Service of Documents on Insurance Companies: The ECJ in the Corporis/Gefion Insurance Case

The Court of Justice of the European Union on 27th February 2020 delivered its judgment in ***Corporis/Gefion Insurance*, Case C-25/19**. The case concerned rules surrounding service of documents in a specific, yet increasingly common context.

Corporis is a Polish insurance company, who was assigned damages by the owner of a vehicle following a car accident for the value of 30 euro. *Gefion* was the Danish insurance company covering the risk related to the accident. Under the **Solvency II Directive**, insurance undertakings may provide services in other Member States without having there an agency or an establishment – yet, for compulsory motor insurance coverages they must appoint a representative with "*sufficient powers to represent the undertaking … including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims*" (Art 152). The Polish representative of *Gefion* was *Crawford Polska*.

When *Corporis* wanted to start judicial proceedings, it served legal documents upon the prospective defendant, in Denmark. Documents were not translated, and the recipient of the documents, according to Art 8 of the **Service of Documents Regulation (no. 1393/2007)**, refused to accept service on the ground that it was in not in the condition to understand the content of the documents.

Polish courts suspended proceedings, requesting *Corporis* advanced payment for translation for 1.500 euro. Failing such payment, the court dismissed the case.

On appeal, the court of appeal questioned whether the Service of Documents Regulation was applicable, as its recital 8 states that it "*should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence*

of that party".

The Court of Justice was thus called to rule on whether the rules on the appointment of representatives contained in the Solvency II Directive and the scope of application of the Service of Documents Regulation as reconstructed in light of its recital extend the competence and duties of said representative to receive service of documents in the language of that specific host State for which he has been appointed.

The Court of Justice has confirmed that the Service of Documents Regulation is not applicable to service of a document on the party's authorized representative in the Member State where the proceedings are taking place (para 28 f). The applicability of the regulation is set aside in light of its recital 8, according to which it should not be applied "*to service of a document on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party*". This sets the difference from the previous case law of the court, namely the **Alder judgment Case C-325/11**, where there was no local representative of the foreign defendant, nor a legal obligation to appoint such a representative.

Yet, in the Court's eye, the non-application of the Service of Documents Regulation in the case at hand does not mean that EU law remains silent in general. The Solvency II Directive creates a harmonized regime for the pursuit of insurance activities between Member States. Amongst its goals, not only the promotion of cross-border services, but the protection of persons as well. The necessity for an insurance undertaking to appoint a representative in a State where it decides to offer services without opening an agency or an establishment is pre-ordered at the protection of persons; even though the Solvency II Directive is silent on the matter, according to the Court, not recognizing the right to victim to serve documents in his own language to the representative with whom it has already taken preliminary steps would, in essence, deprive the provisions of their *effet utile*.

Interestingly, in terms of legal narrative, the matter is mostly constructed in positive terms. The Court speaks of the "*possibility for that representative to accept service*" (para 37); it stress the negative consequences of excluding "*the powers* [of the] *representative to accept service of documents*" (para 42). Evidently, from the perspective of the foreign insurance company and its

representative, this is more a matter of legal obligation to accept service.

The approach and the perspective followed by the Court becomes apparent in the conclusion. The Court does not clearly say that the representative has an obligation to accept service – it says that the rules on appointment in the Solvency II Directive include the power to receive service of documents. An argumentative style that appears to little prejudice to the conclusion: insurance companies now know that when they appoint a representative in another Member State under Artt. 152 Solvency II Directive, persons will have the possibility to serve documents to that representative, and avoid a cross-border service of documents.

Mareva injunctions in support of foreign proceedings

In *Bi Xiaoqing v China Medical Technologies* [2019] SGCA 50, the Singapore Court of Appeal provided clarity on the extent of the court's power to grant Mareva relief in support of foreign proceedings.

The first and second respondents were companies incorporated in the Cayman Islands and the British Virgin Islands. The action was pursued by the liquidators of the first respondent against the appellant, a Singapore citizen, who was formerly involved in the management of the respondents and allegedly misappropriated funds from them.

Hong Kong proceedings were commenced first and a worldwide Mareva injunction was granted against, inter alia, the appellant. The terms of the Hong Kong injunction specifically identified assets in Singapore.

Two days after the Hong Kong injunction was obtained, the respondents commenced action in Singapore and applied for a Mareva injunction to prevent the defendants from disposing of assets in Singapore. The action in Singapore covered substantially the same claims and causes of action as those pursued in Hong Kong. After the grant of a Mareva injunction on an *ex parte* basis, the

respondents applied to stay the Singapore proceedings pending the final determination of the Hong Kong proceedings on the basis that Hong Kong was the most appropriate forum for the dispute. The High Court granted the stay and confirmed the Mareva injunction in *inter partes* proceedings.

The issues before the Court of Appeal were: (1) whether the court had the power to grant a Mareva injunction and (2) whether it should grant the Mareva injunction. In other words, the first question dealt with the existence of the court's power to grant a Mareva injunction and the second question dealt with the exercise of the power.

The Singapore court's power to grant an injunction can be traced back to section 4(10) of the Civil Law Act which is in these terms: "A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made." The Court of Appeal clarified that section 4(10) of the Civil Law Act should be read as conferring on the court the power to grant Mareva injunctions, even when sought in support of foreign proceedings. Two conditions had to be satisfied: (1) the court must have *in personam* jurisdiction over the defendant; and (2) the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore.

Given the stay of the Singapore proceedings, the Court of Appeal had to consider if the Singapore court still retained the power to grant Mareva relief. There had been conflicting first instance decisions on this point: see *Petroval SA v Stainsby Overseas Ltd* [2008] 3 SLR(R) 856 cf *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000. The Court of Appeal preferred the *Multi-Code* approach, taking the view that the court retains a residual jurisdiction over the underlying cause of action even when the action is stayed. This residual jurisdiction grounds the court's power to grant a Mareva injunction in aid of foreign proceedings. Further, a party's intentions on what it would do with the injunction had no bearing on the existence of the court's power to grant the Mareva injunction.

Party intentions, however, was a consideration under the second question of whether the court should exercise its power to grant the injunction. Traditionally,

a Mareva injunction is granted to safeguard the integrity of the Singapore court's jurisdiction over the defendant so that, if judgment is rendered against the defendant, that jurisdiction is not rendered toothless. The court commented that where it appears that the plaintiff is requesting the court to assume jurisdiction over the defendant for the collateral purpose of securing and safeguarding the exercise of jurisdiction by a foreign court, the court should not exercise its power to grant Mareva relief. On the facts, the court held that it could not be said that the respondents had such a collateral purpose as there was nothing on the facts to dispel the possibility that the respondents may later request for the stay to be lifted. This conclusion suggests that the court would generally take a generous view of litigation strategy and lean towards exercising its power in aid of foreign proceedings.

Given the requirement that the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore, a Mareva injunction is not free-standing relief under Singapore law. The court emphasized that a Mareva injunction in aid of foreign court proceedings is still ultimately premised on, and in support of, Singapore proceedings. This stance means that service in and service out cases may end up being treated differently. If the defendant has been served outside of jurisdiction and successfully sets aside service of the writ, there would no longer be an accrued cause of action in Singapore on which to base the application for a Mareva injunction. See for example, *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64, [2018] 4 SLR 1420 (see previous post **https://conflictoflaws.net/2018/mareva-injunctions-under-singapore-law/**). On the other hand, if the defendant had been served as of right within jurisdiction and the action is stayed (as in the present case), the court retains residual jurisdiction to grant a Mareva injunction.

