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."

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 3/2020: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)" features the following articles:

A. Stein: **The 2019 Hague Judgments Convention – All's Well that Ends Well?**

The Hague Convention on the Recognition and Enforcement of Foreign Judgments, which was concluded in July 2019, holds the potential of facilitating the resolution of cross-border conflicts by enabling, accelerating and reducing the cost of the recognition and enforcement of judgments abroad although a number of areas have been excluded from scope. As the academic discussion on the merits of this instrument unfolds and the EU considers the benefits of ratification, this contribution by the EU's lead negotiator at the Diplomatic Conference presents an overview of the general architecture of the Convention and sheds some light on the individual issues that gave rise to the most intense discussion at the Diplomatic Conference.

C. North: **The 2019 HCCH Judgments Convention: A Common Law Perspective**

The recent conclusion of the long-awaited 2019 HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the "Judgments Convention") provides an opportunity for States to reconsider existing regimes for the recognition and enforcement of foreign

judgments under national law. This paper considers the potential benefits of the Judgments Convention from a common law perspective. It does so by considering the existing regime for recognition and enforcement at common law, and providing an overview of the objectives, structure and a number of key provisions of the Judgments Convention. It then highlights some of the potential benefits of the Convention for certain common law (and other) jurisdictions.

P.-A. Brand: **Recognition and enforcement of decisions in administrative law matters**

Whereas for civil and commercial matters there are extensive rules of international and European civil procedural law on mutual legal assistance and in particular on the recognition and enforcement of civil court decisions, there is no similar number of regulations on legal assistance and for the international enforcement of administrative court decisions. The same applies to the recognition of foreign administrative acts. This article deals with the existing rules, in particular with regard to decisions in administrative matters, and concludes that the current system of enforcement assistance in the enforcement of administrative decisions should be adapted to the existing systems of recognition and enforcement of judgments in civil and commercial matters.

B. Hess: **About missing legal knowledge of German lawyers and courts**

This article addresses a decision rendered by the Landgericht Düsseldorf in which the court declined to enforce, under the Brussels Ibis Regulation, a provisional measure issued by a Greek court. Erroneously, in its decision the Landgericht held that applications for refusal of enforcement of foreign decisions (article 49 Brussels Ibis Regulation) are to be lodged with the Landgericht itself. Since the party lodged its application with the Landgericht on the last day of

the time limit, the Oberlandesgericht Düsseldorf eventually held that the application was untimely as it was not lodged with the Oberlandesgericht, instead. The Oberlandesgericht refused to restore the status quo ante because the information about the competent court had been manifestly erroneous, whereas the lawyer is expected to be familiar with articles 49 (2) and 75 lit b) of the Brussels Ibis Regulation. This article argues that jurisdiction over applications for refusal of enforcement is not easily apparent from the European and German legal provisions and that the legal literature addresses the issue inconsistently.

This results in a certain degree of uncertainty as concerns jurisdiction over such applications, making it difficult to establish cases of possibly manifestly incorrect applications.

C.F. Nordmeier: **Abuse of a power of attorney granted by a spouse – The exclusion of matrimonial property regimes, the place of occurrence of the damage under Brussels Ibis and the escape clause of art. 4 (3) Rome II**

The article deals with the abuse of power of attorney by spouses on the basis of a decision of the Higher Regional Court of Nuremberg. The spouses were both German citizens, the last common habitual residence was in France. After the failure of the marriage, the wife had transferred money from a German bank account of the husband under abusive use of a power of attorney granted to her. The husband sues for repayment. Such an action does not fall within the scope of the exception of matrimonial property regimes under art. 1 (2) (a) Brussels Ibis Regulation. For the purpose of determining the place where the damage occurred (Art. 7 No. 2 Brussels Ibis Regulation), a distinction can be made between cases of manipulation and cases of error. In the event of manipulation, the bank account will give jurisdiction under Art. 7 No. 2 Brussels Ibis Regulation. Determining the law applicable by Art. 4 (3) (2) Rome II Regulation, consideration must be given not only to the statute of marriage effect, but also to the statute of power of attorney. Particular restraint in the application of Art. 4 (3) (2) Rome II Regulation is indicated if the legal relationship to which the non-contractual obligation is to be accessory is not determined by conflict-of-law rules unified on European Union level.

P.F. Schlosser: **Governing law provision in the main contract – valid also for the arbitration provision therein?**

Both rulings are shortsighted by extending the law, chosen by the parties for the main contract, to the arbitration provision therein. The New York Convention had good reasons for favoring, in the absence of a contractual provision specifically directed to the arbitration provision, the law governing the arbitration at the arbitrators' seat. For that law the interests of the parties are much more predominant than for their substantive agreements.

