CROSS-BORDER COLLECTIVE ACTIONS IN EUROPE: A LEGAL CHALLENGE

A Study of the Legal Aspects of Transnational Collective Actions from a Labour Law and Private International Law Perspective

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The present volume offers a lawyer’s perspective of cross-border collective action in Europe. The subject has been dealt with starting from the well-documented case law on transnational collective action in the transport sector (e.g. collective action or boycotts) which was primarily organized by the International Transport Workers’ Federation. Subsequently, this practice was extrapolated by means of a *pars pro toto* to cross-border collective action in general. Due to the expanding “Europeanisation” of the economy industrial disputes with a cross-border impact will and do arise, as the recent cases of *Viking* and *Laval* may show. Moreover, industrial disputes become or may become a more common feature in multinational enterprises when they operate in a European and a global context. These disputes with a potential transnational dimension give rise to legal questions such as to the right to resort to collective action.

The choice between the Member States concerned has been made due to the presence (or the absence) of sufficient case law, which challenges labour conditions of seamen on board ships sailing under a flag of convenience as produced by a local “*iudex portus*”. That case law has stimulated the authors in their legal discussion of transnational industrial action in general. Other case law concerning transnational industrial action has been analysed as well. The various national reports have contemplated the theme from a labour law as well as from a private international law perspective. The following Member States have been involved in the study: Belgium, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

The right to take collective action lies at the heart of industrial relations. Historically, the recognition of the right to take collective action is a distinguishing feature of a democratic, i.e. non-totalitarian vision of industrial relations. An effective means to have recourse to collective action is a necessary tool for the development of a system of cross-border industrial relations. The question arises whether divergencies between domestic labour law and domestic private international law impede the effective use of cross-border collective action. Furthermore, the question arises to what extent Community law can constitute a means to resolve legal obstacles to cross-border collective action or whether Community law itself can amount to an obstacle to the effective use of collective action (Cf. the *Viking* and *Laval* cases).
The European Commission has made increased efforts to promote the quality of industrial relations within the European Union. It has recently been the instigator of comparative studies on industrial relations at the national level as a lever for the development of a European system of cross-border industrial relations. (Cf. the studies on “The Freedom of Association” (co-ordinated by Professor D. Valdés Dal-Re) and “The Evolving Structure of Collective Bargaining in Europe (1990–2003)” (coordinated by Professor S. Sciarra)). Furthermore, in the recent Communication on the Social Agenda 2006–2010 the elaboration of an optional framework for transnational collective bargaining is envisaged. However, up until now scarce attention has been paid to the legal issues of transnational collective action in the European area.

The present volume is the outcome of an international Colloquium held at Utrecht University on 28 April 2006. The Colloquium managed to enhance expertise in the field of industrial relations, especially in European and comparative terms. The exchange of information between legal experts from the European and national trade union movement and lawyers from the European academic community was extremely fruitful.

This book starts with several contributions addressing general issues related to the right to take collective action in the transnational context. The second part deals with the national reports on the approach of labour law. Similarly, the third part contains the reports dealing with the issues raised from a private international law perspective. The three parts are completed with a comparative contribution. The report of the United Kingdom is an integrated report dealing with both branches of law.

The Colloquium was made possible due to the joint efforts that emerged from a unique academic partnership between the Labour Law department of the Utrecht Law School (Utrecht University) (Prof. Dr A. Ph. C.M. Jaspers; Dr F. Dorssemont) and the Faculties of Law of the Erasmus University of Rotterdam (Prof. Dr C.J. Loonstra) and Groningen University (Prof. Dr W.A Zondag; Dr H. Voogsgeerd). The involvement of the Labour Law Departments from Rotterdam and Groningen operated within the framework of the Bakels Institute. The Wiarda Institute of Utrecht University and the Faculties of Law of the Erasmus University and Groningen University financed this academic co-operation. The project could not have been organized without a substantial contribution from the European Commission (Budget heading 04.03.03.01 Industrial relations and Social Dialogue).

