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Yearbook  
of  
Private International Law

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2007

Founding Editor  
Petar Šarčević †

Editors  
Andrea Bonomi and Paul Volken

PUBLISHED IN ASSOCIATION WITH  
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# YEARBOOK OF PRIVATE INTERNATIONAL LAW



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VOLUME IX – 2007

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# FOREWORD

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The year 2007 was arguably the most extraordinary year in recent memory for the development of Private International Law on both a regional and universal level.

Within the European Union, the process of unification of Private International Law culminated in 2007 with some very fundamental achievements. Following many years of extensive negotiation, the Community institutions finally reached the political consensus necessary to adopt two very important – and much debated – conflicts of law regulations. In July, the ‘Rome II’ Regulation on the law applicable to non-contractual obligations was enacted. Shortly thereafter, the European Parliament and the Council agreed on the final text of the ‘Rome I’ Regulation on the law applicable to contractual obligations; as currently slated, this instrument is expected to be adopted (and to replace the Rome Convention) in the spring of 2008. Thus, over thirty years after a 1972 draft on the law applicable to contractual and non-contractual obligations, which was soon condemned to oblivion, two parallel sets of conflicts rules concerning the entire area of the law applicable to obligations will soon come into operation in the Member States of the European Union, the only exceptions being Denmark and, possibly, the United Kingdom (whose attitude towards ‘Rome I’ is still uncertain).

As remarkable as these developments have been, they were not the only events that took place on the European front in 2007. Two additional actions stand to have a lasting effect on Private International Law in the EU. First, two regulations have been adopted that – even though less celebrated than Rome I and Rome II – will soon play a key role in conflicts’ practice: the instrument revising the 2000 Regulation on service of documents, and a Regulation creating uniform European civil procedure rules for small claims. Secondly, the European Community exercised its broad external competences under ECJ opinion 1/03 and signed in October, with Denmark, Iceland, Norway and Switzerland, the revised version of the Lugano Convention.

As far as uniformity on a global level is concerned, the Hague Conference on Private International Law proved also very successful. A couple of years after the Convention on choice of court agreements, two ambitious instruments were adopted in the area of maintenance obligations. First, the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance creates an extremely broad and detailed cooperation scheme. This scheme is rounded out with innovative rules guaranteeing free legal assistance to certain categories of foreign maintenance creditors, notably children. This treaty also creates uniform grounds and procedures for recognising and enforcing foreign support orders. Second, the Hague Protocol on the Law Applicable to Maintenance Obligations of 23 November 2007 modernizes the existing Hague Conventions of 1956 and 1973 by enhancing the role of party autonomy and of the *lex fori*.

It is important to note that this achievement has been attained through the active participation of the European Community, which was awarded membership status to the Hague Conference in April. This major institutional development and the positive outcome of the maintenance project indicate that the creation of a unified Private International Law system inside the European Union is not necessarily bound to adversely affect the elaboration of global instruments.

Developments on a European and global level are not the only events that took place in 2007. On the national scale, the process of reforming existing Private International Law codifications continued at a steady pace. After Japan in 2006, Turkey reviewed its own rules on conflicts-of-law and jurisdiction.

Volume IX of the *Yearbook of Private International Law* is again a very rich and multi-faceted book reflecting the vitality and fluidity of a subject that is in constant motion. The *Yearbook* was once again able to provide an overview of the current issues in Private International Law, even if all of the developments described above could not be dealt with in detail.

Instead of blindly following the agenda reviewed above, we have decided to focus on the 'Rome II' Regulation, by devoting to it an entire thematic section of this volume. It is our belief that this text opens up a new era in the process of creating a European PIL system. Indeed, it represents the Community institutions' first attempt to directly regulate pure applicable law issues based on Articles 61 and 65 of the EC Treaty, whose potential is likely to prove far-reaching in the future. At the same time, the Regulation extends the reach of the European rules to the area of non-contractual obligations that, until now, were the sole prerogative of Member States. Moreover, being the first regulation that openly and frankly opts for an *erga omnes* approach, 'Rome II' will have a clear impact on relationships with third States.

For all of these reasons, we believed that the new regulation deserved a detailed commentary and analysis of its main provisions, including those on torts and other non-contractual obligations, such as pre-contractual liability. Because of the interest that this European text presents for third States, we also asked some distinguished scholars from non-European areas (the U.S., Japan, Latin America and Australia) to express their views on this important piece of Community legislation and the possible influence it may have on conflict developments in their respective countries and regions.

Further progress in the EC system is more generally illustrated by the section 'News from Brussels,' which we brought back this year with the intent of continuing it in future volumes. Two notes on the first ECJ cases concerning the 'Brussels I' Regulation – *Color Drack* and *West Tankers* – also touch upon further progressions in the broader EC system. Other important achievements, in particular the 'Rome I' Regulation, will be discussed in the 2008 volume.

The additional reason for which all of the 2007 developments are not analytically covered in this volume is that we did not want to sacrifice our traditional sections, which we regard as a valuable source of hard-to-access information.

In the section ‘National Reports,’ a very detailed and, indeed, unique study on the PIL decisions of African courts over the last decade deserves special attention. This section includes a comprehensive report on the above mentioned reform of the Turkish PIL and various contributions on Bulgarian, Canadian, Portuguese, Romanian, Spanish, and South African law. The section on ‘Court Decisions’ includes the comments on Czech, Slovakian, Singaporean, English and Swedish decisions. Lastly, the ‘Forum’ section boasts the synthesis of two brilliant comparative PhD theses on issues of arbitration and adjudicatory jurisdiction.

We would like to express our gratitude to all authors who contributed to this impressively rich and varied volume – indeed the richest ever. Once again, our Assistant Editor, Gian Paolo Romano, has played a key role in choosing and revising the contributions, with helpful assistance by his two new ‘Co-Assistants’, Bart Volders and Eva Lein. This dynamic trio of young scholars who have been moulded by the Swiss Institute of Comparative Law will prove to be an important added value for the *Yearbook’s* development in the years to come. In this same perspective, a very important role will also be played by the members of our Advisory Board. Many thanks are owed to all of them for their precious support, particularly Profs. Michael Bogdan and Diego Fernández Arroyo, who have joined in 2007.

Finally, we would like to acknowledge the invaluable assistance of our dedicated English revisers – Mr. Charles Tabor, Mr. Marc Merrill, Mrs. Karen Jeanneret-Druckman and Mrs. Shaheeza Lalani – as well as of Mrs. Monique Bassin, for her immense secretarial support.

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