Private International Law & the current migratory context: workshop 20 June 2017

The European Parliament's Policy Department for Citizens Rights and Constitutional Affairs of the is organising a **workshop** on **Potential and challenges of private international law in the current migratory context** on 20 June 2017 from 3 to 6.30 p.m.

The reason behind the initiative for this workshop is the tensions and overlaps between the areas of private international law and migration law. These overlaps have become more visible in the context of recent increases of migration. Issues include jurisdiction, cooperation between authorities, recognition of personal status, family tracing, child marriages, guardianship, kafala, the application of foreign law.

At the workshop two studies will be presented:

- Private international law in a context of increasing international mobility: challenges and potential, and
- Protecting children on the move: a private international law perspective.

For those readers unable to come to Brussels, the studies are available here and the event will be livestreamed here.

Book: International Banking Transactions with Consumers (in

German)

Florian Heindler and Bea Verschraegen have just published the proceedings of the **IACPIL conference** which took place in October 2016 in Vienna: *Internationale Bankgeschäfte mit Verbrauchern*, Florian Heindler, Bea Verschraegen (Eds.), IACPIL (Interdisciplinary Association for Comparative and Private International Law) Series 5, Jan Sramek, 2017, 201 pp. ISBN 978-3-7097-0140-9

English translation of the **Table of Contents**:

- Preface (Bea Verschraegen & Florian Heindler)
- Choice of Court Clauses in Banking Contracts with Consumers (Peter Mankowski, Hamburg)
- Choice of Law Clauses in Banking Contracts with Consumers (Dietmar Czernich, Innsbruck)
- International Jurisdiction and the Law Applicable to Outsourced Distribution of Financial Products (Georg Kodek, Vienna)
- The Law Applicable to Prospectus Liability (Judith Schacherreiter, Vienna)
- Crowdfunding and Crowdinvesting and Conflict of Laws (Gerald Spindler, Göttingen)
- International Jurisdiction and the Law Applicable to Distance Selling of Financial Products and Services (Florian Heindler, Vienna)

See:
http://www.jan-sramek-verlag.at/Buchdetails.411.0.html?buchID=278&cHash=299ec37e58

The Applicability of the Alien Tort

Statute to Human Rights Violations by Private Corporations

Hannah Dittmers, LL.M. candidate at the University of Michigan (USA) and doctoral candidate at the University of Freiburg (Germany), has just published an interesting paper on recent developments concerning corporate liability under the Alien Tort Statute in the Journal of Science, Humanities and Arts (JOSHA). On April 3rd 2017, the New York Times published an article with the heading: "Supreme Court to Weigh if Firms Can be Sued in Human Rights Cases". On the same day, the Supreme Court of the United States had granted the petition for certiorari to consider an issue that now has come before the highest US court already for the second time. The Second Circuit through the case *In re Arab Bank* has again brought the question before the Justices whether private corporations can be sued under the Alien Tort Statute of 1789 (ATS) for aiding and abetting human rights violations that occurred outside the territory of the United States. The Supreme Court is now to provide guidance on the issue that is not uniformly assessed by the US Circuit Courts. The full article is available here.

Droit International Privé et Droit de l'Union Européenne (Répertoire Dalloz)

The Répertoire Dalloz has just published the voice "Droit international privé et droit de l'Union européenne" (in French), by J.S. Bergé, D. Porcheron and G. Vieira da Costa Cerqueira. Here is the English summary. The ToC is available here.

The law of the European Union offers itself as a new legal context in which the constructions of private international law are now massively deployed. In addition to pre-existing national contexts and pre-established international or

transnational environments, the European Union is likely to dramatically change the substance and conditions of the implementation of conflicts of laws. The changes brought about by the emergence of this new European legal reference framework are far from having delivered all their manifestations. The three generations of European law which have so far succeeded are not sufficient to shed light on all the areas of shadow left behind by the two major legal areas of the European Union, namely the internal market space and the area of ??freedom, security and justice. But the process is on the way, which suggests dialectical games which can reasonably be expected to be well established today.

