Conference Report: "International Civil Procedure and Brussels Ibis" – 50th Anniversary of the T.M.C. Asser Instituut, Den Haag

In 2015, the T.M.C. Asser Institute celebrates its 50th anniversary (http://www.asser.nl/asser-50-years/). On this occasion, its Private International Law Section organized on 19 March 2015 the Symposium "International Civil Procedure and Brussels I bis".

The first panel discussed recent developments on the EU level in the context of the Brussels I bis Regulation. Ian Curry-Sumner, Voorts Juridische Diensten, presented thoughts on a possible future recast of Brussels II bis. The Commission conducted a consultation on the functioning of this Regulation from 15 April 2014 until 18 July 2014 (http://ec.europa.eu/justice/newsroom/civil/opinion/140415_en.htm) and published results (https://ec.europa.eu/eusurvey/publication/BXLIIA) but beyond these steps no further action has been taken so far. According to Article 65 of the Regulation the Commission should have presented no later than 1 January 2012 its first report on the application of the Regulation, based on information by the Member States, and should have accompanied this Report with proposals for adaption if necessary. Curry-Sumner submitted several of such proposals, e.g. in relation to making more precise the geographical scope of the Regulation or for making the Regulation more coherent with the Hague Convention on Protection of Children in order to reduce complexity in international cases.

Andrea Bonomi, Université de Lausanne, presented procedural issues of the Succession Regulation. He discussed the jurisdictional system of the Regulation as being one of comprehensive scope leaving no room for residual jurisdiction (except for Article 19). Bonomi drew attention to the risk of concurring proceedings under the subsidiary jurisdiction of Article 10, coupled with lis pendens rules in Article 17 that are limited to concurring proceedings before the courts of Member States. Given various „correction mechanisms" for „reuniting" *forum* and *ius* such as e.g. in Article 6 lit. a empowering the court seized to

exercise discretion to decline jurisdiction, the question was raised whether the dogma of legal certainty so far excluding *forum non conveniens doctrines* may become or even may have already become obsolete. The author of these lines asked whether the broad definition of „court“ in Article 3(2) may possibly include arbitral tribunals since the Succession Regulation does not exclude „arbitration“ as opposed to, for example, the Brussels I bis Regulation in its Article 1(2) lit. d. Even if arbitral tribunals are no „courts“ in the sense of the Succession Regulation the question of potential effects of the Succession Regulation on arbitration remains. One may hold that the Regulation implicitly establishes a fully mandatory system that excludes the derogation of the jurisdiction of the (Member) state courts, one may also hold that the Regulation leaves the decision about the arbitrability to the applicable national law but requires an arbitral tribunal with a seat in a Member State to apply the choice-of-law rules provided for by the Regulation, one may finally hold that arbitration is not affected in any way by the Regulation despite its silence on this issue.

Francisco Garcimartín Alférez, Universidad Autónoma de Madrid, reported that the Commission evaluated the Insolvency Regulation positively in principle but identified certain needs for reform (Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1346/2000 on insolvency proceedings, COM(2012) 744 final, p. 2 et seq.). These relate to (1) the inclusion of pre-insolvency proceedings, (2) the precision of the central connecting factor of the COMI, (3) the better coordination of main and secondary proceedings, (4) the publicity of insolvency proceedings and (5) insolvency of groups of companies. As regards the inclusion of pre-insolvency proceedings, Garcimartín pointed out that under the recast the English scheme of arrangement would still not be covered. He further explained the new system of rebuttable presumptions for establishing the COMI including „suspect periods“ of three and six months respectively in which the presumptions do not apply. Article 6 now allows consolidating insolvency and related non-insolvency proceedings. A large part of the new provisions concern duties of cooperation in case of insolvency of groups of companies (Chapter V). Garcimartín expressed scepticism as to the benefit and practical impact of these provisions. The recast of the Insolvency Regulation was adopted by the European Council last week, and the European Parliament will presumably adopt it in May. Most of the provisions will not take effect until 2017.

Finally, Jasnica Garasic, University of Zagreb, explained the system and details of the European Account Preservation Order. Garasic made clear that the EAPO allows creditors to preserve funds in bank accounts under the same conditions in all Member States of the EU (except the UK and Denmark) without changing the national legal systems. Rather, creditors are able to choose the interim protection procedure of the EAPO in cross-border cases.

The second panel focused on the Brussels I bis Regulation and forum selection clauses. Xandra Kramer, Erasmus University Rotterdam, provided for data material on the frequency of the use of forum selection clauses and the various interests and aims involved, e.g. choosing a forum because of an interest in the substantive *lex fori* or avoiding certain fora etc. Kramer also showed for the USA that forum shopping seems to pay off since the success rate of claims after referring the proceedings to another court on the grounds of *forum non conveniens* drops from 58% to 29%. As regards the Hague Forum Selection Convention, it was reported that the deposit of the ratification by the EU is expected for July which means that three months later the Convention will enter into force.