F. Rieländer: **Choice-of-law clauses in pre-formulated fiduciary contracts for holding shares: Consolidation of the test of unfairness regarding**

choice-of-law clauses under Art. 3(1) Directive 93/13/EEC

In its judgment, C-272/18, the European Court of Justice dealt with three conflict-of-laws issues. Firstly, it held that the contractual issues arising from fiduciary relationships concerning limited partnership interests are included within the scope of the Rome I Regulation. While these contracts are not covered by the exemption set forth in Art. 1(2)(f) Rome I Regulation, the Court, unfortunately, missed an opportunity to lay down well-defined criteria for determining the types of civil law fiduciary relationships which may be considered functionally equivalent to common law trusts for the purposes of Art. 1(2)(h) Rome I Regulation. Secondly, the Court established that Art. 6(4)(a) Rome I Regulation must be given a strict interpretation in light of its wording and purpose in relation to the requirement "to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence". Accordingly, this exception is applicable only if the consumer needs to leave the country in which he has his habitual residence for the purpose of enjoying the benefits of the services. Thirdly, the Court re-affirmed that choice-of-law clauses in pre-formulated consumer contracts are subject to a test of unfairness under Art. 3(1) Directive 93/13/EEC. Since the material scope of this Directive is held to apply to choice-of-law clauses, such a clause may be considered as unfair if it misleads the consumer as far as the laws applicable to the contract is concerned.

U. Bergquist: **Does a European Certificate of Succession have to be valid not only at the point of application to the Land Registry, but also at the point of completion of the registration in the Land Register?**

When it comes to the evidentiary effect of European Certificates of Successions, there are different opinions on whether a certified copy of the certificate has to be valid at the time of the completion of a registration in the Land register. The Kammergericht of Berlin recently ruled that a certified copy loses its evidentiary effect in accordance with art. 69 (2) and (5) of the European Succession Regulation (No. 650/2012) after expiry of the (six-month) validity period, even if the applicant has no influence on the duration of the registration procedure. This contribution presents the different arguments and concludes – in accordance with the Kammergericht – that not the date of submission of the application but the date of completion of the registration has to be decisive for the required proof.

D. Looschelders: **International and Local Jurisdiction for Claims under**

Prospectus Liability

The judgment by the Austrian Supreme Court of Justice (Oberster Gerichtshof, OGH) deals with international and local jurisdiction for a claim under prospectus liability. It is mainly concerned with the determination of the place in which the harmful event occurred, as stated in Art. 5(3) of Regulation No 44/2001. Specifying the damage location can pose significant problems due to the fact that prospectus liability compensates pure economic loss. The OGH had stayed the proceedings in order to make a reference to the European Court of Justice (ECJ) for a preliminary ruling on several questions related to this issue. However, the decision by the ECJ left many details unsettled. This article identifies the criteria developed by the OGH in light of the case. The author agrees with the OGH to designate the damage location in this particular case as the injured party's place of residence. Nevertheless, he points out the difficulties of this approach in cases where not all investment and damage specific circumstances point to the investor's country of residence.

W.Voß: **U.S.-style Judicial Assistance – Discovery of Foreign Evidence from Foreign Respondents for Use in Foreign Proceedings**

In the future, will German litigants in German court proceedings have to hand over to the opposing party evidence located on German territory based on American court orders? In general, under German law, the responsibility to gather information and to clarify the facts of the case lies with the party alleging the respective facts, while third parties can only be forced to produce documents in exceptional circumstances. However, the possibility to obtain judicial assistance under the American Rule 28 U.S.C. § 1782(a) increasingly threatens to circumvent these narrow provisions on document production in transatlantic relations. For judicial assistance under this Federal statute provides parties to foreign or international proceedings with access to pre-trial discovery under U.S. law, if the person from whom discovery is sought "resides or is found" in the American court district. Over the years, the statute has been given increasingly broad applicability – a trend that is now being continued by the recent ruling of the Second Circuit Court of Appeals discussed in this article. In this decision, the Court addressed two long-disputed issues: First, it had to decide on whether the application of 28 U.S.C. § 1782(a) is limited to a person who actually "resides or is found" in the relevant district or whether the statute could be read more broadly to include all those cases in which a court has personal jurisdiction over a person.

Second, the case raised the controversial question of whether 28 U.S.C. § 1782 allows for extraterritorial discovery.

M. Jänterä-Jareborg: **Sweden: Non-recognition of child marriages concluded abroad**

Combatting child marriages has been on the Swedish legislative agenda since the early 2000s. Sweden's previously liberal rules on the recognition of foreign marriages have been revisited in law amendments carried out in 2004, 2014 and 2019, each reform adding new restrictions. The 2019 amendment forbids recognition of any marriage concluded abroad as of 1/1/2019 by a person under the age of 18. (Recognition of marriages concluded before 1/1/2019 follows the previously adopted rules.) The marriage is invalid in Sweden directly by force of the new Swedish rules on non-recognition. It is irrelevant whether the parties had any ties to Sweden at the time of the marriage or the lapse of time. The aim is to signal to the world community total dissociation with the harmful practice of child marriages. Exceptionally, however, once both parties are of age, the rule of nonrecognition may be set aside, if called upon for "extraordinary reasons". No special procedure applies. It is up to each competent authority to decide on the validity of the marriage, independently of any other authority's previous decision. While access to this "escape clause" from the rule of non-recognition mitigates the harshness of the system, it makes the outcome unpredictable. As a result, the parties' relationship may come to qualify as marriage in one context but not in another. Sweden's Legislative Council advised strongly against the reform, as contrary to the aim of protecting the vulnerable, and in conflict with the European Convention on Human Rights, as well as European Union law. Regrettably, the government and Parliament took no notice of this criticism in substance.