These dialectical reports, at the first level, present a confrontation of the methods and solutions of private international law and the legal system of the European Union. A historical approach requires a distinction between the three major stages that marked the Europeanization of private international law. The question of the competence of the European Union to legislate in this area must also be asked. There remains the crucial question of methods: the irreducibility of the two subjects of European law and private international law suggests a cross-game of influence on one another. At the second level, the construction of private international law at a European level needs to be re-examined. The presence of a European judge and the European codification movement are likely to explain the transformations currently taking place.

Judicial Training on International Child Abduction, Milan, 8 and 9 June 2017

The **University of Milano-Bicocca** will host on June 8th and 9th a Judicial Training on International Child Abduction as part of the Project "*EU Judiciary Training on Brussels IIa Regulation: from South to East*", co-funded by the Justice Programme of the European Union.

The Project, carried out by a net of four Universities led by Professor Costanza Honorati, aims to promote uniformity in the application of Regulation No 2201/2003 on Separation, Divorce and Parental Responsibility, through the organization of training events and the realization of a final handbook.

On **June 8th** the workshop will focus on the **Hearing of the Child**, a very sensitive issue and an essential part of a modern protection of children's rights. Qualified Judges, Psychologists and Social Services will explore on all relevant concrete issues. Experts include, in particular: Martina Erb-Klünemann (Judge at the District Court Hamm, Liaison Judge of the Hague Network and ENJ Member), Maria Domenica Maggi (Psychologist, Honorary Judge Juvenile Court of Milan), Sara Lembrechts & Katrien Herbots (KeKi – Children's Right Knowledge Centre, Ghent), Michael Ford (MiKK – International Mediation Centre for Family Conflict and Child Abduction).

On **June 9th**, Italian and foreign academics will address to International Child Abduction. Speakers include: Prof. Costanza Honorati (University of Milano-Bicocca), Prof. Maria Caterina Baruffi (University of Verona), Prof. Cristina Gonzalez Beilfuss & Dr. Maria Alvarez Torné (University of Barcellona), Prof. Mirela Zupan (University J. J. Strossmayer of Osijek), Prof. Ivana Kunda (University of Rijeka), Dr. Agne Limante (Law Institute of Lithuania).

Judges and Lawyers will solve practical cases and discuss with trainers, bringing their professional experience and working methods to the benefit of all participants.

Further information and the flyer of the initiative are available here.

International Law Association: New Website and Annual Meeting of the German Branch

The International Law Association (ILA) has a new website (please click here) with an improved look. The ILA hopes that visitors will find the site more informative and easier to navigate; in particular, the Members Only Area has been upgraded and will continue to be developed in order to provide members with more targeted and relevant information.

The ILA was founded in Brussels in 1873. Its objectives, under its Constitution, are "the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law". The ILA has consultative status, as an international non-governmental organisation, with a number of the United Nations specialised agencies. For further information and a welcome address from ILA chairman *Lord Mance*, please click here.

The German branch of the ILA will hold its annual meeting on 23 June, 2017, in Frankfurt (Main). This year's topic is „Human Rights in International Business". The list of distinguished speakers will include Professors *Marc-Philippe Weller* (Heidelberg) and *Karsten Nowrot* (Hamburg) as well as lawyers Dr. *Birgit Spießhofer* and Prof. Dr. *Remo Klinger* (both from Berlin). You may find the full programme and further information here.

Regulating economic activity in the international sphere and

freedom of establishment (XI Seminar on Private International Law). Call for Papers

The Seminar on Private International Law organized since 2007 at the Universidad Complutense of Madrid by Professors Fernández Rozas and De Miguel Asensio is an annual meeting devoted to private international law. This year the Seminar goes to Barcelona, where it will held on October 26 and 27, 2017.

