Both books deal with the important issue of jurisdiction and enforcement of judgments within the European Union. Gaudemet-Tallon’s book, written in the French language, is restricted to jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as laid down in the EC Regulation No. 44/2001 (‘Brussels I’) and in the Brussels and Lugano Conventions. Rauscher’s book, written in the German language, addresses a wider range of subjects. Not only is the ‘Brussels I’ Regulation discussed in depth article by article, but attention is also paid to other regulations in the field of judicial cooperation in civil matters within the meaning of Article 65 EC. Rauscher discusses the Regulation of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (No. 1347/2000; ‘Brussels II’) (pp. 517-738). The proposal to replace the ‘Brussels II’ Regulation by a new regulation can be found on pp. 739-778, without further comments. In the mean time the latter Regulation (‘Brussels IIA’) has been adopted and will be applied as from 1 March 2005. Bettina Heiderhoff discusses the Regulation on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (No. 1348/2000) (pp. 779-857) and Jan von Hein the Regulation on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters (No. 1206/2001) (pp. 859-995). Finally, the text can be found of the June 2003 proposal for a Regulation creating a European Enforcement Order for uncontested claims (pp. 997-1050). The latter Regulation is adopted on 24 April 2004 (No. 805/2004) and will be applied as from 1 October 2005.

Professor Gaudemet-Tallon’s book is a comprehensive study of questions relating to matters of jurisdiction and enforcement of judgments within the EU. This is the third revised edition of her book on the Brussels Convention. In this new edition, Professor Gaudemet-Tallon rewrote parts of the book in view of the transformation of the Brussels Convention into the ‘Brussels I’ Regulation. To my knowledge this book is the only study in French which is now up to date with respect to the ‘Brussels I’ Regulation. There is, of course, the famous study of the late Georges Droz (Compétence...
judiciaire et effets des jugements dans le Marché Commun), but this work dates from 1972. However, it still is an important source of information for the interpretation of the Brussels Convention 1968 and, hence, for the equivalent articles of the ‘Brussels I’ Regulation. Droz and Gaudemet-Tallon paid attention to the ‘Brussels I’ Regulation in their article in the Revue critique de droit international privé 2001, pp. 601-652. Gaudemet-Tallon’s book gives more than comments on the ‘Brussels I’ Regulation. It provides information on the Brussels and Lugano Conventions as well. Sometimes this wider scope is confusing, for instance when Gaudemet-Tallon discusses the rule of special jurisdiction regarding matters relating to a contract, laid down in Article 5(1) of the Brussels Convention and in Article 5(1) of the ‘Brussels I’ Regulation. In my view, a detailed discussion focused on the latter provision would have been more practical, whereas the differences with the Brussels (and Lugano) Conventions could be given as background information. Another example where Gaudemet-Tallon gives full attention to a matter which has become obsolete in the ‘Brussels I’ Regulation is the ground for refusal of the recognition of a judgment, laid down in Article 27(4) Brussels Convention (pp. 315-320). This ground relates to the incidental question (‘question préalable’; ‘Vorfrage’) and is no longer maintained in the ‘Brussels I’ Regulation, due to the fact that ‘Brussels II’ was adopted.

Rauscher’s Europäisches Zivilprozeßrecht has a totally different scheme in which each provision of the ‘Brussels I’ Regulation is commented on by Stefan Leible, Peter Mankowski and Ansgar Staudinger, respectively. It is written in the best German tradition of Kropholler’s Europäisches Zivilprozeßrecht (7th edn., Verlag Recht und Wirtschaft, Heidelberg 2002) and Geimer/Schütze’s Europäisches Zivilverfahrensrecht (2nd edn., Beck, Munich 2004). The commentary concentrates on the provisions of the ‘Brussels I’ Regulation, whereas the provisions of the Brussels Convention are only mentioned as far as necessary for the good understanding of the equivalent provisions in the Regulation. One of the major changes in the ‘Brussels I’ Regulation is the rule of special jurisdiction regarding contractual obligations. Article 5(1)(b) deals with an autonomous definition of the ‘place of performance of the obligation in question’ in the case of sale of goods and of provision of services. As regards the sale of goods the place of performance of the obligation in question shall be the ‘place in a Member State where, under the contract, the goods were delivered or should have been delivered’. This provision calls for clarity. In easy cases Article 5(1)(b) does not give rise to any problem. For instance, if contracting parties agreed upon the place of delivery of the goods, the court of that particular place will have jurisdiction with regard to all matters relating to the contract. There is concentration of disputes. However, if parties have made an agreement that the purchase price of the goods will be paid at a certain place, the court of that particular place will have jurisdiction to hear any dispute on payment. In the latter case there will be no concentration of disputes before that court. The court of the place where the goods were delivered will have jurisdiction to hear cases regarding the delivery or non-delivery. Article 5(1)(b) demands that the place of performance is situated in a Member State. If this is not the case, then according to
subparagraph c subparagraph a will apply. For instance, if the goods were delivered in Casablanca (Morocco), disputes concerning the payment can be brought against the defendant having his domicile in a Member State, in accordance with Article 5(1)(a) in another Member State, in the courts for the place of performance of the obligation in question (viz., payment). Where payment has to take place, has to be decided according to the applicable law to the contract (the Tessili/Dunlop doctrine, [1976] ECR 1473).

