

Erasmus



Conference Invitation

TENSION BETWEEN UNIVERSAL AND REGIONAL UNIFICATION OF PRIVATE LAW

Conflict between EU law and
maritime & transport law conventions

Program Conference
Rotterdam 16 & 17 February 2012

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Brussels
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T.M.C. ASSER INSTITUUT
Inter-University Institute for Public & Private
International & European Law



NEDERLANDSE VERENIGING
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ST. DUTCH LEGAL NETWORK FOR SHIPPING AND TRANSPORT

Vereniging Publiek Vervoerrecht



The theme of this Conference is the tension, if not direct conflict, existing between uniform EU law and conventions of uniform private law to which EU member states are party, but the EU itself is not. As is illustrated by a number of cases brought before the ECJ in recent years, courts in member states are increasingly confronted with conflicts of duty in cases where uniform EU law and conventions of uniform maritime and transport law are of simultaneous application. For courts in member states it may sometimes appear as if the only way in which to comply with EU law is by breaking their country's obligations under international treaties and vice versa.

INTRODUCTION

Although for the ECJ this conflict is resolved in principle by the rule of primacy of EU law, it nevertheless raises questions of a constitutional law nature both at the EU level and that of individual member states and further gives rise to problems of interpretation in the demarcation and co-ordination between EU law and uniform private law conventions. As is illustrated by the example of the Montreal Convention 1999, ratification by the EU and incorporation into EU law of the uniform law conventions is not the panacea which will resolve all the above problems, but may instead raise new issues e.g. about the consistency of certain elements of existing and future EU law with the EU's new treaty obligations.

From the perspective of uniform private law, the primacy of EU law entails the risk that regionalism will prosper to the detriment of globalism in the unification of private law with regard to truly worldwide economic activities such as shipping and aviation. Also, it challenges the principle of the autonomous interpretation of uniform private law conventions which has developed in recent decades and has been codified in the Vienna Convention on the Law of Treaties 1969. Finally, especially in relation to those

maritime and transport law conventions which provide civil liability regimes for transport loss or damage and oil pollution, the primacy of EU law endangers their hard-fought exclusivity and uniformity, the loss of which would form a setback of fifty years in the development of uniform private law.

Apparently, the ECJ is not insensitive to the above concerns. In its recent case law the ECJ has cautiously explored ways to avoid direct confrontations that could only be resolved by establishing a hierarchy of norms. Instead it seems the ECJ adopts a more integrated approach in which EU law may allow conventions 'on particular matters' to take precedence, whilst preserving certain basic principles of EU law, which represent 'inalienable' core values and norms of the European legal order. In a more general sense, the ECJ has stressed in *Kadi* (C-402/05 P and C-415/05 P) that the EU must respect international law in the exercise of its powers and that a measure adopted by virtue of those powers must be interpreted, and its scope limited in the light of the relevant rules of international law.

This approach of the ECJ is not unique but fits in the trend of a progressively multilayered international



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legal order in which international courts like the ECJ and the European Court of Human Rights (ECHR) as well as Supreme courts at the national level are increasingly confronted with conflicts between legal rules deriving from heterogeneous (international) legal instruments without there being a clear hierarchical order. Clearly, the approach adopted by the ECJ requires the development of a new conceptual framework to understand the relation between EU law and the uniform private law conventions to which the EU and/or the member states are party.

Undoubtedly the ECJ's approach will give rise to many new questions as well, e.g. into the status, nature and identification of these basic principles of EU law, their relation to other principles and rules of written and unwritten EU law, their application and interpretation by the ECJ and by courts in member states etc.

One of the problems inherent in this theme is that it is connected to and determined by several distinct areas of the law, such as international law, EU law, constitutional law, private international law, uniform law, maritime and transport law. Both in legal practice and in academia these legal fields are mainly the domain of specialists, who may possess great

knowledge and deep insight in one or more of these legal areas, but who rarely have expertise in equal measure in all of these areas. The aim of this Conference is to bring together specialists from several distinct areas of the legal discipline including but not limited to: international law, European law, constitutional law, private international law, uniform private law, maritime and transport law in order to stimulate the exchange of ideas between these areas of the law and to contribute to the debate about both the novel approach of the ECJ and the conflict between EU law and the uniform maritime and transport law conventions.

STRUCTURE

The structure of the conference is as follows. During sessions #1 to #3 several questions of a more general nature (i.e. the place of EU law in the international legal order, constitutional law and autonomous interpretation) are explored in relation to the theme of the conference. During the sessions #4 to #7 several specific problems areas which have already given rise to case law of the ECJ will be examined in more detail, followed by a forum discussion in session #8 in which all the different strands of the discussion during the previous sessions of the conference will be brought together and the way forward will be explored.