This edition of the Seminar, entitled "Regulating economic activity in the international sphere and freedom of establishment (corporate law, tax law, competition law, private law and arbitration law)", will deal with the regulation of the economic activity in an international framework and its relationship with the freedom of establishment recognized by EU law. The goal is to bring together specialists in private international law, tax law and commercial law as well as law practitioners in order to analyze the current situation of the regulation of economic activity in Europe.

In addition to this central issue, there will be room for the study of the regulation of economic activity in other geographical areas (America, Asia …), and of arbitration as a fundamental tool both for resolving conflicts between economic operators, as well as between investors and states.

The Seminar welcomes the presentation of papers on any topic related to one of the panels, in Spanish, English or French. A summary (900 words) and a basic bibliography must be submitted to the Scientific Committee before September 15, to this address: rafael.arenas@uab.cat. The Scientific Committee will select the papers to be presented at the Seminar by September 29. The final version must be delivered on October 20 at the latest.

The Seminar will include the following panels:

1. **Establishment of Companies (perspective of PIL)**

Main speaker: Prof. Dr. Jessica Schmidt, Professor of Civil Law and German,

European and International Law of Companies and Capital Markets (University of Bayreuth, Germany)

2. **Establishment of Companies (perspective of Commercial Law)**

Main speaker: Prof. Dr. Andrés Recalde Castells, Professor of Commercial Law at the Autonomous University of Madrid

3. **Tax issues**

Main speaker: Prof. Dr. Cristina García Herrera-Blanco, Financial and Tax Law Adviser, Institute of Fiscal Studies

4. **Economic law (free competition, unfair competition and administrative regulation of economic activity)**

Main speakers: Prof. Dr. Amadeo Petitbó Juan, Professor of Applied Economics; Prof. Dr. Barry Rodger, Professor of Law at Strathclyde University in Glasgow (United Kingdom).

5. **Freedom of establishment and private law**

Main speaker: Prof. Dr. Gerry Maher, Professor of Law at the University of Edinburgh (UK)

6. **Regulation of economic activity and private law outside the EU**

Main speaker: *to be confirmed*

7. **Arbitration**

Main speaker: Prof. Dr. José Carlos Fernández Rozas, Professor of Private International Law at the Universidad Complutense de Madrid.

Internationalizing the New Conflict of Laws Restatement

The Duke Journal of Comparative & International Law has just published a symposium issue on the importance of international law and comparative law for the American Law Institute's new Conflict of Laws Restatement project. Professors Ralf Michaels and Christopher Whytock have a Foreword entitled Internationalizing the New Conflict of Laws Restatement. Here is the Table of Contents for the complete issue:

International Conflict of Laws and the New Conflict of Laws Restatement

Donald Earl Childress III

Determining the Territorial Scope of State Law in Interstate and International Conflicts: Comments on the Draft Restatement (Third) and on the Role of Party Autonomy

Hannah L. Buxbaum

The Transnational Case in Conflict of Laws: Two Suggestions for the New Restatement Third of Conflict of Laws—Judicial Jurisdiction over Foreign Defendants and Party Autonomy in International Contracts

Linda J. Silberman and Nathan D. Yaffe

How "International" Should a Third Conflicts Restatement Be in Tort and Contract?

Patrick J. Borchers

Marriage and Divorce Conflicts in the International Perspective

Ann Laquer Estin

Children Crossing Borders: Internationalizing the Restatement of the Conflict of Laws

Louise Ellen Teitz

Netherlands International Law Review (NILR) 1/2017: Abstracts

In the recent issue of the *Netherlands International Law Review* (NILR) three articles on private international law issues were published.

Peter Mankowski (The European World of Insolvency Tourism: Renewed, But Still Brave?, NILR 2017/1, p. 95-114) discusses the cross border insolvency tourism under the Insolvency Regulation. He also pays attention to the upcoming changes after Brexit to the Recast Insolvency Regulation.