I. Tekdogan-Bahçivanci: **Recent Turkish Cases on Recognition and Enforcement of Foreign Family Law Judgements: An Analysis within the Context of the ECHR**

In a number of recent cases, the Turkish Supreme Court changed its previous jurisprudence, rediscovered the ECHR in the meaning of private international law and adopted a fundamental-rights oriented approach on the recognition and enforcement of foreign judgements in family matters, i.e. custody and guardianship. This article aims to examine this shift together with the jurisprudence of the European Court of Human Rights, to find a basis for this shift

by analysing Turkey's obligation to comply with the ECHR and to identify one of the problematic issues of Turkish private international law where the same approach should be adopted: namely recognition and/or enforcement of foreign judgements relating to non-marital forms of cohabitation.

Israeli Requirement of Good Faith Conduct in Enforcement of Foreign Judgments

Written by Haggai Carmon, Carmon & Carmon, an international law firm with offices in Tel Aviv and a front office in New York.

The requirement of parties' good faith conduct is fundamental in Israeli law and jurisprudence. However, only recently the Supreme Court has applied that doctrine to enforcement of foreign judgments as thus far, only lower courts have followed that doctrine.

In **Civil Appeal X [Name removed upon request of Claimant, General Editors of CoL, 26 October 2022] v. Bankruptcy Office Geneva**, the Supreme Court (per Esther Hayut, Chief Justice,) on August 27, 2019, unanimously denied an appeal over a District Court's earlier finding that procedural bad faith is independently sufficient grounds to rule against a party whose conduct during proceedings to enforce a Swiss judgment, was so egregious that it warranted such extreme measure.

"In the course of the proceedings in the case, the appellant demonstrated contempt for the court's proceedings, the counterclaimant's rights and the duties imposed on him under the Rules of Civil Procedure and the judicial decisions given in his case. In doing so, the appellant violated his duty to act fairly and reasonably to enable proper judicial proceeding. In light of all the foregoing,

there is no escaping of the conclusion that the appeal before us is one of those rare instances where the appellant's bad faith conduct, who has taken practical measures to thwart the enforcement of the judgment rises to an abuse of court proceedings. Under these exceptional circumstances, in my opinion, it is justified to use the authority given to us and order the appeal be denied in limine."

Although lack of good faith or unacceptable conduct do not, pursuant to the Israeli Foreign Judgments Enforcement Law, provide independent cause to refuse recognition or enforcement of a foreign judgment, "however certainly this carries weight in the court's considerations together with all other conditions"[1] for such recognition or enforcement. [Judge Keret-Meir's ruling in **Bankruptcy File (T.A.) 2193/08 First International Bank of Israel Ltd. v. Gold & Honey (1995) L.P. et al.**

Earlier, the Jerusalem District Court's judgment in D.C.C. (Jm.) 3137/04 **Ahava (USA) Inc. v. J.W.G. Ltd (Ahava)**[2]concerned whether a U.S. judgment precluding an Israeli company from marketing Israeli products in the United States through a website was a foreign judgment enforceable pursuant to the Enforcement Law. The court held that "the filter of 'public policy' allows us to uproot unjust outcomes that may arise from the application of a foreign law,"[3] and addressed at length the essence of public policy:[4]

What is public policy? It is a broad term, "flexible and not entirely definable" …. Some will emphasize the local nature of public policy… but it seems that the basic requirements of law, including good faith, equity, and human rights, do not carry national identities, nor do they evaporate at international borders. Recognition of this approach grew with the erosion of "the archaic definition of the sovereignty doctrine, and as territorial sovereignty boundaries between legal systems blurred" (I. Canor, *Private International Law and the Decay of Sovereignty in the Globalization Age: The Application of Foreign Public Law on International Contracts*… p. 491). This process expanded the definition of public policy and imparted it with a quality of *tikkun olam* (bettering society) in its literal sense, such that appropriate applications are made from the public and private law of foreign legal systems to a domestic forum. In this context, we can even identify certain international rules which obligate even the parties of a **purely domestic** contract (Canor, id. 513). The inclination to apply rules of **global** public policy will increase as the link between the contract and local law weakens. A component of this global public policy is the very need to enforce foreign

judgments.

The District Court held essentially that the protection of intellectual property does not in and of itself violate public policy in Israel, as this includes as well the principle that prohibits taking another's work or basing one's work on it, and this principle also applies to trademark law and other protections related to the appearance of the product. In these circumstances, the court ruled that the prohibition placed by the U.S. court, on the basis of internal U.S. trademark law, did not conflict with public policy in Israel.

In D.C.C. (T.A.) 22673-07-10 **Nader & Sons LLC et al v. Homayon Antony Namvar (Nader)**,[5] the District Court rejected arguments that a summary judgment by the Supreme Court of the state of New York was unenforceable in Israel as having been rendered in unjust and improper proceedings, so that it conflicted with the public policy of Israel. The respondent argued that the choice of such proceedings in a suit of such broad scope constituted lack of good faith and an attempt to evade thorough investigation of the claims, as well as that significant details and facts withheld from the New York court might have affected the outcome of the proceedings.

The court dismissed these arguments:[6]

As stated, external public policy, in the sense of Article 3(3) of the Foreign Judgments Enforcement Law, refers to conformance with the basic principles of Israeli law, and the argument of the respondent regarding the flaws that, in his opinion, characterize the proceedings in New York, as decisive as they may be, do not testify to any conflict with these basic principles (regardless of the validity of these claims) and are not directly connected to the content of the judgment.