A problem might arise if the parties did not make an agreement on the place of delivery and the goods were not delivered at all. Does the words ‘under the contract’ used in paragraph b of Article 5(1) mean that regard is to be had to the applicable law to the contract in order to establish the place of performance? Or should paragraph a apply according to paragraph c? The difference between applying paragraph b or paragraph a is to be found in the concentration of disputes, which is only the case under paragraph b. If I am correct, neither Gaudemet-Tallon nor Leible consider this befuddling problem. It goes without saying that the final solution for this problem has to be given by the European Court of Justice.

Both books under review give indispensable information to practitioners and scholars about the application of the ‘Brussels I’ Regulation. These books ought to be within arm’s reach when studying and applying the ‘Brussels I’ Regulation.

P. Vlas
Editor-in-Chief


Suppressing the Financing of Terrorism is a handbook for legislative drafting which draws on a number of sources from international law as well as relevant background materials. Maintaining a certain detachment from the attacks in New York City and Washington, the handbook reveals that whilst on the one hand attempts to suppress terrorism by attacking its financial base date back as far as the early nineteen seventies, on the other hand, recent incidents have re-alerted the authorities to the fact that modern terrorism is a huge logistic operation requiring immense financial resources, which are usually built up in precisely those states, which are the potential targets of terrorist attacks.
The most prominent piece of international legislation on suppressing the financing of terrorism is UN Security Council Resolution No. 1373 (2001). This resolution is of interest not only in substantive terms, but also because it might be seen as one of the few examples supporting a more optimistic view of the power of the United Nations and its organs. Therefore, discussion usually focuses on this resolution and it is to be appreciated that the IMF’s publication widens the perspective.

However, this publication does not of course make the highly political background to this means of tackling terrorism explicit. Whereas most European countries treat the suppression of financial streams as part of the political fight against terrorism, the ‘coalition of the willing’ tends to put it into a more military discourse. A wish to heal the rift between these different concepts may be one of the reasons why comparative remarks of the IMF usually concentrate on Monaco and Barbados. But picking on this cannot necessarily be expected from an international organisation.

This leads to another aspect of this subject: even without an explicit provision in the constitution or statutory law, preserving secrecy in the banking system finds a place in most legal systems. This is sometimes characterised as a result of effective lobbying by the banking sector, but should also be seen in the larger context of privacy rights and human rights. Awareness of the threat which anti-terrorist measures can pose to human rights is much higher when it comes to detention and wire-tapping and rightfully so. That said, undermining values, which have historically dominated the relationship between bank and customer may turn out to be more harmful than anticipated. Suppressing the Financing of Terrorism refers to this problem only briefly, when commenting on Article 21 of the International Convention for the Suppressing of the Financing of Terrorism, where it states:

‘Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.’

Obviously the suppressing of the financing of terrorism does affect these rights, obligations and responsibilities. The preamble to the UN Universal Declaration of Human Rights reminds states to keep human rights ‘constantly in mind’, which also means to appreciate them in rough times. Even in respect of national differences it seems to be an easy exit to transfer all responsibilities for solving the emerging conflicts to national legal systems. The commitment to human rights as part of international law also involves addressing these embedded tensions. Therefore, one might look forward to the advice the Council of Ministers of the Council of Europe or the Office of the High Commissioner for Human Rights might give on these matters. Whereas other policing methods generally only affect the suspect, everybody opening a simple account is already feeling the effects of interference in the relationship between banks and their clients, therefore the quantity of ‘collateral damage’ is a real issue here.

