Conference Program, CVs and Abstracts

I. June 12, 2012

08:30-09:00 Registration

09:00-10:00 Opening Remarks
• Prof. Dr. M. Emin ARTUK, Dean of Law School of Marmara University
• Prof. Dr. M. Zafer GÜL, Rector of Marmara University
• Prof. Dr. Vedat AKGİRAY, President of Capital Market Board of Turkey
• Abdulkadir Emin ÖNEN, Delegate of Justice and Development Party of Turkey, Head of China Turkey Cultural Exchange Group
• Mr. Tian Kaisheng, Acting Consul General of China in Istanbul attended on behalf of Xiaosheng GONG, Ambassador Extraordinary & Plenipotentiary of the People’s Republic of China to the Republic of Turkey
• Bekir BOZDAĞ, Deputy Prime Minister of Turkey

10:00-11:00 Panel I: General Introduction on the Laws of Turkey and People’s Republic of China
Moderator: Prof. Dr. Hasan SELÇUK, Deputy Rector of Marmara University
• Prof. Dr. Gokhan ANTALYA, Head of Civil Law Department of Marmara University
• Prof. Dr. Renshan LIU, Dean of Law School of Zhongnan University of Law and Economics, Vice President of Chinese Private International Law Association

11:00-11:20 Coffee Break

11:20-13:00 Panel II: Foreign Investment Law
Moderator: Prof. Dr. Günseli ÖZTEKİN GELGEL, Law School of Istanbul University
• Prof. Dr. Zhang QINGLIN, Law School of Wuhan University
  “On The Public Interest in International Investment Agreements”
• Prof. Dr. Lerzan YILMAZ, Law School of Maltepe University
  “New Developments on the Foreign Investment Law”
• Assoc. Prof. Dr. İlhan YILMAZ, Law School of Galatasaray University
  “China –Turkey Bilateral Investment Agreement”
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- Assist. Prof. Dr. Mustafa ERKAN, Law School of Marmara University  
  “Work Permit of Foreigners in Turkey and China”
- Question and Answer

13:00-14:00  Lunch Break

14:00-15:40  Panel III: Capital Market in Turkey  
 **Moderator:** Bülent GOKREM, Board Member of Capital Market Board’s of Turkey

- Assoc. Prof. Dr. A. Caner YENIDUNYA, Law School of Marmara University  
  “General Principles of Crime and Misconduct in Turkish Capital Market Law”
- Assoc. Prof. Dr. Yakup ERGINCAN, General Manager of Central Registry Agency  
  “Central Registry Agency, the Young and Brilliant Component of Turkish Capital Markets”
- Bekir S. SAFAK, Executive Vice President of Capital Markets Board of Turkey  
  “The New Market Structure of the Turkish Capital Markets and the New Corporate Governance Regime of the New Capital Markets Law”
- Dr. Nusret CETIN –Capital Market Board of Turkey  
  “International Standards and Emerging Markets”
- Question and Answer

15:40-16:00  Coffee Break

16:00-17:40  Panel IV: International Arbitration I  
 **Moderator:** Prof. Dr. Cemal ŞANLI, Head of the Private International Law Department of Law School of Istanbul University

- Prof. Dr. Ziya AKINCI, Law School of Galatasaray University  
  “Resolution of Trade Disputes between Turkey and China By Way Of Arbitration”
- Prof. Dr. Weigong XU Law School of Zhongnan University of Economics and Law  
  “Definition of Arbitration In China”
- Prof. Dr. Kamil YILDIRIM, Law School of Marmara University  
  “Alternative Dispute Resolution Without Resorting to Trial”
- Rayhan ASAT, Visiting Scholar of Marmara University  
  “Culture of the International Arbitration”
- Question and Answer
II. June 13, 2012

09:00-10:40  Panel V: Private International Law I

Moderator: Prof. Dr. Janet WALKER, Osgoode Hall Law School of York University, Toronto, Canada

• Prof. Dr. Renshan LIU, Law School of Zhongnan University of Economics and Law
  “The Law of the Application of Law for Foreign-Related Civil Relations of the People’s Republic of China: ‘General Provision’ and ‘Civil Subjects’”

• Prof. Dr. Yao-Ming HSU, Taiwan National Cheng-Chi University
  “Conflict of Laws Matters Concerning Matrimonial Property-Perspectives From European Union’s Rome IV Regulation Proposals, Chinese and Taiwanese New Code of Private International Law”

• Assoc. Prof. Dr. Ayfer UYANIKCAVUSOGLU, Law School of Koc University
  “Comparative Study of the Turkish and Chinese Nationality Laws”

• Assist. Prof. Dr. Hatice Selin PURSELIM, Law School of Marmara University
  “Civil Partnership in the Private International Law”

• Question and Answer

10:40-11:00  Coffee Break

11:00-12:40  Panel VI: International Commercial Law I

Moderator: Prof Dr. Serap HELVACI, Head of Private Law Department of Law School of Marmara University

• Prof. Dr. Janet WALKER, Osgoode Hall Law School of York University, Toronto, Canada
  “Three Engines of Trade: CISG, Model Law, Education”

• Prof. Dr. Bahadir ERDEM, Law School of Istanbul University

• Assoc. Prof. Dr. Pinar AKAN, Law School of Marmara University
  “Potential Liability of Marine Classification Societies”

• Assist. Prof. Dr. Zeynep Derya TARMAN, Law School of Koc University

• Question and Answer

12:40-13:40  Lunch Break
13:40-15:40  Panel VII: Private International Law II
Moderator: Prof. Dr. Sibel OZEL, Head of Private International Department of Law School of Marmara University
- Prof. Dr. Umar MAHMOD, Vice Dean of Law School of Xinjiang University
  “The Significance of Modernization of Legislation on Private International Law in China”
- Assoc. Prof. Dr. Hatice OZDEMIR KOCASAKAL, Law School of Galatasaray University
  “Contracts Regulation on the Turkish and Chinese Private International Law”
- Dr. Wenwen LIANG, Law School of Wuhan University
  “Party Autonomy in Rights in Rem to Movables: Going Too Far?”
- Assoc. Prof. Quing-Song WANG, Law School of Xinjiang University
  “History and the Latest Development on Choice of Law on Contracts in Mainland of China”
- Research Assistant Zeynep OZGENC, Law School of Uludag University
  “Problems of Maritime Lien in the Conflict of Laws”
- Question and Answer

15:40-16:00  Coffee Break

16:00-17:40  Panel VIII: International Commercial Law II
Moderator: Prof. Dr. Sami KARAHAN, Head of Commercial Law Department of Marmara University
- Prof. Dr. Han LONG, Law School of Zhongnan University of Economic and Law
  “China’s National Security System for Foreign M&As Has Been Unveiled”
- Dr. Aysegul SEZGIN HUYSAL, Law School of Marmara University
  “The Stargate of Foreign Investors; M&A Transaction in Turkey”
- Assist. Prof. Dr. Ozlem KARAMAN COSGUN, Law School of Marmara University
  “Liability Arising Out of Carriage of Goods by Road in Turkish Commercial Code No: 6102 and CMR Convention”
- Assist. Prof. Dr. Meltem Deniz GUNER OZBEK, Law School of Koc University
  “Linking China to Turkey By Rail: The Need for A Uniform Transport Law”
- Question and Answer
III. June 14, 2012

09:00-10:40  Panel IX: International Arbitration II
Moderator: Prof. Dr. Yavuz Kaplan, Dean of Law School of Istanbul Aydin University
- Prof. Dr. Deng LÎE, Law School of Zhongnan University of Economic and Law
  “Chinese Perspective on the International Dispute Settlement”
- Assist. Prof. Dr. Cemile DEMÎR GÖKYAYLA, Law School of Istanbul Bilgi University
  “The Recognition and Enforcement of the Chinese Judgement in Turkey”
- Assist. Prof. Dr. Burak HUYSAL, Law School of Bahcesehir University
  “Judical Intervention and Assistance of Court in the International Arbitration in Turkey and China”
- Fatih Serbest, Attorney at Law–Ph.D Candidate at King’s College London
  “Fast-Track Arbitration - Should it be Encouraged for International Commercial Disputes?”
- Question and Answer

10:40-11:00  Coffee Break

11:00-12:15  Panel X: International Commercial Law III
Moderator: Prof. Dr. Kamil YILDIRIM, Head of Law of Civil Procedure and Bankruptcy Department of Law School of Marmara University
- Prof. Dr. Sibel OZEL, Law School of Marmara University
  “The Effect of UCP 600 Rules on the Letter of Credits among the Banks”
- Assist. Prof. Dr. Oguz CANER, Law School of Erzincan University
  “E-Commerce Payment Methods”
- Burcu YÜKSEL, Law School of Ankara University
  “Facilitating International Trade Between Turkey and China By Payments Via International Electronic Funds Transfer”
- Question and Answer

12:15-13:30  Lunch Break

13:30-15:00  Panel XI: International Arbitration III
Moderator: Prof. Dr. Seyithan DELIDUMAN, Dean of Law School of Yalova University-Law School of Marmara University
- Prof. Dr. Li Shou PING, Vice Dean of Beijing Institute of Technology
  “China’s Practices of Participating in WTO Dispute Settlement on Counter-vailing since Accession to WTO”
• Prof. Dr. Yang ZEWEI, Law School of Wuhan University
  “The Energy Charter Treaty and Dispute Settlement of Transnational Energy Pipelines—Chinese Perspectives”
• Assist. Prof. Dr. Babi TOHTI, Law School of Xinjiang University
  “The Resolution of Foreign-Related Civil Cases in Later Qing Dynasty”
• Assist. Prof. Dr. Meltem SARIBEYOĞLU, Law School of Marmara University
  “Developing Countries in the WTO Dispute Settlement System: Participation of Turkey and China”
• Question and Answer

15:00-15:20 Coffee Break

15:20-16:30  Panel XII: International Commercial Law IV
Moderator: Prof. Dr. Nurşen CANIKLIOGLU, Head of Labour and Social Security Law Department of Marmara University
• Prof. Dr. Kemal SENOCAK, Law School of Ankara University
  “Unfair Competition by means of Fraud and Misrepresentation”
• Dr. Yavuz ERDOGAN, Military Judge
  “Turkish Trade Act Offense of Unfair Competition (Turkish Trade Act Article 55,62)”
• Dr. Mehmet Emin ALSAHIN, Law School of Marmara University
• Question and Answer

16.30-16.45 Coffee Break

16:45-18:00  Panel XIII: Intellectual Property Law
Moderator: Prof. Dr. Kemal SENOCAK, Dean of Law School of Inonu University-Law School of Ankara University
• Assist. Prof. Dr. Tamer PEKDINCER, Law School of Marmara University
  “Compensation Claim in Intellectual Property Law because of Seizure in Customs”
• Assist. Prof. Dr. Eda GIRAY, Justice Vocational School of Higher Education of Marmara University
  “Parallel Import and Exhaustion of Right Principle in the Intellectual Property Law”
• Fatih BIRTEK, Law School of Erciyes University
  “Trademark Infringement and Unauthorised Use of Trademark”
• Question and Answer
I. DAY (12 June 2012)

OPENING REMARKS

Prof. Dr. Mehmet Emin ARTUK, Dean of Law School of Marmara University

Prof. Dr. Artuk graduated his LL.B degree from Istanbul University Faculty of Law in 1972. In 1979, he received his Ph.D degree from Köln University, with a thesis entitled “Sinn und Zweck der Strafe und die Massnahmen zur Sicherung und Besserung im Türkischen Stafrecht”. In 1987, he became associate professor at Marmara University Faculty of Law, with his work entitled “Children Courts Procedure”. In 1993, he became professor at Marmara University. He is a member of the academic staff of Marmara University Faculty of Law. Professor Dr. Mehmet Emin Artuk served at the Committee which drafted the Draft Criminal Code of 1997 and that of 2000. Currently, he is the dean of Marmara University Faculty of Law.

Prof. Dr. M. Zafer GÜL, Rector of Marmara University

The present rector of Marmara University Professor Dr. M. Zafer GUL, has completed his primary education in 1971 at the primary school “Yeşilyurt H.S. Tannöver” and his secondary education in 1977 at “Haydarpasa High School”. During his high school education, he has won the “TUBITAK Chemistry team championship prize” and the scholarship of “TUBITAK growing scientists group”. In 1982, he has graduated from Istanbul Technical University (ITU), Mechanical Faculty, General Mechanical Engineering Department with a degree. He started his graduate education in 1982 at ITU and the same year he was appointed research assistant at the Faculty of Civil Engineering, department of mechanical. After his graduate education he went to the U.K. for his Ph.D in 1985 with the scholarship of the Ministry of Education. During his Ph.D at Manchester University, he worked as research assistant at Programming and Numerical Analysis Courses and at the Heat Transfer Lab. After his Ph.D, he started to work at Marmara University as assistant professor at the Engineering Faculty, Mechanical Engineering Department. He became associate professor in 1997. During this period he has also undertaken administrative functions at the faculty such as “Presidency of the Purchasing Commission”, being a “Member of the Board” and a member of the “Faculty Board” in addition to the presidency of the thermodynamics and heat engineering department. He won the “Dean's Special Award” for his contribution to improving the quality of education in 2000. In 2002, he was awarded with the “Fulbright Scholarship”. In 2002 – 2003 he worked at the “Automotive Research Center” of the Ohio State University as guest lecturer. In 2004, he was appointed as Professor. Between 2005 and 2010 he worked as the head of the Mechanical Engineering Department. Since 2008, he has been a member of the Institution of Higher Education (YOK) - Commission of Instructor Training and
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YOK – Working Group of National Qualifications as a Bologna Expert. Professor Dr. GUL who has been chosen as a member of Marmara University's Senate to represent the faculty of engineering, was appointed as Marmara University Rector by the President of the Turkish Republic on July 14, 2010. Professor Dr. Gul who has approximately 40 articles published in international journals and conference journals, has directed 12 MA and 4 Ph.D theses. He also has directed and participated to several projects which were supported by TUBITAK, CPT, BAPKO, Fulbright, Automotive and Energy Sector. He is the member of some professional associations such as ASME, SAE and MMO and works as journal referee for national and international academic journals. He is married and has two children.