In Justice Procaccia commented in C.A. 5793/05 **The Great Synagogue Shone Halachot Association v. Netanya Municipality**:[7]

It is true that the Arbitration Law, 5728-1968 does not set a binding deadline on the prevailing party in an arbitration award to file a motion for its confirmation.… Nevertheless, this does not signify that there exists no limit whatsoever for filing a motion for the confirmation of an arbitration award and that the procedural rights of the holder of such an award are everlasting. A party who prevailed in arbitration is required by procedural good faith to submit the award for confirmation within a reasonable time period, given the special circumstances of

the relevant incident. A party who for years ignored the award, did not act on it, and appeared to no longer have any intention of enforcing it, is liable to face a procedural estoppel claim (Ottolenghi, *Arbitration: Law and Procedure*, 4th ed., 2005, 914-916). Like any other complaint filed with a court, a motion for confirmation of an arbitration award is also subject to the rules of procedural good faith and reasonability regarding the timing, form, and content of the filing. The civil rules of laches apply to the timing of filing, as they apply to civil suits in the framework of statutory periods of limitations.

The question of whether this judgment, which deals with a 30-year delay in filing a motion for the confirmation of an Israeli arbitration award, will also apply to an arbitral award issued abroad under the New York Convention, remains open and has not been addressed. Because the New York Convention and the regulations for its execution make no mention of laches, it is unclear if the application of the Convention should be restricted and subjected to those principles, thus bypassing the absence of deadline for filing for confirmation under the Convention. In general, foreign arbitration takes place between commercial entities or countries, and at times, the difficulty in enforcing arbitration awards for various reasons is universal. There are many cases in which enforcement in one country encounters protracted difficulties, and then, upon locating debtor's assets in another country, the award holder applies for enforcement of the award in that country. This may be many years after the award was issued. Blocking the procedural path of the holder through laches is unjust, at least under such circumstances, and it appears that the New York Convention's silence in this context is not for naught. Presumably for the same reason, the Convention does not list laches among the grounds for refusal to recognize or enforce an award, nor does it impose a time limit for filing a motion for the confirmation of an arbitration award under the Convention.

For more informaiton, see Haggai, *Foreign Judgements in Israel — Recognition and Enforcement*, published in Hebrew by the Israeli Bar Association. Springer published an English translation.

[1] See Judge Keret-Meir's ruling in Bankruptcy File (T.A.) 2193/08 First International Bank of Israel Ltd. v. Gold & Honey (1995) L.P. et al.

[2]P.M. 5763 (2) 337 (2004).

[3] Id. at 343.

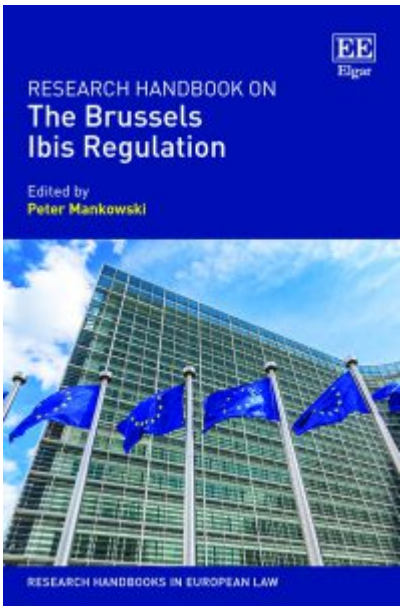
[4] Id. at 344.

[5]Nevo (May 5, 2011).

[6]Id. at 9.

[7]Nevo (Sep. 11, 2007).

Out now: Mankowski, Peter (ed.), Research Handbook on the Brussels Ibis Regulation



A most useful new research handbook in European Law is on the table – highly recommended! The publisher's blurb reads:

„The Brussels Ibis Regulation is the magna carta for jurisdiction and the free circulation of judgments in civil and commercial matters in the EU, and forms a cornerstone of the internal market. This timely Research Handbook addresses the cutting edges of the regime, in particular its place within the overall system of EU law and its adaptations in response to specific kinds of lawsuits or the needs of

particular industries.

Featuring original research by leading academics from across Europe, chapters take a systematic approach to examining a broad variety of topics in relation to the Brussels Ibis Regulation. Such topics include collective redress, injunctive relief, lis pendens and third states, negotiorum gestio, arbitration, intellectual property lawsuits, and its interface with the European Insolvency Regulation (Recast). Moving beyond what is offered by textbooks and commentaries, this incisive Research Handbook analyses the most recent developments in legislation and practice, as well as providing an outlook on the future of this field of EU law.

This Research Handbook will prove a critical read for scholars and students of EU law. Judges and practitioners working in this area will also find its insights to be of significant practical relevance.

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The eBook version is priced from £22/$31 from Google Play, ebooks.com, and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.

'Force majeure certificates' issued by the Russian Chamber of Commerce and Industry

The Russian Chamber of Commerce and Industry is issuing 'force majeure certificates', like some of their homologues in other countries, as discussed

earlier in this blog. Although this practice has existed in Russia since 1993, the number of requests for the certificates has recently increased. The requests come not only from Russian companies but also from foreign entities. While the increase is understandable in these times of the coronavirus pandemic, under Russian law, the 'force majeure certificate' can (only) form a part of evidence in possible future disputes, as its impact on the outcome of the dispute is ultimately defined by the (Russian or foreign) courts or arbitration tribunals.

