A true game changer and the apex stone of international commercial litigation – the NILR Special Edition on the 2019 HCCH Judgments Convention is now available as final, paginated volume

On 2 July 2019, the Hague Conference on Private International Law (HCCH) adopted the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 HCCH Judgments Convention). The instrument has already been described as a true game changer and the apex stone in international commercial litigation.

To celebrate the adoption of the 2019 HCCH Judgments Convention, the Netherlands International Law Review (NILR) produced a special edition entirely dedicated to the instrument.

Volume 67(1) of the NILR, which is now available in its final, paginated version, features contributions from authors closely involved in the development of the instruments. The articles provide deep insights into the making, and intended operation, of the instrument. They are a valuable resource for law makers, practitioners, members of the judiciary and academics alike.

The NILR's Volume comprises the following contributions (in order of print, open access contributions are indicated; the summaries are, with some minor modifications, those published by the NILR).

Thomas John ACIArb, "Foreword" (open access)

Ronald A. Brand, "Jurisdiction and Judgments Recognition at the Hague Conference: Choices Made, Treaties Completed, and the Path Ahead"

Ron Brand considers the context in which a Hague Convention on Jurisdiction and the Recognition and Enforcement of Foreign Judgments was first proposed in 1992. It then traces the history of the Hague negotiations, both from within those negotiations and in regard to important developments outside the negotiations, through the completion of the 2005 Convention on Choice of Court Agreements and the 2019 HCCH Judgments Convention. The article ends with comments on whether it is advisable to now resume discussion of a separate convention on direct jurisdiction.

Francisco Garcimartín, "The Judgments Convention: Some Open Questions"

Francisco Garcimartín explores some of the open issues that were discussed in the negotiation process but remained open in the final text, such as, in particular, the application of the 2019 HCCH Judgments Convention to pecuniary penalties (2) and negative obligations (4), as well as the definition of the res judicata effect (3).

Cara North, "The Exclusion of Privacy Matters from the Judgments Convention"

Cara North considers on issue of particular focus in the later phases of the negotiations of the Convention, namely, what, if any, judgments ruling on privacy law matters should be permitted to circulate under the 2019 HCCH Judgments Convention. Having acknowledged that privacy is an evolving, broad and ill-defined area of the law and that there are obvious differences in the development and operation of privacy laws and policies in legal systems globally, the Members of the Diplomatic Session on the Judgments Convention determined to exclude privacy matters from the scope of the Convention under Article 2(1)(l). The purpose of this short article is to describe how and why the Diplomatic Session decided to exclude privacy matters from the 2019 HCCH Judgments Convention and to offer some observations on the intended scope of that exclusion.

Geneviève Saumier, "Submission as a Jurisdictional Basis and the HCCH 2019 Judgments Convention"

The 2019 HCCH Judgments Convention establishes a list of jurisdictional filters, at least one of which must be satisfied for the judgment to circulate. One of those is the implied consent or submission of the defendant to the jurisdiction of the

court of origin. While submission is a common jurisdictional basis in international litigation, its definition and treatment vary significantly across states, whether to establish the jurisdiction of the court of origin or as a jurisdictional filter at the enforcement stage in the requested court. This diversity is most evident with respect to the mechanics and consequences of objecting to jurisdiction to avoid submission. The 2019 HCCH Judgments Convention adopts a variation on an existing approach, arguably the least complex one, in pursuit of its goal to provide predictability for parties involved in cross-border litigation. This contribution canvasses the various approaches to submission in national law with a view to highlighting the points of convergence and divergence and revealing significant complexities associated with some approaches. It then examines how the text in the 2019 HCCH Judgments Convention came to be adopted and whether it is likely to achieve its purpose.

Nadia de Araujo, Marcelo De Nardi, "Consumer Protection Under the HCCH 2019 Judgments Convention"

The 2019 HCCH Judgments Convention aims at mitigating uncertainties and risks associated with international trade and other civil relationships by setting forth a simple and safe system according to which foreign judgments can easily circulate from country to country. The purpose of this article is to record the historical moment of the negotiations that took place under the auspices of the HCCH, as well as to pinpoint how consumer cases will be dealt with by the Convention under Article 5(2).

Niklaus Meier, "Notification as a Ground for Refusal"

The 2019 HCCH Judgments Convention provides for several grounds for the refusal of recognition, including refusal based on insufficient notification. While this ground for refusal of the 2019 HCCH Judgments Convention seems quite similar to those applied in other conventions, the comparison shows that there are several differences between this instrument and other texts of reference, both with respect to the context of application as well as with respect to the details of the wording. The optional nature of the grounds for refusal under the 2019 HCCH Judgments Convention indicates that its primary focus is the free circulation of judgments, and not the protection of the defendant. The latter's protection is left to the discretion of the state of recognition: a sign of trust amongst the negotiators of the 2019 HCCH Judgments Convention, but also a risk for the

defendant. Practice will show whether the focus of the negotiators was justified.