The publication here under review starts out by introducing the sources of interna-
tional law in the area of suppressing the financing of terrorism. In addition to the 1999 UN Convention, eight further UN Resolutions cover a range of measures from freezing individual accounts to the development of new monitoring schemes. Furthermore, the Financial Action Task Force, a board established by the Group of Seven summit in Paris 1989, released some recommendations in 1990, which concentrate especially on an assessment of the anti-money laundering systems of its member states. In the aftermath of 9/11 Special Recommendations have ensured that member states also implement UN Resolution 1373. Subsequently, there have been further Special Recommendations dealing with some of the detail surrounding the freezing or confiscation of assets and creating the basis for the criminalisation of the financing of terrorism.

Yet, the publication goes beyond a mere collection of international norms and seeks to influence national legislation. After giving an overview of the legislation in some countries (p. 41) the book presents some patterns for designing the implementing legislation. This is followed by notes on certain specific matters. Firstly there is the problem of defining terrorist acts (p. 45). This debate has a far longer history than the simple guidelines in Suppressing the Financing of Terrorism would indicate. The background to these explanations is, firstly, the debate about achieving a definition of terrorism, which is neutral between the concept of state terrorism, as in the 18th century and later in the post-colonial era, and that of terrorism against a democratic order. Secondly and more recently, the wording of international declarations has led to fears that legitimate citizen rights might be undermined as a result of inappropriate definitions.

In common with a number of other instruments of international law the International Convention for the Suppressing of the Financing of Terrorism attempts to circumvent these difficulties by choosing not to define ‘terrorism’, but instead defining ‘terrorist acts’ (p. 45). This is explicitly intended to absolve the Convention from any political debate related to a discussion and analysis of the phenomenon of terrorism. But this is obviously disingenuous because ‘terrorist acts’ are distinguished from other forms of violence only by virtue of their distinct political background. One should be sceptical of any legislation, which is built around undefined terms. The pragmatic solution might be to consider as a terrorist act any act, which the Counter Terrorism Committee would unanimously consider as such. But this suggestion loses its value as soon as the discourse leaves the circle of the Committee.

This is not however a problem limited to this Convention alone which is why the Convention for the Suppressing of the Financing of Terrorism refers to the handling of other international law treaties (Art. 4). As far as the Convention creates generic offences (p. 47) it introduces a subjective element, such as the intention and purpose of the act (Art. 4). A number of countries have added elements to the definition, which have had the effect of either limiting its scope or expanding it. Nevertheless, in respect of the subjective element of the crime problems are more likely to occur at the level of evidence rather than definition. The publication suggests that the creation of subjective elements of crimes might vary according to the ‘sensitivity to basic rights considerations … [which] may make successful prosecution of offences more difficult’ (p. 48). This
sounds as if there is a choice of adopting a laxer standard of basic rights as a consequence of their weaker legal standing. This raises some concerns because it might seem that the IMF is implying that achieving successful prosecutions might override the goal of improving basic rights standards.

A key issue in establishing offences, which address the problem of terrorism more specifically, is to go beyond the usual money laundering provisions. This is, incidentally another argument in support of the need for a definition of terrorism in international law. The IMF reminds states that legislation to address the problem of money laundering is not sufficient to address the goals of the Convention. Rather, states are required to deal with the problem of financing terrorism. The crucial difference is that, whilst with money-laundering the criminal tries to secure the profits from his illegal act by transferring them into the legal money circulation, with terrorism legally acquired money (at least that is the new phenomenon) is used to finance terrorist acts. This chronological order is what makes the subjective elements of these crimes so important, as is also the case with other attempt-offences.

The IMF assesses the money laundering legislation as helpful, but warns states that relying exclusively on the offence of money laundering ‘would leave a significant gap in the legislation’ (p. 49). However, since the main difference is located on the subjective side, one might wonder whether that is really true. But additionally the methods of financing certainly make separate legislation necessary. This is supported by some empirical studies, which suggest that the bulk of money laundering legislation has not been very successful.

At least in terms of international co-operation, the Convention can rely on a much wider basis, even taking in countries such as Switzerland, which – for good reasons – has in the past placed considerable emphasis on the importance of maintaining confidentiality between banker and client. By contrast, the whole idea behind Suppressing the Financing of Terrorism is to remove the barriers to criminality, so that financing terrorism, like aiding and abetting, is an offence regardless of whether the terrorist act is actually carried out later.

