Fellowship Announcements

With thanks to Professor S.I. Strong for bringing these openings to our attention, there are serveral fellowships currently accepting applications that might be of interest to our readers.

The first position is the Brandon Research Fellowship at the Lauterpacht Centre for International Law at the University of Cambridge in the United Kingdom. The Brandon Fellowship supports research on various topics of international public and private law, including international arbitration. Further details are available at http://www.lcil.cam.ac.uk/news/content/brandon-research-fellowships-international-law-2014 . The closing date for applications is September 23, 2013.

The second position is also based at the Lauterpacht Centre. This fellowship is sponsored by the British Red Cross and involves research relating to the International Committee of the Red Cross Study on Customary International Humanitarian Law. More information can be found at http://www.redcross.org.uk/About-us/Jobs or by contacting Elizabeth Knight on EKnight@redcross.org.uk or 020 7877 7452 quoting ref number UKO 46734. The closing date is September 22, 2013.

The final position is the U.S. Supreme Court Fellowship in Washington, D.C. Four fellowships are awarded each year, and several of the positions provide the opportunity to consider matters relating to international and comparative law. Although the fellowships are affiliated with the U.S. Supreme Court, there does not appear to be a requirement that candidates be U.S. nationals, although applicants from outside the United States should check. The program has been significantly revamped this year and is now open to both junior and mid-career candidates. Further information is available at http://www.supremecourt.gov/fellows/default.aspx. Applications are due by November 15, 2013.

Hague Academy, Summer Programme for 2014

Private International Law

Second Period: 28 July-15 August 2014

General Course

4-15 August

Arbitration and Private International Law: George A. BERMANN, Columbia University School of Law

Special Courses

28 July-1 August

* Renvoi *in Private International Law – The Technique of Dialogue between Legal Cultures:* Walid KASSIR, Université Saint-Joseph

Legal Certainty in International Civil Cases: Thalia KRUGER, University of Antwerp

* *Circulation of Cultural Property, Choice of Law and Methods of Dispute Resolution:* Manlio FRIGO, University of Milan

4-8 August

Maintenance in Private International Law, Recent Developments: Christoph BENICKE, University of Giessen

* *The International Adoption of Minors and Rights of the Child:* María Susana NAJURIETA, University of Buenos Aires

11-15 August

Limitations on Party Autonomy in International Commercial Arbitration: Giuditta CORDERO-MOSS, University of Oslo

* *International Air Passenger Transport:* Olivier CACHARD, University of Lorraine

*in French, with English translation.

Woodward on Legal Uncertainty and Aberrant Contracts

William J. Woodward Jr. (Santa Clara Law School) has posted Legal Uncertainty and Aberrant Contracts: The Choice of Law Clause on SSRN.

> *Legal uncertainty about the applicability of local consumer protection can destroy a consumer's claim or defense within the consumer arbitration environment. What is worse, because the consumer arbitration system cannot accommodate either legal complexity or legal uncertainty, the tendency will be to resolve cases in the way the consumer's form contract dictates, that is, in favor of the drafter. To demonstrate this effect and advocate statutory change, this article focuses on fee-shifting statutes in California and several other states. These statutes convert very common one-way fee-shifting terms (consumer pays business's attorneys fees if business wins but not the other way around) into two-way fee-shifting provisions (loser pays winner's fees in all cases). As written, these statutes level the lopsided playing field created by the drafter and, indeed, may give consumers access to lawyers in cases where their claims or defenses are strong. But choice of law provisions, found in the same consumer forms, introduce near-impenetrable uncertainty into the applicability of those same statutes, thereby reducing or eliminating the intended statutory benefits. Statutory change is needed to restore the intended benefits of the*

otherwise applicable fee-shifting statutes (and of other local consumer protection similarly degraded by drafters' choice of law clauses); the article concludes by presenting a roadmap for state statutory reform.

PhD Positions in Private International Law in Luxembourg

The Faculty of Law of the University of Luxembourg will be seeking to recruit several PhD candidates in Private International Law.

Candidates should be PhD students who will be expected to work on their doctorate, to teach a few hours per week (one to three) and to contribute to research projects in private international law, mostly under my supervision. They are 3-year contracts, which can be extended for one year.

Ideally, candidates would hold a Master's degree in private international law or in international dispute resolution (litigation or arbitration). Their language skills should be sufficient to work in a multilingual environment. Skills in another social science (economics, political science, etc…) would be an advantage.

Applications should include:

- A motivation letter.
- A detailed curriculum vitae with list of publications and copies thereof, if applicable.
- A transcript of concluded university studies.
- The name, current position and relationship to the applicant, of one referee.

They should be sent to me by email (gilles.cuniberti@uni.lu). I am also available to answer any questions at the same address.

Deadline for applications: September 1st, 2013.

Brand on Implementing the 2005 Hague Convention

Ronald A. Brand (University of Pittsburgh School of Law) has posted Implementing the 2005 Hague Convention: The EU Magnet and the US Centrifuge on SSRN.