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Many distinguished colleagues dedicated their time and selfless efforts in attending a preparatory expert seminar at Utrecht University in the winter of 2006 and in attending the colloquium. Their valuable written contributions provide ample evidence of their highly esteemed intellectual efforts.

Last but not least, we owe many thanks to Peter Morris for his linguistic revision of the written contributions and to Michelle Möhl for her precious editorial assistance.

This study has been finished by June 2007.

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# TABLE OF CONTENTS

**PREFACE** .......................................................... v

**PART I**

**FOREWORD**  
RESTORING A BALANCE OF ECONOMIC POWER IN EUROPE  
B. BERCUSON .................................................... 3

1. Introduction: Competing Regulatory Systems ........................ 3  
2. Analytical Frameworks ........................................... 5  
3. Definitions ..................................................... 8  
4. Strategic Choices ............................................... 11  
   4.1. EU Law and National Laws and Practices ...................... 11  
   4.2. Institutional Developments ................................. 13  
   4.3. The Imminent Challenge: The Pending Cases on Collective  
         Industrial Action in the Single European Market .......... 15  
   4.4. The Issues at Stake ........................................ 16  
5. Conclusion ................................................... 20

**THE RIGHT TO COLLECTIVE ACTION IN EUROPEAN LAW**  
A. Ph. C.M. JASPERS ............................................ 23

1. Introduction .................................................. 23  
2. The Recognition of the Right to Collective Action ................. 25  
   2.1. The Historical Background ................................ 25  
   2.2. Council of Europe Instruments .............................. 31  
       2.2.1. The European Convention on Human Rights .......... 31  
       2.2.2. The (Revised) European Social Charter ............. 34  
3. A Harmonising Role for the Expert Committees .................... 36  
4. The Legality of Collective Actions ................................ 38  
   4.1. Assessment of the Objectives ............................... 39
Table of Contents

4.1.1. The linkage with collective bargaining .................. 39
4.1.2. Subject to conciliation ............................... 42
4.1.3. Employment conditions and beyond ................... 43
4.2. Secondary Actions ........................................ 44
4.3. Political Strikes ........................................... 46
5. Personal Scope ................................................ 47
6. Permissible Restrictions ........................................ 49
   6.1. General Restriction Clauses ................................. 49
   6.2. Public Order/Public Interest ............................... 51
   6.3. Rights and Freedoms of Others .............................. 53
   6.4. A Last Resort, the Premature Nature of the Collective Action .. . 54
   6.5. Deviating Types of Collective Action ........................ 56
7. Transnational Actions and EU/EC Law ............................ 57
   7.1. EU/EC Law and the Fundamental Right to Collective Action ........ 57
   7.2. Collision Between Fundamental Freedoms and the
       Fundamental Right to Take Collective Action .................. 61
       7.2.1. Viking and Laval .................................... 62
       7.2.2. Fundamental right (to take collective action) versus
               fundamental freedom (free movement) ..................... 65
       7.2.3. The lesson learned from Schmidberger ................. 67
       7.2.4. Possible solutions ................................... 69
8. Conclusion ................................................... 72

TRANSNATIONAL COLLECTIVE ACTION – ALREADY A REALITY?
W. WARNECK .................................................. 75
1. Introduction .................................................. 75
2. A Snapshot of Transnational Collective Action in the EU .......... 76
   2.1. What Kind of Action Was Chosen? ........................... 76
   2.2. What is the Scope of Such Actions? .......................... 81
   2.3. Why Have the Actions Been Taken? What Were the Demands
       of the Trade Unions Relating to the Action? .................. 81
   2.4. What Might Be the Outcome? ............................... 81
   2.5. What Can Be Learned From the Transnational Collective
       Actions Taken so far and What Should Be Improved in
       Future Actions? ........................................... 83
3. Conclusions ................................................... 83
### TRANSNATIONAL COLLECTIVE ACTION: THE FOC CAMPAIGN