Another focus of the Convention is on the criminal liability of corporate bodies (Art. 5). As with a number of other areas, for example environmental law, the idea of individual liability has increasingly developed into the dominant form of criminal liability. Article 5 is peculiar, because it creates a general concept of corporate liability in criminal, administrative and civil matters. This is a commendable step, even though the usual difficulties of causation and evidence remain.

Whilst it quite often remains unclear what the specific characteristics of the new global terrorism are, the suggestion that global networking is one of them has some merit. One feature of international law must therefore be to ensure a higher level of international co-operation. Various provisions of the Convention address this matter, including the establishment of jurisdiction, extradition rules and smoother procedures (Arts. 7-11, Special Recommendation V). As always, much will depend on states having the political will to implement and execute the relevant agreements.
Both Conventions and UN Resolutions seek to describe the criteria of ‘financing’ and the scope of the relevant measures to tackle it (confiscating, seizing). Most of the measures are similar to mechanisms used for example in tackling drug crime or money laundering. That is why the remarks here should concentrate on the meaning of the term ‘financing’. Whereas transactions directly linked to specific terrorist acts can obviously be considered ‘financing’, more general support for terrorist infrastructure, for example training camps, is more difficult to quantify. Additionally, ‘financing’ refers to the Western banking system and has to be adapted to a number of other remittance systems (SR VI, p. 66). Similarly, the possibility of financing through non-profit organisations must also be considered (SR VIII).

In publishing this handbook, the IMF is seeking to support states, especially those which lack the requisite legal and administrative infrastructures, in mastering the ‘ambitious objective’ (p. 74) of complying with international law. Only time will tell whether this has been a success. One of the major problems will be precisely this diversity between states with a highly developed rule of law standard and transition states struggling on their way towards establishing a working judicial system. This publication may prove particularly helpful in assisting the latter group in developing their anti-terrorism policies. Therefore the IMF has to be congratulated for creating a platform for the development of international law in this area.

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2. G. Ipsen, ‘Discourse of Evil, Speaking Terrorism to Silence’, <http://www.reconstruction.ws/033/isen.htm> (visited at 28 July 2004); for the US also see the report of the United States Department of States ‘Patterns of Global Terrorism’, Appendix F.
4. See the introduction in P.F. Müller, Wegleitung zum schweizerischen Bankgeheimnis (Zurich, Schulthess Juristische Medien AG 1998).
5. This became especially obvious in the Bilateral Agreements II between Switzerland and the European Union, which uphold banking secrecy in Switzerland whilst giving the European Union more rights in taxation.
9. See A.P. Schmid and A.J. Jongman, Political Terrorism: A new guide to actors, authors, concepts, data bases, theories and literature (Amsterdam, North Holland Publishing Co. 1988) p. 5 for a list of 22 different elements (4), which figure in over a hundred definitions.
12. See the ongoing research project of the Max-Planck-Institut for Foreign and International Criminal Law (Freiburg), <http://www.iuscrim.mpg.de/forsch/krim/kilchling1_e.html> (visited 29 July 2004).

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Since the start of the 1990’s, the countries of central and eastern Europe have faced unprecedented migration policy challenges. With average incomes at roughly half of the European Union average, they have become major potential sources of emigrants to the EU Member States. At the same time, richer and more stable than most countries further east, they have attracted asylum applicants and economic migrants in increasing number. Countries where non-Europeans had been quite rare have been compelled to take the first steps towards becoming multi-cultural societies. Moreover, the countries of central and eastern Europe have not been left to manage these changes in isolation. Instead, as part of their drive to accede to the European Union, they have had to adopt the EU *acquis* on asylum and migration, even though they have had no hand in shaping EU rules. The process of taking over the *acquis* in this field has not been made any easier by the fact that the *acquis* itself is undergoing rapid development. A fascinating study could be written of these developments; this rather banal book is not it.

The authors – mainly officials from the International Organisation for Migration and the International Centre for Migration Policy Development – approach the issue of migration from different perspectives. Albert Kraler, Martijn Plum, Frank Laczko and Amanda Klekowski analyse recent statistical trends in asylum applications in and from central and eastern Europe. They reach a number of unremarkable conclusions: that introducing visas reduces asylum applications; that most asylum applicants from central and eastern Europe are Roma; and that the countries of central and eastern Europe experienced an enormous increase in asylum applications during the 1990’s. Albert Kraler and Krystyna Iglicka analyse labour migration in the central and eastern European states. Acknowledging that only limited data is available, they sketch the outlines of labour movements since 1990 but can reach no conclusion other than that further research is needed.

