Law Governing Trade Finance Tokens	Prof. Koji Takahashi, Doshisha University (online)
11.30	Determining the Law Governing Smart Contracts	Dr. Jasper Verstappen, University of Groningen
11.45	Discussion	
12.15	**Summary and Conclusion**	Prof. Matthias Lehmann, University of Vienna and Radboud University of Nijmegen

About the Interdisciplinary Association of Comparative and Private International Law (IACPIL)

IACPIL is a platform for discussing issues in comparative law and private international law. The association is based in Vienna, where it organises events on current topics, fundamental issues, and methodological questions. Its members reflect a broad professional base rooted in the academic, judicial, and administrative fields, and are also joined by translators and specialists from international organisations.

The association is a critically scrutinising forum. Interdisciplinary topics with legal, political, historical, social, economic, and cultural dimensions are frequently considered. In this way, IACPIL endeavours to promote a modern, humane, and social regulation of cross-border conflicts.

About the European Banking Institute (EBI)

The EBI is an international centre based in Frankfurt for banking studies resulting from the joint venture of Europe’s preeminent academic institutions which have decided to share and coordinate their commitments and structure

their research activities in order to provide the highest quality legal, economic and accounting studies in the field of banking regulation, banking supervision and banking resolution in Europe.

EBI aims to become a point of reference in the research of banking regulation research in Europe. By promoting the dialogue between scholars, regulators, supervisors, industry representatives and advisors in relation to issues concerning the regulation and supervision of financial institutions and financial markets from a legal, economic and any other related viewpoint, the close relationship with regulators, supervisors, and private sector is expected to guarantee a one-of-its-kind academic research production.

This week begins the Special Commission on the 1980 Child Abduction Convention and the 1996 Child Protection Convention

Written by Mayela Celis

The eighth meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention will be held from 10 to 17 October 2023 in The Hague, the Netherlands. For more information, click here.

One of the key documents prepared for the meeting is the Global Report – Statistical study of applications made in 2021 under the 1980 Child Abduction Convention, where crucial information has been gathered about the application of this Convention during the year 2021. However, these figures were perhaps affected by the Covid-19 pandemic as indicated in the Addendum of the document (see paragraphs 157-167, pp. 33-34). Because it refers to a time period in the midst of lockdowns and travel restrictions, it is not unrealistic to say that the

figures of the year 2021 should be taken with a grain of salt. For example, the overall return rate was the lowest ever recorded at 39% (it was 45% in 2015). The percentage of the combined sole and multiple reasons for judicial refusals in 2021 was 46% as regards the grave risk exception (it was 25% in 2015). The overall average time taken to reach a final outcome from the receipt of the application by the Central Authority in 2021 was 207 days (it was 164 days in 2015). While statistics are always useful to understand a social phenomenon, one may only wonder why a statistical study was conducted with regard to applications during such an unusual year – apart from the fact that a Special Commission meeting is taking place and needs recent statistics -, as it will unlikely reflect realistic trends (but it can certainly satisfy a curious mind).

Other documents that are also worth noting are the following (both Preliminary Documents and Information Documents):

Child abduction and asylum claims

- Prel. Doc. No 16 of August 2023 – Discussion paper on international child abduction return applications where the taking parent lodged a parallel asylum claim. This document submits the following for discussion and includes a useful annex with decisions rendered in the UK, Canada and USA about this issue (SC stands for Special Commission):

> *43. The SC may wish to discuss how the issue of delays in processing the asylum claims could be addressed when a return application is presented, and what the solutions could be to avoid such delays ultimately pre-empting a return application under the 1980 Child Abduction Convention, in particular:*
>
> *a. Bearing in mind the confidentiality rules that apply to asylum proceedings, consideration can be given to whether general information can be shared, where possible and appropriate, (between authorities of the requested State/country of asylum only) for example, regarding timeframes and average duration periods, steps or stages of such proceedings.*
>
> *b. Where possible and appropriate, consideration can be given to whether asylum claims can be treated and assessed on a priority basis when a return application is presented under the 1980 Child Abduction Convention.*

c. Consideration can be given to whether stays of return proceedings can be avoided in order to prevent that allegations are made concerning the settlement of the child in the new environment, and whether an eventual stay can only be considered regarding the implementation and enforcement of the return order.