Christian Heinze, University of Hannover, explained the new lis pendens rules in Articles 29 et seq. of the Brussels I bis Regulation. He made clear to what extent the new rules rely on previous concepts or concepts from the Hague Convention and how far these rules introduce true novelties. In particular, Articles 33 et seq. were scrutinized and compared to traditional *forum non conveniens* notions. Heinze suggested that as opposed to *forum non conveniens* doctrines, Articles 33 et seq., in particular in light of Recital 23 and 24, do not allow to take account of choice of law or substantive law aspects but only of genuinely procedural aspects when it comes to the question whether the second seized Member State court should stay its own proceedings. Heinze also drew attention to the fact that taking account of the prospects of recognition of the future judgment from the earlier third state proceedings inevitably threatens uniformity since recognition of third state judgments is subject to non-unified national law of the Member States – as does the question whether a proceeding is "pending" in the sense of Articles 33 et seq.

Finally, Vesna Lazi?, T.M.C. Asser Instituut, Den Haag, presented on the protection of weaker parties in connection with forum selection and arbitration clauses. Lazi? particularly drew attention to the protection under the Unfair

Terms in Consumer Contracts Directive. Indeed, lit. q of Schedule 2 provides that clauses excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract, may be held unfair. Even if "arbitration" is excluded from the scope of the Brussels I bis Regulation this Regulation and its protective provisions for consumers may still serve as a measure for assessing whether the consumer's right to take legal action is unduly hindered.

In the discussion, the author of these lines asked the panel what standard should be applied for assessing whether there is an "agreement" in the sense of Article 31(2). If there is such an agreement in favour of a Member State court, a non-chosen Member State court must stay its own proceedings, as soon as the "chosen" court is seized as well. There were different views on this crucial issue for the functioning of the new *lis pendens* rule. For example, it was held that this was a non-issue since it was proof enough for a high likeliness of an agreement if the defendant in the first proceedings before the non-chosen court starts instituting further proceedings before the chosen court. However, if a party is determined to abuse as aggressively as possible the mechanisms of the *lis pendens* rule, things might well be different and another type of torpedo may emerge. The majority held that the non-chosen court should at least have the power to review the existence of an agreement to a certain extent. Indeed, Recital 22 Sentence 4, according to which the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute before it, should not be understood as excluding any review.

The third panel dealt with enforcement under the Brussels I bis Regulation. Ilaria Pretelli, Swiss Institute of Comparative Law, Lausanne, discussed the regime for provisional measures, Marta Requejo Isidro, Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg, reported on enforcement under Brussels I bis and under special European civil procedure Regulations and finally Paul Beaumont analysed the Brussels I bis Regulation in relation to other instruments of unification on the global level, in particular in relation to the Lugano Convention, the Hague Judgments Project and the 1958 New York Convention on the recognition and enforcement of arbitral awards in

light of Article 73(2) (Regulation "shall not affect" the 1958 Convention) and Recital 12 (Convention "takes precedence" over Regulation) of the Regulation. In essence, Beaumont suggested a general priority of arbitral awards over judgments about the same issue between the same parties rendered by Member State courts, even if the award comes years later than the judgment. In the discussion it was made the observation that this approach may conflict with *res iudicata* principles and thus may violate the public policy in the sense of Article V(2)(b) New York Convention which would of course be a matter of interpretation of the New York Convention as such.

It will be no surprise for those who know about the excellence of the Asser Instituut to be informed that the Symposium provided for first-class analysis and discussion of most central and current trends and developments in International Civil Procedure of European provenance. The large audience of the Symposium was perfectly right not only in congratulating the Institute to its 50th birthday but also the organisers of the birthday party.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 2/2015: Abstracts

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

Moritz Brinkmann, **„Clash of Civilizations" oder effektives Rechtshilfeinstrument? Zur wachsenden Bedeutung von discovery orders nach Rule 28 U.S.C. § 1782(a)**
The author analyses two recent decisions by U.S. federal courts on Rule 28 U.S.C. § 1782(a). Under this rule a court may grant judicial assistance with respect to a foreign or international tribunal by ordering the respondent "to give his testimony or statement or to produce a document or other thing". The decision of the

District Court for the Southern District of New York in In re Kreke concerns inter alia the question whether discovery under § 1782(a) is available also with respect to documents which are not located in the U.S. The CONECEL case, decided by the Court of Appeals for the Eleventh Circuit, touches upon the highly contested issue whether under § 1782(a) judicial assistance may also be obtained with respect to arbitration tribunals.