Prof. Dr. A. Vedat AKGİRAY, President of Capital Markets Board of Turkey

Vedat Akgiray has graduated from the Bogaziçi University in 1980, after finishing high school at Robert College of Istanbul. He obtained MA, MBA degrees and also Ph.D degree in finance at Syracuse University in the US. Having held several posts at numerous universities both in the US and in Turkey, he has published and presented more than 100 articles on various international academic platforms. He has tutored and advised many students at both doctorate and also master degree levels. Besides his academic role, he has also provided consultancy services to various enterprises in the subjects of finance and information technology. Since 1990, he has held his academic position at Boğaziçi University, where he was promoted to full professorship in 2000. He is the founder of the masters program in Financial Engineering, where he has served as the chairman during the period 2002-2009. In March of 2009, he was appointed as the Chairman of the Capital Markets Board of Turkey and is currently employed in this position. Vedat Akgiray was born in Istanbul in 1958. He is married with three children.

Abdulkadir Emin ÖNEN, Delegate of Justice and Development Party of Turkey, Inter-Parliamentary Turkey-China Friendship Group Chairman

Mr Abdukadir Emin Önen is the Head of Delegation of Turkey to the OSCE PA. He also sits as a Member of the European Union Harmonization Committee, Member of the European Union Joint Parliamentary Committee. He is the Chairman of the Turkey-China Interparliamentary Friendship Group, AK Party Deputy Chairman of External Affairs. One of his role in the public service is that Mr ÖNEN regularly provides comment to international and national media outlets such as the Today’s Zaman, Al Jazeera, Hurriyet, Zaman, Eurasia Critic, Reuters, Associated Press, BBC World, CNN-Turk and TRT-Turk. Mr Abdukadir Emin Onen studied Bachelor of Arts in Public Administration at Fatih University, Istanbul. Following, he also studied for Master of Political Science at Fatih University. Other than Turkish, he speaks English and Chinese. Mr ÖNEN is married and the father of two children.
Bekir BOZDAĞ, Deputy Prime Minister of Turkey

Mr Bekir Bozdağ was born on April 1st of 1965 in Yozgat city. His father's name is Mehmet Duran, mother's name is Nuriye. He graduated from Divinity School of Uludag University and Law School of Selcuk University. He studied for his master at Social Science and Religious History Institution. He worked as a pro-bono lawyer. Bozdağ was elected as a member of Turkish Parliament of 22nd and 23rd period. He worked as a vice president to the Prime Minister at the 61th government. He speaks intermediate English and Arabic. He is a father of three children.

PANEL I: GENERAL INTRODUCTION ON THE LAWS OF TURKEY AND PEOPLE'S REPUBLIC OF CHINA

Prof. Dr. Hasan SELÇUK

Professor Dr. Hasan Selçuk was born in 1952 at Isparta. He graduated from Istanbul University Economics Faculty with BA degree in 1977. Later, he graduated with master degree from the same faculty in 1980 and he graduated from Institute of Social Sciences with Ph.D degree in 1987. He became associate professor and professor in 2005 at the Law Faculty of Marmara University. Besides, he was a visiting scholar at Loughborough University of Technology Department Economics. He is a member of Chamber of Sworn-in Certified Public Accountants in Istanbul. Furthermore, he is a charter member and member of the board in Turkish---Asian Center for Strategic Studies. He is a founder and member of Board of Trustee in Academic Research and Internet Foundation. Lastly, he is a member of ‘Ihtisas’ Foundation. He is married and has four children.

Prof. Dr. Gökhan ANTALYA

Professor Dr. Gökhan Antalya graduated Law School of Istanbul University with an LL.B degree in 1979. He received his LL.M degree from Law school of Ankara University in 1985 and his Ph.D degree from Istanbul University School of Law in 1991. Starting from, he is serving as the head of Civil Law Department of Law School of Marmara University.
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Prof. Dr. Renshan LIU

Professor Renshan LIU is a dean of Law School of Zhongnan University of Economics and Law, Ph.D supervisor, vice president of Chinese Private International Law Association, vice president of Private International Association of Hubei Province, and chief editor of Comparative Study of Chinese Private International Law and Comparative Law Yearbook to name a few. Professor Renshan LIU was a visiting scholar at Osgoode Hall Law School of York University, Max Plank Institute for Comparative and International Private Law and visiting scholar of United States Department of State International Visitor Leadership Program. He was in charge of a number of leading projects of the Ministry of Justice Department and Ministry of Education of the People's Republic of China. Projects under his leadership received governmental and provincial supports.

Professor Renshan LIU is the author of "Canadian Conflict of Law". His book on the "Canadian conflict of Laws" was his Ph.D dissertation upon his completion of Wuhan University under the supervision of distinguished professor Han Depei. He is general editor of "Private International Law", "International Commercial and Civil Procedural Law". He published and translated over than 60 articles in the leading academic journals including but not limited to Yearbook of Swiss Private International law, the Law Journal of China...

PANEL II: FOREIGN INVESTMENT LAW

Moderator: Prof. Dr. Günseli ÖZTEKİN GELGEL, Law School of Istanbul University

Prof. Dr. Günseli Öztekin Gelgel graduated from University of Istanbul School of Law in 1984. She had a master (LLM) degree due to her thesis named "Discretionary Power of the Judge on Evidences in Common Law" from the University of Istanbul Institute of Social Sciences Department of Private Law. By the time she was writing her master thesis she received an offer by the professors' on private international law department to be a research assistant due to her salient academic studies. Afterwards she began to work as a research assistant at that department till to the end of his PhD studies. Prof. Öztekin made also research studies for her PhD thesis in England for one year. She was granted with a PhD degree by the thesis on "Binding Term of the Arbitration Award in Recognition and Enforcement Procedure According to New York Convention". In 1993 Prof. Öztekin was appointed to University of Istanbul Law School Private International Law Department as an Assistant Professor. In 2000 due to her new thesis named "Problems on Consumer Contracts in Turkish Private International Law", she was granted with an associate professor degree by the Council of the Higher Education of Turkey. By adding a new book to her academic studies, she has been appointed as a professor to the Private International Law department in 2007. Her book was on "The applicable Law to Non-Contractual Obligations in European Union".
Prof. Öztekin participated in all the drafting and codification process of Private International and International Procedural Law Nr.5718 dated 27.11.2007. She lectures on private international law, international civil litigation, international commercial arbitration, international family law, CISG convention, international consumer contracts, foreigners’ law at Law School and School of Economics at Istanbul University.

Prof. Dr. Qinglin ZHANG
Professor Qinglin ZHANG received his Ph.D in International Economic Law at Wuhan University in Wuhan, China. As a professor, he has taught International Economic Law, International Investment Law, International Financial and Monetary Law. He also holds an LL.M in International Economic Law from Wuhan University. Professor Zhang has authored articles, book chapters and books on a variety of topics including the Euro, national treatment, monetary law, financial soft law, electronic money, monetary sovereignty, etc.

ON THE PUBLIC INTEREST IN INTERNATIONAL INVESTMENT AGREEMENTS

ABSTRACT

I. Public Interest forms of expression in IIAs
   1. Proem or preface clause
   2. Expropriation clause
   3. Exception clause(general exception clause and Essential Security interests Exceptions Provisions)

II. The public interest in IIAs is the balance between the private property right and the police power of State
   1. Protection of private property right is core value in modern rule of law
   2. Respect the police power of State is legitimate pursuit in modern rule of law

III. The way to achieve of public interest in IIAs
   1. Principle of proportionality is appropriate way to achieve of public Interest in IIAs
   2. Due process is effective protect achieve of public interest in IIAs
   3. Compensation principle is strong counterbalance achieve of public interest in IIAs

IV. China’s Practice

Prof. Dr. Lerzan YILMAZ
Professor Dr. Lie Lerzan Yilmaz graduated from law faculty of Istanbul University in 1982. Upon her competition of law degree, she passed exam for government scholarship for doctorate study aboard. She was send to the University of Bern in Switzerland to study for her doctoral studies. Back then, the bachelors degree from Turkey is partially recognized. To that regard, she also studied for LL.B at University of Bern. Upon her completion of such requirement, she was successfully recommended to the doctorate program under the supervision of professor. Dr. Lieu. Iur. Ralf Bar in commercial law studies. Her Ph.D dissertation title
was “The Responsibility and Liability in Concerns according to Swiss, Turkish and German Laws” on May 19th of 1988.

In 1988, she returns back to Turkey and start working at the professional Chair for Commercial Law License at the Law Faculty of Marmara University. Beside her employment at the Marmara University, she also started her private law practice. She founded her law firm “U&M Law Office and Consultancy Ltd.”. Her law firm serves as consultant law firm to foreign business companies, especially questions regarding joint venture, agreements, contract, unfair competition, capital license and questions relate to commercial law.

NEW DEVELOPMENTS ON THE FOREIGN INVESTMENT LAW

ABSTRACT

For the purpose of encouraging foreign investors to make investments in Turkey, providing foreign investors to be equally treated with domestic investors, and assuring the freely transfer to abroad by the foreign investors of their net profits from their commercial activities and transactions in Turkey, of their dividends from their participation shares and interests, of the proceeds from sale of shares and merchandises, of the liquidation residuals as well as of their indemnity compensations and license fees, the “Direct Foreign Investments Law” 4875 has been enforced on 17.06.2003. In this work, we will try to discuss and assess the novelties introduced by the newly enforced law by laying down the differences between the new law and the former one.

Keywords: Novelties introduced by the Law 4875

Assoc. Prof. Dr. İlhan YILMAZ, Ph.D (Exon) LL.M

Dr. Yilmaz is associate professor of private international law department at Faculty of Law of Galatasaray University, Istanbul. He received his Ph.D in Law from Exeter University, England in the subject of IP rights. He mainly lectures on international commercial law, international investment law, international arbitration and law of aliens, as well as entrepreneur’s law. He is the author of the first Turkish written book on investment arbitration in Turkey in 2004. He lectures in symposiums and conferences on entrepreneur’s law and investment law.

He is a member of “Endeavor Turkey” Advisory Board, member of panels of arbitrators and conciliators at International Centre of Settlement of Investment Disputes (ICSID) in the World Bank.

CHINA –TURKEY BILATERAL INVESTMENT AGREEMENT

ABSTRACT

This paper will discuss the need for a bilateral investment treaty (BIT) for the protection and promotion of foreign investments. Basic characteristics of BITs and rights of investors under the specific protection granted to the investors according to Chinese-Turkish BIT. Is the protection granted in the said BIT ample for the purpose of investment?

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**Assist. Prof. Dr. Mustafa ERKAN**

Mustafa Erkan is an Assistant Professor at the Law School of the University of Marmara, Istanbul. During his career he has worked closely and extensively with legal practitioners and academics whilst remaining based in academic institutions. He is also a lawyer and a member of the Ankara Bar Association. He specializes in international dispute resolution through arbitration, mediation or litigation. His focus is especially on energy/petroleum investment disputes with State parties, including issues of State responsibility, sovereign immunity and investment treaty protections. He is author of "International Energy Investment Law: Stability through Contractual Clauses", together he published a few articles including in the Kluwer International Law 2011. Assist. Prof. Mustafa received an LL.B Degree in law from the University of Ankara in Turkey. He also holds an LL.M in International Commercial Law from the University of Leicester and received Ph.D in law from the University of Exeter in the UK. Assist. Prof. Dr. Mustafa worked as a visiting scholar at Center for Energy Economics of Texas at Austin. He is a member of the AIPN.

**WORK PERMIT OF FOREIGN INVESTORS IN TURKEY AND CHINA**

**ABSTRACT**

After deciding come to Turkey or China with the aim of working, foreigners need to deal with the Turkish or Chinese authorities to obtain a work permit. Every foreigner who works in Turkey and China is required to have a valid work permit. Otherwise, a foreigner cannot legally work in either country. If a foreigner works illegally, the consequence will be penalties.

The aim of this study is to examine issues relating to work permits in Turkish and Chinese Law. This study will analyse the constitutional aspects of work permits for foreigners in both countries. Laws governing work permits in Turkey and China are another key issue that will be examined. In order to explain work permits, the study raises the following questions: What types of work permit procedures exist in the mentioned jurisdictions? What kind of permission is needed in order to work in these two countries? Is a work permit sufficient authorization for a foreigner to work?

