

UNIDROIT celebrates the 90th anniversary of its foundation

The International Institute for the Unification of Private Law (UNIDROIT) has recently announced the celebration of the 90th anniversary of its foundation. Established in 1926 as an auxiliary organ of the League of Nations, and re-established in 1940 on the basis of a multilateral agreement, UNIDROIT has made significant contributions to the modernisation and harmonisation of substantive private, notably commercial, law, but also to the conflict of laws and international civil procedure. In all these years, UNIDROIT has collaborated and maintained close ties of cooperation and friendship with numerous partner organisations and entities. To celebrate this momentous occasion, UNIDROIT will hold a series of celebratory events in Rome from 15 to 20 April 2016 which are devoted to the role and place of private law in supporting the implementation of the international community's broader cooperation and development objectives. *Please note that all events are accessible upon invitation only.* Further information is available [here](#).

ICC and OAS Survey on Arbitration in the Americas

As you may (or may not) already know, a team of researchers recently concluded a study for the European Parliament on arbitration across the European Union and Switzerland. As part of this study the researchers undertook a large-scale survey of arbitration practitioners across Europe, including 871 respondents from every country in the European Union and Switzerland. The results of this survey have allowed the research team to produce far more information on the practice of arbitration in Europe than has previously been available. (see, e.g. this discussion of arbitration in six southern European countries)

A new team of researchers (Tony Cole, Paolo Vargiu, Masood Ahmed at the

University of Leicester; S.I. Strong at the University of Missouri, Manuel Gomez at Florida International University, Daniel Levy at Escola de Direito da Fundação Getúlio Vargas - São Paulo, and Pietro Ortolani at the Max Planck Institute Luxembourg) is now working in collaboration with the ICC International Court of Arbitration and the the Organisation of American States to deliver a survey that will generate similar information on the practice of arbitration in the Americas. Letters of support have been received from both the ICC and the OAS. Results from the survey will be used to draft articles on arbitration in the Americas, written by the members of the research team.

The survey consists almost entirely of multiple-choice questions, and only takes approximately half an hour to complete. Moreover, it need not be completed in a single sitting, and if respondents return to the survey on the same computer and with the same browser, they can resume where they left off. The survey team will keep responses confidential and will not divulge any respondent's identity at any time without his or her explicit consent.

All response data from the survey will be stored securely under password on SurveyMonkey. All research records will be retained for a period of 7 years following the completion of the study. Responses by an individual can, however, be deleted at any time upon request of that individual. Responding to the survey will be taken as consenting to the use of the information provided, for the purposes of drafting the articles deriving from this project.

The survey will remain open until July 11, 2016. The survey is available [here](#).

Junior fellowships (PhD) at Erasmus School of Law

The Erasmus Graduate School of Law (EGSL) of the Erasmus University Rotterdam has two junior fellowships available for PhD candidates from universities outside the Netherlands, including candidates working in the field of private international law and European/international civil procedure, to visit the

Erasmus School of Law for a period of three months. During this stay, the Junior Fellows will be able to discuss their research with senior staff members and interact with other PhD candidates in the framework of EGSL activities. Information about the Junior Fellowship programme can be found on this webpage.

Erasmus School of Law is also currently recruiting PhD Candidates, and also welcomes high quality proposals in the area of private international law and European, international or comparative civil procedure, in particular those that would fit into the multidisciplinary and empirical research program Behavioural Approaches to Contract and Tort.

Job Opening at the University of Halle-Wittenberg (Germany): Native English Speaker

The following announcement has been kindly provided by Professor Dr. Christoph Kumpan, University of Halle-Wittenberg:

Professor Dr. Christoph Kumpan, University of Halle-Wittenberg, is looking to hire a highly skilled and motivated individual to work as a part-time (50%) research assistant beginning June 2016 or sooner. Applications should be submitted no later than April 15, 2016.

The position will entail close collaboration on a number of new and ongoing projects, focusing primarily on research on financial regulation.

