Just released: Issue 38/1 2020 of the Netherlands Journal of Private International Law, with a special focus on the new HCCH Judgments Convention

The issue 38/1 2020 of the Netherlands Journal of Private International Law (NIPR – *Nederlands Internationaal Privaatrecht*) has just been published. This issue of the NIPR is available here. It includes an Editorial and the following three articles (with abstracts) devoted to the new *Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, concluded on 2 July 2019 (not yet in force see here):

1. Towards a global Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, by Hans van Loon

"This article describes the background and context of the 'Hague Judgments Project'. Apart from earlier attempts, three stages may be distinguished in the history of this project: a first stage, dominated by the dynamics of the early European integration process, with the result that the 1965 and 1971 Hague Conventions on choice of court and recognition and enforcement of judgments, although providing inspiration for the 1968 Brussels Convention, remained unsuccessful; a second stage, very much determined by the transatlantic dimension, with differing strategic objectives of the EU and the USA notably regarding judicial jurisdiction, resulting in the lack of success of the 'mixed' convention proposal; and a third stage, where negotiations took on a more global character, resulting in the 2015 Choice of Court Convention and the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

"The article discusses the interaction between the global Hague and the regional EU negotiations on jurisdiction and enforcement of judgments, the impact of domestic judicial jurisdiction rules (the claim/forum relationship versus the defendant/forum link) on the Hague negotiations and other (in some cases:

recurrent) core issues characterizing each of the aforementioned three stages, and their influence on the type (single, double, 'mixed') and form of convention that resulted from the negotiations."

2. Comment on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. Is the Hague Convention of 2 July 2019 a useful tool for companies who are conducting international activities? By Catherine Kessedjian

"The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, adopted on 2 July 2019, gives some certainty to worldwide trade relations outside regional systems such as the EU, when disputes are submitted to national courts instead of arbitration or mediation. The Convention avoids the difficult issue of 'direct' jurisdictional bases and limits itself to 'indirect' jurisdictional bases. This choice of policy was one of the keys to its adoption. Another one was the exclusion of many problematic areas of the law where differences in legal systems are too deep to allow consensus. A third one was to allow States becoming Parties to the Convention to make a number of declarations including some to protect their own acts, which may have been considered as acta jure gestionis under international law. Consequently, the Convention has a fairly narrow scope of application. This may induce more States to become a Party, without which the Convention would not have any more success than the old Hague Convention of 1971 which is still on the books, particularly because it still includes a bilateralisation system, albeit an easier one than that included in the 1971 Convention."

3. The 2019 Hague Judgments Convention through European lenses, by Michael Wilderspin and Lenka Vysoka

"The European Union is an important actor in the field of international judicial cooperation and in the Hague Conference on Private International Law. It is itself a member of the Conference, and at the same time represents 27 States that are also members. Because of the EU's own internal rules, where the matters being negotiated at international level are already the subject of EU rules, the EU speaks on behalf of its Member States. Furthermore, if the EU accedes to an international convention in such circumstances, the all or nothing principle applies. Either the EU accedes as a bloc or not at all.

“The 2019 Judgments Convention has the potential to facilitate the worldwide recognition and enforcement of judgments in civil and commercial matters. The approach taken by the negotiators has, particularly in the light of the failure of earlier, more ambitious projects, been to aim for a more modest convention, with the objective of encouraging as many States as possible to become Contracting Parties to the Convention.”

Moreover, the issue contains an article written in Dutch on preliminary questions submitted to the CJEU by the Supreme Court of the Netherlands in SHAPE/Supreme: on garnishment and immunity (HR 21 December 2018, ECLI:NL:HR:2018:2361 and HR 22 February 2019, ECLI:NL:HR:2019:292, NIPR 2019, 64), by A. F. Veldhuis

“The Supreme Group initiated proceedings in the Netherlands against two NATO bodies (SHAPE and JFCB) with regard to the alleged non-fulfilment of payment obligations under a contract relating to the supply of fuel to SHAPE for NATO’s mission in Afghanistan. On the basis of a Dutch order for garnishment, Supreme levied a garnishment on an escrow account in Belgium. SHAPE then initiated proceedings for interim relief before the Dutch courts, invoked immunity from enforcement and sought (i) to lift the garnishment and (ii) to prohibit Supreme from attaching the escrow account in the future. Both the court at first instance and the appellate court ruled that the seizure could be lifted. However, the Supreme Court questioned whether the Dutch courts had jurisdiction to adjudicate this dispute. Article 24(5) Brussels I-bis provides that the courts of the Member State in which the judgment has been or is to be enforced have exclusive jurisdiction regarding procedures concerning the enforcement of that judgment. As the garnishment was levied on the basis of an order for garnishment by a Dutch court on an account in Belgium, the question here is whether Article 24(5) Brussel I-bis also covers SHAPE’s application to the Dutch court to have the attachment lifted. Since there may be reasonable doubt as to the interpretation of Article 24(5) Brussels I-bis, the Supreme Court decided to refer the matter to the Court of Justice for a preliminary ruling. Before going into this question, the Supreme Court must first examine whether the claims fall within the material scope of Brussels Ibis. The fact that SHAPE has based its requests on immunity from enforcement raises the question of whether, and if so to what extent, this case is a civil or commercial matter within the meaning of Article 1(1) Brussels Ibis. In this respect, too, the Supreme Court saw sufficient grounds for submitting

preliminary questions. This case has raised thought-provoking questions which navigate along the thin line between private international law and public international law.”