44. The SC may wish to discuss to what extent it is possible to have some level of coordination or basic exchange of information between the different spheres of the government and competent authorities that process the different proceedings, when/if allowed by the relevant domestic laws and procedures and respectful of confidentiality and judicial independence principles. Where possible and appropriate, such coordination could:

a. Encompass, for example, that the competent authority responsible for the return application informs the competent authority responsible for the asylum claim of the return application.

b. Include establishing procedures, guidelines or protocols to ensure that both proceedings are dealt with expeditiously.

This is a sensitive topic that deserves attention, as disclosing that a child is present in a specific State can have a great impact on the safety of the person seeking asylum (usually, the parent).

Transfer of jurisdiction under 1996 Child Protection Convention

- Prel. Doc. No 17 of August 2023 – Transfer of jurisdiction under the 1996 Child Protection Convention (Arts 8 and 9). It is submitted the following:

55. The SC may wish to consider adopting the following Conclusions and Recommendations:

a. The SC invited Contracting States, which have not done so already, to consider designating, in accordance with the Emerging Guidance regarding the Development of the IHNJ, one or more members of the judiciary for the purpose of direct judicial communications within the context of the IHNJ.

b. Recalling Article 44 of the 1996 Convention, the SC encouraged Contracting States to designate the authorities to which requests under Articles 8 and 9 are to be addressed, as such a designation could greatly assist in improving the

processing times of requests for a transfer of jurisdiction. Depending on domestic policies and requirements relating to the judiciary, Contracting States may choose to designate a member of the IHNJ (if applicable) and / or the Central Authority to receive requests for transfers of jurisdiction.

c. The SC encouraged authorities requesting a transfer of jurisdiction to, in the first place, informally consult their counterparts in the requested State, to ensure that their requests are as complete as possible and that all necessary information and documentation is furnished from outset to meet the requirements of the requested State.

d. Recalling Principle 9 of the Emerging Guidance regarding the Development of the IHNJ,139 the SC encouraged Central Authorities that are involved in a transfer of jurisdiction request and judges engaging in direct judicial communications pertaining to a request for a transfer of jurisdiction to keep one another informed regarding the progress and outcome of such a request. Doing so could further assist in addressing delays and enhance the efficiency of processing requests under Article 8 or 9 of the 1996 Convention.

e. The SC invited the PB to circulate the questionnaire annexed to Prel. Doc. No 17 of August 2023 to all Contracting States to the 1996 Convention, with a view collecting information from judges and Central Authorities regarding requests under Article 8 or 9. The SC further invited the PB to review Prel. Doc. No 17, in the light of the responses from Contracting States, and to submit the revised version of Prel. Doc. No 17 to the Council on General Affairs and Policy (CGAP). The SC noted that it will be for CGAP to determine the next steps in this area (e.g., whether there is a need to form a Working Group consisting of judges and representatives from Central Authorities to identify good practices pertaining to requests for a transfer of jurisdiction under the 1996 Convention).

The transfer of jurisdiction (as foreseen in those articles) is sometimes little known in some civil law States (in particular, Latin America) so these suggestions are very much welcome.

Placement or provision of care of a child (incl. kafala) under the 1996 Child Protection Convention

- Prel. Doc. No 20 of September 2023 – Placement or provision of care of

the child in another Contracting State under the 1996 Child Protection Convention (Art. 33). Interestingly, this document includes as annex Working Document No 10 Proposal from the delegation of Morocco about "The Kafala procedure as established by the law of 10 September 1993 on abandoned children" of 30 September 1996. This Prel. Doc. suggests the following:

64. The SC may want to discuss what clearly falls within the scope of application of Article 33 of the 1996 Convention and what clearly falls out of the scope of application of Article 33.

65. The SC may want to consider discussing the use of the term "approved" in C&R No 42 of the 2017 SC as it does not appear in Article 33 of the 1996 Convention.

66. The SC may want to consider whether additional information should be provided in the Country Profile for the 1996 Convention in addition to what appears under Sections 16 to 19 and 36 of the draft Country Profile to assist with the implementation of Article 33.