Heinz Fassmann and Rainer Münz consider the impact of EU enlargement on east-west migration. The authors review the literature forecasting migration movements within the enlarged EU and draw attention to the significant demographic changes in
the central and eastern European countries during the 1990’s. Although the fertility rate in these countries was higher than in the EU Member States until the late 1980’s, the sudden introduction of the market economy and the removal of natalist incentives produced a sharp decline in births, so that today the Baltic States and Hungary, for example, are experiencing a yearly population decrease of 0.5%. The authors argue that emigration will inevitably decline due to demographic changes; rather than worrying about a flood of migrants from the new Member States after enlargement, the current Member States should instead worry whether they will be able to attract the skilled migrants which they will increasingly require. Peter Futo and Thomas Tass consider border apprehension statistics in central and eastern Europe as a source for measuring illegal migration. Their paper contains numerous sweeping generalisations with little or no supporting evidence; the authors assert, for example, that most central and eastern European countries have weak or non-existent legislation concerning smuggling or trafficking in persons, while making no attempt to substantiate this claim.

The chapter by Peter Kolakovic, Jonathan Martens and Lynellyn Long on irregular migration through Bosnia forms a marked contrast to the mediocrity of the preceding contributions. Having conducted extensive interviews with both illegal migrants and officials in Bosnia, the authors are able to offer an insight into how measures to prevent illegal migration are applied in reality. The dangers illegal migrants face at the hands of traffickers are well-known; less well-documented are the perils illegal migrants may face from the law enforcement authorities. The authors observed a male African illegal migrant who was barely able to walk as a result of beatings inflicted by the Croatian authorities; women African migrants also complained of beatings. The authors also consider the impact of an increasingly popular tool in curbing illegal migration throughout Europe, the readmission agreement, which has to date attracted curiously little scholarly attention. The readmission agreement between Croatia and Bosnia entitles Croatia to return any illegal migrant detected on its territory to Bosnia when it can be demonstrated that he entered Croatia via Bosnia. However, as it is cheaper to deport a migrant on the bus to the Bosnian border rather than to pay his air fare to Iran or China, the authors found that, in practice, the Croatian authorities use the agreement as a means to dump illegal migrants in Bosnia regardless of whether they have passed through Bosnia at all. According to the UN High Commission for Refugees in Bosnia, up to half the migrants returned under the agreement had never set foot in Bosnia. Moreover, scant regard is paid to the humanitarian needs of the migrants expelled under the agreement. As Bosnia has no centre in which to accommodate persons deported under the agreement, they are simply set free at the border and told to catch the local bus to the nearest Bosnian city, Bihac. As the authors note: ‘If the migrants had sufficient resources to attempt another crossing, they probably tried again; if not, they were left to fend for themselves.’ This chapter starkly illustrates the need for more research into the effect of readmission agreements in practice.

Franck Laczko, Amanda Klekowski and Jana Barthel undertake a review of statistical data concerning trafficking in women from central and eastern Europe. While
noting that the quality of data is poor, they demonstrate that central and eastern Europe and the former Soviet Union are increasingly the main countries of origin of women trafficked into western Europe, displacing other source countries in Asia and Africa. The authors reach the unsurprising conclusion that it is poverty that drives women to accept dubious job offers in western Europe, as single mothers or women with elderly parents to support are most likely to grab at the apparently golden opportunities offered by traffickers.

In the final chapter, Peter van Krieken looks at how the central and eastern European countries have striven to take on the obligations of the EU acquis concerning migration and asylum. No-one could fault the author’s ambition. In twenty-four pages, Dr van Krieken considers European migration movements since the mid-nineteenth century, with particular reference to some eastern European countries, summarises the course of the enlargement negotiations, provides a brief case study of Poland and even finds room to criticise the Common Agricultural Policy. Van Krieken is able to draw on his experience as an insider in the enlargement process to provide a perceptive – and amusing – insight into the negotiations, which he likens to a ritual; patient and diplomatic civil servants from the candidate countries have been faced with ‘checks, controls, meetings, dialogues, Pre-Accession Advisers, monologues, creativity, expert meetings, expert missions and even more expert missions [but remain] willing to answer questions which they have already answered a hundred times’. In van Krieken’s view, the EU has been plus royaliste que le roi, as it has criticised the candidate countries for migration practices which are no different, if not worse, in the Member States themselves and compelled the candidates to adopt as law instruments which are in fact only recommendatory. The only criticism to make of this tour de force is that in his study of the negotiations with Poland, the author deals with the Regular Report, the Justice and Home Affairs expert monitoring mission report on Poland and the report of the Collective Evaluation Working Group, without explaining that each of these reports had very different origins and purposes.