Peter Mankowski, **International Jurisdiction in Insurance Matters: Professional Lessor as Injured Party and Standardized, not Case-by-case Assessment of Need of Protection**
The injured party can sue its opponent's liability insurer at its own domicile under Art. 11 II in conjunction with Art. 9 I lit. b Brussels I Regulation/Art. 13 II in conjunction with Art. 11 I lit. b Brussels Ibis Regulation. This holds true also where the injured party is not a natural person but a legal entity. Likewise, it does not matter whether the injured party is a professional. Generally, the protective regimes of the Brussels I/Ibis Regulations including the regime governing insurance matters apply irrespective of whether any protected party deserves protection measured by a concrete yardstick. Conversely, the standard is abstract and typical in line with efficiency, legal certainty and predictability of jurisdiction.

Carl Friedrich Nordmeier, **Coordination of parallel proceedings according to Art. 27 Brussels I Regulation and exclusive jurisdiction – including an analysis of the scope of Art. 22 no. 1 Brussels I Regulation**
Parallel proceedings are coordinated by Art. 27 Brussels I Regulation on the ground of the principle of priority according to which the court first seized examines its international jurisdiction. The present judgment breaks this principle if the court second seized bases its jurisdiction on an in rem claim (Art. 22 no. 1 Brussels I Regulation). In the first part, this article argues that Art. 22 no. 1 Brussels I Regulation covers neither proceedings for the consent to register the transfer of ownership with the German Land Register nor proceedings for a declaration that the exercise of the right of pre-emption under German Law was ineffective and invalid. The second part shows that the reason for strengthening the court second seized – which can be identified in Art. 31 no. 2 Brussels I Regulation (recast) as well – is the protection of the especially close link between the matter in dispute and the place of trial. In contrast, the reliability to predict the (non-)recognition of the judgment which the court first seized may hand down cannot serve as a justification to break the principle of priority. Other potential

reasons of non-recognition than the infringement of an exclusive jurisdiction do not allow the court second seized to continue its proceedings.

Hannes Wais, **The concept of a particular legal relationship in Article 23 Brussels I Regulation and application of Article 5 No. 1 Brussels I Regulation in matters relating to a non-competition clause**
The Higher Regional Court of Bamberg had to deal with mainly two questions: Whether, pursuant to Art 23 (I) Brussels I Regulation, choice of court agreements in sales contracts had a binding effect for a dispute arising from negotiations over a distribution agreement between the same parties (1), and whether a claim, based on an alleged violation of a non-competition agreement, qualified as contractual, pursuant to Art 5 No. 1, or as tort, pursuant to Art 5 No. 3 Brussels I Regulation (2). The court answered the first question in the negative. With respect to the second question, the court held that this claim, even though it may qualify as tort under national law, had to be qualified as contractual under the Brussels I Regulation.

David-Christoph Bittmann, **The legitimacy of substantive objections against a European Enforcement Order in the state of enforcement**
In its judgment of 21/11/2014 the Oberlandesgericht Cologne had to deal with the controversial question whether it should be permitted to a debtor to contest a European Enforcement Order in the state of enforcement by the way of substantive objections, raised in a remedy like the Vollstreckungsabwehrklage according to § 767 of the German Code of Civil Procedure (ZPO). To answer this question, the Oberlandesgericht had to deal with two issues: First, the Senate stated that the courts of the state of enforcement have jurisdiction for such remedies according to art. 22 no. 5 of Reg. (EC) 44/2001. In its argumentation the Oberlandesgericht refers to the judgment of the ECJ in the case Prism Investments BV. Second, the Senate stated, that § 1086 ZPO, which gives a debtor the possibility to raise substantive objections by the way of the Vollstreckungsabwehrklage, is not in contrast to the provisions of Reg. (EU) 805/2004. This judgment is in line with the majority of legal writers. An analysis of the wording, the systematic and the objective of Reg. (EU) 805/2004 shows however, that § 1086 ZPO violates European Law, because the regulation concentrates substantive objections at the courts of the state of origin. A comparison with the procedure of declaration of enforceability according to Reg. (EC) 44/2001 confirms this result.

Leonhard Hübner, **Cross-border change of legal form – implementation of ECJ's Vale judgment into German law**

The following article discusses the national implementation of the cross-border change of legal form by means of transfer of the statutory seat against the background of the Vale judgment of the ECJ. First, it treats the issues arising in case of a cross-border change of legal form to Germany. These include the missing legal foundation, the treatment of the de-registration of the company from the foreign register, and the protection of the stakeholders. It then examines the reverse situation – the cross-border change of legal form to a foreign country.

