

# Table of Contents

Preface.....	V
List of Abbreviations .....	X
Introduction .....	1
Chapter I:.....	11
Historical Development of Continental European and U.S.-American Views on Transnational Litigation.....	11
§ 1: Introduction .....	11
§ 2: United States.....	16
I. Introduction .....	16
II. The Pre-Modern Period.....	17
III. The Modern Period .....	21
A. Active Resistance to Treaty-Making.....	21
1. States' Rights .....	22
2. Positivism and the "Cult Of The Common Law" .....	24
B. Unilateralism as a Normative Concept in Dealing With Transnational Litigation....	30
1. International Law .....	30
2. Changes in Choice-of-Law Approaches .....	33
3. America as the Leader of the Free World .....	34
4. Changes in the Law of Civil Procedure.....	35
5. Unilateralism in Action: The New Rules for Judicial Cooperation of 1963/64....	39
C. Exercising Leadership in International Treaty-Making Without Giving Up the Power to Act Unilaterally .....	41
1. Origins.....	41
2. The Hague Service and Evidence Conventions.....	43
IV. Summary .....	45
§ 3: Continental Europe.....	47
I. Introduction .....	47
II. Reasons for the Abundance of Treaties .....	47
A. Pragmatism in a World of Small Jurisdictional Units .....	47
B. The Advent of National Sovereignty, Nationalism, and Codification .....	48
III. The Age of Treaties Begins in Earnest.....	54
A. Early Treaties.....	54

B. Later Treaties: The Onset of Multilateralism at The Hague and the Interaction Among Bilateral and Multilateral Treaties .....	55
C. The Result: Cross-Fertilization Among Bilateral and Multilateral Treaty-Making and Municipal Law in Transnational Litigation .....	58
1. Clarification .....	59
2. Ossification .....	60
3. Liberalization .....	61
D. Harmonization at an Increased Speed: Recent Developments in Europe.....	62
IV. Summary .....	66
§ 4: Concluding Observations.....	68
I. Introduction .....	68
II. Impatience .....	69
III. Lack of Willingness to Incur a Quid Pro Quo.....	70
IV. Conclusion .....	73
 Chapter II:.....	74
The Forces Affecting Trans-Atlantic Lawmaking for Transnational Litigation .....	74
§ 5: Introduction .....	74
§ 6: German Judicial Cooperation for Litigation in the United States .....	76
I. Introduction .....	76
II. Differences in Civil Procedure and Procedural Philosophy Relevant for an Understanding of the Unfolding of the Justizkonflikt .....	79
A. Service of Process.....	79
B. Scope of Evidentiary Obligations .....	81
III. Sensitizing Courts and Commentators to a Problem .....	86
IV. The Justizkonflikt Emerges.....	95
V. Effects in the Area of Recognition and Enforcement of U.S. Judgments .....	105
§ 7: Lessons From the German Experience .....	110
§ 8: The Process of Making Law for Transnational Litigation Involving the United States on the One Hand and Continental Europe on the Other .....	118
I. Introduction .....	118
II. The Role of Treaties in Overcoming Information Deficits .....	120
A. In General .....	120
B. Facilitating a Useful Linkage of Issues .....	125
C. Promoting Compliance.....	126
III. Conclusion .....	127
 Chapter III: .....	129
Making Law For Transnational Litigation at The Hague: The Proposed Convention on Jurisdiction and Judgments.....	129

§ 9: General Approaches to Judicial Jurisdiction in the United States and in Continental Europe .....	129
I. Introduction .....	129
II. United States.....	131
A. In General .....	131
B. Lack of Jurisdictional Rules Specifically For Transnational Cases.....	132
C. Concentration on Constitutional Doctrine.....	133
1. <i>Pennoyer's Strict Territorialism</i> .....	133
2. <i>International Shoe</i> and Minimum Contacts.....	134
3. <i>International Shoe's</i> Progeny.....	137
4. The Importance of Constitutional Doctrine in Relation to Jurisdictional Statutes .....	142
III. Continental Europe.....	145
A. Roots and Methodology.....	145
B. The Role of Constitutional Analysis .....	146
C. Jurisdictional Statutes .....	149
D. Distinct Rules for International Cases.....	151
E. The Regime of Judicial Jurisdiction under the Brussels and Lugano Conventions and the Brussels Regulation.....	152
1. Introduction.....	152
2. General Framework of the Conventions and the Regulation Regarding Judicial Jurisdiction.....	154
3. Place of Performance: Article 5 Number 1 .....	157
4. Criticism of Article 5 Number 1 of the Brussels and Lugano Conventions.....	160
5. The New Brussels Regulation .....	162
6. Jurisdiction in Torts, Article 5 Number 3.....	163
7. Conclusion .....	166
§ 10: Effects of Both Jurisprudential Preferences and Traditional Approaches to Judicial Jurisdiction on the Negotiation of Jurisdictional Provisions at The Hague .....	169
I. Limitations Arising From U.S. Constitutional Law .....	169
A. The Problem in General .....	169
B. Minimum Contacts and Foreseeability.....	172
II. Jurisprudential Preferences and Interests.....	175
A. United States .....	175
B. Continental Europe .....	178
§ 11: Recognition and Enforcement of Judgments .....	181
I. Introduction .....	181
II. The Utility of Comparative Analysis .....	185
A. Gaining Clarity About the Respective Preferences .....	185
B. Drafting Recognition Law With Content .....	187
Conclusion .....	193
Bibliography .....	195
Index .....	211