In sum, despite the promise of its subject, this is a disappointing book. It does, however, contain two contributions – by Kolakovic, Martens and Long and by van Krieken – which are well worth reading.

Toby King
European Commission

1. The views expressed are entirely personal and do not represent the views of the European Commission.
The book presents contributions to a 2-day symposium on ‘Die Bedeutung des Internationalen Privatrechts im Zeitalter der neuen Medien’, which was held at the Friedrich-Schiller-University in Jena on 31 January and 1 February 2003. The central question of both symposium and book is whether and to what extent private international law is capable of dealing with challenges raised by the Internet. An interesting question in view of the often heard contention that private international law, which is based on territorial contacts, does not fare well with respect to a transnational and deterritorialised computer network, such as the internet. Moreover, the question is of increasing relevance as a result of the advancing internationalization of online activities (be it business-to-business or business-to-consumer) as a result of information and communication technologies and a continuous growth of bandwidth.

The book provides an excellent overview of the several fields of private (international) law concerned, starting off with the presentation of Erik Jayme on ‘Kollisionsrecht und Internet – Nationalisierung von Rechtsverhältnissen oder “Cyber-Law”?’ Jayme explores the meaning of cyberlaw, which ranges from the – meanwhile generally regarded as obsolete – concept of a lex internet – a legal system especially designed for and tuned to online behavior – to self- or co-regulatory arrangements. A series of very interesting topics, such as globalization and the position of NGOs in setting standards, universal jurisdiction, and the role of arbitrage, is subsequently sketched in view of the cyberlaw concept, albeit rather briefly. This is inherent in holding on to the lecture form as the author did, but may leave the reader who is less informed on private international law issues – as is the case with respect to many ICT law experts – somewhat puzzled on the exact ins and outs. Jayme concludes rightly so that private international law is receptive to new (technological) developments and, thus, retains its significance with respect to online activities, with the marginal comment that the relevant contacts should be based on durable locations of persons not the more arbitrary ones, such as those of activities.

Next is the presentation of Olivier Remien: ‘Das anwendbare Recht bei elektronisch geschlossenen Verträgen’, which deals with the applicable law to electronic B2B contracts and – again – appropriately states that traditional (conflicts) law still works fine in this area. While addressing the UN Convention on the International Sale of Goods 1980, an omission is, however, that the author does not mention current work of the UNCITRAL on a draft convention for electronic contracts, which is intended to complement the Vienna Convention of 1980. Furthermore, the part that deals with the Rome Convention does not so much explore points of attention with respect to the position of international online contracts under the Convention, but goes more into the possible collisions with the country of origin principle of EU directive 2000/31/EC on
e-commerce. However, as Remien acknowledges, the relationship between this principle and rules of private international law, i.e., the Rome Convention 1980, is still very much unclear. It is interesting that Remien mentions the Colzani case ([1976] ECR 1831), since many e-commerce businesses may not live up to the standard set there. Because this chapter is still in the original lecture form as well, some of the issues (e.g., the aforementioned Colzani case) may again have been dealt with too summarily for non-private international law experts.

Brigitta Lurger deals with special rules of jurisdiction and conflict rules with respect to international consumer contracts in ‘Internationaler Verbraucherschutz im Internet’. This topic has been debated fiercely with the introduction of Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and is still relevant in view of the upcoming revision and modernisation of the Rome Convention 1980. Lurger’s contribution sets off with the remarkable statement that pure national cases are a rare exception on the internet, which may not be entirely true in instances where consumers have ample national purchasing possibilities. Nevertheless, the number of international consumer contracts will generally have increased as a result of the internet. Lurger contends that Article 15 of Regulation 44/2001 is exemplary for a revised Rome Convention 1980 and states convincingly that the battle between the country of origin and marketplace principle has with respect to consumer protection law been decided in favor of the latter. She touches the sore spots of private international law in this area with her remarks that special jurisdiction rules do not protect European consumers against activities of third country businesses and a revised Article 5 of the Rome Convention 1980 should decrease the significance of scope rules in EU consumer protection directives. Another important issue she points out is the possibility for online businesses to restrict their services to consumers in certain countries (or non-consumers for that matter) to restrict or remove jurisdiction or applicable law risks.