After a restrictive court ruling in relation to the court's power to grant free-standing Mareva relief in aid of foreign arbitrations, the legislature amended the International Arbitration Act to confer that power to the courts. It remains to be seen if the legislature would act similarly in relation to the court's power to grant free-standing Mareva relief in aid of foreign proceedings.

To a certain extent, this lacuna is plugged by the recent amendments to the Reciprocal Enforcement of Foreign Judgments Act ("REFJA") (see previous post **https://conflictoflaws.net/2019/reform-of-singapores-foreign-judgment-rul**

es/). Under the amended REFJA, a judgment includes a non-monetary judgment and an interlocutory judgment need not be "final and conclusive". In the Parliamentary Debates, the minister in charge made the point that these specific amendments were intended to enable the court to enforce foreign orders such as Mareva injunctions. Only judgments from certain gazetted territories qualify for registration under the REFJA. To date, HK SAR is the sole listed gazetted territory although it is anticipated that the list of gazetted territories will expand in the near future. While the respondents had in hand a Hong Kong worldwide Mareva injunction, the amendments to REFJA only came into force after the case was decided.

The judgment may be found at: **https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/ca-188-2018-j—bi-xiaoqiong-pdf.pdf**

Coronavirus, force majeure certificate and private international law

Coronavirus outbreak and force majeure certificate

Due to the outbreak, China has adopted a number of public health measures, including closing schools and workplaces, limiting public gatherings, restricting travel and movement of people, screening , quarantine and isolation. At least 48 cities were locked down by 14 Feb 2020. (here) More than two thirds of China's migrant workers were unable to return to work, (see here) leaving those firms that have restarted operation running below capacity.

Coronavirus and the emergency measures significantly affect economic activates in China. The China Council for the Promotion of International Trade (CCPIT), a quasi-governmental entity, issued 3,325 force majeure certificates covering the combined contract value of $38.5bn to exempt Chinese companies from their

contractual obligations.

Issuing force majeure certificates is a common practice of trade councils or commercial chambers in the world. These certificates are proof of the existence of relevant events that may constitute force majeure and impinge the company's capacity to perform the contract. The events recorded in the certificates would include the confirmation of coronavirus outbreak, the nature, extent, date and length of governmental order for lockdown or quarantine, the cancellation of any transportation, etc. These certificate, however, are not legal documents and do not have direct executive or legal effects. They only attest the factual details instead of certifying those events are indeed force majeure in law. They are also called 'force majeure factual certificate' by the CCPIT. The CCPIT states in its webpage that:

The force majeure factual certificate is the proof of objective, factual circumstances, not the 'trump card' to exempt contractual obligations. The CCPIT issues relevant force majeure factual certificates to Chinese enterprises that are unable to perform contracts due to the impact of the new coronavirus epidemic. The certificate can prove objective facts such as delayed resumption of work, traffic control, and limited dispatch of labour personnel. An enterprise can request for delaying performance or termination of the contract based on this certificate, but whether its obligation can be fully or partially exempt depends on individual cases. The parties should take all the circumstances and the applicable law into consideration to prove the causal link between 'the epidemic and its prevention and control measures' and the 'failure to perform'.

Force Majeure in Different Governing Law

The force certificate is thus mainly used to demonstrate to the other party the existence of certain factual difficulties that hamper performance and seek understanding to privately settle the dispute. If the disputes are brought to the court, the court should consider whether the outbreak and the relevant emergency measure constitute force majeure events pursuant to the governing law, treating the force majeure certificate as evidence of fact. There is no international uniform doctrine of force majeure and different countries adopt different doctrines to allocate contractual risk in unforeseeable change of circumstances. China is a member of the UN Convention on the International Sale of Goods (CISG), which shall apply if the other party has its place of business in

another contracting state, or the parties choose CISG by agreement. Article 79 of the CISG provides that a party is exempted from paying damages if the breach is due to an impediment beyond its control, and either the impediment could not have been reasonably foreseen at the time of the conclusion of the contract, or the party could not reasonably avoid or overcome the impediment or its consequences. Although the disease outbreak is unforeseeable, it can only be an impediment if it makes performance impossible. Therefore, if the outbreak only makes production more difficult or expensive, it is not an impediment. There is no consensus as to whether an event that makes performance excessively burdensome can also be counted as an impediment in CISG. In addition, the impediment must uncontrollable. If a Chinese firm could not perform its contractual obligation due to the compulsory lockdown ordered by its local government, this event is out of control. The same applies if a firm manufacturing facial masks cannot deliver on time due to government requisition. On the other hand, when the Chinese State Council announced the extension of the Chinese New Year holiday to 2 Feb 2020, it was not a compulsory ban and if a firm 'chose' not to operate during the extension without additional compulsory order from any authorities, substantive risk of infection in its place of business, or irreparable labour shortage, the impediment may not be considered as uncontrollable. For the same reason, if a company decided to lock down after a worker tested positive for coronavirus in order to reduce the risk of spreading the disease among its workers, without the high risk and with alternative and less extreme prevention measures available, the impossibility to perform may be considered 'self-inflicted' instead of 'uncontrollable'. Consideration should always be given to the necessity and proportionality of the decision. Furthermore, if the local government imposed compulsory prohibition for work resumption to prevent people gathering, a firm cannot claim uncontrollable impediments if working in distance is feasible and possible for the performance of the contract.

If the other party is not located in a CISG contracting state, whether the coronavirus outbreak can exempt Chinese exporters from their contractual obligations depends on the national law that governs the contracts. Most China's major trade partners are contracting states of CISG, except India, South Africa, Nigeria, and the UK. Chinese law accepts both the force majeure and hardship doctrines. The party that breaches the contract may be discharged of its obligations fully or partially if an unforeseeable, uncontrollable and insurmountable causes the impossibility to perform. (Art 117 of the Chinese

Contract Law 1999) The party can also ask for the alternation of contract if un unforeseeable circumstance that is not force majeure makes performance clearly inequitable. (Art 26 of the SPC Contract Law Interpretation (II) 2009) The 'force majeure factual certificate' can also be issued if CCPIT considers a event not force majeure but unforeseeable change of circumstances in Art 26 of the Interpretation (II). For example, in Jiangsu Flying Dragon Food Machinery v Ukraine CF Mercury Ltd, CCPIT issued the certificate even after recognising that the poorly maintained electricity system of the manufacturer that was damaged by the rain was not a force majeure event. In contrast, other national law may adopt a more restrictive standard to exempt parties their obligations in unforeseeable circumstances. In England, for example, the court will not apply force majeure without a force majeure clause in the contract. A more restricted 'frustration' may apply instead.

Jurisdiction and Enforcement

In theory, a Chinese court should apply the same approach as other jurisdictions to apply the governing law and treat the force majeure certificates issued by CCPIT as evidence of fact. in practice, Chinese courts may prefer applying Chinese law if the CISG does not apply and the parties do not choose the law of another country, grant more weight to the CCPIT certificate than other courts, and be more lenient to apply the force majeure criteria to support Chinese companies' claim in relation to the coronavirus outbreak.