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**PANEL III: CAPITAL MARKETS LAW IN TURKEY**

**Moderator: Bülent GÖKREM**

Mr. Bülent GÖKREM is a board member of Capital Markets Board of Turkey (CMB). He received his bachelor degree in 1996 from Ankara University Faculty of Law, Ankara. He also has LL.M degree both from Yeditepe University (2005), Istanbul and from American University Washington Collage of Law (2007), DC. He has served as an assistant investigator from 1997 to 2000, investigator until 2007 and head of Enforcement Department between 2007 and 2011 at the CMB. Mr. GÖKREM has worked in supervision of the corporations subject to the Capital Market Law, the intermediary institutions and other financial institutions operating in the securities market, investigated violations of the securities regulations.
Assoc. Prof. Dr. A. Caner YENİDÜNYA

Assoc. Prof. Dr. A. Caner Yenidunya’s focus is on the criminal law and criminal procedure law at University of Marmara, Law Faculty. He is also a serving as director of Vocational School of Justice at University of Marmara. He published many books and articles on general provisions and special provisions of criminal law. He is working as an expert in Ministry of Justice Council of Forensic Medicine specialization department of traffic. In recent years, he has attended as an educator (or speaker) training activities, which are especially to combat human trafficking organized by the United Nations International Organization for Migration. He has also written a book in this field. In addition, he teaches courses on protected intellectual property, computer crimes internet crimes and capital market law at master and doctoral level.

GENERAL PRINCIPLES OF CRIME AND MISCONDUCT IN TURKISH CAPITAL MARKETS LAW

ABSTRACT

Protection of trust in the capital markets is very important in relation to the investor’s decisions. If a system does not have a safe regulatory regime, it is not possible to attract people’s interest in this field. Likewise, today, capital markets have also important effects on the country’s economic stability or monetary policy. For this reason, the country’s economic stability and investor protection requires of criminal law sanctions in this field. However, this area is also an area that linked to economic activities. Therefore, economic activities should observe the principle of economic sanctions. Therefore, the arrangements relate to the legal regulation of administrative fines and administrative sanctions are also available. In Turkey, crime and misconduct are regulated under the articles between 47 between 49 of Turkish Capital Markets Law. In this study, according to principal of criminal law and capital markets law and general principles of crimes and misconducts will also be evaluated and discussed.

Bekir Sıtkı ŞAFAK

Mr. Şafak, was born in 1973 in Erzurum, completed his Bachelor’s Degree in Management, at the Middle East Technical University in 1996. In the same year, he began to work for the Capital Markets Board of Turkey. He stayed as a visiting scholar and participated at the Capital Markets Board Finance program at the Wharton School, University of Pennsylvania during Fall 2000. He received a MS degree in Management, from the University of Illinois at Urbana-Champaign in 2004. He has been a Ph.D candidate in Accounting-Financing, Gazi University Institute of Social Sciences. He served two years as the Director of the Department of Corporate Finance at the Capital Markets Board of Turkey. He was appointed as the Executive Vice Chairman of Capital Markets Board in 2008 and since then he has been in this position. Mr. Şafak is married and has two children.

THE NEW MARKET STRUCTURE OF THE TURKISH CAPITAL MARKETS AND THE NEW CORPORATE GOVERNANCE REGIME OF THE NEW CAPITAL MARKETS LAW

ABSTRACT

Following a more than a decade long silence which can be taken as a maturation period, changes in Turkish Capital Markets Law have been introduced in the form of an
ambitious new code. New Turkish Capital Markets Law is not only new in its name but has drastic divergence from its predecessor Turkish Capital Markets Law No:2499. The Law No:2499 had been the basic legislation in Turkey for over three decades, establishing market structures and shaping corporate governance so as to address agency problems in Turkish markets. The New Capital Markets Law, following the same route but with substantial differences in understanding securities markets and establishing a corporate governance regime for issuers is a promising step towards the half way target, Istanbul becoming a Financial Center. Mr. Bekir S. SAFAK, who is the Executive Vice Chairman at the Capital Markets Board of Turkey, will explain the importance of the new Turkish Capital Markets Law and its building blocks.

Assoc. Prof. Dr. Yakup ERGİNÇAN

Upon receiving his Bachelor's Degree from Department of Business Administration, Marmara University (1990), Masters Degree on "Accounting & Finance" from the same university (1995) and MBA degree from University of Michigan Business School (1998), Yakup ERGİNÇAN received his Ph.D in Banking from Marmara University (2001). He obtained Associate Professorship Degree in "Accounting & Finance" from the Council of Turkish Universities (2009). After having worked as a teaching assistant in the Department of Industrial Engineering at Marmara University (1990-1991), he worked as a specialist and chief specialist in the Enforcement Department, Capital Markets Board of Turkey between 1991 and 2002. He worked as a consultant at the World Bank (Washington D.C., 1997-1998) and Price water house Coopers (Detroit, 1997). Since 2008 he is the CEO and Board Member of Central Registry Agency Inc. where he previously worked as the Operations & Project Manager responsible for the Dematerialization Project and as Executive Vice President between 2002 and 2008. He also lectures at Kadir Has University "Capital Markets" Masters Program (2004-) and at Marmara University "Capital Markets and Exchanges" Ph. D. Program. Some of his selected works are "Stock Index Futures, Portfolio Management with Stock Index Futures and the Applicability of Stock Index Futures Markets in Turkey" (1995, Master Thesis), "Stock Index Futures" (1996, Capital Markets Board of Turkey Publication), "Managing Private Capital Flows in Asia: Lessons and New Challenges"(1997, along with a team of researchers and academicians, a World Bank Publication), "EVA and MVA: Econometric Analysis of Stock Prices Listed At ISE" (2001, Ph.D Thesis). He is the author of two books: "Corporate Governance: Current Situation and Proposals for Future Prospects in Turkey " (2004) and "Corporate Valuation: Classical and Modern Approaches" (2004). He also published various articles on dematerialization, corporate valuation, investor protection, and corporate governance.

CENTRAL REGISTRY AGENCY, THE YOUNG AND BRILLIANT COMPONENT OF TURKISH CAPITAL MARKETS

ABSTRACT

The 1999 amendments at the Capital Markets Law numbered 2499, among others, introduced a new institution into the Turkish Capital Markets, Central Registry Agency. The Agency is the authorized Central Securities Depository for dematerialized financial instruments in Turkey. Central Registry Agency provides custody and post-trading services for a number of securities including equities, corporate debt securities, warrants, Exchange Traded Funds (ETFs), and mutual funds. The new Turkish Commercial Code and the new Turkish Capital Markets Law envisions new playing field
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for the Central Registry Agency. Mr. Yakup Ergincan who is the CEO of the agency will
give information about the recent and prospective operations of the Central Registry
Agency and its capabilities.

Dr. Nusret ÇETİN

Dr. Nusret Cetin is a Senior Legal Counsel at Capital Markets
Board of Turkey. He is also a lawyer and a member of Ankara
Bar. He holds LL.M and Ph.D degrees from Ankara University,
Faculty of Law and also an LL.M degree from Queen Mary,
University of London. Nusret Cetin is the author of several
articles on securities and banking law issues. Currently, he
has been awarded a research scholarship by Queen Mary,
University of London to conduct research on the legal aspects
of international banking crisis.

INTERNATIONAL STANDARDS AND EMERGING MARKETS

ABSTRACT

The financial crises together with the globalization have reinforced the role of
international financial organizations especially in the rule-making process. The standards
and principles issued by these organizations are essentially soft law which is not legally
binding, but is implemented voluntarily. Up until now, market mechanisms, however,
have performed as enforcement and sanctions for the implementation of these soft law
instruments, effects of which go well beyond the traditional enforcement mechanisms.
Thus, they have been implemented across the world. After the recent financial crisis,
there have been significant regulatory efforts in some major economies as well as in the
EU and at the international level to change the rules of the game in the financial
markets. These regulatory reforms may present some opportunities as well as challenges
for emerging economies including Turkey and China.

PANEL IV: INTERNATIONAL ARBITRATION LAW I

Moderator: Prof. Dr. Cemal ŞANLI

Professor ŞANLI was born in Manisa in 1950. He
completed his Ph.D in law at the “Institute of
Advanced Legal Studies” of London University. His
thesis was on “International Commercial Arbitration.”
He became an assistant professor in Private
International Law at the Istanbul University Faculty of
Law in 1977. Professor ŞANLI became associate
professor in 1987. He became professor at the
Istanbul University Faculty of Law in 1996. Currently
he is the head of the Private International Law Department of Istanbul University Faculty
of Law. He has many books, articles and monographs on International Private Law and
especially in the area of International Arbitration. Professor ŞANLI is married and has
four children.
Prof. Dr. Ziya AKINCI

Member of Istanbul Bar. Professor Akinci’s expertise spans international arbitration, dispute resolution, construction and international business law. Prof. Dr. Ziya AKINCI has for years been recognized by legal directories as a “leading individual” in arbitration, dispute resolution and construction. Professor Akinci worked on projects and disputes for highways, railways, metro, buildings, underground sewerage system; infrastructure civil projects; water distribution projects; shopping mall, various residential projects; power plants; natural gas storage; SCADA systems; automation system in Turkey and also in many countries worldwide involving Europe, Middle East and CIS Countries financed by European Union, European Investment Bank, Asian Development Bank, JBIC, Word Bank

Professor Akinci has been involved in large number of international disputes (as adviser, counsel, legal expert or arbitrator). As counsel or Arbitrator Prof Akinci acted under the different rules including UNCITRAL, ICC, ICSID, LCIA, SCC, ITO, TRAC. Professor Akinci is a member of the ICC Court. He has substantial experience in cross-border M&A projects and cooperate law.

Professor Akinci has written numerous books on International Arbitration, Construction Disputes, Contract Law and Transportation Law. His articles are mostly related to International Business Law. He was a former Chairman of the International Private Law Section of the Faculty of Law at Galatasaray University, he now teaches international arbitration and contract law at Bahcesehir University.

RESOLUTION OF TRADE DISPUTES BETWEEN TURKEY AND CHINA BY WAY OF ARBITRATION

ABSTRACT

In this presentation, probable issues and resolutions will be taken into consideration regarding disputes between Turkey-China where arbitration have been chosen as a form of dispute resolution.

Firstly, Turkey and China’s national arbitration laws will be analysed. The arbitration laws adopted by each States will be examined. In addition, multilateral arbitration agreements between the two states will also be analysed. The enforcement of arbitral awards will be taken into consideration in respect of bilateral agreements between Turkey and China.

In this presentation, particular emphasis will be placed on the validity of arbitration clauses, practices of arbitral procedure, arbitration institutions and enforcement of foreign arbitral awards will be taken into consideration in relation to practices concerning the Turkey-China arbitral procedure.

Keywords: Resolution of Trade Disputes Between Turkey-China, Arbitration, Dispute Resolution, Arbitral Awards, Enforcement
DEFINITION OF ARBITRATION IN CHINA

ABSTRACT
China has been implementing various reforms and practicing a policy that aims to open China to the world since 1978. The economy has since been developing rapidly and increases in interpersonal communication within society have resulted in more conflicts between individuals. Disputes arising from these communications have increased drastically and become more and more complex. In China, the most commonly used techniques for dispute resolutions are negotiation, mediation, arbitration and litigation. China promulgated the Arbitration Law in 1994. For civil and commercial matters, arbitration has been given increasing attention among the business community and has gradually become an important alternative method of dispute resolution compare to litigation. In China, besides civil and commercial matters, arbitration has been widely used for other matters such as labour disputes and personal disputes. This paper will discuss arbitration practice in China.

ALTERNATIVE DISPUTE RESOLUTION WITHOUT RESOLTING TO TRIAL

Prof. Dr. Kamil YILDIRIM

Prof. Dr. Mehmet Kamil YILDIRIM is a professor of Law School of Marmara University. He received his PhD from the Law School of Marmara University. During his PhD, he received a number of scholarships, Namely DAAD Foundation, Bonn. During his professorship at Law School of Marmara University, he also served as a head of the Civil Procedure Department and he was the key person in charge of the preparation commission of the code of civil procedure since 1999. The commission was founded by the Ministry of Justice.

The renowned professor has published many law books, articles in a number of languages, German. Greek, Turkish. He has presented many papers in
the international conferences. Namely, Bonn University in Germany; Wien University in Austria; Tokio Waseda University and Kyoto Ryokoku University in Japan.

He is a member of the Association of the Faculty Members of Civil Procedure Law, Germany, (1998); International Civil Procedure Lawyers Scientific Corporation, (2002); Turkish and German Cultural Committee, (1996); DAAD (2000).

Rayhan ASAT

Rayhan Asat is a lecture at the Law School of Xinjiang University, Urumqi, China. Rayhan is completing her PH.D studies at the Law School of Zhongnan University of Economics and Law under the supervision of Professor Liu Renshan with the special focus of Turkish Private International Law and Turkish International Arbitration. Currently, Rayhan is a visiting scholar at the Law School of Marmara University working with professor Mustafa Erkan on the comparative study of Turkish and Chinese Private International Law and International Arbitration. She is the co-chair of "Reopening the Silk Road in the legal dialogue between Turkey and China" conference together with Assist. Prof. Mustafa Erkan and Assoc. Prof. Caner Yenidunya in the effort to promote legal dialogue between Turkish and Chinese scholars, experts and practitioners.

Rayhan was a visiting scholar at Osgoode Hall Law School of York University under the supervision of Professor Janet Walker. She was invited to various international conferences as a guest speaker and presenter at quiet well known Graduate Student Annual Conference. Namely, Her presentation titled "Saving Face in Canadian Courtroom: Niqab and Fundamental Freedom" was nominated as one the best paper that captured audience imagination and published in the selective Papers from the University of British Columbia 16th Annual Interdisciplinary legal studies Graduate Students Conference” E-Book. She also presented at Osgoode Hall Law School, McGill and Cornell Law School Graduate Student Conference. She was a guest speaker at "China in the 60 years” conference at the University of Toronto.