67. The SC may want to consider developing a Guide, illustrated by examples, to assist Contracting States with the implementation and operation of Article 33. In addition to covering issues relating to the scope of application of Article 33, the Guide could cover the different issues of procedure relating to Article 33 as presented in this Prel. Doc. Such a Guide would raise awareness as to the mandatory nature of Article 33. The SC may wish to recommend that such a Guide be developed by a Working Group.

68. The SC may want to consider the need to develop a model recommended form for the purpose of requests under Article 33.

The conclusions suggested in this document are very much needed, in particular given that the operation of Article 33 of the 1996 Convention in the Contracting States is far from ideal (the FAMIMOVE project is studying this Article in the context of kafala).

The Guide to Good Practice on the grave risk exception (art. 13(1)(b)) under the Child Abduction Convention – pointing to a mistake in the

Guide

- Info. Doc. No 6 of October 2023 – "A mistake waiting to happen: the failure to correct the Guide to Good Practice on Article 13(1)(b)" – Article by Professor Rhona Schuz and Professor Merle Weiner. I fully endorse the position adopted by Professors Schuz and Weiner and have included my views on this issue in a previous post see here and have discussed this at length in my recent book on international child abduction.

The Note of the International Social Service (ISS) where it highlights (perhaps rightfully), among other things, that the Malta Process and the Central Contact Points are underutilized

- Info. Doc. No 1 of February 2023 – ISS – General information & Response to Prel. Doc. No 2 of October 2022

The Note of the International Association of Child Law Researchers showcases the new publication *Research Handbook on International Child Abduction: The 1980 Hague Convention* (Cheltenham: Edward Elgar Publishing, 2023) – We will be preparing a book review, which will be posted on CoL – stay tuned!

- Info. Doc. No 4 of September 2023 – International Association of Child Law Researchers (IACLaR) – Observer Note

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HCCH Asia Pacific Week 2023

HCCH Asia Pacific Week 2023 – Access to Justice and Sustainable Development: The Impact of the HCCH in an Inter-Connected World, was successfully held from 11 to 14 September 2023 in the Hong Kong Special Administrative Region (SAR), China.

The HCCH celebrated its 130th Anniversary during the HCCH Asia Pacific Week.

During the week, many important conventions and instruments of the HCCH were promoted and examined by the experts from around the Asia Pacific Region.

The program of the Conference was:

Day One | Mon 11 September 2023

13:00 Registration

Opening

14:00 Welcome Remarks

Mr John Lee Ka-Chiu, Chief Executive of the Hong Kong SAR of the People's Republic

of China

Chunyin Hua, Assistant Minster, Ministry of Foreign Affairs of the People's Republic of China

Commissioner, Commission of the Ministry of Foreign Affairs of the People's

Republic of China in the Hong Kong SAR

Mr Paul Lam Ting-Kwok, Secretary for Justice, Hong Kong SAR of the People's

Republic of China

Professor Xiang Zhang, President and Vice Chancellor, The University of Hong Kong,

Hong Kong SAR of the People's Republic of China

Dr Christophe Bernasconi, Secretary General of the HCCH

14:50 Group Photo

Session 1 | The HCCH: Benefits of Membership & Key Conventions

15:00 Introductory Presentation: An Overview of the HCCH

Dr Christophe Bernasconi, Secretary General of the HCCH

15:15 Keynote Speech: Private International Law and the Rule of Law

Chief Justice Andrew Cheung, Chief Justice of the Court of Final Appeal, Hong Kong

SAR of the People's Republic of China

15:30 Regional Perspectives

HCCH Regional Office for the Asia and the Pacific, ROAP:

Prof Yun Zhao, Representative of the HCCH ROAP / Associate Dean, Faculty of

Law, the University of Hong Kong, Hong Kong SAR of the People's Republic of China

Asia-Pacific Economic Cooperation, APEC:

Dr James Ding, Chair, APEC Economic Committee / Law Officer (International Law),

Department of Justice of the Hong Kong SAR of the People's Republic of China

Asian African Legal Consultative Organization, AALCO:

Mr Nick Chan, Director General, AALCO Hong Kong Regional Arbitration Centre

The Law Association for Asia and the Pacific, LawAsia:

Ms Melissa Pang, President, LawAsia

International Organization for Mediation (Preparatory Office), IMOed:

Dr Jin Sun, Director General of the IMOed Preparatory Office

16:10 Q&A

16:30 Coffee Break

Session 2 | Joint Statement

18:15 Welcome Reception (By Invitation Only)Asia Pacific Week 2023 | Draft Programme

Day Two | Tuesday 12 September – a Day of Celebration: The 130th Anniversary of

the HCCH and the Entry into Force of the 2019 Judgments Convention

08:30 Registration

Session 3 | 130th Anniversary of the HCCH (Part One)

09:30 Opening: The 130th Anniversary of the HCCH

Dr Christophe Bernasconi, Secretary General of the HCCH

09:45 Keynote Speech: The Role of Private International Law in the 21st Century

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

10:10 Panel: Challenges and Opportunities for Private International Law in the 21st Century

Prof Junhyok Jang, Sungkyunkwan University, the Republic of Korea

Prof Alan Gibb, Professional Consultant, Associate Professor of Practice in Law,

The Chinese University of Hong Kong, Hong Kong SAR of the People's Republic of

China

10:40 Q&A

11:00 Coffee Break

Session 4 | 130th Anniversary of the HCCH (Part Two)

11:30 Panel: Regional Perspectives of the Impact of the HCCH

Prof Tao Du, Dean, School of International Law, East China University of Political

Science and Law, China

Mr Patthara Limsira, Lecturer, Faculty of Law, Ramkhamhaeng University, Thailand

12:00 Panel: Looking Forward to the Next 130 Years: Challenges and Opportunities for the HCCH

Hon Justice Xiaoli Gao, Chief Judge of the Fourth Civil Division, Supreme People's

Court, China

Ms Delphia Lim, Director, International Division, Ministry of Law, Singapore

12:40 Q&A

13:00 Lunch Break

Session 5 | Entry into Force of the 2019 Judgments Convention (Part One)

14:30 Keynote Speech: The 2019 Judgments Convention – A Gamechanger in Transnational

Litigation

Hon Justice David Goddard (Online), Judge, High Court and Court of Appeal,

New Zealand

14:50 Introduction to the 2019 Judgments Convention: History, Text, and Impact

Prof Yuko Nishitani, Kyoto University, Japan

15:10 Panel: Joining the 2019 Judgments Convention: Experiences of Contracting Parties

Prof Fernando Dias Simoes, Associate Professor of Law at Lusíada University of

Porto and Portucalense University, Porto (Portugal)

Dr Jacek Kozikowski, Partner, Kochanski & Partners, Poland

15:40 Q&A

16:00 Coffee Break

Session 6 | Entry into Force of the 2019 Judgments Convention (Part Two)

16:30 Benefits and Challenges of the Judgments Convention

Prof Zhengxin Huo, Professor of Law and Vice Dean of the Faculty of International

Law at the China University of Political Science and Law (CUPL), China

16:50 Panel: Regional Perspectives

Ms Peggy Au Yeung, Principal Government Counsel, Department of Justice of the

Government, Hong Kong SAR of the People's Republic of China

Judge Soojin Cho, Judge, Seoul Western District Court, Korea

17:30 Looking Forward: The Jurisdiction Project

Prof Keisuke Takeshita, Professor, Graduate School of Law, Hitotsubashi University,

Japan

17:50 Q&A

18:15 Dinner (By Invitation Only)

Day Three| Wednesday 13 September

08:30 Registration

Transnational Litigation and Legal Cooperation

Session 7 | 2005 Choice of Court Convention

09:30 Introductory Presentation

Prof Jianwen Luo, Professor, School of Law, Sun Yat-sen University, China

09:50 Regional Perspectives

Prof Gyooho Lee (Online), Professor, School of Law, Chung-Ang University, the

Republic of Korea

Prof Afifah Kusumadara, Associate Professor, the Faculty of Law, Brawijaya University,

Indonesia

10:10 Q&A

Session 8 | 1961 Apostille Convention

10:30 Introductory Presentation

Mr Simon Kwang, Registrar, High Court of the Hong Kong SAR of the People's

Republic of China

10:50 Regional Perspectives

Ms Dyan Kristine Miranda-Pastrana, Director, Office of Consular Affairs, Department

of Foreign Affairs, Philippines

Mr Paul Neo, Chief Operating Officer & Chief Financial Officer, Singapore Academy of