Thomas Rauscher, **Unbilligkeit bei Versorgungsausgleich mit Auslandsbezug**

Both decisions in comment apply the hardship clause in article 17 (3) (2) introductory law to the civil code (EGBGB). The article explains intertemporal and substantial consequences of the coming into force of the Rome III-Regulation on the law applicable to divorce as far as the distribution of pension rights (Versorgungsausgleich) is concerned. As to the boundaries between the international hardship clause under article 17 (3) 2, the material hardship clause (para 27 Law on the Distribution of Pension Rights, VersAusglG) and forfeiture of rights the author favors a narrow interpretation of the scope of application of the international clause.

Kurt Siehr, **Habitual Residence of Abducted Children before and after Their Return**

Two children, born in 2002 and 2003, had been abducted by their mother from La Palma (Spanish Canary Islands) to Germany. Both parents had custody rights (patria potestad) according to Spanish law. In Germany the parents agreed on 13 February 2013 that the children had to be returned to La Palma. In March 2013 the children were brought back by their mother. In La Palma the Spanish court declined jurisdiction because, according to Spanish law, the mother is entitled to take the children to Germany. She returned with them to Germany and here the father applied for enforcement of the agreement of 13 February 2013 and for an order to return the children to La Palma. The mother argued that she had already performed her obligation by returning the children to La Palma in March 2013. The father, however, objected and was of the opinion, supported by a decision of the Court of Appeal of Karlsruhe of 14 August 2008, that a child is only returned if it had established habitual residence in the state of origin. But this was not the

case in the present situation because the children, after a short visit in La Palma in March/April 2013, returned to Germany. The Court of Appeal for the German State of Schleswig-Holstein (Oberlandesgericht in Schleswig), seized of this matter, finally decided that the duty of the mother to return the children had been performed in March 2013. The establishment of a new habitual residence in the state of origin is not necessary for the performance of the duty to return. Therefore no new return order is given by the court. – Discussed is the habitual residence of an abducted child before and after return to the country of origin from which the child has been abducted. Mentioned is also the English case O v. O (Abduction: Return to Third Country), [2013] EWHC 2970 (Fam), in which the "return" of a child was ordered to a country (USA) from which the child had not been abducted and in which the child was not habitually resident immediately before being abducted. The child had to be "returned" to the state in which the parents agreed to establish their new habitual residence after having given up their former habitual residence in Australia.

Alexandra Hansmeyer, **Legal effects of a third party notice (Streitverkündung) filed in German court proceedings on court and arbitration proceedings in China**
As the world's second largest economy and its largest exporter, China's manufacturers occupy an increasing number of positions across the supply chains of a wide range of industries. With Chinese manufactured or processed products being sold globally, many international product liability cases require bringing claims up the supply chain against Chinese manufacturers. Third party notices ("Streitverkündung") provide a mechanism for courts to recognize specific aspects regarding such claims made in a preceding court proceeding. The article examines the legal impact of third party notices filed in German court proceedings against a Chinese party on subsequent proceedings in Chinese civil courts or by the China International Economic and Trade Arbitration Committee ("CIETAC"). The article concludes that according to the current Chinese law and state of jurisprudence, third party notices have no legally binding effect on subsequent proceedings in China, neither with regard to ordinary courts, nor with regard to CIETAC arbitrations. Further, even if a Chinese party accedes to German court proceedings, such action, according to Chinese contract law, cannot be deemed as an implicit waiver of an arbitration clause in an underlying Chinese law contract.

Marc-Philippe Weller/Alix Schulz, **Maintenance obligations and Legal kidnapping – Jurisdiction at the illegally established habitual residence?**
The following article discusses "habitual residence" as a ground for jurisdiction in maintenance claims according to Art. 5 Nr. 2 Brussels-I-Regulation as well as pursuant to Art. 3 of the Regulation n° 4/2009 on maintenance obligations. In cases of legal kidnapping by one of the parents, it may be worth discussing whether habitual residence can be established in the destination state, even if the change of the child's living environment itself has been illegal.

Carl Zimmer, **The change in the habitual residence under the 2007 Hague Maintenance Protocol**
The Austrian Supreme Court's case gave rise to two crucial questions concerning the application of the Hague Maintenance Protocol from 2007: First, whether a change of habitual residence may already occur as from the moment of relocation to another State and secondly, whether Art. 4 para 3 or Art. 3 para 1 Hague Maintenance Protocol applies when, at the moment of commencement of proceedings, the maintenance creditor and the maintenance debtor have their habitual residence in the same state. While the second instance court addressed both questions, the Austrian Supreme Court did not: the father's appeal was dismissed because of a lack of motivation. The author supports the solution of the second instance court to grant the claimant a choice of procedure with regard to Art. 4 para 3 Hague Maintenance Protocol. The court's concept of habitual residence based on a fixed time-criterion, however, seems questionable.