CULTURE OF INTERNATIONAL ARBITRATION IN TURKEY

ABSTRACT

Justice Minister of Turkey on April 30th, 2012 announced that a bill is ready for an arbitration center to be set up in Istanbul. Within the past few years, the discussion as to set up International Arbitration center in Istanbul always been brought up, and yet seems like we are expecting a dramatic change in the next few month in the International Arbitration Culture of Turkey. The question one should ask is Turkey ready to set up its own Institutional Arbitration Center that can have an equal standing with other well established and worldwide recognized International Arbitration Center?

This paper will discuss culture of international arbitration in Turkey together with the new “Arbitration Act” that enacted in 2001. In doing so, this paper in a broad specterum, address the ways in which the concept, culture and practice of arbitration positioned.

** Rayhan Asat is a lecturer at the Law School of Xinjiang University, Urumqi, China. Rayhan is completing her PH.D studies at the Law School of Zhongnan University of Economics and Law under the supervision of Professor Liu Renshan with the special focus of Turkish Private International Law and Turkish International Arbitration. Currently, Rayhan is a visiting scholar at the Law School of Marmara University working with professor Mustafa Erkan on the comparative study of Turkish and Chinese Private International Law and International Arbitration. She is the co-chair of "Reopening the Silk Road in the legal dialogue between Turkey and China" conference together with Assist. Prof. Mustafa Erkan and Assoc. Prof. Caner Yenidunya in the effort to promote legal dialogue between Turkish and Chinese scholars, experts and practitioners. Rayhan was a visiting scholar at Osgoode Hall Law School of York University under the supervision of Professor Janet Walker. She was invited to various international conferences as a guest speaker and presenter at quiet well known Graduate Student Annual Conference. Namely, Her presentation titled "Saving Face in Canadian Courtroom: Niqab and Fundamental Freedom" was nominated as one the best paper that captured audience imagination and published in the selective Papers from the University of British Columbia 16th Annual Interdisciplinary legal studies Graduate Students Conference” E-Book. She also presented at Osgoode Hall Law School, McGill and Cornell Law School Graduate Student Conference. She was a guest speaker at "China in the 60 years” conference at the University of Toronto. **
II. DAY 13 JUNE 2012

PANEL V: PRIVATE INTERNATIONAL LAW I

Modarator: Prof. Dr. Janet WALKER

BA(Hons), MA, JD (Osgoode), MA, DPhil (Oxon), FCIarb, of the Ontario Bar, Professor and former Associate Dean of Osgoode Hall Law School.

Professor Walker has served as sole arbitrator, co-arbitrator and chair in ICC and ICDR arbitrations and she is active with ICC Canada, and the ICDR and CIETAC Panels, Toronto Commercial Arbitration Society, Chartered Institute (Toronto Branch), Arbitralwomen, and as a coach and arbitrator at the Vis Moot since 2001. She was among the Canadian arbitrators listed in Who's Who Legal in 2010 and 2011, and she is a member of the ILA International Commercial Arbitration Committee.

Professor Walker teaches Conflict of Laws and International Arbitration at Osgoode, and she has taught as a visitor at Monash, Haifa, U of T, NYU, NUS, Oxford, and for eleven years at Tunis II. She is the author of the leading Canadian text on conflict of laws, Castel and Walker: Canadian Conflict of Laws and the Halsbury's Laws of Canada volume on Conflict of Laws; co-author of Civil Litigation; General Editor of The Civil Litigation Process, and Civil Litigation, co-editor of Civil Law, Common Law and the Future of Categories, and other publications at http://ssrn.com/author=1000667

Professor Walker is the common law Advisor to the Federal Courts Rules Committee, and she was the first Scholar-in-Residence at the Law Commission of Ontario. She is a member of the American Law Institute, and a Presidium member of the International Association of Procedural Law, and a Senior Fellow of Massey College. She was President of ILA Canada, and she Co-Chaired the 72nd Biennial Conference in 2006 and the International Association of Procedural Law conference in 2009, and she led the Project on Teaching Procedure at Oxford in 2010.

Prof. Dr.RenshanLIU

Professor Renshan LIU is a dean of Law School of Zhongnan University of Economics and Law, Ph.D supervisor, vice president of Chinese Private International Law Association, vice president of Private International Association of Hubei Province, and chief editor of Comparative study of Chinese Private International Law and Comparative Law Yearbook to name a few. Professor Renshan LIU was a visiting scholar at Osgoode Hall Law School of York University, Max Plank Institute for Comparative and International Private Law and visiting scholar of United States Department of State International Visitor Leadership Program. He was in charge of a number of leading projects of the Ministry of Justice Department and Ministry of Education of the People's Republic of China. Projects under his leadership received governmental and provincial supports.

Professor Renshan LIU is the author of "Canadian Conflict of Law". His book on the "Canadian conflict of Laws" was his Ph.D dissertation upon his completion of Wuhan University under the supervision of distinguished Professor Han Depei.
He is general editor of “Private International Law”, "International commercial and civil procedural law”. He published and translated over than 60 articles in the leading academic journals including but not limited to Yearbook of Swiss Private International law, the Law Journal of China.


ABSTRACT

Chapter I General Provisions of The Law of the Application of Law for Foreign-Related Civil Relations of the People’s Republic of China, including qualification, determination of lex causae in case of a country of multiple law systems, renvoi... are mostly drawn from China’s current practices. Chapter II Civil Subjects contains both China’s current practices and new provisions are included. In addition, the law is unique in that explicit provisions that contains rules such as party autonomy and the principle of the most significant relationship, and it appliesterm of “regular residence” all of which shows a clear Chinese character.

Key Words: qualification, determination of lex causae, renvoi, natural person, legal person, will of autonomy, the principle of the most significant relationship, habitual residence.

Prof. Dr. Yao-Ming HSU

M. Yao-Ming Hsu is an associate professor now in College of Law, National Cheng-Chi University in Taipei. He received his first LL.M in 1999 also in National Taiwan University. Moreover, he got another two LL.Ms in European Community Law and in Legal Theory in 2004 in Université Paul Cézanne Aix-Marseille III (France) and his Doctor of Law also in Université Paul Cézanne Aix-Marseille III in 2006.


CONFLICT OF LAWS IN MATTERS CONCERNING MATRIMONIAL PROPERTY – PERSPECTIVES FROM EUROPEAN UNION’S ROME IV REGULATION PROPOSAL, CHINESE AND TAIWANESE NEW CODE OF PRIVATE INTERNATIONAL LAW

ABSTRACT

The Europeanization of family law matters attracts attentions of the entire world. It is because the European Union has just harmonized the jurisdiction and recognition and enforcement problems, and has set conflict of laws rules in contractual, non-contractual
obligations and divorce regime. Now, the harmonization of conflict-of-law rules in family law is approaching. In 2006, the European Commission published a Green Paper; moreover in 2011, a Rome Regulation IV Proposal was just announced.

In the Proposal, the basic rule for determining the jurisdiction for matrimonial matters would follow the principles of determination of jurisdiction for divorce, legal separations or marriage annulment proceedings (art.4). Besides, for the conflict-of-law rules, it follows the principle of party autonomy (art.16) for the matrimonial property; finally, the recognition of decision would be allowed under some exceptions (art.27).

This Proposal would facilitate the harmonization of conflict-of-law rules in European family laws, and also set some references for other countries. For example, both in 2011, China and Taiwan has just promulgated their new Codes of Private International Law. Some delicate differences in choice-of-law rule among the EU, China and Taiwan would be worthy of further comparative analyses. So, this article would try to establish some cross-country comparative perspectives for the further harmonization in the global conflict of laws rules in matrimonial property.

Assoc. Prof. Dr. Ayfer UYANIK ÇAVUŞOĞLU

Ayfer UYANIK ÇAVUŞOĞLU received her Ph.D in Private International Law at Istanbul University in İstanbul, Turkey. As a full-time faculty member at Koc University Law School, she is teaching Private International Law (PIL) (Conflict of Laws; International Civil Procedure); Foreigners’Law and Turkish Citizenship Law. UYANIK ÇAVUŞOĞLU has authored books on Factoring and Factoring Agreements Particularly in PIL, Divorce in Turkish PIL and Privat International Law - Conflict of Law (with Prof. Dr. Gülören Tekinalp). She is the author of various articles in national and international journals. Her primary research areas are matrimonial relation in PIL, choice of law in international jurisdiction and conflict of law, bilateral investment traties and drafting of international commercial contracts and legal issues in organ transplantation.

COMPARATIVE STUDY OF THE TURKISH AND CHINESE NATIONALITY LAWS

ABSTRACT

In order to meet the desired cooperation between People’s Republic of China and Turkey, it is essential to understand and recognize the legal spectrum of both countries. However, in Turkey, there has been almost noneacademic research on Chinese legal system. In our paper, we’ll emphasize, after the revolution of People’s Republic of China in 1949, Chinese Citizenship Act that dated September 10, 1980 was implemented instead of Chinese Citizenship Act (1929). Legal system: Chinese Citizenship Act which has been in effect for thirty-two years consists only eighteen articles. This Act, unlike the law system that we are accustomed to, has no sections, divisions, separations and headings; has listed only article numbers one under the other.

Chinese Citizenship Act dispenses with fifty-six official ethnic group’s identity and other similar elements in People’s Republic of China; In this context, firstly, the relevant provisions of citizenship in Turkish and Chinese Constitution will be compared. The Chinese Citizenship Act which sets three main subjects such as acquisition of citizenship, loss of citizenship and regain of citizenship will be compared and represented and evaluated differences with the provisions of Turkish Citizenship Act such as, natural-born citizenship, acquired citizenship, dual citizenship, loss of citizenship, regain of citizenship, competent court in citizenship issues, judicial discretion of these authorities.
Assist. Prof. Dr. Hatice Selin PÜRSELİM

Assist. Prof. Dr. Hatice Selin PÜRSELİM has been teaching International Private Law, Foreigners Law and Citizenship Law as a faculty member at Faculty of Law at Marmara University. She received her LL. M and Ph.D from Marmara University and she has been to Tübingen University (Germany), Stockholm University (Sweden) and Düsseldorf University (Germany) for her Ph.D studies and attended to High Court of Germany as a scholarship student.

CIVIL PARTNERSHIP IN THE PRIVATE INTERNATIONAL LAW

ABSTRACT

With the respect homosexuality, there is no regulation which prohibits or punishes such civil union in the history of Turkish law (including the period of Ottoman Empire and Turkish Republic) from comparative law perspective, there are countries where homosexuality was regarded as a crime and its punishment was severe and physical. (A person who identified as a homosexual was thrown to fire) Homosexuality is accepted in the Turkish community despite the fact that it contradicts to Turkish customs and family structure.

Homosexuals, punished with a heavy penalty in the past are subject to positive laws. They live together as registered civil union in the most of the European Countries. For this reason, Private International Code of the most countries regulate the registered civil partnership.

In the system of Turkish Legal System, registered civil partnership is not regulated. However, Private International Law matters in relation to registered civil partnership looked for solution in the framework of Turkish Private International Law System. This paper aims to evaluate the judicial matters arising out of registered civil partnership.

Key Words: Registered civil partnership, homosexual, same-sex marriage, public order

PANEL VI: INTERNATIONAL COMMERCIAL LAW I

Moderator: Prof. Dr. Serap HELVACI

Professor Dr. Serap Helvacı graduated from Istanbul University School of Law with an LL.B degree in 1983. She gained her LL.M and Ph.D degrees from University of Istanbul School of Law. She pursued her Ph.D studies in Switzerland, Université de Lausanne for two years with a scholarship from “The Council of Higher Education.” She is the head of the Marmara University School of Law Private Law Department.
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Prof. Dr. Janet WALKER

BA(Hons), MA, JD (Osgoode), MA, DPhil (Oxon), FCIArb, of the Ontario Bar, Professor and former Associate Dean of Osgoode Hall Law School.

Professor WALKER has served as sole arbitrator, co-arbitrator and chair in ICC and ICDR arbitrations and she is active with ICC Canada, and the ICDR and CIETAC Panels, Toronto Commercial Arbitration Society, Chartered Institute (Toronto Branch), Arbitralwomen, and as a coach and arbitrator at the Vis Moot since 2001. She was among the Canadian arbitrators listed in Who’s Who Legal in 2010 and 2011, and she is a member of the ILA International Commercial Arbitration Committee.

Professor WALKER teaches Conflict of Laws and International Arbitration at Osgoode, and she has taught as a visitor at Monash, Haifa, U of T, NYU, NUS, Oxford, and for eleven years at Tunis II. She is the author of the leading Canadian text on conflict of laws, Castel and Walker: Canadian Conflict of Laws and the Halsbury’s Laws of Canada volume on Conflict of Laws; co-author of Civil Litigation; General Editor of The Civil Litigation Process, and Civil Litigation, co-editor of Civil Law, Common Law and the Future of Categories, and other publications at http://ssrn.com/author=1000667

Professor WALKER is the common law Advisor to the Federal Courts Rules Committee, and she was the first Scholar-in-Residence at the Law Commission of Ontario. She is a member of the American Law Institute, and a Presidium member of the International Association of Procedural Law, and a Senior Fellow of Massey College. She was President of ILA Canada, and she Co-Chaired the 72nd Biennial Conference in 2006 and the International Association of Procedural Law conference in 2009, and she led the Project on Teaching Procedure at Oxford in 2010

THREE ENGINES OF TRADE: “CISG, MODEL LAW, EDUCATION”

ABSTRACT

With the renewed interest in trade between Turkey and China and other partners in the region and around the world, this paper identifies three engines that drive progress and development in trade and discusses the impact on trade that each is having and the benefits ahead for Turkey and China.