Law, Singapore

11:10 Q&A

11:30 Coffee Break

Session 9 | 1965 Service Convention & 1970 Evidence Convention

12:00 Introductory Presentation

Mr Brody Warren (Online), Assistant Director, Private International & Commercial Law

Section, Attorney-General's Department, Australia

12:20 Regional Perspectives

Hon Raul B. Villanueva, Court Administrator, Supreme Court of the Philippines

Ms Pham Ho Huong, Department of International Law, Ministry of Justice, Vietnam

12:40 Q&A

13:00 Lunch Break

International Commercial, Digital and Financial Law

Session 10 | Normative Work in International Commercial, Digital and Financial Law

14:30 Normative Projects: The Central Bank Digital Currencies (CBDCs), HCCH-UNIDROIT Digital

Assets and Tokens (DAT) Joint Project, Digital Economy, and Insolvency Projects

Dr Gerardine Goh Escolar, Deputy Secretary General of the HCCH

15:00 Regional Perspectives

Prof Jingxia Shi, Professor, School of Law, Renmin University of China (RUC), China

Dr Emily Lee, Associate Professor, Faculty of Law, the University of Hong Kong, Hong

Kong SAR of the People's Republic of China

15:20 Q&A

Session 11 | 2015 Choice of Law Principles

15:40 Introductory Presentation

Prof Guangjian Tu, Professor, School of Law, the University of Macau, Macau SAR of

the People’s Republic of China

16:00 Regional Perspectives

Prof Nobumichi Teramura, Assistant Professor, the Institute of Asian Studies,

University of Brunei Darussalam, Brunei Darussalam

Prof Priskila Pratita Penasthika, Assistant Professor, Faculty of Law, Universitas

Indonesia, Indonesia

16:20 Q&A

16:40 Tea & Coffee Break

Session 12 | 2006 Securities & 1985 Trusts Conventions

17:10 Introductory Presentation

Prof Yongping Xiao, Director of International Law Institute of Wuhan University, China

17:30 Regional Perspectives

Dr Dicky Tsang, Associate Professor, Faculty of Law, Chinese University of

Hong Kong, Hong Kong SAR of the People’s Republic of China

Dr Adeline Chong, Associate Professor, School of Law, Singapore Management

University, Singapore

17:50 Q&A

18:10 Conclusion of Day Three

18:15 Dinner (By Invitation Only)

Day Four| Thursday 14 September

08:30 Registration

International Family and Child Protection Law

Session 13 | 1993 Adoption Convention

09:30 Introductory Presentation

Hon Justice Bebe Chu, Judge, Court of First Instance of the High Court of Hong Kong

SAR of the People's Republic of China

09:50 Regional Perspectives

Prof Elizabeth H. Aguiling-Pangalangan, College of Law Director, Institute of Human

Rights, Law Center University of the Philippines

Ms Iris Liu, Programme Director of Cross-boundary and International Casework,

International Social Service Hong Kong Branch

10:10 Q&A

Session 14 | 1980 Child Abduction Convention & 1996 Child Protection Convention

10:30 Introductory Presentation

Hon Justice Victoria Bennett, Judge, Federal Circuit and Family Court of Australia

10:50 Regional Perspectives

Hon Justice Amy C. Lazaro-Javier, Associate Justice, Supreme Court of the Philippines

Mr Stephen Yau GBS, Chief Executive, International Social Service Hong Kong Branch

Ms Yet Ngo Foo, Y.N. Foo & Partners, Malaysia

11:20 Q&A

11:40 Tea & Coffee Break

Session 15 | 2000 Adults Convention & 2007 Child Support Convention

12:10 Introductory Presentation

Hon Chief Justice John Pascoe AC CVO, former Chief Justice of the Federal Circuit

and Family Court of Australia of Australia, Deputy Chancellor of the University of New