> *Competence for the development of rules of private international law has become more-and-more centralized in the European Union, while remaining diffused in the United States. Nowhere has this divergence of process in private international law development been clearer than in the approach each has so far taken to the ratification and implementation of the 2005 Hague Convention on Choice of Court Agreements. In Europe, ratification has been preceded by the 2012 Recast of the Brussels I Regulation, coordinating internal and external developments, and reaffirming Union competence for future developments, both internally and externally. In the United States, debate has arisen over whether the Convention should be implemented in a single federal statute – as was done for the New York Convention in the Federal Arbitration Act – or through state-by-state enactment of a Uniform Act promulgated by the National Conference of Commissioners on Uniform State Laws. These differences in approach are important to future negotiations in multilateral fora such as The Hague Conference on Private International law, UNCITRAL, and UNIDROIT. They demonstrate a coherence of approach within the EU which attracts not only its own Member States, but also external constituencies in international negotiations, and diffuse development of the law in the United States, which tends to make leadership in multilateral negotiations difficult.*

The paper is forthcoming in the *Liber Amicorum Alegrias Borras*.

TDM Special Issue: "Reform of Investor-State Dispute Settlement: In Search of A Roadmap."

Investor-State Arbitration has become a salient feature of international dispute settlement, but its continued vitality is not beyond reproach. I myself have waded into the debate with an article published this month in the ICSID Review. Furthering this dialogue, TDM is pleased to announce a forthcoming TDM special issue: "Reform of Investor-State Dispute Settlement: In Search of A Roadmap."

Co-edited by Jean E. Kalicki (Arnold & Porter LLP and Georgetown University Law Center) and Anna Joubin-Bret (Cabinet Joubin-Bret and World Trade Institute), this special issue will explore recent calls for reform of the investor-State dispute settlement system, along with the viability of five "reform paths" recently proposed for discussion by UNCTAD, the United Nations Conference on Trade and Development (see UNCTAD IIA Issues Note, "Reform of Investor-State Dispute Settlement: In Search of a Roadmap," 29-30 May 2013).

You can find an extensive call for papers on the TDM website.

Publication is expected in October or November 2013. Proposals for papers (e.g., abstracts) should be submitted to the editors by 15 September 2013. Contact info is available on the TDM website.

Brand on Challenges to Forum Non Conveniens

Ronald A. Brand (University of Pittsburgh School of Law) has posted Challenges to *Forum Non Conveniens* on SSRN.

> *This paper was originally prepared for a Panel on Regulating Forum Shopping:*

Courts' Use of Forum Non Conveniens in Transnational Litigation at the 18th Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium: Tug of War: The Tension Between Regulation and International Cooperation, held at New York University School of Law, October 25, 2012. The doctrines of forum non conveniens and lis alibi pendens have marked a significant difference in approach to parallel litigation in the common law and civil law worlds, respectively. The forum non conveniens doctrine has recently taken a beating. This has come (1) in its UK form as a result of decisions of the European Court of Justice, (2) through a lack of uniformity of application throughout the common law world, (3) as a result of legislation and litigation in Latin American countries, and (4) through the misapplication of the forum non conveniens doctrine in cases brought to recognize and enforce foreign arbitration awards. This article reviews those challenges, and considers the compromise reached in 2001 at the Hague Conference on Private International Law when that body was considering a general convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It concludes with thoughts on the importance of remembering that compromise and the promise it holds for bringing legal system approaches to parallel litigation closer together.

The paper is forthcoming in the *New York University Journal of International Law and Politics.*

Second Issue of 2013's Belgian PIL E-Journal

The second issue of the Belgian bilingual (French/Dutch) e-journal on private international law *Tijdschrift@ipr.be / Revue@dipr.be* was just released.

The journal essentially reports European and Belgian cases addressing issues of private international law, but it also offers academic articles. This issue includes two:

- Herman VERBIST – Transparency In Treaty Based Investor State Arbitration – The Draft Uncitral Rules on Transparency
- Thalia KRUGER en Britt MALLENTJER – Het kind dat een voldongen feit is

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UK Supreme Court Rules on Anti Suit Injunctions

Yesterday, the Supreme Court of the United Kingdom ruled in Ust-Kamenogorsk Hydropower Plant JSC (Appellant) v AES Ust-Kamenogorsk Hydropower Plant LLP (Respondent) that English courts have jurisdiction to injunct the commencement or continuation of legal proceedings brought in a foreign jurisdiction outside the Brussels Regulation/Lugano regime where no arbitral proceedings have been commenced or are proposed.

The Court issued the following Press Summary.

Background

The appellant is the owner of a hydroelectric power plant in Kazakhstan. The respondent is the current operator of that plant. The concession agreement between the parties contains a clause providing that any disputes arising out of, or connected with, the concession agreement are to be arbitrated in London under International Chamber of Commerce Rules. For the purposes of this appeal the parties are agreed that the arbitration clause is governed by English law. The rest of the concession agreement is governed by Kazakh law.

Relations between the owners and holders of the concession have often been strained. In 2004 the Republic of Kazakhstan, as the previous owner and grantor of the concession, obtained a ruling from the Kazakh Supreme Court that the arbitration clause was invalid. In 2009 the appellant, as the current owner and grantor of the concession, brought court proceedings against the respondent in Kazakhstan seeking information concerning concession assets. The respondent's

application to stay those proceedings under the contractual arbitration clause was dismissed on the basis that the Kazakh Supreme Court had annulled the arbitration clause by its 2004 decision.