The Russian Chamber of Commerce and Industry (CCI) is issuing 'force majeure certificates', like some of their homologues in other countries. Although this practice exists in Russia since 1993, the CCI has recently noticed an increase in the number of requests for the certificates, due to the coronavirus pandemic. The requests come not only from Russian companies but also from foreign entities. What could be the practical value of the certificate in a contractual dispute relating to the consequences of the pandemic?

The legal basis for the CCI's competence to issue the 'force majeure certificates' is laid down in the law 'On the chambers of commerce and industry in the Russian Federation' of 7 July 1993. Article 1 of the law defines the CCI as a non-state non-governmental organisation created to foster business and international trade. Along with other competences, the CCI may act as an 'independent expert' (art. 12) and may provide information services (art. 2) in matters relating to international trade. One of the services is the issuing of 'force majeure certificates'. The Rules for issuing the certificates are defined by the CCI's governing council. These Rules entrust the CCI's legal department with assessing requests and advising whether the certificate should be issued. The advice is given on the basis of the documents that a party submits to substantiate their request, following the Rules.

Notably, the list of documents includes (a copy of) the contract, 'which contains a clause on force majeure' (point 3.3.2 of the Rules). This requirement is not accidental; it has to do with the non-mandatory character of the legal provision on force majeure. Article 401(3) of the Russian Civil Code provides for exoneration of liability for non-performance of a contractual obligation, if the party proves that the non-performance was due to the force majeure. This provision applies by default, if 'the law or the contract does not provide otherwise' (art. 401(3)). The parties may provide otherwise by including a clause about unforeseen circumstances, hardship, frustration, force majeure, or similar circumstances in

the contract. This is, at least, the way Russian courts have applied art. 401(3) up to the present time. The Russian CCI does not appear to deviate from this approach. More than 95% of the requests submitted to the Russian CCI for 'force majeure certificates' have so far been rejected, according to the head of the Russian CCI (even though some decrees deliberately label the COVID-19 pandemic 'force majeure' as, for example, the Decree of 14 March 2020 does, this decree is adopted by the municipality of Moscow to prevent the spread of the virus by various measures of social distancing).

Thus, the legal basis of the CCI's competence to issue a 'force majeure certificate' implies that the certificate is the result of a service provided by a non-state non-governmental organisation. The application of Article 401(3) implies the need to interpret the contract, more specifically, the provision on force majeure it possibly includes. If the parties disagree on the interpretation, a dispute may arise. The competence to resolve the dispute lies with the courts or arbitration tribunals. In this way, the ICC's decision (taken upon the advice of the CCI's legal department) to confirm by issuing a certificate that a particular event represents a force majeure in the context of the execution of a specific contract can have persuasive authority in the context of the application of Art. 401 (3). However, it remains the competence of the courts or arbitration tribunals to apply art. 401(3) to the possible dispute and to establish the ultimate impact of the relevant events on the outcome of the dispute. Under Russian law, one would treat the 'force majeure certificates' issued by the CCI (and possibly a refusal to issue the certificate) as a part of evidence in possible future disputes. A (Russian or foreign) court or arbitration tribunal considering this evidence is free to make a different conclusion than that of the Russian CCI or may consider other evidence.

The HCCH 2019 Judgments Convention: Prospects for Judicial

Cooperation in Civil Matters between the EU and Third Countries – Conference on 25 and 26 September 2020, University of Bonn, Germany – Final Programme

Dear CoL Readers,

While we are all deeply concerned about the still growing dimensions of the coronavirus pandemic, we did not want to give up working on the programme of our conference.

Thanks to the HCCH, the Bonn PIL colleagues and our distinguished speakers, there is now a fantastic programme we would like to bring to your attention in this post (see below).

Meanwhile, we will closely follow the instructions of the University of Bonn as well as the German local and federal governments and travel restrictions in other countries to see whether the conference can take place on site. We have not yet given up optimism in this respect. Yet, safety must be first. This is why we are setting up structures for a video conference via zoom in case we need it. We assume that all of you would agree to proceeding via zoom if necessary. We will take a final and corona risk-averse decision on this during July and keep you posted. Please do not hesitate to register with us (sekretariat.weller@jura.uni-bonn.de) if you wish to be updated by email.

Looking forward to seeing you in Bonn in September!

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Brexit has become reality – one more reason to think about the EU's Judicial Cooperation with third states:

The largest proportion of EU economic growth in the 21st century is expected to arise in trade with third countries. This is why the EU is building up trade

relations with many states and other regional integration communities in all parts of the world. The latest example is the EU-MERCOSUR Association Agreement concluded on 28 June 2019. With the United Kingdom's exit of the Union on 31 January 2020, extra-EU trade with neighboring countries will further increase in importance. Another challenge for the EU is China's "Belt and Road Initiative", a powerful global development strategy that includes overland as well as sea routes in more than 100 states around the globe.

The increasing volume of trade with third states will inevitably lead to a rise in the number and importance of commercial disputes. This makes mechanisms for their orderly and efficient resolution indispensable. China is already setting up infrastructures for commercial dispute resolution alongside its belts and roads. In contrast, there seems to be no elaborate EU strategy on judicial cooperation in civil matters with countries outside of the Union, despite the DG Trade's realisation that "trade is no longer just about trade". Especially, there is no coherent plan for establishing mechanisms for the coordination of cross-border dispute resolution and the mutual recognition and enforcement of judgments. This is a glaring gap in the EU's policy making in external trade relations.