The contribution of Peter Mankowski, which is titled ‘Behördliche Eingriffe und grenzüberschreitende Online-Dienste’, addresses the effectiveness of government or public sector intervention in general and more specifically the possibilities for government intervention with respect to online activities. He points out new ways for governments to take action, such as by blocking or restricting access to certain websites in order to disable communication to citizens and by making intermediaries (in their function of gatekeepers) also responsible as an incentive to exert control. Mankowski further explores several areas (i.e., credit, assurance, telecommunications, business and competition law) of governmental supervision more deeply. Amongst others, he identifies a lack of consumer protection in the area of mail order insurance and online auctions, and, therefore, points (as did Lurger) at the importance of the marketplace principle in these areas. In the area of credits, he indicates that websites or use of a German access provider do not constitute an establishment in that country and are insufficient contacts for applicability of protective provisions under the Act on Credit Institutions (‘Kreditwesengesetz’). However, introducing a marketplace principle in this area would, according to the author, lead to regulatory and enforcement problems
with respect to foreign credit institutions. Finally, he sees no specific problems in view of online activities under competition law. The contribution is very instructive for non-experts as well, because of the general background information on the different issues provided by the author.

Andreas Spickhoff’s contribution is titled ‘Das Internationale Privatrecht der sog. Internet-Delikte – Art. 40-42 EGBGB, “Rom II” und Herkunftslandprinzip’ and deals with cross-border online tort. The author provides an instructive overview of German rules and the preliminary draft proposal for a Council Regulation on the law applicable to non-contractual obligations (Rome II) in a way that is understandable for those readers that lack expertise in this area. More specifically with respect to online tort, Spickhoff explores the relevant locations to serve as decisive contacts with respect to online torts and concludes that the location of servers are of no interest under the *locus delicti* rule, but the place where messages were sent on the other hand is significant in such instances. Although, Spickhoff also points at the place of residence or establishment of persons as an alternative in case the place where a message was sent (or even conceived) is unclear, one could even argue that the latter is irrelevant anyway, because arbitrary and easily manipulated. Not merely when hackers hide their traces, but also more generally the location can – if at all – be difficult to determine. Spickhoff further points out that in case of damaging of personalities and reputations through the internet, it is justified to have the offender bear the consequences of choosing a worldwide network to communicate his harmful message by conceiving all locations where his actions have effects as relevant private international law contacts. Spickhoff explains that the applicability of the laws of these locations is, however, restricted to effects in that specific area and the significance of such locations is, thus, restricted at the same time. The author concludes that as result of its restricted scope, the country-of-origin principle is of only confined importance in this area.

Next Eva-Maria Kieninger considers the justice and use of the marketplace principle with respect to unfair competition on the internet in: ‘Die Lokalisierung von Wettbewerbsverstößen im Internet’. Kieninger points at German case law, which holds that expressly restricting services offered on websites to certain countries or excluding customers from specific countries is an effective way of escaping from worldwide effects of the marketplace principle. She very competently explores different factors, such as explicit restrictions, language, currency, domain names, local nature of service provision etc., that may or may not play a role or even be decisive in determining the location of online unfair competition activities, and finally concludes an explicit disclaimer is most appropriate to provide notice of limited service provision. At the same time, she fears negative consequences as a result of the marketplace principle for the development of the internal and worldwide market. On the other hand, however, Kieninger argues that a worldwide country-of-origin principle is not possible, most particularly because of a lack of harmonization of unfair competition law. Although this chapter is in lecture form as were the first two contributions, this time it is sufficiently informative for non-specialists as well.

In ‘Kennzeichenkonflikte im Internet’, Ansgar Ohly addresses the collision between
territorial trademark law and borderless and transnational communication networks, and more specifically the role of the (commercial) effects principle. This principle is increasingly put forward as the solution to delineate relevant and irrelevant online actions for trademark infringement. He discusses the interaction and relationship between this principle in substantive and conflicts law. Ohly contends that trademark conflicts on the internet are not so much dictated by conflicts of trademark law, but rather conflicts of territorially confined rights in the area of trademark law. He argues that possible solutions proposed under auspices of the WIPO are the right track to follow. The proposal, amongst others, encompasses the effects principle as well as notification and conflict avoidance procedures. Very briefly, Ohly also addresses the alternative dispute resolution mechanism of ICANN with respect to domain names.