PROGRAM

Thursday 16 February 2012

- 09.00-09.30 REGISTRATION AND COFFEE
- 09.30-09.40 OPENING AND WELCOME BY DEAN OF ERASMUS SCHOOL OF LAW, PROF. DR. MAARTEN KROEZE
- 09.40-09.50 INTRODUCTION BY PROF. DR. FRANK SMEELE
A BRIEF EXPLANATION OF THE PURPOSE AND STRUCTURE OF THIS CONFERENCE.
- 09.50-11.10 **1ST SESSION**
SUBJECT: THE PLACE OF THE EUROPEAN LEGAL ORDER WITHIN INTERNATIONAL LAW
CHAIR: PROF. DR. FABIAN AMTENBRINK
- 09.50-10.20 INTERNATIONAL LAW PERSPECTIVE, PROF. DR. PIETER-JAN KUIJPER
- 10.20-10.30 DISCUSSION
- 10.30-11.00 EUROPEAN LAW PERSPECTIVE, PROF. DR. RAMSES WESSEL
- 11.00-11.10 DISCUSSION
- 11.10-11.30 COFFEE BREAK
- 11.30-13.00 **2ND SESSION**
SUBJECT: TENSION/CONFLICT BETWEEN EU LEGISLATION AND INTERNATIONAL TREATY OBLIGATIONS OF THE MEMBER STATES AS A PROBLEM OF CONSTITUTIONAL LAW.
CHAIR: PROF. DR. JAAP DE ZWAAN
- 11.30-12.00 EUROPEAN UNION PERSPECTIVE, PROF. DR. PIET EECKHOUT
- 12.00-12.15 DISCUSSION
- 12.15-12.45 MEMBER STATES PERSPECTIVE, DR. ADAM LAZOWSKI
- 12.45-13.00 DISCUSSION
- 13.00-14.00 LUNCH BREAK
- 14.00-15.30 **3RD SESSION**
SUBJECT: AUTONOMOUS INTERPRETATION OF CONFLICTING EU LAW AND UNIFORM PRIVATE LAW CONVENTIONS
CHAIR: PROF. DR. DAAN ASSER
- 14.00-14.30 PROF. DR. OLIVIER CACHARD
- 14.30-14.45 DISCUSSION
- 14.45-15.15 PROF. DR. CHRIS TIMMERMANS
- 15.15-15.30 DISCUSSION
- 15.30-15.45 TEA BREAK

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15.45-17.15

4TH SESSION

SUBJECT: CASE STUDY 1: INCORPORATION OF UNIFORM PRIVATE LAW CONVENTIONS INTO EU LAW AS A POSSIBLE MODEL FOR DEALING WITH THE TENSION BETWEEN EU LAW AND UNIFORM PRIVATE LAW CONVENTIONS IN THE FIELD OF MARITIME AND TRANSPORT LAW.

HOWEVER, AS IS ILLUSTRATED BY THE CASE LAW GENERATED BY THE 1999 MONTREAL CONVENTION WHICH IS ALREADY INCORPORATED INTO EU LAW (SEE: (C-344/06) IATA, ELFAA VS. DEPARTMENT OF TRANSPORT, (C-63-09) WALZ VS. CLICKAIR, (C549/07) WALLENTIN-HERMANN VS. ALITALIA, (C-402/07) STURGEON), SUCH INCORPORATION DOES NOT SOLVE ALL PROBLEMS OF INTERPRETATION AND GIVES RISE TO SOME NEW PROBLEMS OF ITS OWN. THIS HAS IMPLICATIONS ALSO FOR THE INCORPORATION OF THE AMENDED ATHENS CONVENTION 2001 ON THE CARRIAGE OF PASSENGERS BY SEA INTO A NEW EU REGULATION.