The first engine - effective dispute resolution - has been driven forward by one of the most successful international treaties ever negotiated. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) has fostered growth in arbitration and has led to a range of other advances, including the UNCITRAL Model Law on International Commercial Arbitration.

The second engine - harmonized legal standards - has been driven forward by an equally successful treaty: the Convention on Contracts for the International Sale of Goods (“CISG”). This successor to the lex mercatoria has simplified agreements for the sales of goods for countless merchants around the world.

The third engine - legal education - has been driven forward by the most successful moot competition ever launched. The Vis Moot incorporates elements of international arbitration and sale of goods law. It is ensuring that the coming generation will take advantage of the opportunities for growth afforded by international arbitration and harmonized sales law.

This paper explores the benefits ahead for Turkey and China, now that they are participants in all three initiatives - the future is bright!
Prof. Dr. B. Bahadir ERDEM obtained a Bachelor of Law degree in 1987 from Istanbul University Law Faculty; an LL.M degree in 1992 from Istanbul University in the field of Private Law with the thesis "Notification in International Procedural law", and a PH.D degree in 1998 from Istanbul University in the field of Private Law with the thesis "Applicable Law to The Protection of Patent Rights and to the Contracts on Patent Rights". Professor Erdem was assigned as an assistant professor in 2000, as an associate professor in 2004 and as a Professor in 2009 in Istanbul University Law Faculty Private International Law Department. Professor Erdem has been lecturing private international law, international procedural law, citizenship law, foreigners’ law, and international intellectual property law at the Istanbul University for the candidates of Bachelors’, LL.M and PH.D. Professor ERDEM has published several books and articles, has made several presentations in national and international symposiums. Professor Erdem had been a member of the Committee between 2000 and 2007 that drafted the Turkish Code on Private International Law of 27.11.2007 and Nr.5718.

2010 INCOTERMS RULES AND THEIR ROLE ON APPLICABLE LAW TO THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

The INCOTERMS which are the main elements of obtaining the needed legal security practicality and predictability on international sales and eliminating the misunderstandings arise from the terms being understood differently in different countries, were renewed in 2010. INCOTERMS which settle the delivery of goods, transition of the damage, the division of property, and the liability related to the documents and present to the parties for them to choose are substantive law norms which are chosen to set the rights and obligations of the buyer and the seller. The parties don’t make a choice of law by having INCOTERMS in the contract. It is not possible for the state courts to apply the INCOTERMS unless the parties choose them to be applied. If the parties have put the INCOTERMS into their contract and have chosen the law applicable; after determining the validity of the contract terms (in that matter the INCOTERMS’) according to the law applicable, INCOTERMS are going to be applied to parties' rights and obligations and transition of the damage and the law the parties have chosen to apply is going to be applied to the rest of the matters. Despite setting INCOTERMs rules in the contract, if the parties do not choose the applicable law, the applicable law will be determined firstly by the conflict of laws rules, then it will be checked out whether the provisions of the contract are valid or not under this law and if they are valid, then INCOTERMs will be applied to the rights and liabilities arising from the contract. In the international arbitration, even not chosen by the parties, INCOTERMs can have the possibility of being directly applied by the arbitrators if it is accepted as a part of Lex Mercatoria. Whether the existence of Lex Mercatoria, which is defined as the rules that have set out to regulate international commercial relations and the commercial manners and customs which have accepted internationally, is under dispute as far as we are concerned, there is no doubt that INCOTERMs are real Lex Mercatoria rules in international sales as they are substantive norms which formulates international manners, customs and practice.

* * *
Assoc. Prof. Dr. Pınar AKAN

Assoc. Prof. Dr. Akan has graduated from Istanbul University, School of Law. After her undergraduate study, she attended University of Wales, Cardiff Law School where she received her LL.M degree on maritime and admiralty law. She also holds a Ph.D of private law from University of Marmara. She has been invited by Tulane University, School of Law(USA) as a visiting professor several times. She is also the first Turkish professor who was invited to the summer school in Rhodes organised by Tulane University Law School and Rhodes Maritime Institute every year. She has classes both on Maritime Law (LL.B), Carriage of Goods (LL.B) Liability of the Carrier Due to the Breach of Care of Cargo(LL.M) and The Alternative Dispute Resolutions on Maritime Law (P.hd). Akan has authored two books and plenty of articles on maritime law. She has also presented papers in international conferences both in Turkey and abroad.

POTENTIAL LIABILITY OF THE CLASSIFICATION SOCIETIES

ABSTRACT

Classification Societies were organisations providing a private enterprise certification service to shipowners. No doubt this service means so much for insurers to have some confidence in the condition of vessels they were being asked to cover. The reason we preferred to use past tense is because of the changes in operation and the commercial functions of the classification societies in recent years. In practice not only the insurers, also the purchasers and the charterers have similar interests and nowadays it became a standard practice to have a "class clause" esp.in ship purchase contracts.

Classification societies started not only provide private enterprise certification service, but also marine consultancy operations, giving advice on most aspects of marine operations and certify vessels -for a large number of regulatory purposes- such as compliance with MARPOL,SOLAS and other similar regimes. This process of course has its pros and cons. Considering the societies mutation into multifunction, the coverage in this paper will be the specific situation, where questions of liability of the classification society may arise.

NEW ERA IN TURKISH SALES LAW: THE EFFECT OF THE VIENNA SALES CONVENTION ON INTERNATIONAL SALES CONTRACTS

ABSTRACT

The difference between states’ substantive law rules on sales contracts, which is one of the most fundamental contracts of international business, hinders the free development
of international commerce. If the law which should be applied to the dispute with a foreign element is unforeseeable to the parties, this may create legal uncertainty. One of the ways to overcome this issue is to adopt uniform substantive law rules on sales contracts. United Nations Convention on Contracts for the International Sale of Goods was signed on 11 April 1980 in order to unify substantive law rules on international sales of goods. The convention is known as “the Vienna Sales Convention” as it was signed in Vienna. The Vienna Sales Convention contains the rules on international sales contracts on movable goods. The purpose is to resolve the potential disputes on sales contracts within the framework of the Convention as much as possible. The Vienna Sales Convention, whose parties are the states that are the main actors in world trade, entered into force on 1 August 2011 in Turkey. The subject of this paper is mainly to identify the scope of the Convention and the relationship between the provisions of the Convention and the conflict of law rules. If a Turkish court is dealing with a dispute arising out of an international sales contract, the court should primarily investigate if CISG is applicable to the dispute. In case the court decides that CISG is not applicable, the applicable law will be determined according to the relevant articles of the Turkish Private International Law Code. Consequently, even a Turkish court decides that CISG is applicable; the Turkish Private International Law Code might still be applicable. Since CISG does not cover all the legal issues arising out of a sales contract, the need for determination of the applicable substantive law according to the conflict of law rules still exists. This paper is going to address under which circumstances the convention will be applied to a sales contract with a foreign element, in other words the scope of the convention will be discussed. In this regard, especially the first six articles of the Convention will be explained.

Key Words: Vienna Sales Convention, scope, direct and indirect application, derogation, Turkish Private International Law Code.

PANEL VII: PRIVATE INTERNATIONAL LAW II

Moderator: Prof. Dr. Sibel ÖZEL

Prof. Dr. Sibel ÖZEL is the head of the Department of Private International Law at Law School of Marmara University. Having graduated from Marmara University, Prof. Dr. Özel became the member of Law School of Marmara University. She has LLM and PhD degree in Private Law in Marmara University. She has been teaching Private International Law, International Arbitration, Protection of Cultural Property, Protection of Personal Rights in Media, International Commercial Law and Conflict of Laws in the EU. She has authored and edited books and articles on this field. She is the delegate of Turkish Bar Association and Member of Turkish National Committe of UNESCO. She was Turkish delegate in the Meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Second Meeting, Paris (20-21 June 2012) and vice-president of the Intergovernmental Committee For Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, Eighteen Session, Paris (22 June 2012).
Prof. Dr. Umar MAHMOD

Professor Umar MAHMOD earned law degree at Xinjiang University in Urumqi, PR China. As a Teaching Fellow of Law School of Xinjiang University, he has been teaching Private International Law, International Economic Law, Public International Law, Law of the EU, International Human Rights Law and WTO Law for the graduate and advanced undergraduate students. Mr. Umar was a visiting scholar at the Institute for International Law and Comparative Law of Ludwig Maximilians University of Munich, Germany and research fellow at Law School of Leiden University, Holland, he has authored articles and book chapters on a variety of topics and current issues of Private International Law, International Economic Law, International Human Rights Law and EU Law in Key Journals and Periodicals, one of them gained the "Third Prize" of "the Excellent Scientific Research Achievements in the Field of Social Science in Xinjiang Uyghur Autonomous Region, PR China". From 2008 on, Mr. Professor Umar Mahmod was appointed as vice dean of the Law School, Xinjiang University.

THE SIGNIFICANCE OF MODERNIZATION OF LEGISLATION ON PIL IN CHINA

ABSTRACT

Under the background of globalization as well as the trend of reform and modernization of legislation on private international law in the world, the modernization of legislation on Private International Law in China is very necessary for the development of civil and commercial relations with other countries. This modernization process on one hand due to the legislative organs and their working mechanism, on the other hand due to the appropriate use of legal method, legislative idea and legislative technology are the keys to the success of the modernization of legislation, and the application of comparative law approach is indispensable.

Key Words: PIL; the law of the application of laws; legislation; modernization

Assoc. Prof. Dr. Hatice ÖZDEMİR KOCASAKAL

Hatice ÖZDEMİR KOCASAKAL is an associate professor of Private International Law at Galatasaray University, Faculty of Law. She graduated from Marmara University Faculty of Law in 1990. She has a LL.M in and Ph.D in Private Law at Marmara University Institute of Social Sciences in Istanbul. She has been teaching and research areas are private international law, international arbitration, sport arbitration. She has authored and edited books and articles in this field.

THE REGULATIONS RELATED TO AGREEMENTS IN TURKISH AND CHINESE PRIVATE INTERNATIONAL LAW SYSTEMS

ABSTRACT

In this paper, the Chinese and Turkish international private procedure law and rules of conflict of laws will be compared on the assumption that the sale agreement concluded between the real person or legal person having a residence or workplace in China and Turkey. In this context, in case of the claim sued in Turkey or China, the competent courts of jurisdiction and the applicable law will be defined.
Dr. Wenwen LIANG

Dr. Wenwen LIANG got her Ph.D from The University of Manchester (UK) in 2011 with her research on the property law aspects of intermediated securities under English law and comparative law. She was sent to attend the third meeting of the UNIDROIT working group on netting by the Ministry of Commerce of People’s Republic of China in 2012. She has been a visiting scholar to UNIDROIT, Max Planck Institute for Comparative and International Private Law, and Geneva University. She has published on intermediated securities. Her current research interest is property law of intermediated securities, closeout netting, and private international law of the financial markets.

PARTY AUTONOMY IN RIGHTS IN REM TO MOVEABLES: GOING TOO FAR?

ABSTRACT

The choice of law for rights in rem has long been the lex situs rule. This is undisputed in respect of immovablees, but less so with moveables since the situs of moveables can be changed. It remains firmly established only with reservations for specific kinds of moveables. However there has been a trend of allowing party autonomy in respect of the choice of law of rights in rem.

The Law on the Law Applicable to Civil Law Relations with a Foreign Element of the People’s Republic of China (PRC) (the Law) extends party autonomy to the choice of law regarding rights in rem to moveables.

This paper will examine the previous Chinese approach to rights in rem to moveables, which is the lex situs rule. Then this paper will examine the international trends of allowing party autonomy for choosing the applicable law to rights in rem. Finally attempts will be made to clarify the scope of party autonomy in respect of rights in rem, that is for property it is difficult to establish their situs or location. It is thus concluded that the rule in the Law should be revised.

Key Words: lex situs; party autonomy; rights in rem; numerus clausus; the Law on the Law Applicable to Civil Law Relations with a Foreign Element of the PRC

Assoc. Prof. Quing-Song WANG

Associate Professor Qing-Song WANG specializes in Private International Law, Public International Law, Economic & Trade Law of Central Asia and Energy Law. He also teaches in the area of International Economic Law and European Union Law. Assist. Prof. Wang has also been a Visiting Scholar at Beasley School of Law of Temple University. Besides, Assist. Prof. Wang is a member of the Lawyers Association of China.

Assist. Prof. Wang’s current research interests include Jurisdiction and Choice of Law, New Energy Law and Comparative Research on the Economic & Trade Laws of Central Asian Countries.