This is why the Bonn group of PIL colleagues – Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Philipp Reuss, and Matthias Weller – will host a conference on Friday and Saturday, 25 and 26 September 2020, at the University of Bonn that seeks to explore ways in which judicial cooperation in civil matters between the EU and third countries can be improved by the HCCH 2019 Judgments Convention as an important driver, if not game changer, of legal certainty in cross-border commercial relations.

The list of speakers includes internationally leading scholars, practitioners and experts from the Hague Conference on Private International Law (HCCH), the European Commission (DG Trade, DG Justice), and and the German Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz)

The Conference is co-hosted by the HCCH as one of the first European events for discussing the HCCH 2019 Judgments Convention. The Conference will be further supported by the Zentrum für europäisches Wirtschaftsrecht at the University of Bonn and The International Litigation Exchange (ILEX).

The Organizers will kindly ask participants to contribute with € 100.- to the costs of the event (includes conference dinner).

Dates:

Friday, 25 September 2020, and Saturday, 26 September 2020.

Venue:

Friday:

Universitätsclub Bonn, Konviktstraße 9, D – 53113 Bonn

Saturday:

Main Auditorium (Aula), Hauptgebäude, Am Hof 21, 53113 Bonn

Registration: sekretariat.weller@jura.uni-bonn.de

Registration Fee: € 100.-

To be transferred to the following account (you will receive confirmation of your registration only after payment was booked on this account):

Bonn Conference 2020

IBAN: DE71 5001 0517 0092 1751 07

BIC: INGDDEFF (ING-Diba Bank)

Programme

Friday, 25 September 2020

1.30 p.m. Registration

2 p.m. Welcome note

Prof Dr Wulf-Henning Roth, University of Bonn, Director of the Zentrum für Europäisches Wirtschaftsrecht (ZEW)

Dr Christophe Bernasconi, Secretary General of the HCCH (video message)

2.10 p.m. Part 1: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 1: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Keynote: Hague Conference's Perspective and Experiences

Hans van Loon, Former Secretary General of the Hague Conference on Private International Law, The Hague

1. **Scope of application**

Prof Dr Xandra Kramer, Erasmus Universiteit Rotterdam

2. **Judgments, Recognition, Enforcement**

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich

Discussion

3.30 p.m. Coffee Break

4.00 p.m. Part II: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 2: Prof Dr Nina Dethloff / Prof Dr Moritz Brinkmann

1. **Jurisdictional filters**

Prof Dr Pietro Franzina, Catholic University of Milan

2. **Grounds for refusal**

Prof Dr Francisco Garcimartín Alférez, University of Madrid

Discussion

5.30 p.m. Panel Discussion: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries

Chairs of Part 3: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy, DG Trade (tbc)

Andreas Stein, Head of Unit, DG JUST – A1 "Civil Justice"

Dr Jan Teubel, German Federal Ministry of Justice and Consumer Protection

RA Dr Heiko Heppner, Attorney at Law (New York), Barrister and Solicitor Advocate (England and Wales), Chair of ILEX, Head of Dispute Resolution, Partner Dentons, Frankfurt

and perhaps more…

Discussion

7 p.m. Conference Dinner

Saturday, 26 September 2020

9.00 a.m. The context of the HCCH 2019 Judgments Convention

Chairs of Part 4: Prof Dr Moritz Brinkmann / Prof Dr Philipp Reuss

1. **Lessons from the Genesis of the Judgments Project**

Dr Ning Zhao, Senior Legal Officer, HCCH

2. **Relation to the HCCH 2005 Convention on Choice of Court Agreements**

Prof Paul Beaumont, University of Stirling

3. **Relations to the Brussels Regime / Lugano Convention**

Prof Marie-Elodie Ancel, Université Paris-Est Créteil

4. **Brexit…**

Dr Pippa Rogerson, Reader in Private International Law, Faculty of Law, Cambridge

Discussion

11:00 a.m. Coffee Break

11:30 a.m. Chairs of Part 5: Prof Dr Nina Dethloff / Prof Dr Matthias Lehmann

1. **South European Neighbouring and Candidate Countries**

Ass. Prof Dr Ilija Rumenov, Ss. Cyril and Methodius University, Skopje, Macedonia

2. **MERCOSUR**

Dr Veronica Ruiz Abou-Nigm, Director of Internationalisation, Senior Lecturer in International Private Law, School of Law, University of Edinburgh

3. **China (OBOR)**

Prof Zheng (Sophia) Tang, University of Newcastle

4. **International Commercial Arbitration**

Jose Angelo Estrella-Faria, Senior Legal Officer UNCITRAL Secretariat, International Trade Law Division Office of Legal Affairs, United Nations, Former Secretary General of UNIDROIT

Discussion

1.30 p.m. Closing Remarks

Dr João Ribeiro-Bidaoui, First Secretary, HCCH

Mareva injunctions in support of

foreign proceedings

In *Bi Xiaoqing v China Medical Technologies* [2019] SGCA 50, the Singapore Court of Appeal provided clarity on the extent of the court's power to grant Mareva relief in support of foreign proceedings.

The first and second respondents were companies incorporated in the Cayman Islands and the British Virgin Islands. The action was pursued by the liquidators of the first respondent against the appellant, a Singapore citizen, who was formerly involved in the management of the respondents and allegedly misappropriated funds from them.

Hong Kong proceedings were commenced first and a worldwide Mareva injunction was granted against, inter alia, the appellant. The terms of the Hong Kong injunction specifically identified assets in Singapore.