South Wales, Australia

12:30 Regional Perspectives

Hon Angelene Mary W. Quimpo-Sale, Associate Justice of Court of Appeals of

the Philippines, Philippines

Mr Enzo Chow, Barrister of the Hong Kong SAR of the People’s Republic of China

12:50 Q&A

Closing

13:10 Closing Remarks

Mr Horace Cheung Kwok-kwan, Deputy Secretary for Justice, Hong Kong SAR of the People’s Republic of China

Dr Gerardine Goh Escolar, Deputy Secretary General of the HCCH

13:30 Farewell Lunch (By Invitation Only)

Giustizia consensuale No 1/2023: Abstracts

The first issue of 2023 of *Giustizia Consensuale* (published by Editoriale Scientifica) has just been released, and it features:

Annalisa Ciampi (Professor at the University of Verona), ***La giustizia consensuale internazionale*** (*International Consensual Justice*; in Italian)

> All means of dispute settlement between States, including adjudication, are based on the consent of the parties concerned. The post-Cold War era saw an unprecedented growth of third-party (judge or arbitrator) dispute resolution systems. In more recent years, however, we are witnessing a weakening of the international judicial function. This paper analyses and explains similarities and differences between dispute settlement between States and dispute resolution between private parties at the national level. Whilst doing so, it makes a contribution to the question of whether the de-judicialisation taking place in Italy and elsewhere, as well as in the international legal system, can be considered a step in the right direction.

Sabrina Tranquilli (Researcher at the "Università degli Studi di Napoli Parthenope"), ***I contratti istituzionali di sviluppo (CIS) e i modelli di risoluzione e prevenzione dei conflitti tra pubbliche amministrazioni*** (*Institutional Development Contracts (IDC) and Models for Conflict Resolution and Prevention between Public Administrations*; in Italian)

> The paper examines the two models of conflict resolution between public administrations set out in the Institutional Development Contracts (IDC). These contracts – recurrently used by the Italian lawmaker, also for the implementation of the Recovery and Resilience Plan (NRRP) for strategic interventions, especially in the area of territorial cohesion – allow the Administrations involved to define their respective spheres of intervention while also preventing possible conflicts between them. IDCs provide for both a centralised-substitutive model of conflict resolution and a negotiated one. This article shows that, although there is no overriding criterion between the two models, in both cases the dialectic between the parties based on the

principle of loyal cooperation is essential.

Guillermo Schumann Barragán (Associate Professor at the "Universidad Complutense" in Madrid), ***Verso una teoria generale degli accordi processuali. Premesse ricostruttive*** (*Toward a General Theory of Procedural Agreements. Reconstructive Premises*; in Italian)

> Procedural agreements are legal transactions with which the parties pursue certain procedural effects. Although such agreements are not unknown in the Spanish and Italian legal systems, there seems to be a lack of drive in these to define them as a legal category per se, i.e. as a set of legal transactions that share a series of structural elements and common criteria of validity and effectiveness. The aim of this paper is to outline a general theory of procedural agreements and to apply the theoretical results achieved to a few, selected procedural agreements. In doing so, this paper aims to assess the usefulness and appropriateness of such agreements, also in the light of the economic analysis of the law and of the growing regulatory competition of States vis-à-vis cross-border legal relations as well as jurisdiction, in case a dispute arises.

Alessandro Giuliani (Reserchер at the "Università Politecnica delle Marche"), ***Percorsi di valorizzazione dell'arbitrato irrituale nel diritto del lavoro in una prospettiva diacronica*** (*Pathways to the Enhancement of Informal Arbitration in Labour Law in a Diachronic Perspective*; in Italian)

> Through a diachronic examination of applicable law, the article addresses critical issues in informal arbitration in the context of labour disputes. The legal framework of informal arbitration reveals a piecemeal scenario marked by discrepancies between legal provisions and implementation thereof. Against this backdrop, informal arbitration contributes to fostering a culture of alternative dispute resolution within the Italian legal system. The article focuses in greater detail on the procedure set out in Article 7 of Italian Law No 300 of 1970 and its potential to boost the effectiveness of informal arbitration in labour disputes, thus enhancing the protection of workers' rights beyond the judicial process.