Finally, if the dispute is heard in a non-Chinese court or international arbitral tribunal, the judgment holding the Chinese company liable need to be enforced in China unless the Chinese company has assets abroad. Enforcing foreign judgments in China is generally difficult, though there are signs of relaxation. If judgments can be enforced pursuant to bilateral treaties or reciprocity, they may be rejected based on public policy. The question is whether the coronavirus outbreak and the government controlling measures can be public policy. According to the precedents of the Supreme People's Court, (eg. *Tianrui Hotel Investment Co., Ltd. (Petitioner) v. Hangzhou Yiju Hotel Management Co., Ltd. (Respondent)*, (2010) Min Si Ta Zi 18) breach of mandatory administrative regulations *per se* is not violation of public policy. But public policy undoubtedly includes public health. If Chinese courts consider the Chinese company should not resume production to prevent spread of disease event without compulsory government order, the public policy defence may be supported.

Indigenous Claims to Foreign Land: Update from Canada

By Stephen G.A. Pitel, Faculty of Law, Western University

In 2013 two Innu First Nations sued, in the Superior Court of Quebec, two mining companies responsible for a mega-project consisting of multiple open-pit mines near Schefferville, Quebec and Labrador City, Newfoundland and Labrador. The Innu asserted a right to the exclusive use and occupation of the lands affected by the mega-project. They claimed to have occupied, since time immemorial, a traditional territory that straddles the border between the provinces of Quebec and Newfoundland and Labrador. They claimed a constitutional right to the land under s. 35 of the *Constitution Act, 1982*.

The mining companies and the Attorney General of Newfoundland and Labrador each moved to strike from the Innu's pleading portions of the claim which, in their view, concerned real rights over property situated in Newfoundland and Labrador and, therefore, fell under the jurisdiction of the courts of that province.

In *Newfoundland and Labrador (Attorney General) v Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, the Supreme Court of Canada held (by 5-4 majority) that the motion to strike failed and that the Quebec court had jurisdiction over the entire claim advanced by the Innu.

Quebec's private international law is contained in Book Ten of the Civil Code of Quebec. Jurisdiction over the mining companies was based on their being domiciled in Quebec. However, as a special rule of jurisdiction, Division III governs what are called real and mixed actions (para. 18). The general rule is that Quebec has jurisdiction to hear a real action only if the property in dispute is situated in Quebec (art. 3152). In the case of a mixed action, Quebec must have jurisdiction over both the personal and real aspects of the matter: see *CGAO v Groupe Anderson Inc.*, 2017 QCCA 923 at para. 10 (para. 57). These rules required the court to properly characterize the Innu's action.

The majority held that the claim was a mixed action (para. 56). This was because the Innu sought both the recognition of a *sui generis* right (a declaration of Aboriginal title) and the performance of various obligations related to failures to respect that right. However, the claim was not a "classical" mixed action, which would require the court to have jurisdiction over both the personal and real aspects of the matter. Rather, this was a "non-classical" mixed action that involved the recognition of *sui generis* rights and the performance of obligations (para. 57). Put another way, the nature of the indigenous land claims made them different from traditional claims to land. Accordingly, the claim did not fall within the special jurisdiction provisions in Division III and jurisdiction could simply be based on the defendants' Quebec domicile.

The majority was influenced by access to justice considerations, being concerned about requiring the Innu to litigate in both Quebec and Newfoundland and Labrador. It noted that "[t]he Innu have argued that separating their claim along provincial borders will result in higher — perhaps prohibitive — costs caused by "piecemeal" advocacy, and inconsistent holdings that will require further resolution in the courts. … These are compelling access to justice considerations, especially when they are coupled with the pre-existing nature of Aboriginal rights" (paras. 46-47).

The dissenting reasons are lengthy (quite a bit longer than those of the majority). Critically, it held that "Aboriginal title and other Aboriginal or treaty rights are "real rights" for the purposes of private international law, which is to say that they *resemble* or are at least *analogous* to the domestic institution of real rights" (emphasis in original) (para. 140). Labeling them as *sui generis* was not sufficient to avoid the jurisdictional requirement for a mixed action that the land had to be in Quebec: "the fact that Aboriginal title is *sui generis* in nature does not mean that it cannot be a proprietary interest or a real right strictly for the purposes of private international law" (para. 155).

In the view of the dissent, " if Quebec authorities were to rule directly *on the title* that the Innu believe they hold to the parts of Nitassinan that are situated outside Quebec, the declarations would be binding on *no one*, not even on the defendants … , precisely because Quebec authorities lack jurisdiction in this regard" (emphasis in original) (para. 189).

On the issue of access to justice, the dissent stated that "access to justice must be

furnished within the confines of our constitutional order. Delivery of efficient, timely and cost-effective resolution of transboundary Aboriginal rights claims must occur within the structure of the Canadian legal system as a whole. But this is not to suggest that principles of federalism and provincial sovereignty preclude development by superior courts, in the exercise of their inherent jurisdiction, of innovative *yet* constitutionally sound solutions that promote access to justice" (emphasis in original) (para. 217). It went on to proffer the interesting procedural option that both a Quebec judge and a Newfoundland and Labrador judge could sit in the same courtroom at the same time, so that the proceedings were heard by both courts without duplication (para. 222).

There are many other issues in the tension between the majority and the dissent, including the role of Newfoundland and Labrador as a party to the dispute. It was not sued by the Innu and became involved as a voluntary intervenor (para. 9).

The decision is very much rooted in the private international law of Quebec but it has implications for any Indigenous claims affecting land in any legal system. Those systems would also need to determine whether their courts had jurisdiction to hear such claims in respect of land outside their territory. Indeed, the decision offers a basis to speculate as to how the courts would handle an Indigenous land claim brought in British Columbia in respect of land that straddled the border with the state of Washington. Is the court's decision limited to cases that cross only internal federation borders or does it extend to the international realm? And does there have to be a straddling of the border at all, or could a court hear such a claim entirely in respect of land in another jurisdiction? The court's decision leaves much open to interesting debate.

Dubious Cross-Border Insolvency Framework in India: The Need of a

new Paradigm?

By Gaurav Chaliya and Nishtha Ojha. The authors are third year students at the National Law University, Jodhpur, India.

Introduction

In 2018, around 47 entities forming the part of corporate groups were reported to be in debt which reflects the necessity of having an effective cross-border legal framework. The flexibility in the framework of cross border insolvency helps in overcoming the hurdles encountered in cross border disputes. This framework essentially girdles around the principle of coordination and cooperation and in consonance with these principles the National Company Law Appellate Tribunal ["**NCLAT**"] in *Jet Airways* case has extended these principles by providing sufficient rights to Dutch trustee and observed that–

"*as per law, he (Dutch Trustee) has a right to attend the meeting of the Committee of Creditors*"

However, despite effective coordination and cooperation, the proceedings against one entity is questioned to be extended to others as *first*, the elemental issue concerned is that each entity is managed by its own interests and such extension may be prejudicial to the interest of other entities and *second*, the legal conundrum associated in determining the Centre of Main Interest ["**COMI**"] of an entity. With regards to the first question, it is imperative that extension of insolvency proceeding is not prejudicial to the interests of the other entities as it is only extended in case of existence of reasonable nexus between entities in terms of financial and commercial relationship which makes them interdependent on each other. The authors would elaborate upon the second question in the subsequent section.´

Deficient Regulatory Framework

Section 234 and 235 of the Insolvency and Bankruptcy Code, 2016 ["**IBC**"] governs the cross border disputes in India. Section 234 empowers the government to enter into bilateral agreements with another country and Section 235 provides that Adjudicating Authority can issue a letter of request, to a country with which bilateral agreement has been entered into, to deal with assets situated thereto.

