FOREWORD

Dear Readers of the *Yearbook*,

We are proud to emphasize that twenty years have passed since the publication of the first volume of the *Yearbook of Private International Law* – twenty passionate years of unflagging commitment to the values of international coordination and multilateralism, to disseminating information across State lines, and to unfettered academic debate.

Created in 1999, at the enlightened initiative of the late Petar Sarcevic, who was able to convince the Swiss Institute of Comparative Law and his co-editor Paul Volken to join him on this bold new venture, the *Yearbook* was then the first English-language periodical devoted exclusively to private international law. Other publications have blossomed since, confirming the importance and need to share research findings on a global scale in an area of law that does not tolerate national boundaries nor purely internal advancements.

Sure, twenty years is a short spell if measured against the long history of our discipline and the centennial life of some of the most prestigious periodicals in our field: it is nevertheless notable, in this era of rapid and often breath-taking change.

Indeed, the context of private international law has evolved significantly since 1999. Two hints make that abundantly clear:

1999 saw the adoption of the Treaty of Amsterdam, the first spark of what has been referred to as the "European conflict-of-laws revolution". Two decades of unprecedented, sometimes frenzied, rush towards the regional unification of private international law rules followed, defying the initial scepticism and reluctance of some national observers. While the pace of the European law-making process may have recently experienced some hesitation, the long-lasting effects of this upheaval have nevertheless durably changed the face of our discipline, within as well as outside Europe.

1999 also marked the first draft of a global Hague Judgments Convention. Certainly, that attempt was met with suspicion in certain circles and countries, which precipitated its 2001 failure. However, the project regenerated from its ashes and produced two texts with a great potential: the Hague Choice of Court Convention of 2005 and, very recently, the Hague Judgments Convention, just adopted on 2 July 2019. A "last minute" contribution presenting this instrument has been included at the end of the volume, in our section "News from The Hague", that has been exceptionally renamed to celebrate this achievement.

Since its creation, the *Yearbook* has always been there to accompany and report on these important developments, as well as on other challenges that private international law is facing both on factual and methodological reasons: the growing awareness of the centrality of human rights, the blurring of

territorial boundaries in the era of new technologies, the globalization of exchanges, the struggle between the advances of party autonomy and the preservation of collective and state interests, the revival of the vested-rights theory under cover of the so-called "*méthode de la reconnaissance*", and many more.

Coming to the volume you hold in your hands, the Doctrine section is particularly rich for it has been conceived and set up as a sort of "birthday party". Several "friends" of the *Yearbook*, including members of the Advisory Board and some of our most faithful contributors, offer their reflections on current and future challenges of conflict of laws. The result confirms, if needed, the irreducibility of our discipline to a purely national branch of law, in spite of an old-fashioned conception still prevailing in certain private international law handbooks.

The centrality of the State belongs to the past. Thus, as Jürgen Basedow reports, the laws and judgments of entities that are not recognised as independent States under public international law are nonetheless often applied, and recognised, in other countries, although they may encounter insurmountable obstacles in certain sensitive areas. On a different note, Diego Fernández Arroyo shows that legal certainty and practical application in cross-border cases no longer hinge exclusively on States, but are rather largely ensured by a variety of "adjudicators and enforcers", including private arbitrators and supranational organizations. The vitality of international arbitration is also evidenced through the recent adoption by the American Law Institute of a new Restatement focussed on the treatment of arbitration by U.S. courts, as reported by its main inspirer, George Bermann. The warning call by Hans Van Loon about the present difficulties confronting the International Commission of Civil Status (CIEC) and the need to preserve its *acquis* serves as a welcome reminder of the crucial role played by international cooperation, including in the area of personal and family law. In this same field, the growing influence of European principles, and in particular of human rights and European freedoms, is at the core of the *Orlandi* and *Coman* decisions, commentated by Patrick Kinsch. Other recent developments at the European and national level are discussed by Ádám Fuglinsky (mandatory direct remedies against the producer for repair or replacement), Yasuhiro Okuda (the new Japanese legislation on transnational divorces) and Ilaria Pretelli (interim measures and the Brussels II-*ter* Regulation).

A special section is devoted to recent developments of private international law in Brazil. Some papers report on the significant progress brought about by the ratification and implementation in Brazil of several Hague Conventions, in both procedural and family law, including inter-country adoption. Other contributions discuss the controversial case-law of Brazilian courts, and the Brazilian legislation, on adjudicatory and prescriptive jurisdiction in cross-border internet disputes as well as the developments in the area of recognition and enforcement of decisions.

No less profuse and diversified are the additional sections you are accustomed to finding in the *Yearbook*: the "National Reports" section echoes topics already mentioned, with a paper on international arbitration in Argentina, one on

provisional measures in China, and two papers on recognition and enforcement of judgments in Russia and Slovenia which, jointly read, show how important supranational legislation is to ensure legal certainty and create a common safety net for businesses and individuals. Recognition and enforcement are also at the core of the "Court Decisions" section, where a dyscrasia between the attitude of the Israeli Supreme Court and that of the *Knesset* allows Israeli residents to bypass religious obstacles to their non-orthodox family choices when it comes to marriage and divorce. On the other hand, national social cohesion, embodied by public policy, has hindered the application of Islamic inheritance law in Austria as well as the recognition in South Korea of a Japanese judgment having dismissed as time-barred an action for compensation by the families of victims of human rights violations perpetrated during the Japanese occupation. The "Forum" presents essays by young scholars on forum shopping in international litigation, including some ideas on how best to mitigate its evil ramifications, on the foundations of European Private International Family Law, where emphasis is rightly placed on the "unity" of family status across the EU, and on *ipso facto* clauses in cross-border insolvency, which lead the reader through a rare *tour de force* across the still little explored realm of comparative insolvency law.

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