The contribution of Gerald Spindler, titled ‘Morpheus, Napster & Co. – Die kollisionsrechtliche Behandlung von Urheberrechtsverletzungen im Internet’, finally deals with the applicable law to international copyright conflicts and, more particularly, the locus protectionis principle as the leading conflict rule in these cases. Spindler distinguishes between different online uses (uploading and downloading (or more generally copying), and making available to the public) of copyrighted materials in view of diverging results with respect to the localization of these uses. In the first case, he argues that the place where a copy is made and stored is the decisive contact, since that is the place where the work is of economic value to the user. This approach may, however, turn out to be problematic, since the place where a person acts (see also Jayme) is – comparably to the place of the server as is correctly indicated by the author – often arbitrary and difficult to determine. The place where the user (i.e., offender) resides would, therefore, be more appropriate. In the second case, the country of origin of the work is decisive in his view. His argument that the problem of free havens can then be avoided by using the location where the service provider is established may, however, not work out well in many cases. Little to nothing will restrain those that intend to illegally make copyrighted works available to the public to choose a service provider established in such a free haven. Ultimately, it does not matter where or by whom the server is operated as long as the information is available online (if necessary on different servers of different service providers established in different countries).

Returning to the overall question, which was raised by symposium and book, a good number of interesting subjects have been reviewed and relevant issues with respect to online activities addressed by the authors to provide (possible) answers. All in all, private international law is – with minor changes in some instances – in principle receptive to technological developments. Ultimately, the most conspicuous thread in all the contributions is, however, the country-of-origin principle of Directive 2000/31/EC on electronic commerce. It seems, therefore, a good idea to schedule a next conference entirely focused on this principle soon.

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These two textbooks have as their focus an area of growing importance: European law of civil proceedings and European law of obligations. Both have been edited by Ulrich Magnus, Professor of Civil Law at the University of Hamburg and both provide an overview of regulations, directives and recommendations on these matters. The text of the collected instruments is published in three languages: in German, English and French. This is very useful not only for practical reasons, but it simplifies a comparison of the various texts. In *European Law of Civil Proceedings* Magnus collected 17 instruments: from the 1968 Brussels Convention and the ‘Brussels I’ Regulation to several other proposals, such as the Insolvency Regulation and the proposal for a Council Directive on Legal Aid. After the date of publication of this textbook some proposals have been adopted: the Directive on Legal Aid was adopted on 27 January 2003 (No. 2003/8/EC) and has to be implemented in the national laws of the Member States before 30 November 2004. On 21 April 2004 the European Council accepted the EC Regulation (No. 804/2004) creating a European Enforcement Order for uncontested claims (*OJ* L 143/15). This regulation will enter into force on 21 January 2005, but will be applied as from 21 October 2005.

In the textbook on European law of obligations Magnus collected 27 regulations and directives. In his preface Magnus emphasizes that contract law is increasingly harmonized within the European Union and that it also is at the centre of important, intensive academic research. Magnus divides the directives and regulations in this collection into five sub-areas. The first sub-area considers the formation of the contract, with five directives: from the 1985 Directive on the protection of the consumer in respect of contracts negotiated away from business premises to the 1999 Directive on a Community framework for electronic signatures. The second sub-area provides a collection of seven directives, which concern the contents of the contract: late payment in commercial transactions, unfair terms in consumer contracts, consumer protection in the indication of the prices of products, the approximation of laws regarding misleading advertising, comparative advertising, the advertising of medicinal products for human use and, finally, the injunctions for the protection of consumers’ interests. In the third sub-area nine directives can be found in the field of specific contracts: from self-employed commercial agents to financial collateral arrangements. The fourth sub-area relates to
electronic commerce and protection of personal data, the fifth to tort liability where three instruments are collected. Here the reader finds the Directive on the approximation of the laws concerning liability for defective products, the Directive on general product safety, and the Regulation on air carrier liability in the event of accidents.

As mentioned above, both textbooks can be useful for study and practice. They make a welcome contribution to the knowledge of European law in the field of private law.

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