As is evident, the impediments associated with this regulatory framework are: *first*, it does not provide for a legal framework for foreign representatives to apply to the Indian courts and most importantly these sections are not notified yet and *second*, the current legal framework under IBC provides for entering into bilateral treaties which is uncertain and in addition is a long term negotiation process. For instance, in Australia the regulatory framework therein was not sufficient to deal with the complexities associated with cross-border insolvencies as bilateral treaties can provide some solution but they are not easy to negotiate and have intrinsic intricacies. Consequently, it passed the Cross Border Insolvency Act, 2008 which provides adoption and enactment of the United Nations Commission on International Trade Law ["**Model law**"]. In light of same, India should also consider the enactment of the Model law though with modifications, one of which is suggested and dealt in the next section.

Resolving the Complications

Complications in the field of International Insolvency are never-ending primarily due to the lack of a comprehensive legal framework. The Model Law seeks to alleviate these complications by providing a pragmatic legal framework. As asserted earlier, *Jet Airways* case acknowledges and applies the principles enshrined under the Model Law. The Model Law, unlike any treaty or convention, is a model form of legislation which is adopted by 46 nations till date.

The Model Law sets out the principle of Centre of Main Interest ["**COMI**"] for determining the jurisdiction of the proceedings.
Interestingly, it does not define the COMI and therefore, determining COMI possesses the greatest challenge. Also, the principal concern that remains is that the debtor can escape its liability by changing its COMI according to its favourable outcome. However, the Model law safeguards the rights of the creditor by providing that *first*, as per Article 16 of the Model Law, COMI corresponds to the place where debtor has its registered office and *second*, COMI is dependent on many other factors viz. seat of an entity having major stake in terms of control over assets and its significant operations, which is basically dependent upon the transparent assessment by the third parties. Consequently, the debtor cannot escape its liability by changing COMI as determination of the same is dependent upon assessment by third parties. Hence, the Model Law addresses the prime issues which are present in the current regulatory framework.

In India, the Report of Insolvency Law Committee ["**ILC**"] was constituted to examine the issues related to IBC, which recommended the impending need to adopt the Model Law. However, the proposed draft disregards the objective of coordination and cooperation among all nations by mandating the requirement of *reciprocity*.
The authors subscribe to the view, that, until the Model Law has been adopted to a significant extent by other counties, the absolute requirement of reciprocity as postulated under the draft should be done away with and courts should be given the discretion on *case to case* basis. As such an absolute requirement of reciprocity i.e. entering into a treaty with other countries take us back to the present legal framework in India by limiting adjudicating authority's power to only 46 countries. For instance, in case the corporate debtor has COMI in country A, which has adopted the Model Law, whereas his assets are located in country B, which has not adopted the Model Law. In such a situation, if the requirement of reciprocity is imposed then the administration of assets in country B would become difficult, as an entity in country B would always be reluctant to become a part of the insolvency proceedings relying on probable defences such as of lex situs and absence of bilateral agreements.

In essence, this whole process would be detrimental to the interest of the creditor as it would hamper the maximization of the value of assets. Moreover, in *Rubin v. Eurofinance*, the Supreme Court of U.K. has observed that the court is allowed to use the discretion provided to it by the system. Hence, by this approach courts are allowed to cooperate and coordinate with those countries that are acquiescent to return the favour. It is pertinent to clarify that by granting discretion to court, the authors do not concede to the practice of Gibb's principle. Rather the said principle is inherently flawed as it does not recognise the foreign insolvency process preceding over English law per contra courts generally expects other jurisdictions to accept their judgements.

Concluding Remarks

After a careful analysis of present cross border legal framework in India, it can be ascertained that current system is highly ineffective and in light of instances provided, the adoption of the Model Law with modifications seems to be a better alternative. The Model Law provides an orderly mechanism as it recognises the interest of the enforcing country by taking into account its public policy and national interest. The Appellate Tribunal in *Jet Airways* case has attempted to extend the principles of the Model Law into domestic case laws therefore it is optimal time that India adopts such legislation. Though with regards to the problem of reciprocity as pointed earlier, the absolute requirement or non-requirement of the reciprocity would not solve the problem and according to *Rubin's* case, discretion should be given to the courts which would widen the scope of the application of the law, thereby, being in consonance with the objectives of the principles i.e. of effective cooperation and coordination among all nations. Hence, the Model law contains enough of the measures to prevent any misuse of the process and adopting it with modifications would resolve the problem associated.

Claims Against Corporate Defendant Founded on Customary International Law Can Proceed in Canada

By Stephen G.A. Pitel, Faculty of Law, Western University

Eritrean mine workers who fled from that country to British Columbia sued the mine's owner, Nevsun Resources Ltd. They sought damages for various torts including battery, false imprisonment and negligence. They also sought damages for breaches of customary international law. Their core allegation was that as conscripted labourers in Eritrea's National Service Program, they were forced to work in the mine in intolerable conditions and Nevsun was actively involved in this arrangement.

Nevsun moved to strike out all of the claims on the basis of the act of state doctrine. It also moved to strike out the proceedings based on violations of customary international law because they were bound to fail as a matter of law.

In its decision in *Nevsun Resources Ltd v Araya*, 2020 SCC 5, the Supreme Court of Canada has held (by a 7-2 decision) that the act of state doctrine is not part of Canadian law (para. 59) and so does not preclude any of the claims. It has also held (by a 5-4 decision) that the claims based on customary international law are not bound to fail (para. 132) and so can proceed.

Act of State Doctrine

Justice Abella, writing for five of the court's nine judges, noted that the act of state doctrine had been heavily criticized in England and Australia and had played no role in Canadian law (para 28). Instead, the principles that underlie the doctrine were subsumed within the jurisprudence on "conflict of laws and judicial restraint" (para 44).

In dissent, Justice Cote, joined by Justice Moldaver, held that the act of state doctrine is not subsumed by choice of law and judicial restraint jurisprudence (para. 275). It is part of Canadian law. She applied the doctrine of justiciability to the claims, finding them not justiciable because they require the determination that the state of Eritrea has committed an internationally wrongful act (para. 273).

This division raises some concerns about nomenclature. How different is "judicial restraint" from "non-justiciability"? Is justiciability an aspect of an act of state doctrine or is it a more general doctrine (see para. 276)? Put differently, it appears that the same considerations could be deployed by the court either under an act of state doctrine or without one.

The real division on this point is that Justice Cote concluded that the court "should not entertain a claim, even one between private parties, if a central issue is whether a foreign state has violated its obligations under international law" (para. 286). She noted that the cases Justice Abella relied on in which Canadian courts have examined and criticized the acts of foreign states are ones in which that analysis was required to ensure that Canada comply with its own obligations as a state (para. 304). In contrast, in this case no conduct by Canada is being called into question.

In Justice Abella's view, a Canadian court can indeed end up determining, as part of a private civil dispute, that Eritrea has engaged in human rights violations. She did not, however, respond to Justice Cote's point that her authorities were primarily if not all drawn from the extradition and deportation contexts, both involving conduct by Canada as a state. She did not squarely explain why the issue of Eritrea's conduct was justiciable or not covered by judicial restraint in this particular case. Having held that the act of state doctrine was not part of Canadian law appears to have been sufficient to resolve the issue (para. 59).