#### CASE STUDY

D. FITZPATRICK ................................................ 85

1. Introduction .................................................. 85
2. The Maritime Industry and Flags of Convenience ............... 86
3. The FOC Campaign ............................................ 87
4. International Solidarity Action ................................... 88
5. Free Movement v Right to Collective Action ...................... 90

#### PART II: NATIONAL REPORTS

### TRANSNATIONAL COLLECTIVE ACTION: LABOUR LAW APPROACH

#### BELGIAN LABOUR LAW REPORT

P. HUMBLET ................................................... 95

1. Legal Practice in Belgium (1970–2005) ............................ 95
2. The Legal Status of “Domestic” Collective Action .......... 96
   2.1. Legal Recognition of the Right to Take Collective Action .... 96
   2.2. Classification of Collective Actions ........................ 98
       2.2.1. The sit-in ............................................ 98
       2.2.2. The boycott ........................................ 99
       2.2.3. Solidarity strikes .................................... 100
   2.3. Procedural Restrictions to Collective Action ............. 101
3. Issues Related to Cross-Border Collective Actions .......... 102
   3.1. Legitimacy of Cross-Border Collective Actions .......... 102
   3.2. Right to Strike and Occupation of the Plant (SHIP) ....... 102
   3.3. Cross-Border Collective Agreements (ITF Case) .......... 103

#### FINNISH LABOUR LAW REPORT

N. BRUUN .................................................... 105

1. The Legal Status of (Domestic) Legal Action ..................... 105
   1.1. Introductory Remarks .................................... 105
   1.2. Legal Recognition of the Right to Take Collective Action .... 106
       1.2.1. Constitutional provisions ............................ 106
       1.2.2. International agreements ............................. 108
       1.2.3. Other national provisions ............................ 109
1.3. The Peace-obligation .................................. 111
1.4. Mediation in Labour Disputes Act ...................... 113
1.5. Actions Against Fair Practice (Bonos Mores) .......... 115
2. Issues Related to Cross-Border Collective Action ........... 115
  2.1. The Supreme Court Case KKO (1987:85) .............. 116
  2.2. The Supreme Court (1987:86) .......................... 118
  2.3. The Supreme Court (1999:39) .......................... 119
3. Closing Remarks ............................................ 121

FRENCH LABOUR LAW REPORT
B. PALLI ..................................................... 123

1. Domestic Law ................................................ 123
  1.1. The Right to Strike ..................................... 123
    1.1.1. Etymological comments ............................ 123
    1.1.2. Legal foundation ................................. 124
    1.1.3. Definition ....................................... 125
    1.1.4. Absence of procedural restrictions ............... 126
  1.2. Other Forms of Strike ................................ 127
    1.2.1. Political strikes ................................ 127
    1.2.2. Solidarity strikes ................................ 128
    1.2.3. A strike entailing the occupation of the plant .... 130
2. The Legal Status of Transborder Collective Actions According to French Legal Standards ........................ 131
3. Conclusions ................................................ 133

GERMAN LABOUR LAW REPORT
W. DÄUBLER ................................................. 135

1. Legal Practice in Germany ................................ 135
  1.1. Coordinated Actions in Different Countries .......... 135
  1.2. The Solidarity Strike .................................. 136
  1.3. Refusal to Perform the Work of the Strikers .......... 137
  1.4. Boycott ............................................. 138
2. The Legal Status of “Domestic” Collective Action .......... 138
  2.1. Legal Recognition of the Right to Take Collective Action ...... 138
  2.2. The Uncertain Influence of the European Social Charter .... 139
  2.3. Classification of Collective Actions .................. 140
  2.4. The Solidarity Strike ................................. 142
Table of Contents