HISTORY AND THE LATEST DEVELOPMENT OF CHOICE OF LAW ON CONTRACTS IN MAINLAND OF CHINA

ABSTRACT

The choice of law of foreign-related contracts has always attached great importance on by the legislature and courts in China. The General Principles of the Civil Law and some
judicial interpretations have set the basic rules of application of law in this field. Then the Regulations of the Supreme People's Court on Issues Concerning the Application of Law in Adjudication Cases of Disputes over Foreign-related Civil or Commercial Contracts became the most practical and detailed judicial interpretation on application of law of foreign-related contracts in China, it not only combined the academic research achievements and the practical experiences of Chinese private international law but also fill legislation blanks in the relevant fields in China. However, in the clearly defining “civil and commercial contract”, the specificity of the application of the law”contract for the disadvantaged” and the application of the law on the issues of contractual disputes involving Taiwan, there are some shortages and need to be improved. As the latest development, the Law of the Application of Law for Foreign-related Civil Relations of the People's Republic of China which was enacted on 28th October 2010 and come into enforcement on 1st April 2011 has solved above-mentioned problems to a certain degree.

**Key Words:** Foreign-related contracts, application of law, China

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**Research Assistant Zeynep ÖZGENÇ**

Zeynep ÖZGENÇ is research assistant of private international law department at law School of Uludag University. She completed LL.B at Uludag University. She is doing Ph.D in private law at Marmara University. Her major interests are European Union Law, Private International Law and International Maritime Law

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**THE PROBLEM OF MARITIME LIEN IN CONFLICT OF LAWS**

**ABSTRACT**

Maritime liens provide safeguards to maritime claims that are stipulated in Turkish Commercial Code (TCC). Moreover, except being regulated in the TCC, maritime lien ranks before registered, or not, other statutory and contractual lien and real obligation. Maritime liens are privileged due to this juridical instrument.

This article focuses on the problem of maritime liens in the conflict of law. Firstly, this paper examines maritime liens as substantive law. Additionally, we try to analyze allocation rules which are regulated in the International Private and Civil Procedure Law, Turkish Commercial Code, International Convention Maritime Liens and Morgages, 1993 and Final Act and International Convention on Arrest of Ships, 1999.

**Key Words:** Maritime Lien, equitable lien, applicable law, allocation rules, International Conventions.
PANEL VIII: INTERNATIONAL COMMERCIAL LAW II

Moderator: Prof. Dr. Sami KARAHAN

Professor Sami Karhan is a full time faculty at Law Faculty of Marmara University. He is attorney at Istanbul Bar Association. He had sworn in Certified Public Accountant. He studied for his LL.B at Law Faculty of Istanbul University. He received his masters of Law and PH.D degree from Private and Commercial Law department of Law School of Istanbul University.

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Prof. Dr. Han LONG

Professor Han LONG earned Ph.D in international economic law and finished post-doctor research in world economics in Wuhan University. Han is now a professor in Law School of Zhongnan University of Economics and Law. During 2004 and 2005, Professor Han conducted research on financial law and the law of WTO respectively under the guidance of Professor Joel Seligman in Washington University in St. Louis and Professor John H. Jackson who is widely honored as "Father of the WTO" in Georgetown University. Professor Han has long been engaged in the research of financial law, international financial law and the law of the WTO; acquired and chaired many China's national, ministerial and provincial research academic projects, including China's national key project on social science; published more than a hundred academic papers in Chinese and foreign languages, more than ten academic books; won the scientific research rewards on for many times. Professor Han has made unique and original research achievements in the law fields of RMB exchange rate, offshore finance, WTO financial services and regulation of financial risk and crisis, enjoying the leading status in above fields in China.

CHINA'S NATIONAL SECURITY REVIEW SYSTEM FOR FOREIGN M&AS HAS BEEN UNVEILED

ABSTRACT

In response to the sharp increase of foreign M&As in China, China has formally established its national security review system for foreign M&As in 2011 after its lengthy embryoment and development. The system actually classifies the M&As transactions potentially falling into the scope of national security review into two categories depending on the nature of target of the foreign M&As: the military or military-related enterprises and important enterprises in industries other than the military or military-related fields, setting up different requirements for them. The system has also listed the factors for consideration in the review, and has set up the mechanism and procedure for the review, similar to American counterpart in structure. The biggest threat to the proper implementation of the system is that it might be misused by the vested interests in China to protect their own interests in the pretext of national security and block foreign investment beneficial for the public interest but harmful for the vested interests.

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Dr. Ayşegül SEZGİN HUYSAL

Dr. Ayşegül SEZGİN HUYSAL is a research assistant in Marmara University Law Faculty Commercial Law Department since 2001. She completed her LL.B and LL.M in Galatasaray University Law Faculty. She received her Ph.D from Marmara University. She published her Ph.D thesis “Pharmaceutical Patent” as well many articles in commercial law.

THE STARGATE OF FOREIGN INVESTORS; M&A TRANSACTIONS IN TURKEY

ABSTRACT

Turkey is shown as “one bright spot in an otherwise bleak landscape” where the M&A business has not been so badly affected by the global downturn. The principles of (i) freedom to invest and (ii) national treatment of foreign investors are stated in the Foreign Direct Investment Law. Thus, the establishment of M&A transactions regarding such companies or by foreign investors shall be realized in exactly the same way as by companies with local capital.

Turkish law provides and allows different types of M&A transaction models. First of all, Turkish Commercial Code provides two types of merger; takeover of a company and fusion of two companies in one new company. Other than these two merger options, it also possible to realize the transaction as a share deal or an asset deal. Regardless the type of the transaction the steps to be followed are more or less identical and similar to other legal systems.

In this presentation, the practice of M&A transactions in Turkey will be examined while the FAQ of the investors are highlighted. Also a basic knowledge for managing a company in Turkey will be given within the terms of the new TCC and related legislation.

Assist. Prof. Dr. Meltem Deniz GÜNER-ÖZBEK

Meltem Deniz GÜNER-ÖZBEK has a Ph.D degree from Hamburg University Faculty of Law (Germany), a LL.M degree from Tulane University Faculty of Law (U.S.A); and a LL.M and LL.B degrees from Istanbul University Faculty of Law. She has worked as a research and teaching assistant at Istanbul University Faculty of Law, Maritime and Insurance Law Department. Currently she is a full-time faculty member at Koc University of Faculty of Law, Istanbul. Guner-Ozbek’s teaching and research areas are maritime law, insurance law, air law and transport law. She has authored and edited books and articles in this field.

LINKING CHINA TO TURKEY BY RAIL: THE NEED FOR A UNIFORM TRANSPORT LAW

ABSTRACT

Both Turkey and China are fast-growing economies of the world. Furthermore, Turkey is an important import market for China. The Strategic Agreement signed in Ankara in 2011, targeted 50 billion USD mutual trade by 2015 and 100 billion USD by 2020. Transportation is the fundamental element of trade. Economics involve production, distribution and consumption of goods and services. Raw materials available somewhere are transported to a place to be produced and then finished products are distributed
anywhere they are needed. Moreover, transportation allows people to change their location for different purposes. Transportation also plays important political and social role. Consequently, transport law has been one of the most international area of laws. Predictability, certainty and sustainability are fundamental to international transport law. Uniformity in the allocation of liability and risk in international transport promote such fundamentals of international transport law. Uniformity in law can be achieved by different methods such as international conventions, standard forms, standard terms etc. In Europe international carriage by rail is governed by the Convention Concerning International Carriage by Rail, (COTIF) 1999 - as amended by the Vilnus Protocol effective from 2006. The COTIF consist of Uniform Rules on the specific subjects of transportation in its Appendices. Currently, 48 States, including European Union in addition to its members, from Europe to North Africa and Middle East, are party to the COTIF. Turkey is one of the state parties to the COTIF; however China is not. This presentation will examine the need for a uniformity and ways thereof when a railway system will have been built in the future linking China to Turkey.

**Key Words:** International Transport, International Trade, Rail Transport, Uniformity in International Transport Law, International Transport Conventions

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**PANEL IX: INTERNATIONAL ARBITRATION II**

**Moderator: Prof. Dr. Yavuz KAPLAN**

Professor KAPLAN received his LL.B from law school of Marmara University. LL.M from Selçuk University, Ph.D from Ankara University. He is a group member in Primine Ministry IT Council. He was Arbitration Board Member in Erzincan Chamber of Commerce and Industry (2003), Erzincan University Faculty of Law Journal Editor (2005), Faculty Board Member and the Senator in Erzincan University (2006) ,Erzincan University Ethics Committee Member (2006) He was the Principal of the Private Law Department in Erciyes University Faculty of Law (2007), Principal of the Private Law Department in Erciyes University Institute of Social Sciences(2007). He was Faculty Board and Executive Board Member in Erciyes University Faculty of Law(2007) Azerbaijan Arbitration and Mediation Center Referee, Baku (2009). Zirve University Faculty of Law Dean (2009) Zirve University Faculty of Law Dean (2010) Currently, he is serving as a dean of Istanbul Aydin University Faculty of Law.

**Prof. Dr. Lie DENG**

Professor Deng  received his Ph.D from law School of Wuhan University. Currently he is a full time professor at Law school of Zhongnan University of Economics and Law. Professor Deng’s interests include the international law and Chinese foreign policy, especially Chinese security policy and its practice on international disputes settlement. He is a senior member of China National Association for International Studies (CNAIS) .In 2008, he visited the Center for International Security and Cooperation at Stanford University and the James Madison College of Michigan State
University as a visiting scholar, where he wrote a wide range of articles on the U.S.-China diplomacy and international law theory.

SETTLING INTERNATIONAL DISPUTES: CHINA’S EXPERIENCES AND PRACTICES

ABSTRACT

In ancient China, Confucianism gained the dominant position in Chinese spiritual world and had a far-reaching impact on the thinking of dispute settlement. This philosophy results in the logic of emphasizing final consequences. Therefore, when it comes to resolving disputes, the "best solution" is to achieve harmony among parties concerned and sometimes the whole society as well. The fairness of distributing interests is usually considered as second in line. Another effect of the thought of upholding harmony is the negligence of dispute-solving procedures.

Under the influence of this dispute-resolving philosophy, China lived in peace with the rest of the world for nearly 2000 years. Nevertheless, from mid-19th Century, with the expansion of western civilization and forces to the Far East, China started its difficult transition to become a modern nation. This "pain of growing up" caused fundamental changes in China's relation with the world, which also brought an enormous impact on Chinese dispute-resolving philosophy and its practices.

Today China is standing in front of the revolving door of history. Whether to enter to the center or to revolve around and slide back to our original point is totally depending on our choice and our way of thinking. In the author's opinion, China has to make psychological, institutional, and self-identical transitions in order to become a responsible big power and step into the center of the stage of international affairs. It means China needs to abandon its instrumental idea towards international law, and fully accept it on the fundamental level.

Zooming in on practices of settling international disputes, the author believes the following three points are necessary for China: more international law, more multilateral mechanism, and more practices of international judicature.

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Assist. Prof. Dr. Cemile DEMİR GÖKYAYLA

Assistant Prof. Dr. Cemile Demir GÖKYAYLA graduated from Dokuz Eylül University Faculty of Law in 1998. Her main areas of practice include international private law, international arbitration law, foreign investment law and international distribution law and international family law. She has lectured international private law, international arbitration law, foreign investment law and international commercial law at Istanbul Bilgi University Faculty of Law.


THE RECOGNITION AND ENFORCEMENT OF THE CHINESE JUDGMENT IN TURKEY

ABSTRACT

Turkey and China entered into Bilateral Treaty on Judicial Assistance on Legal, Commercial and Criminal Matter. Articles 21-26 of the Treaty deal with enforcement and recognition of the judgment. Turkish International Private Law (Refered as TIPL)
stipulates provision regarding for the recognition and enforcement of the forgery in judgment. Under Turkish law the treaty that Turkey is party to prevail over the Codes on the same matter. Thus enforcement of Chinese judgment is regulated under the said Treaty. The enforcement requirement under the Treaty and TIPL differs from one another. For example, violation of the ordre public is not listed as a reason to reject the enforcement under the Treaty. In this paper we are dealing with the requirements of the enforcement under the Treaty and the differences between the Treaty and TIPL.

Assist. Prof. Dr. Burak HUYSAL

Burak Huysal is an assistant professor of international private law and full-time researcher of the Faculty of Law of the Bahcesehir University. He holds a Ph.D in 2009 from Istanbul University after attaining an LL.M from Marmara University in 2003. He is the author of books and publications on international arbitration and private international law.

COURT ASSISTANCE AND INTERVENTION IN CHINESE AND TURKISH LAW

ABSTRACT

Court assistance and court intervention in arbitration proceedings are major problems of international commercial arbitration. Since arbitration has been accepted as an alternative dispute resolution mechanism in international commercial transactions, the limits and powers of arbitrators have always been subject to serious discussions. In the discussions regarding the limits and powers of arbitrators, court assistance and court intervention have always been hot subjects, because today, especially in states where international arbitration has been codified recently, many state courts still want to preserve their dominance. In such states in case of existence of doubt judges tend to use their discretion against arbitration.

In this context especially three matters can be distinguished; the power to decide its own jurisdiction, interim measures and the appointment of arbitrators. When we examine Turkey and China, it is clearly noticeable that state courts play an important role in arbitration processes in both countries. This role can be complementary, and sometimes can be interventionist at different stages of the arbitration process. The courts can react either by request from any of the parties or upon the initiative of the arbitral tribunal. But we also see an almost unique system in both of these countries.

The competence-competence doctrine does not exist in Chinese arbitration legislation and practice. Also jurisdiction to rule on interim measures is within the competence of Chinese courts. Furthermore, with regards to the appointment of arbitrators, the parties' freedom of choice is limited.