Claims Based on Violations of Customary International Law

The more significant split relates to the claims based on violations of customary international law. The majority concluded that under the "doctrine of adoption", peremptory norms of customary international law are automatically adopted into Canadian domestic law (para. 86). So Canadian law precludes forced labour, slavery and crimes against humanity (paras. 100-102). Beyond that conclusion,

the majority fell back on the hurdle for striking out claims, namely that they have to be bound ("plain and obvious") to fail. If they have a prospect of success, they should not be struck out. The majority found it an open question whether these peremptory norms bind corporations (para. 113) and can lead to a common law remedy of damages in a civil proceeding (para. 122). As a result the claims were allowed to proceed.

Four of the judges dissented on this point, in reasons written by Brown and Rowe JJ and supported by Cote and Moldaver JJ. These judges were critical of the majority's failure to actually decide the legal questions raised by the case, instead leaving them to a subsequent trial (paras. 145-147). In their view, the majority's approach "will encourage parties to draft pleadings in a vague and underspecified manner" which is "likely not to facilitate access to justice, but to frustrate it" (para. 261). The dissent was prepared to decide the legal questions and held that the claims based on violations of customary international law could not succeed (para. 148).

In the dissent's view, the adoption into Canadian law of rules prohibiting slavery, forced labour and crimes against humanity did not equate to mandating that victims have a civil claim for damages in response to such conduct (para. 172). The prohibitions, in themselves, simply did not include such a remedy (para. 153). The right to a remedy, the dissent pointed out, "does not necessarily mean a right to a particular form, or kind of remedy" (para. 214).

Further, as to whether these rules can be directly enforced against corporations, the dissent was critical of the complete lack of support for the majority's position: "[i]t cites no cases where a corporation has been held civilly liable for breaches of customary international law anywhere in the world" (para. 188). As Justice Cote added, the "widespread, representative and consistent state practice and *opinio juris* required to establish a customary rule do not presently exist to support the proposition that international human rights norms have horizontal application between individuals and corporations" (para. 269).

On this issue, one might wonder how much of a victory the plaintiffs have achieved. While the claims can now go forward, only a very brave trial judge would hold that a corporation can be sued for a violation of customary international law given the comments of the dissenting judges as to the lack of support for that position. As Justices Brown and Rowe put it, the sole authority

relied on by the majority “is a single law review essay” (para. 188). Slender foundations indeed.

ERA: Recent European Court of Human Rights Case Law in Family Matters (conference report)

Report written by Tine Van Hof, researcher at the University of Antwerp

On the 13th and 14th of
February 2020, the Academy of European Law (ERA) organized a conference on ‘Recent ECtHR Case Law in Family Matters’. This conference was held in Strasbourg and brought together forty participants coming from twenty-one different countries. This report will set
out some of the issues addressed at the conference.

The presentation, made by ***Ksenija Turkovi?***, Judge at the European Court of Human Rights, focused
on children on the move and more specifically on minors in the context of migration. On this topic the European Court of Human Rights (ECtHR) has developed
a child-specific human rights approach. This approach implies taking into account three particular concepts: vulnerability, best interests and autonomy. Judge Turkovi? pointed to the interesting discussion on whether vulnerability could
only apply to young migrant children. On this discussion, there is now agreement that the vulnerability applies to all children under the age of 18 and regardless whether they are accompanied by adults. The ECtHR made very clear in its case law
that migrant children are especially vulnerable and that this vulnerability is a decisive factor that takes precedence over the children’s migrant status. This

vulnerability also plays a role in the cases on the detention of children. The more vulnerable a person is, the lower the threshold for a situation of detention to fall within the scope of Article 3 of the European Convention on Human
Rights (ECHR), encompassing the prohibition of torture.

Family unification and the free movement of family
status was the second topic of the day. ***Michael Hellner***,
professor at Stockholm University, discussed several cases of the ECtHR (Ejimson v Germany) and the Court of Justice of the EU (CJEU) (K.A. v Belgium, Coman and S.M.). He concluded that family life does not automatically create a right of residence but it can create such a right in certain circumstances. In the Coman case for example, the CJEU decided that Romania had to recognize the marriage between the two men for the purpose of enabling such persons to exercise the rights they enjoy under EU law (i.e. free movement). Professor Hellner noted that it seems to be quite easy to circumvent national law in the future if one looks at the Coman case. He considered it positive if the consequence was that same-sex marriages and surrogacy arrangements created abroad
were recognized. However, he made the interesting observation that it might be a very different story if one thinks about child marriages and the recognition thereof.

Maria-Andriani Kostopoulou,
consultant in family law for the Council of Europe, thereafter shared her insights on parental rights, pre-adoption foster care and adoption. She discussed i.a. the evolution in the case law of the ECtHR on the representation of the child before the Court. In the Strand-Lobben case, the Court stated that the issue of representation does not require a restrictive or technical approach and thus made clear that a certain level of flexibility is necessary. In the Paradisio and Campanelli case, the ECtHR provided three criteria that should be taken into account for assessing the representation of the child: the link between the child and the representative, the subject-matter of the case and any potential conflict of interests between the interests of the child and those of the representative. The latest case, A. and B. against Croatia, introduced a security safeguard. In this case, the ECtHR asked the Croatian Bar Association to appoint a legal representative for the child for the procedure

before the ECtHR since the Court was not sure that there were no conflict of interests between the child and the mother, who proposed to be the representative.

To end the first conference day, ***Dmytro Tretyakov***, lawyer at the Registry of the ECtHR, enlightened us about the misconceptions and best practices of submitting a case to the Court. His most important tips for a submission to the Court are the following:

- Use the current application form and not an old one;
- Submit well in time and certainly within the six-month period;
- Summarize the facts of the case on the three pages provided. This summary has to be clear, readable (for those that do it in handwriting) and comprehensible;
- To state claims, refer to the relevant Article from the ECHR (do not cite it) and explain what the specific problem is with regard to that Article;
- Support each claim with documents; and
- Sign the form in the correct boxes and carefully look where the signature of the applicant and where the signature of the representative is required.

The second day of the conference started with the presentation of ***Nadia Rusinova***, attorney-at-law and lecturer at the Hague University of Applied Science, on international child abduction. She discussed i.a. the issue of domestic violence in child abduction cases. Several questions can be raised in this regard, for example: what constitutes domestic violence? When should a court accept the domestic violence to be established? What is adequate protection in light of the Hague Convention on International Child Abduction (1980) and who decides on this? In the case O.C.I. and others v Romania, one of the questions was whether there is such a thing as light violence that does not amount to a grave risk in the sense of Article 13(1)(b) of the Hague Convention. The ECtHR approached this issue very critically and stated that no form of corporal punishment is acceptable. Regarding the adequate measures, the Court stated that domestic authorities have a discretion

to decide what is adequate but the measures should be in place before ordering the return of the child. Another point raised by Ms. Rusinova is the time factor that is required. If one looks at Article 11(2) of the Hague Convention and at Article 11(3) of the Brussels IIbis Regulation together, six weeks is the required time period for the return proceedings. The Brussels IIbis Recast clarified that the procedure should take no more than six weeks per instance. However, according to Ms. Rusinova it is hardly possible to do the procedures in six weeks; it will only work when the proceeding is not turned into an adversarial proceeding in which all kinds of claims of both parents are dealt with.