2.5. The Boycott ............................................. 144
2.6. The Occupation of the Plant ............................... 144
2.7. Procedural Restrictions to Collective Action ............ 145
3. Issues Related to Cross-Border Collective Action .......... 146
  3.1. The General Rule ........................................ 146
  3.2. The “Synchronized” Strike ................................. 146
  3.3. The Solidarity Strike ...................................... 146
  3.4. The Refusal to Perform the Work of Strikers .......... 147
  3.5. Boycott ................................................. 147

ITALIAN LABOUR LAW REPORT
G. ORLANDINI ................................................ 149
1. The Legal Status of ‘Domestic’ Collective Action .......... 149
  1.1. Legal Recognition of the Right to Take Collective Action .... 149
  1.2. Classification of Collective Actions .................... 150
    1.2.1. The notion of a “strike” and the regulation of “other”
           collective actions ................................... 150
    1.2.2. Boycott actions .................................... 154
    1.2.3. Occupying the plant ................................ 155
    1.2.4. Solidarity strikes ................................... 158
  1.3. Procedural Restrictions to Collective Action .......... 160
2. Issues Related to Cross-border Collective Action .......... 161
  2.1. Legal Practice in Italy .................................. 161
  2.2. Legitimacy of Cross-border Collective Actions .......... 163
  2.3. The Right to Strike and the Occupation of the Plant
       (the ITF Case) ........................................... 165
  2.4. Cross-border Collective Agreements ...................... 167
    2.4.1. The Italian cases law on ITF collective agreements .... 167
    2.4.2. The binding nature and the enforcement of ITF
           collective agreements ................................ 171

Collective Action .................................................. 174

DUTCH LABOUR LAW REPORT
A.T.J.M. JACOBS ............................................... 179
1. General Framework ........................................... 179
2. The Right to Strike According to Dutch Law ............... 180

Intersentia xiii
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. The Dutch Law on Sympathy Strikes/Solidarity Action</td>
<td>186</td>
</tr>
<tr>
<td>4. Cross-Border Collective Action</td>
<td>190</td>
</tr>
</tbody>
</table>

**SPANISH LABOUR LAW REPORT**

F. VALDÉS DAL-RE ........................ 193

1. The Right to Take Collective Action: Constitutional Foundations ... 193
   1.1. The Spanish Constitution .................................. 193
   1.2. The European Social Charter ................................ 194

2. The Classification of Collective Action .......................... 195

3. The Legitimacy of Cross-Border Collective Action .................. 199

4. The Right to Strike and the Occupation of a Plant (the ITF Case) ... 200

**SWEDISH LABOUR LAW REPORT**

N. BRUUN .......................................... 203

1. The Legal Status of (Domestic) Legal Action ....................... 203
   1.1. Introductory Remarks ...................................... 203
   1.2. Legal Recognition of the Right to Strike .................. 204
       1.2.1. The Constitutional Protection of the Right to Strike ... 204
       1.2.2. The Co-Determination Act ............................. 205
   1.3. General Rules on Industrial Actions ......................... 206
   1.4. Definition of the Notion “Industrial Action” ............... 207
   1.5. Political Actions and Sympathy Actions .................... 209
   1.6. The Peace Obligation in the Co-determination Act .......... 209
   1.7. Mediation .................................................. 211

2. Issues Related to Cross-Border Collective Action Industrial Actions
   in an International Context ..................................... 212
   2.1. Introduction ................................................ 212
   2.2. Political Actions in an International Context .............. 212
   2.3. Sympathy Actions in Support of a Foreign Primary Conflict ... 213
   2.4. Lex Britannia ............................................... 213
   2.5. The Laval Case – The Background ............................ 214
# BRITISH LABOUR LAW AND PRIVATE INTERNATIONAL LAW