In Turkey the intervention of courts are dominant but controversially the duty of courts on assistance is arbitration friendly beyond the expectation. The competence-competence doctrine is generally accepted in Turkish arbitration legislation. Regarding the interim measures, Turkish State courts are empowered to decide before or during the arbitral proceeding when a party or arbitrator so requests. The courts will appoint the arbitrator if there is a dispute among the parties regarding such an appointment.
Fatih Serbest is a Ph.D in Law student at Kings College London. His research is about promoting administrative efficiency and procedural fairness of fast-track procedures in International Commercial Arbitrations. Prior to joining the Institute of Construction Law and Dispute Resolution at Kings College London in 2008, he completed LL.M in International Commercial Law at the University of Essex in 2007 and formerly graduated from the Faculty of Law, Istanbul University. Mr. Serbest is also an advocate. He specializes in international arbitrations - both commercial and investment treaty in a wide variety of sectors including construction, energy and intellectual property. He has acted and advised arbitration as a counsel under the rules of ICSID and UNCITRAL. He has also acted for Turkish construction companies to commence a BIT arbitration under the Turkey-Turkmenistan Bilateral Investment Treaty (BIT) in relation to various construction projects in Mary, Dashoguz and Ashgabat, Turkmenistan.

FAST-TRACK ARBITRATION - SHOULD IT BE ENCOURAGED FOR INTERNATIONAL COMMERCIAL DISPUTES?

ABSTRACT

Fast-track arbitration is used quite often in the Far East. Almost all arbitration institutions provide fast-track arbitration rules in this region. Some like the ACICA and the KL RCA provide commercial parties withstand-alone fast-track arbitration rules. Others, like the CIETAC, the SIAC and the HKIAC, offer quasi-separate fast-track procedures as part of their ordinary arbitration rules.

The stand-alone fast-track arbitration rules accept opt-in approach to fast-track procedures. This means commercial parties should specifically agree on fast-track rules either in the arbitration clause before a dispute or in the submission agreement after a dispute. By contrast, under the quasi-separate rules expedited procedures are "automatically applicable" if the claimed amount is below a certain monetary threshold. This is an opt-out approach to fast-track procedures.

Recently, the 2010 SIAC Rules increased the monetary threshold for the automatic application of fast-track procedures from S$1,000,000 to the amount in dispute does not exceed the equivalent amount of S$5,000,000. The revised version of the 2012 CIETAC Rules also increased the automatic applicability from old RMB 500,000 threshold to new RMB 2,000,000 threshold. It is expected, in the coming years, that half of the commercial arbitration cases under the supervision of these institutions will be dealt with fast-track procedures.

Fast-track arbitration has its advocates and its critics in the resolution of international commercial disputes. It has advantages and disadvantages and there are situations where it is appropriate and situations where it is not so appropriate. This paper discusses the pros and cons of fast-track arbitration. It particularly analyses the legitimacy of opt-in approach to fast-track procedures in international commercial disputes.


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PANEL X: INTERNATIONAL COMMERCIAL LAW III

Moderator: Prof. Dr. Kamil YILDIRIM, Law School of Marmara University

Prof. Dr. Mehmet Kamil YILDIRIM is a professor of Law School of Marmara University. He received his PHD from the law School of Marmara University. During his PhD, he received a number of scholarships, Namely DAAD Foundation, Bonn. During his professorship at Law School of Marmara University, he also served as a head of the Civil Procedure Department and he was the person in charge of the preparation commission of the code of civil procedure since 1999. The commission was founded by the ministry of justice.

The renowned professor has published many law books, articles in a number of languages, German, Greek, Turkish. He has presented many papers in the international conferences. Namely, Bonn University in Germany; Wien University in Austria; Tokio Waseda University and Kyoto Ryokoku University in Japan.

He is a member of the Association of the Faculty Members of Civil Procedure Law, Germany, (1998); International Civil Procedure Lawyers Scientific Corporation, (2002); Turkish and German Cultural Committee, (1996); DAAD (2000).

Prof. Dr. Sibel ÖZEL

Prof. Dr. Sibel ÖZEL is the head of the Department of Private International Law at Law School of Marmara University. Having graduated from Marmara University, Prof. Dr. Özel became the member of Law School of Marmara University. She has LLM and PhD degree in Private Law in Marmara University. She has been teaching Private International Law, International Arbitration, Protection of Cultural Property, Protection of Personal Rights in Media, International Commercial Law and Conflict of Laws in the EU. She has authored and edited books and articles on this field. She is the delegate of Turkish Bar Association and Member of Turkish National Committe of UNESCO. She was Turkish delegate in the Meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Second Meeting, Paris (20-21 June 2012) and vice-preshapeident in the Intergovernmental Committe For Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, Eighteen Session, Paris (22 June 2012).

THE EFFECT OF UCP 600 RULES ON THE LETTER OF CREDITS AMONG THE BANKS

ABSTRACT

In respect of the letters of credit issued by a bank all procedure and responsibility will subject to the rules of UCP 600 of the ICC. The parties do expressly stipulate that they will be bound by the rules of UCP 600. So these rules will become a part of contract and will be validand effective as a term of contract. They will not be considered as choice of law. Therefore their application will subject to the law applicable to the matter. Many laws do not have special provisions relating to the letter of credit, so it will not be difficult to apply the rules of UCP to the procedure of the letter of credit as a custom. However the UCP provides disclaimer for acts of an instructed party. A bank utilizing the services of another bank will assume no liability or responsibility for the acts of that bank.
against the applicant. In this regard this clause of disclaimer may not comply with the mandatory rules of the national law applicable. According to Turkish Obligation Code, the debtor who provides professional services under the licence of law or competent authority shall not make an agreement of disclaimer for the negligence. Should the debtor utilize the services of other party that provides professional services under the licence of law or competent authority it is null and void to make an agreement of disclaimer for the acts of the instructed party.

Key Words: Letter of credit, Uniform Rules, UCP 600, ICC, agreements of disclaimer

Assist. Prof. Dr. Oğuz CANER
Assist. Prof. Dr. Oğuz CANER teaches at Law Faculty of Erincan University. He is assist professor at the law faculty starting from 2004. He received his Ph.D from the Law Faculty of Marmara University. He is also attorney at Law.

E-COMMERCE PAYMENT METHODS
ABSTRACT
In trade practice, transactions made on paper to electronic media and increasingly shifting to a paperless environment. In international sales, there are four traditional payment methods. Cash in advance/prepayment, open account, documentary collection, documentary credits. Documentary credit is the most frequently used method. Parties may choose the most suitable method for their business transactions. In this context, international factoring is considered as an important payment methods. In addition, other payment methods are being developed. Process of digitalization affects the Methods of payment used in international trade, and electronic documents lead to some serious legal and practical consequences.

Documentary credit has some advantages. Because of lower risk, liquity and proximity, documentary credit is preferred in international paperless payments. Some alternative payment methods like escrow agreement, bank undertakings and emerging electronic payment systems are improving in practice. This paper will discuss the improvements about payment methods in paperless trade.

Research Assistant Burcu YÜKSEL
Burcu Yüksel obtained her LL.B from Ankara University Faculty of Law and her LL.M in International and Comparative Business Law from London Metropolitan University in the UK. Currently, she is doing her Ph.D in Private International law at Ankara University Institute of Social Sciences and works as a research assistant at the Department of Private International Law, Ankara University Faculty of Law. Her major research interests are in the field of private international law, especially in commercial aspects of private international law.

INTERNATIONAL PAYMENTS BY WAY OF ELECTRONIC FUNDS TRANSFER AND THE UNCITRAL MODEL LAW ON INTERNATIONAL CREDIT TRANSFERS
ABSTRACT
In October 2010, Turkey and China announced a strategic partnership for the deepening and development of bilateral relations. Banking and finance are at the centre of this target. It has been well reflected in the efforts of the major banks in Turkey to make
arrangements with the banks in China for the start of banking transactions in the local currencies of Turkey and China. These arrangements entail opening accounts of Turkish lira and Chinese yuan and transferring funds between the two countries. This paper aims to consider international payments by way of electronic funds transfer, addressing some of the problems that could be faced and discussing solutions, paying particular attention to the major international legal document dealing with this subject adopted in 1992 by the United Nations Commission on International Trade Law, namely the Model Law on International Credit Transfers. In this context, the paper focuses on the technical and legal aspects of electronic funds transfers in general, including the operations of banking transactions in the funds transfer chain and the legal relations between the parties to the transfer. Furthermore, for the purpose of promoting the use of international electronic funds transfer in international trade between Turkey and China by enhancing legal certainty for the parties to the transfer, the paper examines the legal problems raised by electronic funds transfers particularly in the case of unauthorised payment orders or of failed, erroneous or delayed funds transfers and discusses the possible solutions in the light of the provisions of the UNCITRAL Model Law.

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**PANEL XI: INTERNATIONAL ARBITRATION III**

**Moderator: Prof. Dr. Seyithan DELİDUMAN**

Professor Seyithan DELİDUMAN is dean of Law Faculty of Yalova University. His Ph.D dissertation was on "Civil Procedure and Bankruptcy Law, Notary Public Securities". He assisted Professor Dr. Ejder Yilmaz in Private Law, Civil Procedure and Bankruptcy Law at Law Faculty of Ankara University. At the same time, he is a member of the academic staff of School of Law, Marmara University.

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**Prof. Dr. Li SHOUPING**

Li Shouping is a professor of international law and the deputy dean of law school of Beijing Institute of Technology, the director of Space Law Institute of BIT. He is the editor in chief of Chinese Yearbook on Space Law. He is the main drafter of Regulation on the Development of Civil Aircraft Industry of China. He participated in drafting Interim Regulation on Space Debris Mitigation and Defence.

Professor Li Shouping is a member of Institute of International Space Law, an executive director of Chinese Institute of Space Law and Beijing Society of International law, a vice president of Chinese Institute of EU law. Professor Li published 3 books, such as Legal system on Modern International Responsibility, Introduction to Outer Space Law and The Issue on Environment Protection in the Framework of Multilateral Trade System. He published close to 30 papers on law and policy on air and space.
CHINA’S PRACTICES OF PARTICIPATING IN WTO DISPUTE SETTLEMENT ON COUNTERVAILING SINCE ACCESSION TO WTO

ABSTRACT

China has participated in 31 dispute settlement cases since the 10 years of accession to WTO. Because of the practices of participating in WTO dispute settlement on countervailing, China safeguarded its national trade security and accumulated experiences on dispute settlement. China raised two actions as applicant before WTO dispute settlement body. The practices improved some WTO dispute settlement procedures and regulations on subsidy. It can be foreseen that with the development of China’s economical transformation, China will be the main respondent in WTO dispute settlement on countervailing. Based on the situation, on the one hand, China shall take advantage of WTO dispute settlement to safeguard national trade security; on the other hand, China shall design scientific subsidy measures and policies to promote industry.

Key Words: WTO, Dispute Settlement, Countervailing, Antidumping and Countervailing measures

Prof. Dr. Yang ZEWEI


THE ENERGY CHARTER TREATY AND DISPUTE SETTLEMENT OF TRANSNATIONAL ENERGY PIPELINE ------A CHINESE PERSPECTIVE

ABSTRACT

There are many types of disputes on transnational energy pipeline with various and complicated reasons. International legal system based on the Energy Charter Treaty (ECT) contains a comprehensive system for settling disputes on transnational energy pipeline, which covers international arbitration, adjudication of international judicial bodies, a specialized conciliation mechanism under the ECT, and the Energy Charter conference mechanism. In addition, the traditional diplomatic and political means, such as negotiation and consultation are also included. As to the dispute settlement of those pipelines related to China, it's crucial to establish and develop a friendly relationship with those countries related.

Assoc. Prof. Dr. Babi TOHTI

Prof. Babi Tohti is associate professor at Law School of Xinjiang University in Urumqi, PR China. As a Teaching Fellow of Law School, of Xinjiang University, he has been teaching Private International Law, Public International Law and WTO Law for the graduate students. Mr. Babi has authored and published books and many articles on current issues of Private International Law, Public International Law and Kazakh Law in Key Journals and Periodicals.

ON THE APPROACHES OF SOLVING TRANSNATIONAL CIVIL CASES IN THE LATE QING DYNASTY

ABSTRACT

In early modern times, the Kazakh nationality became a transnational nationality. There are frequent contacts between the Kazakh of border area. The civil and penal disputes and litigations among them became transnational ones. In the late 19th and early 20th century, with the attendance of officials from Czarist Russian and Qing Imperial Court as well as Kazakh Tribal chiefs (namely Biy), transnational Biy court meetings were held in Tarabagatay, Gulja and Sino-Russian border areas which are nearby the Kashgar. According to the customary Law of Kazakh, these court meetings focused on the mutual disputes, including: solving the animal larceny, disputes on property, personal injury, marriage, inheritance of property, and judicial procedure, etc. In other words, it is the Syaz joint trial system. This paper mainly aims to explore the approaches, methods, characteristics, historical roles and functions of the late Qing Dynasty transnational civil cases.