Samuel Fulli-Lemaire, professor at the University of Strasbourg, addressed the interesting evolution of reproductive rights and surrogacy. In the case of C. and E. v France, the French Court of Cassation asked the ECtHR for an advisory opinion on the question whether the current state of the case law in France was compatible with the obligations under Article 8 ECHR (the right to respect for private and family life). The status of the French case law was that the genetic parent was fully accepted but the other intended parent was required to adopt the child if he or she wished to establish parentage links. The ECtHR replied that the obligation under Article 8 entailed that there must be a possibility of recognition of the parent-child relationship but that it is up to the States to decide how to do this. Adoption is a sufficient method of recognizing such relationship, provided that it is quick and effective enough. The Court also refers to the possibility of transcription of the birth certificate as an alternative to adoption. However, professor Fulli-Lemaire pointed out that there is a misconception on what transcription means under French law. The mere transcription of the birth certificate does not establish legal parentage in France. The fact that the ECtHR says that an intended parent can adopt or transcribe the birth certificate is therefore tricky because under French law the effects of the two methods are not at all the same.

The very last presentation of the conference was given by ***Gabriela Lünsmann***, attorney-at-law and member of the Executive Board of the Lesbian and Gay Federation in Germany. She spoke about LGBTQI

rights as human rights and hereby focused i.a. on transsexuals' gender identity and the case of X. v North-Macedonia. The question raised in that case is whether the state must provide for a procedure to recognize a different gender. The applicant had tried to change their gender but North-Macedonia did not offer any possibility to undergo an operation or to have medical treatment in that regard.
The applicant then went abroad for treatment. Back in North-Macedonia, he had his name changed but it was not possible to change his officially registered gender.
The applicant claimed that this amounted to a violation of Article 8 ECHR and specially referred to the obligation of the state to respect a person's physical and psychological integrity. The Court found that there was indeed a violation. What is as yet unclear, and is thus an interesting point for reflection, is whether states are under an obligation to provide for a procedure for the recognition of a change of gender without the person having had an operation.

The author would like to thank ERA for the excellent organization of the conference and for the interesting range of topics discussed.

Common law recognition of foreign declarations of parentage

This note addresses the question whether there is a common law basis for the recognition of foreign declarations of parentage. It appears that this issue has not received much attention in common law jurisdictions, but it was the subject of a relatively recent Privy Council decision (*C v C* [2019] UKPC 40).

The issue arises where a foreign

court or judicial authority has previously determined that a person is, or is not, a child's parent, and the question of parentage then resurfaces in the forum (for example, in the context of parentage proceedings or maintenance proceedings).

If there is no basis for recognition of the foreign declaration, the forum court will have to consider the issue de novo (usually by applying the law of the forum: see, eg, Status of Children Act 1969 (NZ)). This would increase the risk of "limping" parent-child relationships (that is, relationships that are recognised in some countries but not in others) – a risk that is especially problematic in the context of children born by way of surrogacy or assisted human reproduction technology.

The following example illustrates the problem. A baby is born in a surrogacy-friendly country to a surrogate mother domiciled and resident in that country, as the result of a surrogacy arrangement entered into with intending parents who are habitually resident in New Zealand. The courts of the foreign country declare that the intending parents are the legal parents of the child. Under New Zealand law, however, the surrogacy arrangement would have no legal effect, and the surrogate mother and her partner would be treated as the child's legal parents upon the child's birth. Unless the foreign judgment is capable of recognition in New Zealand, the only way for the intending parents to become the child's legal parents in New Zealand is to apply for adoption (see, eg, *Re Cobain* [2015] NZFC 4072, *Re Clifford* [2016] NZFC 1666, *Re Henwood* [2015] NZFC 1541, *Re Reynard* [2014] NZFC 7652, *Re Kennedy* [2014] NZFLR 367, *Re W* [2019] NZFC 2482, *Re C* [2019] NZFC 1629).

So what is the relevance of a foreign declaration on parentage in common law courts? In *C v C* [2019] UKPC 40, [2019] WLR(D) 622, the Privy Council decided that there was a basis in the common law for recognising such declarations, pursuant to the so-called *Travers v Holley* principle. This principle, which has traditionally been applied in the context of divorce and adoption, calls for recognition of foreign judgments on the basis of "jurisdictional reciprocity" (at [44]). The Privy Council

applied the principle to recognise a declaration of parentage made in Latvia, in relation to a child domiciled and habitually resident in Latvia, for the purposes of maintenance proceedings in the forum court of Jersey. Lord Wilson emphasised that, although foreign judgments may, in some cases, be refused on grounds of public policy, recognition will not be refused lightly: "a court's recognition of a foreign order under private international law does not depend on any arrogant attempt on that court's part to mark the foreign court's homework" (at [58]).

As a matter of policy, my first impression is that the Privy Council's decision is to be welcomed. Common law jurisdictions have traditionally taken a conservative, relatively "closed" approach to the recognition of foreign laws and judgments on parentage (see Hague Conference on Private International Law *A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements* (Prelim Doc No 3C, 2014)). Such an approach has become increasingly indefensible in a world that is witnessing unprecedented levels of cross-border mobility and migration. The conflict of laws should, as a matter of priority, avoid limping parent-child relationships: for example, a child who was declared by the courts of their place of birth to be the child of the intending parents, but who is nevertheless treated as the surrogate mother's child under New Zealand law. The ability to recognise foreign judgments on parentage may not amount to *much* progress, given that it can apply only where the foreign court has, in fact, made a declaration of parentage: it would have no application where the relevant parent-child relationship simply arises by operation of law or through an administrative act (such as entry of the intending parents in the birth register). There is no doubt that an international solution must be found to the problem as a whole. But it is surely better than nothing.

Another question is what to make of the Privy Council's reliance on the *Travers v Holley* principle. Based on the decision in *Travers v Holley* [1953] P 246 (CA), the principle enables recognition of foreign judgments by virtue of reciprocity: the forum court will recognise a foreign judgment if the forum court itself would have had jurisdiction to grant the judgment had the facts been reversed (ie had the

forum court been faced with the equivalent situation as the foreign court). In the context of divorce, the principle has since been subsumed within a wider principle of "real and substantial connection" (*Indyka v Indyka* [1969] 1 AC 33 (HL)). In the context of adoption, the principle has been applied to recognise "the status of adoption duly constituted … in another country in similar circumstances as we claim for ourselves" (*Re Valentine's Settlement* [1965] Ch 831 (CA) at 842).

Perhaps it is not a big step from adoption to parentage more generally. The Privy Council recognised that the latter primarily represents "a conclusion of biological fact", while adoption "stamps a person with a changed legal effect" (at [39]). But the Privy Council did not seem to consider that this distinction should warrant a different approach in principle. In *C v C*, the issue of parentage involved a relatively straightforward question of paternity. Had the case involved a question of surrogacy or human assisted reproduction, the answer might well have been different. There is an argument that a parent-child relationship created under foreign law can only be recognised in the forum if the foreign law is substantially similar to forum law. Thus, in the context of adoption, it has been asked whether the concept of adoption in the foreign country "substantially conform[s] to the English concept" (*Re T & M (Adoption)* [2010] EWHC 964, [2011] 1 FLR 1487 at [13]). This requirement might not be made out where, for example, the law of the forum does not recognise parentage by way of surrogacy (as is the case in New Zealand).

The Privy Council cautioned that the Board did not receive full argument on the issue and that the reader "must bear the lack of it in mind" (at [34]). It seems especially important, then, for conflict of laws scholars to give the issue further consideration. This note may serve as a careful first step – I would be interested to hear other views. Perhaps the most encouraging aspect of the Board's reasoning, in my mind, is its openness to recognition. The Board's starting point was that the declaration could be recognised. Arguably, this was because counsel seemed to have largely conceded the point. But to the extent that it cuts through an assumption that questions of parentage are generally left to the law of the forum, it nevertheless strikes me as significant – even more so since the UK Supreme Court's previous refusal

to extend the *Travers v Holley* principle beyond the sphere of family law (*Rubin v Eurofinance SA* [2012] UKSC 46, [2012] 3 WLR 1019 at [110], [127]).