The abstract of his article reads:

"Insolvency tourism and COMI migration have become key features in modern European international insolvency law. Fostered, in particular, by the ingenuity of the English insolvency industry. Yet it has not gone unanswered. The Recast European Insolvency Regulation introduces a not insignificant number of counter-measures as well as an antidote in the shape of a look-back period. Furthermore, as a prospective aftermath of Brexit, the race is on once more in the field of pre-insolvency restructuring measures."

Marek Zilinsky (Mutual Trust and Cross-Border Enforcement of Judgments in Civil Matters in the EU: Does the Step-by-Step Approach Work?, NILR 2017/1, p. 116-139) deals with the question on the implementation of the principle of mutual trust in different EU instruments in the field of cross border recognition and enforcement of judgments. He points out that the EU legislator has chosen different approaches for implementation. Special attention is paid to three instruments: the Brussels I Regulation Recast, the Brussels IIbis Regulation and

the Maintenance Regulation.

The abstract of this article reads:

"Mutual trust is one of the cornerstones of cooperation in the field of European Union private international law. Based on this principle the rules on the cross-border recognition and enforcement of judgments in the European Union are still subject to simplification. The step-by-step approach of the implementation of this principle led to the abolition of the exequatur, often accompanied by a partial harmonization of enforcement law to improve and support the smooth working of cross-border enforcement without exequatur. In this regard, it seems that the Member States still want to have control over the 'import' of judgments which results in maintaining the ground for non-recognition and the possibility of relying on them in the Member State of enforcement. This article considers the implementation of the principle of mutual recognition in three areas of justice: civil and commercial matters, family law and maintenance. In these areas the European Union legislator has chosen three different approaches for the implementation of this principle."

Jacobien Rutgers (NILR 2017/1, p. 163-175) discusses the *VKI/Amazon* Case of the European Court of Justice (Case C-191/15) where the Court gave its interpretation of Art 6(1) of the Rome II regulation and Art 6(1) Rome I Regulation in a procedure started by a consumer organization based on allegedly unfair terms in general terms and conditions of the seller.

The abstract to this article reads:

"In Amazon the CJEU decided which conflict rules applied to a claim in collective proceedings that was initiated by a consumer organization to prohibit allegedly unfair terms contained in the general terms and conditions of a seller. The terms were used in electronic b2c contracts, where the seller targeted consumers in their home country. The CJEU distinguished between the conflict rule concerning collective action, Article 6(1) Rome II, and the conflict rule concerning the fairness of the term, Article 6(2) Rome I. In addition, the CJEU introduced a new test to assess the fairness of a choice-of-law term under Directive 93/13 on unfair contract terms. In the note, it is argued that the CJEU's distinction between those two conflict rules is unnecessary and that the test that the CJEU formulated to

assess whether a choice-of-law term is unfair, is less favourable to the consumer than the tests formulated in prior decisions."

The text of the articles is free available on the website of the publisher of the *Netherlands International Review*.

Thanks go to Marek Zilinsky for providing the above-noted abstracts.

Buxbaum on "Determining the Territorial Scope of State Law in Interstate and International Conflicts: Comments on the Draft Restatement (Third) and on the Role of Party Autonomy"

Professor Hannah L. Buxbaum of Indiana University Bloomington Maurer School of Law hast just released an article adressing the treatment of geographic scope restrictions in state law in the current draft of the Restatement (Third) of Conflicts of Law.

The article begins by analyzing the role of the presumption against extraterritoriality in supplying implied restrictions on the scope of law. It considers the role of the presumption in both international and interstate conflicts of laws, and argues that the Restatement (Third) should differentiate clearly between those two contexts. It then turns to the question whether geographic scope restrictions should properly be considered part of a state's internal law. The paper analyzes that question through the lens of a common problem: a

contract dispute involving a transaction or event that falls outside the scope of the law chosen by the parties to govern their agreement. On the basis of that analysis, it concludes that forthcoming sections will need to address the implications of the draft's categorical treatment of legislative scope.

The Indiana Legal Studies Research Paper No. 372 is available on SSRN and will be published in the Duke Journal of Comparative & International Law, Vol. 27, 2017.