Junhyok Jang, "The Public Policy Exception Under the New 2019 HCCH Judgments Convention"

The public policy exception is inherently a fluid device. Its content is basically left to each State. A shared public policy is an exception. Therefore, the obligation of uniform interpretation, as provided in Article 20 of the 2019 HCCH Judgments Convention, will have an inherent limit here. Moreover, the 2019 HCCH Judgments Convention leaves some important issues, including procedure, to national rules. Each requested State retains a discretion to invoke the Convention grounds of refusal in a concrete case, and on whether to make an ex officio inquiry or have the parties prove those refusal grounds. The 2019 HCCH Judgments Convention also provides for the concrete applications of the public policy exception, following the model of the 2005 Choice of Court Convention. Here, a purely grammatical reading may create some peripheral problems, especially with the specific defences of conflicting judgments and parallel proceedings. Solutions may be found in the method of purposive interpretation and some general principles, particularly the evasion of the law and the abuse of rights, before resorting to the public policy defence.

Marcos Dotta Salgueiro, "Article 14 of the Judgments Convention: The Essential Reaffirmation of the Non-discrimination Principle in a Globalized Twenty-First Century"

The 2019 HCCH Judgments Convention includes a non-discrimination disposition in Article 14, according to which there shall be no security, bond or deposit required from a party on the sole ground that such a party is a foreign national or is not domiciled or resident in the State in which enforcement is sought. It also deals with the enforceability of orders for payment of costs in situations where the precedent disposition applied, and lays down an 'opt-out' mechanism for those Contracting States that may not wish to apply that principle. This article frames the discussion of the non-discrimination principle in the wider context of previous private international law instruments as well as from the perspectives of access to justice, human rights and Sustainable Development Goals (SDGs), understanding that its inclusion in the 2019 HCCH Judgments Convention was an important, inescapable and necessary achievement.

Paul R. Beaumont, "Judgments Convention: Application to Governments" (open access)

The 2019 HCCH Judgments Convention makes the classic distinction between private law matters within its scope (civil or commercial matters) and public law matters outside its scope. It also follows the same position in relation to State immunity used in the Hague Choice of Court Convention 2005 (see Art. 2(5) in 2019 and 2(6) in 2005). The innovative parts of the 2019 HCCH Judgments Convention relate to the exclusions from scope in Article 2 relating to the armed forces, law enforcement activities and unilateral debt restructuring. Finally, in Article 19, the Convention creates a new declaration system permitting States to widen the exclusion from scope to some private law judgments concerning a State, or a State agency or a natural person acting for the State or a Government agency. This article gives guidance on the correct Treaty interpretation of all these matters taking full account of the work of the Hague Informal Working Group dealing with the application of the Convention to Governments and the other relevant supplementary means of interpretation referred to in Article 32 of the Vienna Convention on the Law of Treaties.

João Ribeiro-Bidaoui, "The International Obligation of the Uniform and Autonomous Interpretation of Private Law Conventions: Consequences for Domestic Courts and International Organisations"

This article addresses the issue of the uniform and autonomous interpretation of private law conventions, including of private international law conventions, from the perspective of their Contracting States, particularly their judiciaries, and of the international organizations. Firstly, the author analyses the use of standard uniform interpretation clauses, and the origin of such clauses, in the context of the Hague Conference on Private International Law. The following part the article addresses negative and positive obligations imposed on States and their judiciaries under international law regarding the uniform and autonomous interpretation of international treaties. It is argued that States are not only obliged to refrain from referring to concepts from national laws for the purpose of the interpretation of international law instruments, but also that they face certain positive obligations in the process of applying the conventions. Those include referring to foreign case law, international scholarship, and under certain circumstances, also to travaux préparatoires. Thirdly, the author discusses the role of international organizations—e.g. HCCH, UNCITRAL, UNIDROIT, in

safeguarding and facilitating the uniform and autonomous interpretation of private law conventions. It does so by describing various related tools and approaches, with examples and comments on their practical use (e.g. advisory opinions, information sharing, access to supplementary material, judicial exchanges and legislative action).

The NILR's Special Edition on the 2019 HCCH Judgments Convention concludes with a reproduction of the text of the *2019 HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, as adopted on 2 July 2019.