Shortly thereafter the respondent issued proceedings in England seeking (a) a declaration that the arbitration clause was valid and enforceable and (b) an anti-suit injunction restraining the appellant from continuing with the Kazakh proceedings. An interim injunction was granted by the English Commercial Court and the appellant subsequently withdrew the request for information which was the subject of the Kazakh proceedings. However, the respondent remained concerned that the appellant would seek to bring further court proceedings in Kazakhstan in breach of the contractual agreement that such disputes should be subject to arbitration in London. As a result the respondent continued with the proceedings. The English Commercial Court found that they were not bound to follow the Kazakh court's conclusions in relation to an arbitration clause governed by English law and refused to do so. The Commercial Court duly granted both the declaratory and final injunctive relief sought.

The appellant appealed to the Supreme Court of the United Kingdom on the grounds that English courts have no jurisdiction to injunct the commencement or continuation of legal proceedings brought in a foreign jurisdiction outside the Brussels Regulation/Lugano regime where no arbitral proceedings have been commenced or are proposed.

Judgment

The Supreme Court unanimously dismisses the appeal. The English courts have a long-standing and well-recognised jurisdiction to restrain foreign proceedings brought in violation of an arbitration agreement, even where no arbitration is on foot or in contemplation. Nothing in the Arbitration Act 1996 ("the 1996 Act") has removed this power from the courts. The judgment of the court is given by Lord Mance.

Reasons

- An arbitration agreement gives rise to a 'negative obligation' whereby both parties expressly or impliedly promise to refrain from commencing proceedings in any forum other than the forum specified in the arbitration agreement. This negative promise not to commence proceedings in

another forum is as important as the positive agreement on forum [21-26].

- Independently of the 1996 Act the English courts have a general inherent power to declare rights and a well-recognised power to enforce the negative aspect of an arbitration agreement by injuncting foreign proceedings brought in breach of an arbitration agreement even where arbitral proceedings are not on foot or in contemplation [19-23].
- There is nothing in the 1996 Act which removes this power from the courts; where no arbitral proceedings are on foot or in prospect the 1996 Act neither limits the scope nor qualifies the use of the general power contained in section 37 of the Senior Courts Act 1981 ("the 1981 Act") to injunct foreign proceedings begun or threatened in breach of an arbitration agreement [55]. To preclude the power of the courts to order such relief would have required express parliamentary provision to this effect [56].
- The 1996 Act does not set out a comprehensive set of rules for the determination of all jurisdictional questions. Sections 30, 32, 44 and 72 of the 1996 Act only apply in circumstances where the arbitral proceedings are on foot or in contemplation; accordingly they have no bearing on whether the court may order injunctive relief under section 37 of the 1981 Act where no arbitration is on foot or in contemplation [40].
- The grant of injunctive relief under section 37 of the 1981 Act in such circumstances does not constitute an "intervention" as defined in section 1(c) of the 1996 Act; section 1(c) is only concerned with court intervention in the arbitral process [41].
- The reference in section 44(2)(e) of the 1996 Act to the power of the court to grant an interim injunction "for the purposes of and in relation to arbitral proceedings" was not intended to exclude or duplicate the court's general power to grant injunctive relief under section 37 of the 1981 Act [48].
- Service out of the jurisdiction may be affected under Civil Procedure Rule 62.2 which provides for service out where an arbitration claim affects arbitration proceedings or an arbitration agreement; this provision is wide enough to embrace a claim under section 37 to restrain foreign proceedings brought or continued in breach of the negative aspect of an arbitration agreement [49].

H/T: Dominic Pellew

HEC Seeks to Recruit Assistant Professor of PIL

The Department of Law and Taxation of HEC Paris (France) invites applications for Tenure-track faculty positions to begin in 2014.

HEC Paris is the leading Business School in France and one of the leading Business Schools in Europe. The teaching of Law is one of its distinctive features. In addition to a large diversity of mandatory and elective law and taxation courses, HEC Paris offers to its students specializations in international business law and taxation.

JOB DESCRIPTION/QUALIFICATIONS: The position's opening is in International Private Law, with emphasis on International Contract law, Legal environment of International negotiations, Arbitration. A strong track record in both research and teaching is required. Support for research is excellent, including grants from HEC. During their first three years at HEC, assistant professors benefit from a reduced number of teaching hours, simplified access to research funds and an exemption of administrative duties.

The remuneration and benefits package is competitive by international standards and will be commensurate with experience and profile. While HEC Paris is a bilingual school (English/French), the ability to teach in French is not mandatory.

Applicants are required to have (or be about to complete) a Ph.D. degree.

APPLICATION PROCEDURE: Interested applicants should send a cover letter, vitae, and selected research papers, to Elizabeth Hautefeuille by June 10, 2013 at the following address: email: hautefeuille@hec.fr

For additional information about HEC Paris, please refer to our website at: http://www.hec.fr