Tort jurisdiction and pure economic loss – Request preliminary ruling

Written by Laura van Bochove, Erasmus University Rotterdam

In January, the Dutch Court of Cassation referred several questions on Article

5(3) Brussels I Regulation to the CJEU for a preliminary ruling (Case C-12/15), including the questions how a court should establish 1) whether an economic loss is an ‘initial loss’ or a ‘consequential loss’ and 2) in which country economic losses occur.

Briefly stated, the facts of the case are as follows. In 1998, Universal Music International Ltd (part of the Universal Music Group) and Czech record company B&M agreed upon the purchase of 70 per cent of the shares of B&M by companies within the Universal Music Group. In addition, parties agreed that in 2003, Universal would buy the remaining 30 per cent. In the draft version of the Letter of Intent, the intended purchase price of all shares equalled five times the annual profit of B&M. For the drafting of the definitive share option agreement regarding the 30 per cent of the shares, the Universal Music Group turned to Czech law firm A. On 5 November 1998, a share option agreement was concluded by Universal Music International Holding B.V. (hereafter: Universal Music), seated in the Netherlands, B&M and its shareholders. However, due to an alleged mistake of A.’s employee in the drafting of the agreement, the price Universal had to pay for the shares was increased radically. In 2003 Universal Music bought, as agreed, the remaining 30 per cent of the shares. It calculated, on the basis of the intended purchase price, that it should pay about 313,000 euros. B&M’s shareholders, however, calculated the price of the shares on the basis of the formula in the final agreement, resulting in an amount of more than 30 million euros. Parties went to arbitration and in 2005 Universal Music and B&M’s shareholders settled their dispute for 2.6 million euros.

Universal Music then commenced legal proceedings before the court of Utrecht (the Netherlands) against the law firm and its employee for the amount of 2.7 million euros, being the difference between the intended price of the shares and the settlement plus the costs for the arbitration proceedings and the settlement. The defendants argued that the Utrecht court did not have jurisdiction. In first instance, the court denied jurisdiction, on the basis that none of the facts giving rise to the damage occurred in the Netherlands and that the connection with the Netherlands was too weak to accept jurisdiction. The Court of Appeal followed this decision and held that the court of the place where pure economic loss was suffered cannot accept jurisdiction on the basis of Article 5(3) Brussels I Regulation. Universal Music then filed an appeal in cassation.
The Court of Appeal’s ruling is in line with the majority opinion long held in Dutch

scholarship that the place of (initial) pure economic loss cannot be considered the place where the damage occurred or the ‘Erfolgsort’. Although one could argue that the CJEU already in its 2004 decision in Kronhofer (C-168/02) suggested otherwise, the Dutch Court of Cassation deemed it necessary to ask for a preliminary ruling on this topic. However, taking into consideration the recent CJEU decision in Harald Kolassa v. Barclays Bank plc (C-375/13), which was published after the Court of Cassation referred its questions to the CJEU, it is likely that the matter will be viewed as an ‘acte éclairé’, since the CJEU rules that the court of the place where pure economic loss occurred as a direct consequence of misleading information in a prospectus, can establish jurisdiction on the basis of Article 5(3) Brussels I Regulation. The Kolassa judgment also provides an affirmative answer to one of the other questions of the Court of Cassation, namely whether the court in deciding on its jurisdiction should also take into account the defendant’s arguments regarding jurisdiction.

However, the two remaining questions referred to the CJEU for a preliminary ruling have not yet been answered. The Court of Cassation informs how a national court should establish whether the damage should be considered initial economic loss or consequential economic loss, and how a national court should establish whether the economic damage has occurred in its territory. In the case at hand, the question is whether the difference between the intended share price and the settlement eventually paid and the costs related to arbitration and settlement should be regarded as initial economic loss, and if so, if the Netherlands should be considered the place where the damage occurred, since these costs were paid at the expense of Universal Music’s assets (bank account) located in the Netherlands.

Since the boundaries between initial and consequential economic loss can be hard to delineate and the localisation of pure economic loss often raises problems, it would be useful if the CJEU would provide courts with more guidance. It will be interesting to see whether the CJEU is willing to extent its ruling in Kolassa to all pure economic loss cases and adopt as a general rule that in cases of pure economic loss the Erfolgsort is the place where the victim suffers the loss to its assets, in this case the bank account from which the amount was transferred. Yet, the CJEU could also rule that the Kolassa judgment should be interpreted restrictively and that it only applies to private investors suffering economic damage on their investments due to misinformation.