Recognition in the UK of a marriage celebrated in Somaliland

Can a foreign marriage be recognised in the UK if the State where it was celebrated is not recognised as a State? This was the question which the High Court of Justice (Family Division) had to answer in MM v NA: **[2020] EWHC 93 (Fam)**.

The Court distilled two questions: was the marriage validly celebrated and if so, can it be recognised in the UK? If the answers to both questions were affirmative, the court could give a declaratory order; if one of them were negative, the parties could celebrate a new marriage in the UK.

In assessing the **first question**, the court considered issues of formal and essential validity. It took account of the various systems of law in Somaliland: formal law (including the Somali civil code, which is still in force in Somaliland on the basis of its continuation under the Somaliland constitution), customary law and Islamic law. In matters of marriage, divorce and inheritance, the latter applies. On the basis of the facts, the Court came to the conclusion that the parties were validly married according to the law of Somaliland.

Although this would normaly be the end of the matter, the Court had to consider what to do with a valid marriage emanating from a State not recognised by the UK (the **second question**). The Court referred to the one-voice principle, implying that the judiciary cannot recognise acts by a State while the executive branch of the UK refuses to recognise the State. It then considered exceptions and referred to cases concerning the post-civil war US, post-World War II Eastern Germany, the Turkish Republic of Northern Cyprus, Ciskei (one of the ‘States’ created by Apartheid-era South Africa), and Southern Rhodesia.

It also referred to the ICJ Advisory Opinion of 21 June 1971 on the continued presence of South Africa in Namiba, particularly its §125, which states:

“while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”

The Court found that an exception to the one-voice doctrine is acceptable in matters of private rights. The Court also explained that it had conferred with the Foreign and Commonwealth Office of the UK Government, who would not object to the recognition of a Somaliland marriage even though that State is not recognised.

It thus gave the declaration of recognition of the marriage.

(Thanks to Prakash Shah for the tip.)

Private International Law and Venezuelan Academia in 2019: A Review

by José Antonio Briceño Laborí, Professor of Private International Law, Universidad Central de Venezuela y Universidad Católica Andrés Bello

In 2019 the Venezuelan Private International Law (hereinafter “PIL”) academic community made clear that, despite all the difficulties, it remains active and has the energy to expand its activities and undertake new challenges.

As an example of this
we have, firstly, the different events in which our professors have
participated and the diversity of topics developed by them, among which the

following stand out:

- XI
  Latin American Arbitration Conference, Asunción, Paraguay, May 2019 (Luis
  Ernesto Rodríguez – How is tecnology impacting on arbitration?)
- Conferences for the 130th
  Anniversary of the Treaties of Montevideo of 1889, Montevideo, Uruguay, June
  2019 (Eugenio Hernández-Bretón and Claudia Madrid Martínez – The recent
  experience of some South American countries not part of Montevideo Treaties in comparative
  perspective to them. The case of Venezuela).
- OAS XLVI Course on
  International Law. Rio de Janeiro, Brazil, August 2019 (Javier Ochoa Muñoz – Effectiveness
  of foreign judgements and transnational access to justice. Reflections from global
  governance).
- The Role of Academia in Latin
  American Private Intertnational Law, Hamburg, Germany, September 2019 (Javier
  Ochoa Muñoz – The Legacy of Tatiana Maekelt in Venezuela and in the Region).
- XIII ASADIP Annual Conference
  2019: Transnational Effectiveness of Law: Recognition and enforcement of foreign judgments, arbitral awards and other acts (Claudia Madrid Martínez –
  Transnational Efficacy of Foreign Judgments – Flexibilization of Requirements; Eugenio
  Hernández-Bretón – Transnational Effectiveness of Provisional Measures; and
  Luis Ernesto Rodríguez – New Singapore Convention and the execution of international agreements resulting from cross-border mediation).

However, this year's three

most important milestones for our academic community occurred on Venezuelan soil. Below we review each one in detail:

1. **Celebration of the 20th Anniversary of the Venezuelan PIL Act**

The Venezuelan PIL Act, the first autonomous legislative instrument on this subject in the continent, entered into force on February 6, 1999 after a six months *vacatio legis* (since it was enacted in the Official Gazette of the Republic of Venezuela on August 6, 1998).

This instrument has a long history, as its origins date back to the Draft Law on PIL Norms written by professors Gonzalo Parra-Aranguren, Joaquín Sánchez-Covisa and Roberto Goldschmidt in 1963 and revised in 1965. The Draft Law was rescued in 1995 on the occasion of the First National Meeting of PIL Professors. Its content was updated and finally a new version of the Draft Law was sent by the professors to the Ministry of Justice, which in turn sent it to the Congress, leading to its enactment (for an extensive overview of the history of the Venezuelan PIL Act and its content, see: Hernández-Bretón, Eugenio, Neues venezolanisches Gesetz über das Internationale Privatrecht, *IPRax* 1999, 194 (Heft 03); Parra-Aranguren, Gonzalo, The Venezuelan Act on Private International Law of 1998, *Yearbook of Private International Law*, Vol. 1 1999, pp. 103-117; and B. de Maekelt, Tatiana, Das neue venezolanische Gesetz über Internationales Privatrecht, *RabelsZ*, Bd. 64, H. 2 (Mai 2000), pp. 299-344).

To celebrate the 20th anniversary of the Act, the Private International and Comparative Law Professorship of the Central University of Venezuela and the "Tatiana Maekelt" Institute of Law with the participation of 7 professors and 9 students of the Central University of Venezuela Private International and Comparative Law Master Program.

All the expositions

revolved around the Venezuelan PIL Act, covering the topics of the system of sources, vested rights, ordre public, in rem rights, consumption contracts, punitive damages, jurisdiction matters, international labour relations, recognition and enforcement of foreign judgements, transnational provisional measures and the relations between the Venezuelan PIL Act and international arbitration matters. The conference was both opened and closed by the professor Eugenio Hernández-Bretón with two contributions: “The Private International Law
Act and the Venezuelan university” and “The ‘secret history’ of the Private International Law Act”.

- **Private International and Comparative Law Master Program’s Yearbook**

On the occasion of the XVIII National Meeting of Private International Law Professors, the Private International and Comparative Law Master’s Degree Program of the Central University of Venezuela launched its website and the first issue of its yearbook. This specialized publication was long overdue, particularly in the Master’s Program context which is focused on educating and training researchers and professors in the areas of Private International Law and Comparative Law with a strong theoretical foundation but with a practical sense of their fields. The Yearbook will allow professors, graduates, current students and visiting professors to share their views on the classic and current topics of Private International Law and Comparative Law.

This first issue included the first thesis submitted for a Master’s Degree on the institution of *renvoi*, four papers spanning International Procedural Law, electronic means of payment, cross-border know-how contracts and International Family Law, sixteen of the papers presented during the Commemoration of the Twentieth Anniversary of the Venezuelan Private International Law Act’s entry into force, and two collaborations by Guillermo Palao Moreno and Carlos Esplugues Mota, professors of Private International Law at the University of Valencia (Spain), that shows the relation of the Program

with visiting professors that have truly nurtured the students' vision of their area of knowledge.