**REPORT**

K.D. EWING .................................................. 217

1. Introduction ................................................. 217
2. Legal Liability for Industrial Action .............................. 219
   2.1. Trade Union Liability ..................................... 219
   2.2. Wide Liability and Limited Protection ....................... 221
3. Transnational Industrial Action and the ITF Flags Campaign ......... 222
4. Challenging Collective Agreements ................................ 226
   4.1. Invalidating Collective Agreements – Duress ............... 227
   4.2. Invalidating Collective Agreements – Contract ............ 228
5. Transnational Industrial Action and the Conflict of Laws ............ 229
   5.2. Transnational Action and the Law of Tort .................... 232
6. European Law and the Viking Case ................................ 233
   6.2. The Questions for the ECJ .................................. 236
7. British Law and International Labour Standards ................... 237
   7.1. ILO Convention 87 ....................................... 238
   7.2. Council of Europe’s Social Charter .......................... 240
8. Conclusion .................................................. 241

# LABOUR LAW ISSUES OF TRANSNATIONAL COLLECTIVE ACTION – COMPARATIVE REPORT

**F. DORSSEMONT ............................................... 245**

1. Domestic Law Recognition of the Right or Freedom to Take
   Collective Action ............................................. 245
   1.1. Constitutional Recognition ................................ 245
   1.2. Judicial Recognition ...................................... 249
   1.3. Statutory Recognition .................................... 252
2. The Notion ‘Collective Action’ .................................. 254
3. The Legitimacy of Cross-Border Collective Actions .................. 257
   3.1. The Notion of Cross-Border Collective Actions ............... 257
   3.2. The Status of the Solidarity or Sympathy Strike ............ 260
4. Procedural Limits on the Right to Take Collective Action ......... 263
5. The Legal Status of Boycotts .................................... 264
# Table of Contents

6. The Legal Status of Occupying a Plant ........................................ 267  
7. The Legal Status of Cross-Border Collective Agreements .................. 269  
8. Conclusions .............................................................. 271  

**PART III. NATIONAL REPORTS TRANSNATIONAL COLLECTIVE ACTION: PRIVATE INTERNATIONAL LAW APPROACH**

**BELGIAN PRIVATE INTERNATIONAL LAW REPORT**  
S. BOUZOUMITA .............................................................. 277  

1. Introduction .............................................................. 277  
   2.1. Characterisation .................................................... 277  
      2.1.1. Qualification .................................................. 277  
      2.1.2. Public or private law ........................................ 278  
3. Cross-Border Collective Actions Qualified as Unlawful Act ................ 278  
   3.1. Competent Jurisdiction ........................................... 278  
   3.2. Applicable Law .................................................... 279  
4. Contractual Claims Resulting from a Strike .................................. 280  
   4.1. General ............................................................ 280  
   4.2. Jurisdiction ....................................................... 281  
   4.3. Applicable Law .................................................... 283  
5. Public Policy ............................................................ 283  
6. Temporary Measures ........................................................ 284  
   6.1. General ............................................................ 284  
   6.2. Jurisdiction ........................................................ 285  
   6.3. Applicable Law .................................................... 285  
7. Collective Action on Board a Ship .......................................... 286  
8. Conclusion ............................................................... 288  

**FRENCH PRIVATE INTERNATIONAL LAW REPORT**  
E. PATAUT ................................................................. 289  

1. Introduction ............................................................. 289  
2. Grounds of Jurisdiction .................................................. 291  
   2.1. Actions on the Legality of the Industrial Action .................. 292  
      2.1.1. Characterisation and applicability of the Brussels I  
            Regulation ....................................................... 292  
      2.1.2. Choosing the jurisdictional ground ......................... 293
2.2. Provisional and Protective Measures ........................................ 296
2.3. Action for Damages ......................................................... 297
2.4. Actions Concerning Employment Contracts .......................... 299
2.5. Actions Involving Third Parties ......................................... 299

3. Applicable Law ................................................................. 300
3.1. Action Concerning the Legality of the Collective Action ......... 300
3.1.1. Characterization – Mandatory rules ................................ 300
3.1.2. Characterization – Tort .............................................. 301
3.2. Action for Damages ......................................................... 304
3.3. Employment Contracts ..................................................... 304
3.4. Actions Involving Third Parties .......................................... 305