Key Words: the Late Qing Dynasty; Kazakh; Transnational Civil Cases; the Approaches of Solving

Assist. Prof. Dr. Meltem SARIBEYOĞLU

Meltem Sarıbeyoğlu, an assistant professor of public international law in Marmara University, Faculty of Law, was born in Istanbul, Turkey on February 21, 1976. She graduated from Marmara University Faculty of Law in 1998 and continued to LLM in European Union Law at the European Union Institute in Istanbul. She associated with the European Court of Human Rights for a year as a lawyer in 2000 and went back to her academic studies later in 2001. After having completed her doctorate in 2008 in Marmara University, she published two books in Turkey; one in 2009 compiling international treaties and documents with three other writers and another book in 2010 on the World Trade Organization, Customs Union and their impact on Turkey. Her articles on human rights and international humanitarian law issues have been published in many reputable national journals. During her studies, she spent time at various universities and research centres, e.g., Institute of Advanced Legal Studies in London. She has been taking place in activities and events organized by the International Committee of the Red Cross since 2002. She was a fellow of Aspen Institute Romania and she was an Executive Council’s member of the Association of Turkish Women in Legal Careers between 2002 and 2004 and is still an active member.
DEVELOPING COUNTRIES IN THE WTO DISPUTE SETTLEMENT SYSTEM: PARTICIPATION OF TURKEY AND CHINA

ABSTRACT
This article aims to present an insight into the problematics of the situation of developing countries in dispute settlement in global free trade system governed by the WTO. In this respect, in the first part of the article, the WTO dispute settlement system is considered in brief. In the second part, the article further examines the position of developing countries before the Dispute Settlement Body and identifies their advantages and disadvantages accordingly. In the final part, the article evaluates the position of Turkey and China as developing countries in the light of the number of disputes to which they became a party before the WTO Dispute Settlement Body.

PANEL XII: INTERNATIONAL COMMERCIAL LAW IV

Moderator: Prof. Dr. Nurşen CANIKLIÖĞLU
Professor Dr. Caniklioğlu started to work as a research assistant upon the graduation from the Law Faculty in the University of Istanbul. She lived for two years in Germany to do academic research. After coming back to Turkey, she received her doctoral degree and became assistant professor in the Department of Employment and Social Security Law in the Law Faculty of the Marmara University in the year of 1997. She worked as the vice dean between the years of 1999 and 2001. She became associate professor in the year of 2003, and professor in the year of 2011. She is the head of the Department of the Employment and Social Security Law and Erasmus coordinator of the Faculty. Also she has been a member of the University Legislation Commission for long years. She has giving lectures in the graduate and postgraduate programs in the Marmara University and some other universities. She wrote a book in the area of the Employment and Social Security Law besides many articles, and made speech in various symposiums.

Prof.Dr. Kemal ŞENOCAK
Kemal ŞENOCAK, a professor of Commercial Law in Ankara University, Faculty of Law and dean of Faculty of Law at Inonu University. He graduated from Law School of Ankara University in 1986. He finished Ph.D in 1999. His Ph.D thesis named “Professional Liability Insurance” is published. He completed his LL.M at Universität Passau in 2000 with his thesis “Gutgläubiger Erwerb nach § 366 HGB”. He became associate professor in the year of 2003, and professor in the year of 2011. He worked as a president of Legal Camber of Banking Regulatory and Supervisory Agency between the years of 2004-2005.

UNFAIR COMPETITION BY MEANS OF FRAUD AND MISREPRESENTATION

ABSTRACT
In accordance with Turkish Commercial Code No: 6102, in this presentation will point out these important matters:
1. Discrediting others or their goods, their activities, or the products of their work or their commercial affairs by means of wrong, deceitful or uselessly offensive statements;

2. Giving wrong or deceitful information regarding one's own situation, goods and the products of one's work, one's commercial activity or commercial affairs of acting in the same manner regarding third persons and putting them in a situation above their competitors.

3. Creating confusion with others' businesses, business products or activities,

4. Comparing one's own, business products or prices with others, their business products or prices in a false, misleading and discrediting way or bestowing a privilege on someone by this way.

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Dr. Yavuz ERDOĞAN

He was born in Istanbul in 1975. He graduated from the Faculty of Law, Istanbul University and from the Faculty and High School for Military Students' Command in Istanbul in 1997. After completing master's degree in the field of public law in the Institute of Social Sciences, Marmara University in 2000, he completed his second master degree in the field of International Relations in the Faculty of Business and Economics, Cyprus Girne American University in 2004. He also completed Ph.D in the field of public law in the Institute of Social Sciences, Marmara University in 2011. In addition, after completing his internship as the military judge in 1999, he has worked as military judge and prosecutor in Adana, Cyprus and in Erzurum, he is currently the Military Prosecutor in Erzurum. He has published a book and articles; he is married and has one child.

TURKISH TRADE ACT OFFENSE OF UNFAIR COMPETITION (Turkish Trade Act Article 55, 62)

ABSTRACT

Turkish Trade Act’s (TTA) 6102 numbered title’s forth episode entitles unfair competition and includes between 54-63 articles. When we consider this episode; 55 th. Article entitles wrongful acts to the good faith and commercial applications and leading actions of unfair competition which are listed are under the other. Namely, in the article code the applications of unfair competition are sampled as an exemplification. TTA’s 62 th. article includes the punitive actions when we look at this article’s first subjections it refers to the 55 th. Article we need to be aware that the relationship between these two articles must be considered with principle of legality in crime and punishment. Furthermore we should be aware of that at the end of 62 nd. article the statement “if a criminal act does not constitute a crime requiring a severe punishment” we can consider this expression should be debated as conseil judgement of TTA in the same manner the expression at the end of the 62 nd. article “in accordance with 56 th. article with the complaint of the one who can be vested to bring a legal action. We conside that protice on a time period should be evalauoted as the subject is related to criminal law.
Dr. Mehmet Emin ALŞAHİN

Dr. Alşahin graduated his LL.B degree at Istanbul University Faculty of Law in 2003. At the same year, he started his master education at Marmara University Institute of Social Sciences, Law Field and Programme of Public Law. He delivered his master thesis which named “Crimes of Harming the Property (YTCK article 151)”. He completed his lawyer apprenticeship in 2004. He completed his doctorate thesis which named “Limitation in Criminal Law” in 2010. He is a member of the academic staff of Marmara University Faculty of Law.

REVIEW OF CRIME AND FAULT IN ANTI-SMUGGLING CODE

ABSTRACT

Smuggling can be defined as the illegal importation and exportation of goods. Smuggling crimes have increased in parallel with the developments in technology and changes in socio-economic and political areas during the last century. As a result of this increase in the rates of smuggling crimes, governments have taken precautions in order to prevent these crimes. In parallel with the general trend among the governments, Turkey has prepared different kinds of legal regulations. First of all, a new criminal code was prepared and then, a new smuggling code which was named "Struggle of Smuggling Code", was enacted. The mentioned code abandoned the modern Idea of Economical Punishment for Economical Crimes. The reason for this regulation is that smuggling has a widespread position among crimes committed in Turkey.

PANEL XIII: INTELLECTUAL PROPERTY LAW

Moderator: Prof. Dr. Kemal ŞENOCAK

Kemal ŞENOCAK, a professor of Commercial Law in Ankara University, Faculty of Law and dean of Faculty of Law at Inonu University. He graduated from Law School of Ankara University in 1986. He finished Ph.D in 1999. His Ph.D thesis named "Professional Liability Insurance" is published. He completed his LL.M at Universität Passau in 2000 with his thesis "Gutgläubiger Erwerb nach § 366 HGB". He became associate professor in the year of 2003, and professor in the year of 2011. He worked as a president of Legal Camber of Banking Regulatory and Supervisory Agency between the years of 2004-2005.

Assist. Prof. Dr. Tamer PEKDİNÇER

Tamer Pekdincer, an assistant professor of commercial law in Marmara University, Faculty of Law, was born in Istanbul, Turkey on June 14, 1965. He graduated from Istanbul University Faculty of Law in 1990 and continued to LL.M in Private Law at Marmara University Institute of Social Sciences in Istanbul. After having completed his doctorate in 2001 in Marmara University, his articles on intellectual property issues have been published in many reputable national journals. He has been board member of
Intellectual Property Law Commission at Istanbul Bar Association and he submitted a lot of academic papers about intellectual property law and commercial law. Some of them are "The Demand of Leaving the Company Upon a Just Cause in Limited Companies with Two Shareholders and the Court of Appeal's Approach to the Issue, The Context of Registered Office, Branch and Store with regard to Trade Registry, Infringement of the Industrial Rights by the Commercial Representative, Objections against Turkish Patent Institute’s Rulings, Counterfeiting and Customs Seizures, Counterfeiting and Customs Seizures”

COMPENSATION CLAIM IN INTELLECTUAL PROPERTY LAW BECAUSE OF SEIZURE IN CUSTOMS

ABSTRACT

The most important outcome of customs seizures appears to be the moral and material damage claims. Pursuant to the general principles of liability law, Decree No: 556 on Protection of Trademark Rights (the "Trademark Decree") regulates the material damages as two different types (i) Actual Damages, and (ii) Loss of Profit. (Article 66 and 67) Actual damage is the net decrease of the assets; Loss of Profit is however preventing the right holder from gaining a natural, potential profit wholly or partially as a consequence of the infringing act. In case of a loss of profit, not only the current situation of the assets are taken into consideration but also the potential/future position in other words, the future position of the assets when the infringing act had not been occurred, is considered. In my opinion, the outcome of a customs seizure is loss of profit rather than actual damage. In practice, the representatives of the parties usually does not pay regard to this and rely on various irrelative provisions, also it is possible to say that the Supreme Court does not have a consistent precedent regarding this matter. Moral damages can be claimed pursuant to article 62/I-b of the Trademark Decree, article 48, 49 of the Code of Obligations and Article 57 and 58 of the Turkish Commercial Code. In conclusion, it should be stated that, regulating a fixed amount of compensation for such damages in the Draft Trademark Code would be appropriate in order to clarify this issue.

Assist. Prof. Dr. Eda GİRAY

Eda GİRAY, an assistant professor of commercial law in Marmara University, Faculty of Law, was born in Istanbul, Turkey on October 21, 1977. She graduated from Marmara University Faculty of Law in 2000 and continued to LL.M in Private Law at Marmara University Institute of Social Sciences in Istanbul. Having completed her doctorate in 2010 on “Assignment of Trademark and Other Methods of Effective Protection of Commercial Interests” in Marmara University, her articles on intellectual property issues have been published in many reputable national journals. During her studies, she spent time at various universities and research centres, e.g., Institute of Advanced Legal Studies in London. She has been board member of Intellectual Property Law Commission at Istanbul Bar Association and she submitted 12 academic papers in relation to intellectual property law.

PARALLEL IMPORT AND EXHAUSTION OF RIGHT PRINCIPLE IN THE INTELLECTUAL PROPERTY LAW

ABSTRACT

As it known reference of “Decree-Law No. 556 Pertaining to the Protection Of Trademarks” is "Council Regulation (EC) No 40/94 on the Community Trade Mark". Regulation's related Article 13 is entitled "Exhaustion of the rights conferred by a Community trade mark”. This Article is the same as Article 7 of First Council Directive
89/104/EEC to approximate the laws of the Member States relating to trade marks. According to this Article, a Community trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the Community under that trade mark by the proprietor or with his consent. Article 13 Paragraph 1 shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialization of goods, especially where the condition of the goods is changed or impaired after they have been put on the market. In this paper, first will identify and evaluate the existing rules in international law. Second, regarding its close relation with Turkey by means of customs union, the EU law will be examined.

Dr. Fatih BİRTEK

Fatih Birtek graduated Law School of Kırkkale University in Turkey in 2006. He has taught Criminal and Criminal Procedure Law at Niğde Police Vocational School in Niğde (Turkey), between 2007-2011 as a teaching fellow. He earned Master Degree on Public Law at Erciyes University in Kayseri ( Turkey). He carried out research about Interception of Communication and Judicial Inquiry at University of Leeds (United Kingdom) Criminal Justice Studies Centre (CJSC) three month period (each year) in 2009 and 2010 by Turkish Home Office's research scholarship as a visitor scholar. Now, he is continuing Ph.D. program on Criminal and Criminal Procedure Law at University of Marmara (Turkey) and also he is working at Erciyes University Law School in Kayseri (Turkey) as a research assistant.

He has written a book and a book chapter and many articles on a variety of topics related with Criminal and Criminal Procedure Law and Human Rights.

TRADEMARK INFRINGEMENT AND UNAUTHORISED USE OF TRADEMARK (Act No. 556 Article 61/A,I)

ABSTRACT

The trademark notion has got two main aspects as a law term. Firstly, the providing of awareness and advertising of trademark owner and guarantee of quality of product and distinguishing of production in which this aspect for trademark owner (commercial enterprise or merchant). The other aspect of trademark notion is for consumer. The infringement of trademark and unauthorized use of trade mark are deceived to consumer. Because, any consumer wish to use of known and trusted trade mark by him. At this point, trademark infringement and unauthorized use of trade mark are damage to trust and benefit of consumer. Trademark and rights related with trade mark are guarantee for existing customer as well as existing potential customer. However, the strong trademark is seen as a guarantee in terms of company's commercial future (trademark value) and it's market competitiveness. Sometimes, mentioned guarantee is reaches such an extent that the company trademark and image (good will), all actual assets of the business is becoming much more valuable. In this context, taken under the discipline of acts of trademark infringement and unauthorized use of trademark is protect to bilateral relationship (the rights of trademark's owner or Merchant and the trust of consumer) as well as prevent to pirat productor and their black money in which earned by offering low-quality goods and services. Trademark infringement felonies (imitation and piracy) provide these personal and social benefits.

Key Words: Trademark, trademark infringement, unauthorised use of trademark, imitation trade mark, piracy of trademark