Foreword by the Right Honourable Lord Mance

One of the achievements of Lord Goff of Chieveley's chairmanship of the British Institute of International and Comparative Law was the choice of procedure as the main unifying theme of its research programme. With rare exceptions, procedure has not in the English legal tradition had the academic attention that it deserves. But procedure is fundamental to efficient justice. As judicial exchanges with other European jurisdictions regularly confirm, differences in procedure rather than in substantive outcome constitute the most significant distinctions between European legal systems. Lord Diplock once famously described the common law as a maze, not a motorway. Today, the metaphor brings a sense of unease and a hope that common law reasoning focuses rather on underlying principle than dogma and precedent. But it is still apposite at the international procedural level, while the need for clearer signposts marking easier paths to justice increases with the internationalization of life, commerce and law.

The Council of Europe strives in the wider European context to give reality to the principles of article 6 of the ECHR elucidated by the European Court of Human Rights. The European Union aims to improve coordination and where appropriate harmonize procedure. The Woolf reforms, with their emphasis on case management and cultural change, have had international resonance. So procedure merits academic attention; and there is, with the wave of fundamental reforms throughout European jurisdictions, a rich comparative material upon which to draw. The proliferation and increasing importance of international courts and tribunals points also to the need for procedural studies at their level. Many of the new courts are in the process of establishing procedural rules, and there is discussion about further reforms or developments of the preliminary reference procedure which is at the heart of the work of the European Court of Justice. Comparative study can assist to devise solutions where the wholesale adoption of a single national model would not be possible or practicable. Studies in the field of comparative procedure are thus timely and appropriate.

In the last five years, the British Institute of International and Comparative Law has undertaken several major research projects in the field. Under the direction of the Public International Law Section of the Institute's Advisory Board, chaired by Dame Rosalyn Higgins DBE QC, the Institute has completed the first stage of a project on 'Evidence in International Courts and Tribunals'. A seminar series on civil procedure has been organized in memory of Sir Jack Jacob QC, doyen of procedural practice and pioneer in its academic study. Professor Vaughan Lowe has been involved with a successful programme on 'Parallel Proceedings before International Courts and Tribunals'.

Among these many research activities are projects under the direction of the Comparative Law Section of the Institute's Advisory Board. These have recently

included the publication, with the American Law Institute and UNIDROIT based in Rome, of *The Future of Transnational Civil Litigation: English Responses to the ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure* (BIICL London 2004) edited by M Andenas, N Andrews, and R Nazzini, following a seminar opened by Lord Goff.

The present book is the outcome of another research project on civil procedure. Its subject is the practice of enforcement agencies in Europe. Research and harmonization at European Union level have so far aimed primarily at jurisdiction and recognition of judgments pursuant to the Brussels regime, which started as a Convention and is now for most purposes to be found in Council Regulation (EC) No 44/2001. The present project focuses on the next stage: What happens when you have a judgment that is recognized? [How] do you in practice get your money?

National law and practice tends in this field toward the impenetrable, even within any single jurisdiction. To understand and use other jurisdictions' procedures is yet more difficult. Although practical enforcement is obviously critical to the ability and willingness of users of any jurisdiction to achieve justice, there has as yet been no harmonization in EU directives or regulations in the whole field of enforcement falling beyond the scope of the Brussels regime.

The Institute's enforcement agencies project is funded by the European Commission. It has been directed by the Institute's Director, Mads Andenas. The present book is co-edited with two leading European civil proceduralists, Professor Burkhard Hess from the University of Heidelberg, and Professor Paul Oberhammer from Austria who has held chairs at German universities and is now Professor of Swiss and International Civil Procedure at Zurich University. Its preparation has depended upon the creation of a wide network of European proceduralists, who have since continued to cooperate in other fields – in particular with a project on concurrent civil, administrative and criminal proceedings, and in a colloquium in Uppsala, Sweden the proceedings of which will be published in 2005. Professor Peter Schlosser of the University of Munich, author of the initial report on the Brussels Convention, was introduced to the British Institute by Lord Goff, and has provided support throughout the project, as well as agreeing to write the introduction to this book.

The study of enforcement practices covers the following European jurisdictions: Austria, England and Wales, France, Germany, the Netherlands, Spain, and Sweden. The analysis concentrates on the enforcement of civil judgments relating to money claims by the execution of movable assets. This was chosen as the core case of enforcement, and as requiring urgent attention at a European level.

The book sets out the Community law background of the comparative analysis. It focuses on the new provisions in Title IV of the EC Treaty, inserted by the Treaty of Amsterdam of 1997. The country reports, drafted by national experts, each address seven main questions: (1) the legal basis of law enforcement; (2) the structure behind the enforcement agencies; (3) the conditions for execution; (4) specific enforcement methods; (5) disclosure of information on the debtor and

his or her assets; (6) remedies against wrongful execution; and (7) the efficiency of the proceedings.

The aim has been not merely to describe, but to assess the comparative efficiency of different enforcement systems and to suggest best enforcement practices. The study ends by drawing some conclusions about the possible directions which harmonization of enforcement law could take in the European Union. Its contents will I believe persuade even the most ardent defenders of national traditions that there is important practical work to be done at a European level in the field of enforcement practices!

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