Observatory on Legislation and Regulations

Claudio Scognamiglio (Professor at the University of Rome "Tor Vergata"), ***La negoziazione assistita e le controversie di lavoro. Verso un nuovo ruolo dell'avvocato nel riequilibrio delle situazioni di asimmetria negoziale?*** (*Assisted Negotiation and Labor Disputes. Toward a New Role for the Lawyer in Rebalancing Situations of Negotiation Asymmetry?*; in Italian)

> The article offers food for thought on assisted negotiation in labour disputes introduced in the context of the recent reform of civil justice in Italy, which was enacted with Legislative Decree No 149/2022. Starting from the traditional function of labour law, and recalling the legislator's distrust for this alternative resolution instrument for labour disputes – a distrust which lasted until the enactment of Legislative Decree No 149/2022 – the author analyzes the normative data to delve on the prospects of dialogue between civil law and labour law, and on the (new?) role of lawyers and their suitability to perform the function of rebalancing the asymmetries in the parties' power.

Observatory on Practices

Mauro Bove (Professor at the University of Perugia), ***Insegnare la mediazione nell'Università*** (*Teaching Mediation at the University*; in Italian)

> The paper explores ways to integrate the teaching of mediation into university curricula. The discourse ties into the overall issue of legal education and addresses relevant topics such as negotiation strategies for the settlement of civil disputes and university education as a means of cultural and personal growth for all those involved.

Viviana Di Capua (Researcher at the "Università degli Studi di Napoli Federico II"), ***La funzione 'mediatrice' dell'Arbitro per le Controversie Finanziarie. La segreteria tecnica quale strumento di riequilibrio delle parti in lite*** (*The 'Mediating' Function of the Financial Disputes Arbitrator. The Technical Secretariat as a Tool for Rebalancing the Disputing Parties*; in Italian)

> Almost two decades after its establishment, Arbitration for Financial Disputes (AFD) has proven to be an effective alternative means to resolve financial disputes between intermediaries and retail investors. Although the

instrument was not created with the aim of reaching a consensual solution to disputes, the structure of the procedure, the investigative powers and the strategic role of the technical secretariat, along with the features introduced by the most recent reform, have created room for dialogue between the parties, thus providing incentives for reaching an agreement regardless of the final decision. The contribution aims to examine the nature of the proceedings, the powers available to the arbitrator, and the final decision, focusing on cases in which the AFD can take on a 'mediating' function between the parties, instrumental to a consensual resolution of the dispute.

Rachele Beretta (Ph.D. Candidate at the University of Antwerp), ***The Evolving Landscape of Online Dispute Resolution. A Study on the Use of ICT in International Civil and Commercial ODR***

Over the last two decades, Online Dispute Resolution (ODR) has expanded to new geographical and practice areas. However, data regarding the extension and characteristics of the ODR market are scarce. The empirical study presented in this article provides a snapshot of the current ODR landscape in international civil and commercial dispute resolution. After introducing the orienting framework for the study, this contribution will present data concerning ODR providers and the use of technology in civil and commercial dispute resolution services. The analysis will uncover critical issues and areas of interest for research and practice in light of the future development of ODR.

Conference Proceedings

Silvana Dalla Bontà (Associate Professor at the University of Trento), **Mediation: A Sleeping Beauty. *La promessa della giustizia consensuale alla luce della riforma della giustizia civile*** (*Mediation: A Sleeping Beauty. The Promise of Consensual Justice in Light of the Italian Reform of Civil Justice*; in Italian)

The paper draws on the introductory remarks to the Trento chapter of the 'Sleeping Beauty Conferences Series' organized by Giuseppe De Palo and Lela Love. Nearly ten years after the Jed D. Melnick Annual Symposium sponsored by the Cardozo Journal of Conflict Resolution (2014), the

Conference at the University of Trento (11 November 2022) once again evokes the image of mediation as a 'sleeping beauty' awaiting her Prince Charming. What is the current state of play of mediation? Is mediation still a 'sleeping beauty'? Has the situation evolved? What could help improve the use of this promising dispute resolution tool? The author addresses these questions from the perspective of the recent Italian reform of civil justice, which significantly improved the legal framework for mediation. Will the promise of mediation be finally fulfilled?