The duties include reviewing English articles, editing English texts and the support in research and teaching, as well as teaching your own classes in English (2 hours per week), preferably in the areas of private law business/financial law.

This position is expected to last two years. The work location is Halle, Germany, a city close to Berlin, Germany.

Education:

a university degree, preferably in law (JD)
preferably, knowledge of financial law / securities regulation

Competencies:

knowledge of English (native speaker or equivalent language skills)
experience with reviewing and editing legal texts
interest in business law
ability to work in a team as well as independently

Hours/week: 20

Pay Frequency: Monthly

Payment: around 1.700 Euro (approx. 1.200 Euro net) per month

Possibility to obtain a doctoral degree (if faculty's requirements are met)

Required Job Seeker Documents: Resume, Cover Letter, complete transcripts.

The cover letter should include: A brief description of your career/study goals. A description of your experience with reviewing/editing legal texts. A brief description of any prior research assistance experience, or any other experience with legal research (e.g., thesis).

The University is committed to a policy of equal opportunity. Candidates with disabilities will be preferred in cases where they have the same qualifications as others.

If you are interested in this position, please send your application with the reference no. "Reg.-Nr. 3-1109/16-H" by April 15, 2016, preferably, via email to sekretariat.kumpan@jura.uni-halle.de

or to:

Martin-Luther-Universität Halle-Wittenberg, Juristische und Wirtschaftswissenschaftliche Fakultät, Juristischer Bereich, Lehrstuhl für Bürgerliches Recht, Wirtschaftsrecht, Internationales Privatrecht und Rechtsvergleichung, Universitätsplatz 3-5, 06099 Halle (Saale).

For more information (in German) see
http://www.verwaltung.uni-halle.de/dezern3/Ausschr/16_308.pdf.

For further enquiries, please contact Professor Dr. Kumpan:

New Cases at the U.S. Supreme Court: CVSG Orders Concerning Private International Law, Sovereign Immunity and International Arbitration

As explained in a previous post from a few years back, if the Justices of the United States Supreme Court are considering whether to grant a petition for certiorari and review a decision from the Courts of Appeals, and they think the case raises issues on which the views of the federal government might be relevant—but the government is not a party—they will order a CVSG brief. “CVSG” means “Call for the Views of the Solicitor General.” In the past two months, the Court ordered CVSG briefs in two new cases concerning matters of private international law, sovereign immunity and international arbitration.

If the issues are interesting to the Justices of the Supreme Court, and are about to be addressed by the U.S. Executive branch, then they should, *ipso facto*, be interesting to the practicing bar as well. The fact that each of these cases involve claims being made against foreign sovereigns makes them even more interesting for international dispute resolution lawyers steeped in the crossroads of litigation, commercial and investment arbitration. Below is a brief review of these two cases and the interesting issues being raised.

The first case is *Belize Social Development Ltd. v. Government of Belize*. It involves the relatively uncommon juxtaposition of arbitration award enforcement and the doctrine of *forum non conveniens*. In that case, a private company had a contractual dispute with the government of Belize, and obtained an arbitration award of \$38 million. It then sought to confirm the award in the United States.

Belize defended on numerous grounds, including by arguing that the arbitration exception to the Foreign Sovereign Immunities Act did not apply because the contract was entered without proper legal authority in Belize, and by asserting that the New York Convention does not mandate recognition and enforcement where, as here, the dispute was not purely a “commercial” one, but rather promised favorable tax treatments. These defenses were dismissed by the D.C. Circuit; Ted Folkman has discussed that decision on Letters Blogatory.