The Call of Papers for the 2020 Edition of the Yearbook is now open. The deadline for the reception of contributions will be April 1st, 2020 and the expected date of publication is May 15th, 2020. All the information is available here.
The author guidelines are available here. Scholars from all over the world are invited to contribute to the yearbook.

- **Libro Homenaje al Profesor Eugenio Hernández-Bretón**

On December 3rd, 2019 was launched a book to pay homage to Professor Eugenio Hernández-Bretón. Its magnitude (4 volumes, 110 articles and 3298) is a mirror of the person honored as we are talking about a highly productive and prolific lawyer, professor and researcher and, at the same time, one of the humblest human beings that can be known. He is truly one of the main reasons why the Venezuelan Private International Law professorship is held up to such a high standard.

The legacy of Professor Hernández-Bretón is recognized all over the work. Professor of Private International Law at the Central University of Venezuela, Catholic University Andrés Bello and Monteávila University (he is also the Dean of the Legal and Political Sciences of the latter), Member of the Venezuelan Political and Social Sciences Academy and its President through the celebration of the Academy'a centenary, the fifth Venezuelan to teach a course at The Hague Academy of International Law and a partner in a major law firm in Venezuela (where he has worked since his law school days) are just some of the highlights of his career.

The contributions collected for this book span the areas of Private International Law, Public International Law, Comparative Law, Arbitration, Foreign Investment, Constitutional Law, Administrative Law, Tax Law, Civil Law,

Commercial Law, Labor Law, Procedural Law, Penal Law, General Theory of Law, Law & Economics and Law & Politics. The book closes with six studies on the honored.

The contributions of Private International Law take the entire first volume. It includes the following articles:

- Adriana Dreyzin de Klor – El Derecho internacional privado argentino aplicado a partir del nuevo Código Civil y Comercial (The Argentine Private International Law applied from the new Civil and Commercial Code).
- Alfredo Enrique Hernández Osorio – Objeto, contenido y características del Derecho internacional privado (Purpose, content and characteristics of Private International Law).
- Andrés Carrasquero Stolk – Trabajadores con elevado poder de negociación y Derecho applicable a sus contratos: no se justifica restricción a la autonomía de las partes (Workers with high bargaining power and applicable law to their contracts: no restriction to party autonomy is justified).
- Carlos E. Weffe H. – La norma de conflicto. Notas sobre el método en el Derecho internacional privado y en el Derecho internacional tributario (The conflict norm. Notes on the method in Private International Law and in International Tax Law).
- Cecilia Fresnedo de Aguirre – Acceso al derecho extranjero en materia civil y comercial: cooperación judicial y no judicial (*Access to foreign law in civil and commercial matters: judicial and non-judicial cooperation*).
- Claudia Madrid Martínez – El rol de las normas imperativas en la contratación

internacional contemporánea (The role of peremptory norms in contemporary
international contracting).

- Didier
  Opertti Badán – Reflexiones sobre gobernabilidad y Derecho internacional privado (Reflections on governance and Private International Law).
- Fred
  Aarons P. – Regulación del internet y el derecho a la protección de datos personales en el ámbito internacional (Internet regulation and the right to personal data protection at international level).
- Gerardo
  Javier Ulloa Bellorin – Interpretación del contrato: estudio comparativo entre
  los principios para los contratos comerciales internacionales del UNIDROIT y el
  derecho venezolano (Contract interpretation: comparative study between the
  UNIDROIT Principles on International Commercial Contracts and Venezuelan law).
- Gilberto
  Boutin I. – El recurso de casación en las diversas fuentes del Derecho internacional privado panameño (Cassational complaint in the various sources of
  Panamanian Private International Law).
- Guillermo
  Palao Moreno – La competencia judicial internacional en la nueva regulación
  europea en materia de régimen económico matrimonial y de efectos patrimoniales de
  las uniones registradas (International jurisdiction in the new European regulation on the economic matrimonial regime and the property effects of
  registered partnerships).
- Héctor
  Armando Jaime Martínez – Derecho internacional del trabajo (International Labor
  Law).

- Javier
  L. Ochoa Muñoz – El diálogo de las fuentes ¿un aporte del Derecho internacional
  privado a la teoría general del Derecho? (The dialogue
  of sources: a contribution from private international law to the general theory
  of law?
- Jorge
  Alberto Silva – Contenido de un curso de Derecho internacional regulatorio del
  proceso (Content of a course on international law regulating the process).
- José
  Antonio Briceño Laborí – La jurisdicción indirecta en la ley de derecho internacional privado.
- José
  Antonio Moreno Rodríguez – Los Principios Unidroit en el derecho paraguayo (The
  UNIDROT Principles in Paraguayan law).
- José
  Luis Marín Fuentes – ¿Puede existir una amenaza del Derecho uniforme frente al
  Derecho interno?: ¿podríamos hablar de una guerra anunciada? (Can there be a threat to national law from uniform law? Could we talk
  about an announced war?).
- Jürgen
  Samtleben – Cláusulas de jurisdicción y sumisión al foro en América Latina (Jurisdiction
  and submission clauses in Latin America).
- Lissette
  Romay Inciarte – Derecho procesal internacional. Proceso con elementos de extranjería
  (International Procedural Law. Trial with foreign elements).
- María
  Alejandra Ruíz – El reenvío en el ordenamiento jurídico venezolano (*Renvoi*
  in the Venezuelan legal system).
- María

Mercedes Albornoz – La Conferencia de La Haya de Derecho Internacional Privado y el Derecho aplicable a los negocios internacionales (The Hague Conference on Private International Law and the applicable Law to International Business).

- María Victoria Márquez Olmos – Reflexiones sobre el tráfico internacional de niños y niñas ante la emigración forzada de venezolanos (Reflections on international child trafficking in the face of forced migration of Venezuelans).
- Mirian Rodríguez Reyes de Mezoa y Claudia Lugo Holmquist – Criterios atributivos de jurisdicción en el sistema venezolano de Derecho internacional privado en materia de títulos valores (Attributive criteria of jurisdiction in the Venezuelan system of Private International Law on securities trading matters).
- Nuria González Martín – Globalización familiar: nuevas estructuras para su estudio (Globalization of the family: new structures for its study).
- Peter Mankowski – A very special type of renvoi in contemporary Private International Law. Article 4 Ley de Derecho Internacional Privado of Venezuela in the light of recent developments.
- Ramón Escovar Alvarado – Régimen aplicable al pago de obligaciones en moneda extranjera (Regime applicable to the payment of obligations in foreign currency).
- Roberto Ruíz Díaz Labrano – El principio de autonomía de la voluntad y las relaciones contractuales (The party autonomy principle and contractual relations).
- Stefan

Leible – De la regulación de la parte general del Derecho internacional privado
en la Unión Europea (Regulation of the general part of Private International
Law in the European Union).

- Symeon c. Symeonides – The Brussels
  I Regulation and third countries.
- Víctor
  Gregorio Garrido R. – Las relaciones funcionales entre el forum y el ius en el
  sistema venezolano de derecho internacional privado (The functional relations
  between forum and ius in the Venezuelan system of private international law.

As we see, the contributions
are not just from Venezuelan scholars, but from important professors and researchers from Latin America, USA and Europe. All of them (as well as those included
in the other three volumes) pay due homage to an admirable person by offering new ideas and insights in several areas of law and related sciences.

The book will be
available for sale soon. Is a must have publication for anyone interested in Private International Law and Comparative Law.