Two days after the Hong Kong injunction was obtained, the respondents commenced action in Singapore and applied for a Mareva injunction to prevent the defendants from disposing of assets in Singapore. The action in Singapore covered substantially the same claims and causes of action as those pursued in Hong Kong. After the grant of a Mareva injunction on an *ex parte* basis, the respondents applied to stay the Singapore proceedings pending the final determination of the Hong Kong proceedings on the basis that Hong Kong was the most appropriate forum for the dispute. The High Court granted the stay and confirmed the Mareva injunction in *inter partes* proceedings.

The issues before the Court of Appeal were: (1) whether the court had the power to grant a Mareva injunction and (2) whether it should grant the Mareva injunction. In other words, the first question dealt with the existence of the court's power to grant a Mareva injunction and the second question dealt with the exercise of the power.

The Singapore court's power to grant an injunction can be traced back to section 4(10) of the Civil Law Act which is in these terms: "A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient

that such order should be made." The Court of Appeal clarified that section 4(10) of the Civil Law Act should be read as conferring on the court the power to grant Mareva injunctions, even when sought in support of foreign proceedings. Two conditions had to be satisfied: (1) the court must have *in personam* jurisdiction over the defendant; and (2) the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore.

Given the stay of the Singapore proceedings, the Court of Appeal had to consider if the Singapore court still retained the power to grant Mareva relief. There had been conflicting first instance decisions on this point: see *Petroval SA v Stainsby Overseas Ltd* [2008] 3 SLR(R) 856 cf *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000. The Court of Appeal preferred the *Multi-Code* approach, taking the view that the court retains a residual jurisdiction over the underlying cause of action even when the action is stayed. This residual jurisdiction grounds the court's power to grant a Mareva injunction in aid of foreign proceedings. Further, a party's intentions on what it would do with the injunction had no bearing on the existence of the court's power to grant the Mareva injunction.

Party intentions, however, was a consideration under the second question of whether the court should exercise its power to grant the injunction. Traditionally, a Mareva injunction is granted to safeguard the integrity of the Singapore court's jurisdiction over the defendant so that, if judgment is rendered against the defendant, that jurisdiction is not rendered toothless. The court commented that where it appears that the plaintiff is requesting the court to assume jurisdiction over the defendant for the collateral purpose of securing and safeguarding the exercise of jurisdiction by a foreign court, the court should not exercise its power to grant Mareva relief. On the facts, the court held that it could not be said that the respondents had such a collateral purpose as there was nothing on the facts to dispel the possibility that the respondents may later request for the stay to be lifted. This conclusion suggests that the court would generally take a generous view of litigation strategy and lean towards exercising its power in aid of foreign proceedings.

Given the requirement that the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore, a Mareva injunction is not free-standing relief under Singapore law. The court emphasized that a Mareva injunction in aid of foreign court proceedings is still ultimately premised on, and

in support of, Singapore proceedings. This stance means that service in and service out cases may end up being treated differently. If the defendant has been served outside of jurisdiction and successfully sets aside service of the writ, there would no longer be an accrued cause of action in Singapore on which to base the application for a Mareva injunction. See for example, *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64, [2018] 4 SLR 1420 (see previous post **https://conflictoflaws.net/2018/mareva-injunctions-under-singapore-law/**). On the other hand, if the defendant had been served as of right within jurisdiction and the action is stayed (as in the present case), the court retains residual jurisdiction to grant a Mareva injunction.

After a restrictive court ruling in relation to the court's power to grant free-standing Mareva relief in aid of foreign arbitrations, the legislature amended the International Arbitration Act to confer that power to the courts. It remains to be seen if the legislature would act similarly in relation to the court's power to grant free-standing Mareva relief in aid of foreign proceedings.

To a certain extent, this lacuna is plugged by the recent amendments to the Reciprocal Enforcement of Foreign Judgments Act ("REFJA") (see previous post **https://conflictoflaws.net/2019/reform-of-singapores-foreign-judgment-rules/**). Under the amended REFJA, a judgment includes a non-monetary judgment and an interlocutory judgment need not be "final and conclusive". In the Parliamentary Debates, the minister in charge made the point that these specific amendments were intended to enable the court to enforce foreign orders such as Mareva injunctions. Only judgments from certain gazetted territories qualify for registration under the REFJA. To date, HK SAR is the sole listed gazetted territory although it is anticipated that the list of gazetted territories will expand in the near future. While the respondents had in hand a Hong Kong worldwide Mareva injunction, the amendments to REFJA only came into force after the case was decided.

The judgment may be found at: **https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/ca-188-2018-j—bi-xiaoqiong-pdf.pdf**

Australia’s first contested ICSID enforcement

In February, the Federal Court of Australia delivered its judgment on the first contested enforcement of International Centre for Settlement of Investment Disputes (ICSID) awards in Australia.