To be continued…

International Seminar on Private International Law (Program)

The program of the new edition of the International Seminar on Private International Law organized by Prof. Fernández Rozas and Prof. de Miguel Asensio, to be held in Madrid on 21-22 May 2015, is final and downloadable in its entirety here.

Venue:

Salón de Grados de la Facultad de Derecho de la Universidad Complutense, Avda. Complutense, Ciudad Universitaria, Madrid.

Main speakers:

> *The distinction between admissibility and jurisdiction in international arbitration*- **Friedrich Rosenfeld**, Hamburg.
>
> *La dimensión procesal internacional en la Ley de navegación marítima* – **Juan José Álvarez Rubio**, País Vasco University.
>
> *La aplicación de la regulación de la Ley de Navegación Marítima sobre los contratos de utilización del buque y de los contratos auxiliares de la navegación en los supuestos internacionales* – **Rafael Arenas García**, University Autónoma – Barcelona.
>
> *The influence of the ECtHR case law on European Private International Law* – **Burkhard Hess,** Max Planck Institute Luxemburg
>
> *Claves de la coherencia del DIP europeo: la jurisprudencia del TJUE*– **Marta Requejo Isidro**, Max Planck Institute Luxemburg
>
> *La Orden europea de retención de cuentas (Reglamento 655/2014)* – **P.**

Jiménez Blanco, Oviedo University.

La reconnaissance des jugements après la refonte du règlement Bruxelles I – **Louis d'Avout**, París 2- Panthéon-Assas University.

Nuevas reglas internacionales sobre las cláusulas de elección de foro en contratos internacionales: el convenio de La Haya y el reglamento Bruselas Ibis – **Marta Pertegás Sender**, Hague Conference of Private International Law

Multiplicity of objective connecting factors and their relationship to each other: Comments on Art. 4 Rome I Regulation- **Franco Ferrari**, New York University

Cross-border protection measures in the European Union – **Anatol Dutta**, Regensburg University

Further information: patricia-orejudo@ucm.es

Registration: by email to seminariodiprucm@gmail.com

Publication of the Rules and Commentaries of the Draft Text of the OHADAC Principles on International Commercial Contracts

Prof. Sixto Sánchez Lorenzo (University of Granada) has kindly provide the following information.

The rules and commentaries of the draft text of the OHADAC Principles on International Commercial Contracts have been published in Spanish and can be downloaded from the OHADAC website.

The draft text of the OHADAC Principles on International Commercial Contracts is an optional regulation of international contracts, a convergence of legal cultures in the Caribbean. It seeks to promote legal security of international trade in the Caribbean region. The rules and commentaries to the draft have been elaborated under the scientific coordination of Prof. Dr.h.c. **Sixto Sánchez Lorenzo** (Chair), Professor of private international law at the University of Granada, Member of the International Academy of Comparative Law, international arbitrator and Member of IHLADI. This scientific coordination was carried out as part of a partnership initiated by the association ACP Legal in collaboration with the association Henri Capitant. The law faculties of the Universities of Granada and Madrid (Complutense) are also heavily involved in the process, in conjunction with Caribbean lawyers.

The draft is being translated and will also be published in English and French in the coming weeks. The mission of translation is led by CERIJE (Centre for Interdisciplinary Research in Juritraductologie) under the coordination of Mrs. **Sylvie Monjean Decaudin**.

Note that other draft OHADAC texts available on the www.ohadac.com website are:

- The draft OHADAC Model Law Relating to private international law in its original version, drafted under the scientific coordination of Prof. Dr.h.c. **José Carlos Fernandez Rozas**: Director of the Department of public and private international law at the Complutense University of Madrid, Associated of the Institute of International Law, international arbitrator and Member of the IHLADI.
- The draft OHADAC Model Law on Commercial Companies is available in the three languages of the OHADAC project, namely French, English and Spanish. It has been drafted under the scientific coordination of Prof. Dr. **Rodolfo Dávalos Fernández**: Chair (Professor) of private international law and business law at the University of Havana, President of the Arbitration Court of Cuba, international arbitrator and Member of the IHLADI.

Coming soon:

- The draft OHADAC Arbitration and Conciliation Rules: drafted under the scientific coordination of Prof. Dr. **Rodolfo Dávalos Fernández**.

Thoughts, suggestions and/or comments on the draft OHADAC model law publications are welcome and will be taken into consideration so that they contribute to the success of the OHADAC reform, which will lay the foundations for the genuine regional integration of countries in the Caribbean zone.