The other unsuccessful defense raised by the debtor is now the subject of a petition for certiorari before the Supreme Court. The basic question is whether a party may dismiss a petition to recognize and enforce an arbitration award under the doctrine of *forum non conveniens*. The District Circuit held that a foreign forum is *per se* inadequate—and thus ineligible as a *forum conveniens*—because the focus of a recognition and enforcement action (*viz.* U.S.-based assets) cannot be reached by a foreign court. The D.C. Circuit affirmed this holding without any explication. This holding plainly splits from the Second Circuit, which has affirmed the *forum non conveniens* dismissal of recognition and enforcement actions when the alternative forum has some assets of the debtor, and thus offers the possibility of a remedy. This case is complicated by the fact that the Belize Supreme Court has issued an injunction against enforcement proceedings, and the Caribbean Court of Justice has held that the Award convenes public policy.

The decision below and the parties’ briefs before the Court can be found [here](#).

The second case is *Helmerich & Payne Int’l Drilling Co. et al v. Bolivarian Republic of Venezuela*. This case concerns the a lawsuit by a U.S. company regarding breaches of contract by PdVSA and the expropriation of its assets in Venezuela. The claims were brought under both the expropriation and commercial activity exceptions to the FSIA; the District Court permitted the claims to proceed under the latter but not the former. The D.C. Circuit flipped those conclusions, allowing the expropriation but not the contract claims to proceed, and remanded the case. Both sides have filed crossing petitions for a writ of certiorari, presenting the following questions.

- (1) *Whether, under the third clause of the Foreign Sovereign Immunities Act of 1976, a breach-of-contract action is “based ... upon” any act necessary to establish an element of the claim, including acts of contract formation or performance, or solely those acts that breached the contract;*

(2) whether, under *Republic of Argentina v. Weltover*, a breaching party's failure to make contractually required payments in the United States causes a "direct effect" in the United States triggering the commercial activity exception where the parties' expectations and course of dealing have established the United States as the place of payment, or only where payment in the United States is unconditionally required by contract.

(3) Whether, for purposes of determining if a plaintiff has pleaded that a foreign state has taken property "in violation of international law," the Foreign Sovereign Immunities Act recognizes a discrimination exception to the domestic-takings rule, which holds that a foreign sovereign's taking of the property of its own national is not a violation of international law;

(4) whether, for purposes of determining if a plaintiff has pleaded that "rights in property taken in violation of international law are in issue," the FSIA allows a shareholder to claim property rights in the assets of a still-existing corporation; and

(5) whether the pleading standard for alleging that a case falls within the FSIA's expropriation exception is more demanding than the standard for pleading jurisdiction under the federal-question statute, which allows a jurisdictional dismissal only if the federal claim is wholly insubstantial and frivolous.

The decision below and the parties briefs before the Court can be found [here](#) and [here](#).

What the Solicitor General says about these issues and whether the Court takes the cases will not be known until the next Term, which begins in October.

Job Opening: Research Assistant in

Private International Law at the University of Halle-Wittenberg (Germany)

The following announcement has been kindly provided by Professor Dr. Christoph Kumpan, University of Halle-Wittenberg:

Professor Dr. Christoph Kumpan, University of Halle-Wittenberg, is looking to hire a highly skilled and motivated individual to work as a part-time (50%) research assistant beginning May 2016. Applications should be submitted no later than April 15, 2016.

The position will entail close collaboration on a number of new and ongoing projects, focusing especially on research on private law, international private law and business law.

The duties include the support in research and teaching in private law and private international law, as well as teaching your own classes (2 hours per week, in English or German), in particular in the areas of private law and/or private international law.

This position is expected to last three years. The work location is Halle, Germany, a city close to Berlin, Germany.

Education:

a university law degree (e.g., JD)

Competencies:

knowledge of English required, preferably also Spanish or French

knowledge of German of advantage

knowledge of private international law

ability to work in a team as well as independently

Hours/week: 20

Pay Frequency: Monthly

Payment: around 1.700 Euro (approx. 1.200 Euro net) per month

Possibility to obtain a doctoral degree (if faculty's requirements are met)

Required job seeker documents: resume, cover letter, complete transcripts.

The cover letter should include: A brief description of your career/study goals. A brief description of any prior research assistance experience, or any other experience with legal research (e.g., thesis).