GERMAN PRIVATE INTERNATIONAL LAW REPORT
C.W. HERGENRÖDER ............................................................... 307

1. The “Foreign Element” Criterion of a Collective Action ............ 307
1.1. Normative Starting Point .................................................. 307
1.2. Manifestations of Cross-Border Collective Actions .............. 307
1.2.1. Employees’ activities abroad ......................................... 307
1.2.2. International organisation and cooperation of national parties in collective actions ...................... 308
1.2.3. Transnational association of enterprises and international macroeconomy ................................. 309
1.3. Categories Relevant to Provisions of Conflict of Laws .......... 311

2.1. No Supranational Normative Guidelines ............................ 311
2.2. Collective Action as a Constitutionally Guaranteed Consequence of Collective Private Autonomy and Foreign Public Policy ..................................................... 312
2.3. Collective Action and Civil Law Categories ......................... 313
2.3.1. The courts’ collective law theory of uniformity ............... 313
2.3.2. Collective action within the system of tortious liability ........ 313
2.4. Collective Action Law Relationships and the Conflict of Laws’ Principle of Separation ............................ 314
2.5. The Conflict of Laws Question as an Incidental or Main Question .......................................................... 315

3. The Emphasis on the Collective Action Connection as the Crucial Connecting Factor ................................................. 315

Intersentia xvi
3.1. State of Opinions ........................................ 315
3.2. The Decisiveness of the Point of Main Emphasis of Individual
and Collective Employment Relations .......................... 317
3.3. The Substantiation of the Collective Action’s Main Point
of Emphasis ............................................. 318
  3.3.1. Collective (industrial) action by national parties abroad .. 318
  3.3.2. Appeals to foreign parties to a collective action to
        undertake sympathy collective action measures or
        boycott actions ........................................ 320
  3.3.3. Collective action between leading international
        associations ........................................ 320
3.4. Party autonomy: Choice of Law for the Law Applicable to the
    Collective Action? ........................................ 320
4. The Scope of the Law Applicable to the Collective Action ............ 321
  4.1. The Prerequisites for and the Legal Consequences of Collective
       Action Measures ........................................ 321
  4.2. The Refusal of Blackleg Work and the Refusal to Pay Wages
       According to the Doctrine of Industrial Action Risk
       (“Arbeitskamprisiko”) ................................ 322
5. The Constitution, Public Policy and a Special Connection with
   Mandatory Law ............................................... 323
  5.1. Foreign Collective Action Law and Article 6 EGBGB ........... 323
  5.2. On the Special Connection of Cogent National Collective
       Action Law .............................................. 324
6. The Connection of Collective Action Relations Within the Setting
   of Their Accessory Nature ...................................... 325
  6.1. Legal Dependance of Domestic Collective Action Measures
       on Foreign Collective Action ............................ 325
  6.2. The Conflict of Laws Determination of Foreign Collective
       Action Within the Setting of the Accessory Nature Thereof . 326
  6.3. Rectification by the Ordre Public? .......................... 327
7. Procedural Questions of Transnational Collective Action ............ 328
  7.1. Litigation by Parties to a Collective Action in the Same State . 328
  7.2. International Jurisdiction in the Case of Foreign Parties as
       Participants in a Collective Action ........................ 329
ITALIAN PRIVATE INTERNATIONAL LAW REPORT
P. VENTURI ................................................... 331

1. Characterization and Associated Issues ........................... 331
2. Jurisdiction .................................................. 339
3. Applicable Law ............................................... 343
4. The Recognition and Enforcement of Foreign Judgements ........... 350
5. Conclusion .................................................. 352