For further information, please contact:

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ACP LEGAL / OHADAC.com

Funded PhD Positions/Call for Applications

The **International Max Planck Research School for Successful Dispute Resolution in International Law (IMPRS-SDR)** is a doctoral school located in Heidelberg (Germany) and Luxembourg. Founded in 2009, the Research School's aim is to examine and analyse different mechanisms for solving international disputes. The participating institutions are the **Max Planck Institute Luxembourg** for International, European and Regulatory Procedural Law, **Heidelberg University**, the **University of Luxembourg**, the **Max Planck Foundation** for International Peace and the Rule of Law, and the **Max Planck Institute** for Comparative Public Law and International Law (both in Heidelberg). In cooperation with the **Permanent Court of Arbitration** in The Hague, the IMPRS-SDR runs an internship program in international arbitration for its doctoral students.

Ten PhD positions are available from June 1, 2015. An additional five positions will become available in January 2016. Applicants who are admitted to the

IMPRS-SDR will pursue their research within the framework of the Research School. The IMPRS-SDR will offer funding in the form of scholarships and research contracts to its new members.

The deadline for applications is **April 1, 2015.**

To view the complete call for applications, please visit www.mpi.lu/imprs-sdr/. To view the official poster click here.

Paraguay Adopts New Law on International Contracts

On January 15th, Paraguay has adopted a new law on the Law Applicable to International Contracts. A press release of the Paraguayan Presidency is available here.

The first part of the law reproduces almost literally the Hague Principles on Choice of Law in International Commercial Contracts. Perhaps pioneering in the field, the law fully recognizes choice of non state law outside of the arbitration context.

The second part deals with the applicable law absent a choice (a matter not addressed by The Hague Principles) and transcribes -also almost literally- the OAS Interamerican Convention on Applicable Law in International Contracts (1994 Mexico Convention).

An English translation of the draft (which was slightly modified) is available here.

H/T: Jose Moreno Rodriguez, Gilles Cuniberti

TDM 6 (2014) – Dispute Resolution from a Corporate Perspective

TDM has just published a special issue entitled “Dispute Resolution from a Corporate Perspective,” edited by Kai-Uwe Karl (General Electric), Abhijit Mukhopadhyay (Hinduja Group) and Heba Hazzaa (Cairo University). As the title reflects, this issue brings the corporate voice to the debate about reforming alternative dispute resolution and effective conflict management.

It is no surprise that corporations expect a “service provider” mindset from the legal profession, and lawyers from both sides of the corporate structure tend to respond differently to those needs. Legal “re”training is inevitable if lawyers are observing the emerging trends in conflict resolution. After years of arbitration reign in the world of alternative dispute resolution (ADR), we are witnessing a rise in mediation and negotiations. This development affects legal training and practice in numerous ways. As we see throughout the special, corporate perspective prompts innovation in dispute resolution management in a variety of ways.

Here are the contents of this special issue:

EDITORIAL

Introduction TDM Special issue on “Dispute Resolution from a Corporate Perspective”
by H. Hazzaa
K. Karl, GE Oil & Gas
A. Mukhopadhyay, Hinduja Group

DISPUTE RESOLUTION FROM A CORPORATE PERSPECTIVE

Inside Counsel Should be Active in Mediation
by D.H. Burt, DuPont Company

Business Mediation, ADR and Conflict Management in the German Corporate

Sector – Status, Development & Outlook
by L. Kirchhoff, Institute for Conflict Management, European University Viadrina
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Case Management in Transnational Disputes: The Benefits of Having a Litigation Action Plan
by J.W. de Groot, Houthoff Buruma
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Guided Choice Dispute Resolution Processes: Reducing the Time and Expense to Settlement
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P.M. Lurie, Schiff Hardin LLP

Mediation Skills for Lawyers
by G. Carmichael Lemaire, www.carmichael-lemaire.com

Mediation for Corporate Disputes: The Alternative Dispute Resolution Mechanism to end all Corporate Disputes?
by J. Brocas, Linklaters LLP

Early Resolution of Disputes – an Expert's Perspective
by H. de Trogoff, Accuracy
R. Harfouche, Accuracy

Interview on negotiations with Professor David Lax (Managing Principal) Lax Sebenius LLC The 3D Negotiation™ Group
by K. Karl, GE Oil & Gas
D. Lax, Lax Sebenius LLC – The 3-D Negotiation™ Group

Interview on the dynamics of conflict with Professor Bernard Mayer, The Werner Institute at Creighton University, Canada
by K. Karl, GE Oil & Gas
B. Mayer, The Werner Institute at Creighton University, Canada