CHAIR: PROF. MAARTEN CLARINGBOULD

15.45-16.15

THE INCORPORATION OF THE 1999 MONTREAL CONVENTION INTO EU LAW DR. I. KONING

16.15-16.30

DISCUSSION

16.30-17.00

THE INCORPORATION OF THE ATHENS CONVENTION 2001 INTO EU LAW AND EU POLICY ON PASSENGER RIGHTS,
MR. DANIEL WARIN

17.00-17.15

DISCUSSION

17.15

CLOSING OF FIRST DAY

18.00-19.00

DRINKS PARTY

19.00-22.00

BUFFET DINNER

PROGRAM

Friday 17 February 2012

08.45 - 09.00	REGISTRATION AND COFFEE
09.00 - 10.30	5TH SESSION SUBJECT: CASE STUDY 2: TENSION/CONFLICT BETWEEN BRUSSELS I AND LLMC AND CMR TENSION/CONFLICT BETWEEN BRUSSELS I AND MARITIME AND TRANSPORT LAW CONVENTIONS, IN PARTICULAR THE LIMITATION CONVENTIONS OF BRUSSELS 1957 AND LONDON 1976 AND 1996 AND CMR IN VIEW OF RE-CENT CASES FROM THE ECJ: (C39/02) MAERSK OIL & GAS AND (C553/08) TNT/AXA AND FROM THE HOGE RAAD 29.9.2006 SEAWHEEL RHINE/ASSI EUROLINK. CHAIR: PROF. DR. ERIK ROSAEG
09.00-09.30	RECOGNITION OF FOREIGN LIMITATION PROCEEDINGS, PROF. DR. FRANK SMEELE
09.30-09.45	DISCUSSION
09.45-10.15	LIS PENDENS, RECOGNITION AND ENFORCEMENT UNDER CMR AND BRUSSELS-I, PROF. DR. KRIJN HAAK
10.15-10.30	DISCUSSION
10.30-11.00	COFFEE BREAK
11.00-12.30	6TH SESSION SUBJECT: CASE STUDY 3: TENSION/CONFLICT BETWEEN THE ROME I AND ROME II REGULATIONS AND THE TRANSPORT LAW CONVENTIONS, CMR, HAGUE-VISBY RULES, HAMBURG RULES, RR, MC, CMNI, COTIF-CIM. CHAIR: DR. HERMAN BOONK
11.00-11.30	CONFLICT LAW PERSPECTIVE PROF. DR. PETER MANKOWSKI
11.30-11.45	DISCUSSION
11.45-12.15	TRANSPORT LAW PERSPECTIVE, DR. MARIAN HOEKS
12.15-12.30	DISCUSSION
12.30-13.30	LUNCH BREAK
13.30-15.00	7TH SESSION SUBJECT: CASE STUDY 4: TENSION/CONFLICT BETWEEN EUROPEAN DIRECTIVES ON WASTE (75/442 AND 2008/98/EC) AND ENVIRONMENTAL LIABILITY (2004/35/EC) AND THE CLC/HNS COMPENSATION REGIMES, THE ECJ CASE (C-188/07) COMMUNE DE MESGUER VS. TOTAL. CHAIR: PROF. DR. FRANK SMEELE
13.30-14.00	EU ENVIRONMENTAL LAW PERSPECTIVE, DR. EDWARD BRANS
14.00-14.15	DISCUSSION
14.15-14.45	GLOBAL COMPENSATION REGIMES PERSPECTIVE (CLC, HNS), DR. MANS JACOBSSON
14.45-15.00	DISCUSSION

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15.00-15.30

TEA BREAK

15.30-17.00

8TH AND FINAL SESSION

FORUM DISCUSSION

SUBJECT: QUO VADIS EUROPEAN LAW?

CHAIR: PROF. DR. CHRIS TIMMERMANS

17.00

CLOSING OF CONFERENCE

17.00-18.00

DRINKS PARTY

LIST OF CONFIRMED SPEAKERS/ CHAIRS:

- Prof.Dr. Fabian Amtenbrink, Professor European Law, Erasmus School of Law, Rotterdam
- Prof.Dr. Daan Asser, Supreme Court Judge, Hoge Raad
- Dr. Herman Boonk, partner at Boonk Van Leeuwen Advocaten, Rotterdam
- Dr. Edward Brans, Advocate, Pels Rijcken Droogleevers Fortuijn Advocaten, The Hague
- Prof. Dr. Olivier Cachard, University of Nancy II
- Prof. Maarten Claringbould, Professor of comparative maritime law, University of Leyden and partner with Van Traa Advocaten N.V. at Rotterdam
- Prof. Dr. Piet Eeckhout, Professor of European Law, King's College, London
- Prof. Dr. Krijn Haak, Professor of Commercial Law, Erasmus School of Law, Rotterdam
- Dr. Marian Hoeks, Erasmus School of Law, Rotterdam
- Dr. Mans Jacobsson, former director of the International Oil Pollution Fund
- Dr. Ingrid Koning, University of Utrecht
- Prof. Dr. Pieter-Jan Kuijper, Professor of the Law of International (Economic) Organizations, University of Amsterdam
- Dr. Adam Lazowski, University of Westminster
- Prof. Dr. Peter Mankowski, Professor of Private law, comparative law, private international law and international procedural law, University of Hamburg
- Prof.dr. Erik Rosaeg, Professor Maritime Law, Scandinavian Institute of Maritime Law, University of Oslo
- Prof. Dr. Frank Smeele, Professor of Commercial Law, Erasmus School of Law, Rotterdam
- Prof. Dr. Chris Timmermans, Visiting Professor Erasmus School of Law 2010-2012, Rotterdam, former Judge European Court of Justice
- Mr. Daniel Warin, Policy officer, European Commission
- Prof. Dr. Ramses Wessel, University of Twente
- Prof. Dr. Jaap de Zwaan, Professor of Law of the European Union and former Dean, Erasmus School of Law, Rotterdam, Director of Netherlands Institute of International Relations "Clingendael"



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