DUTCH PRIVATE INTERNATIONAL LAW REPORT
J.H. EVEN .................................................... 355

1. Introduction ................................................. 355
2. The Setting of Transnational Collective Bargaining from a Private International Law Perspective ......................... 356
   2.2. Is the Dutch Law on Collective Actions of a Private or of a Public Nature? ........................................ 357
3. The Parties Involved, Their Possible Claims and the Legal Grounds . . 359
   3.1. The Parties Involved in Collective Actions .................... 359
   3.2. The Proceedings and Claims ................................ 360
   3.3. The Legal Grounds ....................................... 361
       3.3.1. Claims by the employer against its employees .......... 362
       3.3.2. Claims by the employer against the organising trade unions ......................................................... 363
       3.3.3. Claims by the employee against his employer .......... 364
   3.4. An Overview of the Different Scenarios ...................... 364
4. Jurisdiction of the Dutch Courts .................................. 364
   4.1. When Does a Court in the Netherlands Have Jurisdiction on the Basis of the Brussels I Regulation? ............................. 365
       4.1.1. Scenario 1 ........................................ 365
       4.1.2. Scenario 2 ........................................ 366
       4.1.3. Scenario 3 ........................................ 367
       4.1.4. Scenario 4 ........................................ 368
       4.1.5. Scenario 5 ........................................ 368
   4.2. When Does a Court in the Netherlands Have Jurisdiction on the Basis of the Dutch Code of Civil Procedure? ............... 369
       4.2.1. Scenario 1 ........................................ 369
       4.2.2. Scenario 2 ........................................ 370
# Table of Contents

4.2.3. Scenario 3 ........................................ 371  
4.2.4. Scenario 4 ........................................ 372  
4.2.5. Scenario 5 ........................................ 373  
4.2.6. Additional comments on jurisdiction concerning collective actions on board ships .............. 373

5. Applicable Law ............................................... 374  
5.1. The Case Law on the Law Applicable to Transnational Strikes ........................................... 375  
5.1.1. The Supreme Court ................................ 375  
5.1.2. Lower Court cases .................................. 376  
5.1.3. An analysis of the case law and putting it into perspective ................................................. 377  
5.2. Scenario 1: Claims Against the Unions Based on Tort ......................................................... 378  
5.2.1. The WCOD ....................................... 379  
5.2.2. Application of the WCOD to scenario 1 ............... 380  
5.2.3. The relevance of the *Saudi Independence* case .......... 381  
5.3. Scenario 2: Claims Against Employees Based on Contract ................................................. 381  
5.3.1. The Rome Convention .................................. 381  
5.3.2. Application of the Rome Convention to scenario 2 ...... 383  
5.4. The Legality of the Collective Action as Such—Characterization and Applicable Law ......................... 384  
5.4.1. Breach of contract or wrongful act/tort? ............... 385  
5.4.2. The law applicable to collective actions undertaken by employees based on breach of contract ............. 387  
5.4.2.1. The relevance of the *Saudi Independence* case ................................................................. 387  
5.4.2.2. The relevance of the other, lower-court case law ................................................................. 388  
5.4.2.3. The law applicable to the collective action ........... 389  
5.4.2.4. Mandatory rules and public policy ................ 390  
5.4.2.4.1. *Saudi Independence* ............................... 390  
5.4.2.4.2. Analysis ........................................ 392  
5.4.3. The law applicable to collective actions undertaken by employees based on a wrongful act/tort ............. 393  
5.4.3.1. The relevance of the *Saudi Independence* case ................................................................. 394  
5.4.3.2. The relevance of the other, lower-court case law ................................................................. 394  
5.4.3.3. The applicable law ................................ 395  
5.4.4. Concluding remark ........................................ 396  
5.5. Scenario 4: Claims Against Employers Based on Contract ................................................. 396  
5.6. Adaptation of the Applicable Law in Transnational Collective Actions .......................................... 396