The University is committed to a policy of equal opportunity. Candidates with disabilities will be preferred in cases where they have the same qualifications as others.

If you are interested in this position, please send an application with the reference no. "Reg.-Nr. 3-1107/16-H" by April 15, 2016, preferably, via email to sekretariat.kumpan@jura.uni-halle.de

or to:

Martin-Luther-Universität Halle-Wittenberg, Juristische und Wirtschaftswissenschaftliche Fakultät, Juristischer Bereich, Lehrstuhl für Bürgerliches Recht, Wirtschaftsrecht, Internationales Privatrecht und Rechtsvergleichung, Universitätsplatz 3-5, 06099 Halle (Saale).

For more information (in German) see http://www.verwaltung.uni-halle.de/dezern3/Ausschr/16_310.pdf.

For further enquiries, please contact Professor Dr. Kumpan: sekretariat.kumpan@jura.uni-halle.de

The Comprehensive Economic and Trade Agreement between the European Union and Canada

(CETA): A TDM Special

Editors Andrea Bjorklund, John Gaffney, Fabien Gélinas and Herfried Wöss have prepared a new TDM special, which undertakes a broad-ranging study of CETA as an indicator of the evolution of EU trade and investment policy and of the kinds of tensions and innovations that can be expected to arise as a new generation of twenty-first century trade and investment agreements emerges. The special starts off with an introduction by Professor Pieter Jan Kuijper; The Honourable L. Yves Fortier and Judge Stephen Schwebel.

You can view the table of contents of the TDM CETA special [here](#)

Video From 2015 Journal of Private International Law Conference

As many will know, in September 2015 the University of Cambridge hosted the Journal of Private International Law Conference (see [here](#)). Video of the four plenary sessions has now been uploaded to YouTube. The videos can be accessed through these links: [first plenary](#), [second plenary](#), [third plenary](#), [fourth plenary](#).

Study on the laws of national civil procedure of the 28 Member

States and the enforcement of European Union law.

The Max Planck Institute Luxembourg, heading an international consortium, is undertaking a **European Commission-funded Study** (JUST/2014/RCON/PR/CIVI/0082) on the laws of national civil procedure of the 28 Member States and the enforcement of European Union law.

The Study has two strands: the first deals with the impact of national civil procedure on **mutual trust and the free circulation of judgments** within the 28 Member States of the EU and the second deals with the impact of national civil procedure on the **enforcement of consumer rights derived from EU law**. Accordingly, the Consortium has prepared two online tools, aimed at gathering information, opinions and experiences (both available in six language versions):

- **Questionnaire focusing on the impact of national procedures on mutual trust and the free circulation of judgments:**

English
French
German
Italian
Polish
Spanish

- **Questionnaire focusing on the impact of national procedures on the enforcement of EU consumer rights:**

English
French
German
Italian
Polish
Spanish

We would encourage consumers, lawyers, judges, academics, consumer protection associations, businesses, business/trade associations, dispute resolution facilitators, and those working in other legal professions (including

bailiffs, court clerks, registrars, notaries and so on) to **respond to the questionnaire** for one or both strands of the study.

If you agree, and wish to share more information with us on any of the topics covered by the Study, it will be possible to provide us with your contact details at the end of the survey.

Please feel free to share widely the links to this webpage and to the questionnaires within your own networks.

Labonté on International Assignments



Hendric Labonté has authored a book entitled “Forderungsabtretung International. Art. 14 Rom I-Verordnung und seine Reform” (International Assignments. Art. 14 Rome I Regulation and its Reform). The volume has been published by Mohr Siebeck. It is written in German.

The official abstract reads as follows:

The commercial significance of assignments, especially in an international context, requires a straightforward conflict of laws provision. However, art. 14 Rome I does not provide enough certainty, particularly when it comes to third party effects. These should be entirely determined by the law of the underlying debt.

More information is available on the publisher's website.