Common Non Legal Objections to Negotiation Clauses
by F. Bettencourt Ferreira, Cuatrecasas, Gonçalves Pereira

Challenges and Opportunities for Dispute Resolution Practitioners and Institutions in the Changing Legal Market

by K. Campbell-Wilson, Arbitration Institute of the Stockholm Chamber of Commerce

The Future of DISpute Resolution – Tailored, Proficient, Affordable
by R. Mosch, German Institution of Arbitration (DIS)

“Let’s Talk”: Using Mobile Technology to Predict and Prevent Corporate-Community Disputes in the Extractive Industry
by A. Heuty, Ulula
L. Pappagallo, Ulula

Artificial Intelligence can Improve Contract Intelligence, Reduces Legal Risks and Dispute Costs
by S. Copeland, Hawkins Parnell Thackston & Young LLP

Over the Horizon: How Corporate Counsel are Crossing Frontiers to Address New Challenges
by KPMG, www.kpmg.com

Companies in Conflict: How Commercial Disputes Are Won – A Discussion of Some of the Key Issues Arising From the Report
by S. Dutson, Eversheds LLP
C. Redmond, Eversheds LLP

Alternate Dispute Resolution from Indian Corporate Perspective – Analysis and Trends
by K.M. Rustagi, Patanjali Associates

Private International Law Act (Dominican Republic)

On December 18, 2014, the Official Gazette of the Dominican Republic published the Private International Law Act of the Republic, Law 544-14, of 15 October 2014. The Act has been conceived as an all-encompassing one: According to its

Art. 1 it aims to “regulate the international private relationships of civil and commercial nature in the Dominican Republic, in particular: the extent and limits of the Dominican jurisdiction; the determination of applicable law; the conditions for recognition and enforcement of foreign decisions“. The broad approach is confirmed all throughout the text, which not only provides for grounds of jurisdiction, conflict of laws rules or rules on recognition and enforcement, but also for solutions to common practical problems experienced in those areas – such as situations of *lis pendens*, *forum non conveniens* linked to the localization abroad of evidence in the case at hand, or the proof of the applicable foreign law. Insolvency and arbitration matters are excluded from the scope of the new Act which, conversely, adopts a wide understanding of PIL – see for instance Art. 11.7, on exclusive jurisdiction for proceedings to establish Dominican nationality.

The text (in Spanish) can be downloaded here.

Symposium International Civil Procedure – Asser Institute 19 March 2015

PLEASE NOTE: THIS CONFERENCE IS FULLY BOOKED, NO SPACES AVAILABLE!

To celebrate the 50th anniversary of the **T.M.C. Asser Institute** and its Private International Law department it organises the symposium:

International Civil Procedure and Brussels Ibis

on 19 March 2015

The main theme will be international civil procedure, with an emphasis on the new Brussels Ibis Regulation. Recent developments in international civil procedure and specific features of the Brussels Ibis Regulation will be discussed.

Time: 10.30 – 17.30 hrs, followed by a reception
Venue: T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, 2517 JN The Hague, the Netherlands

Please register for this free event before **1 March 2015**.

Programme:

10:30 Registration –Welcome
11:00 Recent Developments on the EU Level
– The future recast of Brussels IIbis *(Ian Curry-Sumner, Voorts Juridische Diensten*)
– Regulations on Wills and Successions: procedural issues (*Andrea Bonomi, Université de Lausanne*)
– Revision of the Insolvency Regulation (*Francisco Garcimartín Alférez, Universidad Autónoma de Madrid*)
– European Account Preservation Order (*Antoinette Oudshoorn, T.M.C. Asser Instituut*)

13.00 Lunch
14.00 Brussels Ibis Regulation and Forum Selection Clauses
– Choice of Court under the Brussels Ibis Regulation and the 2005 Hague Forum Selection Convention (*Xandra Kramer, Erasmus University Rotterdam*)
– Revised lis pendens rule in the Regulation Brussels Ibis (*Christian Heinze, Leibniz Universität, Hannover*)
– Weaker Parties disputes and forum selection and arbitration clauses (*Vesna Lazic, T.M.C. Asser Instituut*)

15:30 Coffee/Tea Break
16:00 Brussels Ibis Regulation and Enforcement
– Provisional Measures (*Ilaria Pretelli, Swiss Institute of Comparative Law, Lausanne*)
– Enforcement in Brussels Ibis and enforcement in special European civil procedure Regulations (*Marta Requejo Isidro, Max Planck Institute, Luxembourg*)
– Brussels Ibis in relation to other instruments of unification on the global level

(*Paul Beaumont, University of Aberdeen*)

17:30 Reception