6. Summary .................................................... 398
## Table of Contents

### SPANISH PRIVATE INTERNATIONAL LAW REPORT

V. CUAR TER O RUBIO ........................................... 403

1. The Scope and Definition of Cross-Border Collective Action as a Category of Private International Law ................................. 403
2. Spanish PIL Solutions in Cross-Border Collective Actions ............... 404
   2.1. Grounds for Jurisdiction .................................. 404
   2.2. Applicable Law .......................................... 405
3. Cross-Border Collective Action Within a Contractual Relationship .... 407
   3.1. Grounds for Jurisdiction .................................. 407
   3.2. Applicable Law .......................................... 409
4. Cross-border Collective Actions Based on Non-contractual Obligations (e.g. Tort) ................................................................. 409
   4.1. Grounds for Jurisdiction .................................. 409
   4.2. Applicable Law .......................................... 410
5. Recognition and Enforcement of Foreign Judgements .................... 410
6. Transnational Collective Action on Board a Ship .......................... 412
   6.1. Grounds for Jurisdiction .................................. 412
   6.2. Applicable Law .......................................... 412

### SWEDISH PRIVATE INTERNATIONAL LAW REPORT

J. MALMBERG ................................................. 415

1. Introduction ........................................................................ 415
   1.1. The Model of Autonomous Collective Agreements ............ 415
   1.2. Notes on the Law of Collective Actions ...................... 416
2. Characterisation and Associated Issues ................................ 417
   2.1. Public or Private? ........................................ 417
   2.2. Claims and Procedures .................................... 417
   2.3. Characterisation Within Private International Law .......... 418
3. Jurisdiction ....................................................................... 419
4. Applicable Law ................................................................... 420
   4.1. Disputes Concerning the Lawfulness of Collective Actions 420
       4.1.1. The multilateral conflicts rule ........................ 420
       4.1.2. The Lex Britannia .................................. 420
   4.2. Disputes Concerning the Validity of a Collective Agreement . 421
   4.3. Negotiations ............................................ 423
   4.4. Tort/non-contractual Liability .................................. 423
   4.5. Ordre Public .......................................... 423
# Table of Contents

**PRIVATE INTERNATIONAL LAW ASPECTS OF COLLECTIVE ACTIONS – COMPARATIVE REPORT**

A.A.H. VAN HOEK ............................................. 425

1. The Questions to be Discussed .................................. 425
2. The Conflicts ................................................. 425
3. The Parties and the Claims ..................................... 431
4. Jurisdiction .................................................. 435
   4.1. Relevance of the Brussels I Regulation ............... 435
   4.2. The System of Brussels I ................................... 437
   4.3. Municipal Law ........................................... 441
   4.4. Forum Shopping, the Joining of Claims and the Need for a Common Choice of Law Rule .............. 442
5. Applicable Law ............................................... 443
   5.1. Characterisation ......................................... 443
   5.2. The Need for a European Choice of Law Rule .......... 445
   5.3. The Current Proposals .................................... 446
   5.4. The Locus Actus ......................................... 448
   5.5. Multiple Loci and the Choice for the Locus Damni ........ 451
   5.6. The Disinterested Locus Actus 1: the Posting of Workers ....... 452
   5.7. The Disinterested Locus Actus 2 – International Maritime Transport ............................................... 456
   5.9. Alternatives Used in the Member States – The Law Applicable to the Collective Labour Relations .......... 460
   5.10. Conclusions on the Use of Accessory Allocation ........ 462
   5.11. The Proposed Provision on Party Autonomy .......... 464
   5.12. Support Actions and Boycotts .............................. 465
6. Conclusions .................................................. 466


F. DORSEMONT, A.PH.C.M. JASPERS, A.A.H. VAN HOEK .............. 469

1. Prolegomena: Definitions and Case Law .......................... 469
   1.1. Transnational Collective Action ............................. 469
   1.2. Cross-border Employment Relations and Collective Action .... 470
2. Labour Law .......................................................... 470
   2.1. The Legal Status of 'Domestic' Collective Action ......... 470

xxii

Intersentia