FOREWORD

Rules and practices on international jurisdiction of domestic courts differ significantly between various countries as to their underlying assumptions, structure, formulation and outcome. The divide is particularly noticeable between common law jurisdictions with open-ended *ex post* determinations and exceptions and the civil law tradition of closed rules determining international jurisdiction *ex ante* with scant exceptions. But also in civil law countries, there are substantial differences as diverging criteria such as nationality and presence of assets are being used. A very limited number of bilateral conventions have addressed issues of international jurisdiction and have sometimes even complicated the resolution of jurisdictional problems.

In Europe, the Brussels 1968 Convention and the 2001 Brussels Regulation as well as the Lugano Convention have revolutionalised the law on international jurisdiction with a regional model for uniform rules. This model has been followed in Latin America with similar MERCOSUR rules. A world-wide effort to come with a comprehensive framework under the auspices of the Hague Conference on Private International Law, however, failed.

Globalisation of business transactions does not stop at the borders of regional organisations and seems to require more than national rules on jurisdiction, a patchwork of bilateral treaties or uniform regional rules. At present, there seems to be a mismatch between international jurisdiction and globalisation and a fresh and in-depth analysis is required to better reflect on ways of aligning jurisdiction with the needs of a globalising world in order to reduce transaction costs and provide a common platform for resolution of jurisdictional problems. This challenge is vast and has already been met in relation to forum selection clauses with the adoption of the 2005 Hague Convention on Choice of Court Agreements. But any analysis starts with the foundations of the law on international jurisdiction and the book I have the privilege to introduce, intends precisely to contribute to an analysis and reflection upon the root issues of and possible solutions to international jurisdictional problems.

On the basis of an extensive description and analysis of the major models regarding contractual disputes (American, English and European), Ms. Van Lith develops a conceptual framework distinguishing between general grounds for jurisdiction (which are always available) and special grounds (which are available only where there is a sufficient connection with the forum state). This basic distinction is then applied to claimants, defendants, the contractual claims that are the subject of the dispute and the presence of assets in the forum state.

As to general grounds for jurisdiction, Ms. Van Lith advocates a pragmatic approach where, in a world-wide model, a general ground should not be the starting point of the analysis but be reduced to a subsidiary and alternative function to avoid jurisdictional gaps and to enable a claimant to avoid uncertainties and costs when contemplating to sue a defendant at a place where it has substantial business activities in relation to the contract. Jurisdiction at the defendant's home court should, thus, in her opinion no longer be the central paradigm of international jurisdiction but be limited to its role of

avoiding gaps and provide a claimant with limited forum shopping possibilities. In that same vein, the paradigm proposed by Ms. Van Lith ought to shift to special grounds of jurisdiction based on sufficient connection between the defendant and the forum state. In that respect, she proposes jurisdiction at the place where the defendant has a fixed place of business from which he carries out business activities directly related to the claimant's contractual claim. Absent such a place of business, jurisdiction is to be vested in the courts of the country where the defendant is engaged in substantial business activities in relation to the contract with a limited forum shopping for a claimant in favour of the court of the defendant's home country. Other general or special grounds for jurisdiction (such as claimant-related connections or property-based connections) are rejected because they do not meet the proposed paradigm of sufficient connection.

As to exceptions to international jurisdiction rules as proposed, Ms. Van Lith comes to the conclusion that a general escape provision is to be avoided except for the 'transacting business' rule where – in accordance with the paradigm proposed – international jurisdiction can be avoided in favour of the defendant's home court when the dispute is insufficiently connected with the forum making it unfair under the circumstances to expect the defendant to be subjected to the jurisdiction of that court. In this respect, a balanced approach to predictability and flexibility is being proposed.

A brief summary of the conclusions of this book indicates that the author has made an important and foundational study of the law of international jurisdiction in making inroads into traditional assumptions regarding state sovereignty and defendant's private interests. Moreover, she has been looking beyond accepted knowledge in a quest for a new equilibrium between state and private interests and the values of different legal traditions meeting the requirements of a globalising society while staying within accepted boundaries of private international law searching for sufficient connections between the contractual dispute and the domestic court most apt to adjudicate any such dispute. The quality of the analysis and the reflection undoubtedly will contribute to a better understanding of the law on international jurisdiction and, thus, to its application in adjudicatory decisions and to policy making at national, regional and world-wide levels.

Professor Filip De Ly
Erasmus University School of Law