Giuseppe De Palo (Senior Fellow and International Professor of ADR Law and Practice at Mitchell Hamline School of Law), ***Mediating Mediation Itself. The Easy Opt-Out Model Settles the Perennial Dispute between Voluntary and Mandatory Mediation***

The contribution reflects on the desirability of soft regulation of mediation to strike a balance between the principle of voluntariness and providing a viable alternative to litigation, thus boosting the efficiency of the civil justice system. While focusing on the debate around the mandatory attempt to mediate, the author argues that mediation not only benefits the disputing parties but also the judicial system at large in that it helps reduce the workload of courts and ensure access to justice for all. Despite the clear advantages of mediation, it is debated whether participation must be voluntary or should be mandatory in some instances. The author proposes an 'easy opt-out' mediation model where parties may leave the process if they so wish. Arguably, participation in the process may provide the parties with an understanding of mediation and its advantages. The proposed model has the potential to expose skeptical parties to the benefits of mediation.

Zachary R. Calo (Professor at the Hamad bin Khalifa University, Qatar), ***Commercial Mediation in the Gulf Cooperation Council. The Development of ADR in the Middle East***

The paper analyzes recent developments in the law and practice of commercial mediation among the Arab Gulf countries. Substantial changes have occurred since 2019, the year that Qatar and Saudi Arabia signed the Singapore Convention on Mediation, including issuance of new domestic laws, establishment of mediation rules and centers, and the general promotion of mediation. These changes have established in short order the

foundational infrastructure needed to facilitate greater use of mediation in the region. Yet, in spite of the many impressive legal developments, there are barriers preventing the Gulf countries from more fully embedding mediation into their dispute resolution ecosystems.

Paola Lucarelli (Professor at the University of Florence), ***La nuova mediazione civile e commerciale*** (*The New Civil and Commercial Mediation*; in Italian)

By shedding light on the profound meaning of mediation, the legal culture begins to awaken consciences: the reform of mediation shifts the point of view from solely adversarial to one that contemplates beforehand the concerted, consensual sphere. In doing so, it enhances the role of mediation, which is of coexistence with litigation. In this framework, law as a mere remedy is escorted by cooperative dialogue: with mediation, people acquire a leading role in the pursuit of answers to their needs and to the need for justice. Against this background, the issue of choice arises: for instance, the choice whether to participate in a process of evolution of the society or, rather, to assist inert, possibly complaining of injustices, puerile behaviours, and inefficiencies; and also the choice whether to contribute to the innovation of the legal profession to adequately respond to the needs of a client. In this context, the role of higher education is crucial. In fact, higher education can foster a legal culture that grants space and time to autonomy: a culture of adults, equipped to responsibly address their problems in a direct exchange with their counterparties.

Filippo Danovi (Professor at the University of Milano-Bicocca), ***La giustizia consensuale nella crisi familiare*** (*Consensual Justice in Family Crisis*; in Italian)

Within the recent civil justice reform, a dedicated attention has been given to alternative (or, better, complementary) means of dispute resolution. In particular, in the area of family and juvenile justice, a prominent place has been given to forms of consensual justice, both judicial in nature, which thus presuppose that the meeting of the parties' will is formalized within a jurisdictional framework, and extrajudicial in nature, in the models of assisted negotiation and family mediation. This essay reconstructs the main lines of regulatory intervention in this area.

In addition to the foregoing, this issue features the following chronicles:

Angela M. Felicetti (Research Fellow at the University of Bologna), ***Un'occasione di confronto tra Università e Organismi di mediazione. Note da un recente Convegno*** (*An Opportunity for Discussion between Universities and Mediation Bodies. Notes from a Recent Conference*; in Italian)

Luciana Breggia (formerly Judge at the Florence Tribunal), ***Una proposta degli Osservatori sulla Giustizia civile in merito alla riforma del processo civile. Tra buone prassi e auspicati correttivi al d.lgs. n. 149 del 2022*** (*A Proposal from the Civil Justice Observers on the Italian Reform of Civil Justice. Between Best Practices and Desired Corrective Measures to Legislative Decree No 149 of 2022*; in Italian)

Finally, it features the following book review by ***Cristina M. Mariottini****:* **Guillermo PALAO (ed),** ***The Singapore Convention on Mediation. A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation***, Edward Elgar Publishing, 2023, ix-xxvi, 1-350.