Rivista di diritto internazionale privato e processuale (RDIPP) No 4/2019: Abstracts

The
fourth issue of 2019 of the *Rivista di diritto internazionale privato e processuale* (RDIPP,
published by CEDAM) was just released. It features:

Costanza Honorati,
Professor at the University Milan-Bicocca, **La
tutela dei minori migranti e il diritto internazionale privato: quali rapporti tra Dublino III e Bruxelles II-bis?** (The Protection of Migrant Minors and Private International Law: Which Relationship between the Dublin III and Brussels IIa Regulations?; in Italian)

- Few studies have investigated the relation between Migration Law and

PIL. Even less have focused on the interaction between Brussels IIa and Dublin III Regulations. The present study, moving from the often declared assumption that 'a migrant minor is first of all a minor' focuses on the coordination between the two Regulations and the possible application of Brussels IIa to migrant minors in order to adopt protection measures to be eventually recognized in all EU Member States or to possibly place a minor in another EU Member State.

Francesca C. Villata, Professor at the University of Milan, **Predictability First! *Fraus Legis*, Overriding Mandatory Rules and *Ordre Public* under EU Regulation 650/2012 on Succession Matters** (in English)

- This paper aims at investigating: (i) how *fraus legis*, overriding mandatory rules and *ordre public* exceptions position themselves within the system of the Succession Regulation; (ii) whether they are meant to perform their traditional function or to pursue any alternative or additional objective; and (iii) which limits are imposed on Member States in the application of said exceptions and to what extent Member States can avail themselves of the same to preserve, if not to enforce, their respective legal traditions in this area, as acknowledged in Recital 6 of Regulation No 650/2012. The assumption here submitted is that the traditional notions to which those exceptions refer have been reshaped or, rather, adjusted to the specific needs of Regulation No 650/2012 and of the entire EU private international law system, which increasingly identifies in predictability the ultimate policy goal to pursue.

In addition to the foregoing, the following comments are featured:

Michele Grassi, Research Fellow at the University of Milan, **Sul riconoscimento dei matrimoni contratti all'estero tra persone dello stesso sesso: il caso *Coman*** (On the Recognition of Same-Sex Marriages Entered into Abroad: The *Coman* Case; in Italian)

- With its judgment in the *Coman* case, the Court of Justice of the European Union has extended the scope of application of the principle of mutual recognition to the field of family law and, in particular, to same-sex marriages. In that decision the Court has ruled that the refusal by the authorities of a Member State to recognise (for the sole purpose of granting a derived right of residence) the marriage of a third-country national to a Union citizen of the same sex, concluded in accordance with the law of another Member State, during the period of their residence in that State, is incompatible with the EU freedom of movement of persons. The purpose of this paper is to analyse the private-international-law implications of the *Coman* decision and, more specifically, to assess the possible impact of the duty to recognise same-sex marriages on the European and Italian systems.

Francesco Pesce,
Associate Professor at the University of Genoa, **La nozione di «matrimonio»: diritto internazionale privato e diritto materiale a confronto** (The Notion of 'Marriage': Private International Law and Substantive Law in Comparison; in Italian)

- This paper tackles the topical and much debated issue of the notions of 'marriage' and 'spouse' under EU substantive and private international law. Taking the stand from the different coexisting models of family relationships and from the fragmented normative approaches developed at the domestic level, this paper (while aware of the ongoing evolutionary trends in this field) focuses on whether it is possible, at present, to infer an autonomous notion of 'marriage' from EU law, either in general or from some specific areas thereof. The response to this question bears significant consequences in terms of defining the scope of application of the uniform rules on the free movement of persons, on the cross-border recognition of family statuses and on the ensuing patrimonial regimes. With specific regard to the current Italian legal framework, this paper examines to which extent characterization issues are still relevant.

Carlo De Stefano, PhD, **Corporate Nationality in International Investment Law: Substance over Formality** (in English)

- Since incorporation is usually codified in IIAs as sole criteria for the

definition of protected corporate ‘investors’, arbitral tribunals have traditionally interpreted and applied such provisions without requiring any thresholds of substantive bond between putatively covered investors and their alleged home State. By taking issue with the current status of international investment law and arbitration, the Author’s main proposition is that States revise treaty provisions dealing with the determination of corporate nationality so as to insert real seat and (ultimate) control prongs in coexistence with the conventional test of incorporation. This proposal, which seems to be fostered in the recent state practice, is advocated on the grounds of legal and policy arguments with the aim to combat questionable phenomena of investors’ ‘treaty shopping’, including ‘round tripping’, and, consequently, to strengthen the legitimacy of investor-State dispute settlement.

Ferdinando Emanuele, Lawyer in Rome, *Milo Molfa*, Lawyer in London, and *Rebekka Monico*, LL.M. Candidate, **The Impact of Brexit on International Arbitration** (in English)

- This article considers the effects of the United Kingdom’s withdrawal from the EU on international arbitration. In principle, Brexit will not have a significant impact on commercial arbitration, with the exception of the re-expansion of anti-suit injunctions, given that the *West Tankers* judgment will no longer be binding. With respect to investment arbitration, because the BITs between the United Kingdom and EU Member States will become extra-EU BITs, the *Achmea* judgment will no longer be applicable following Brexit. Furthermore, English courts will enforce intra-EU BIT arbitration awards pursuant to the 1958 New York Convention. Investment treaties between the EU and third countries will not be applicable to the United Kingdom.

Finally, the issue features the following case notes:

Cinzia Peraro, Research Fellow at the University of Verona, **Legittimazione**

ad agire di un'associazione a tutela dei consumatori e diritto alla protezione
dei dati personali a margine della sentenza *Fashion ID* (A Consumer-Protection Association's Legal Standing to Bring Proceedings and Protection of Personal Data in the Aftermath of the *Fashion ID* Judgment; in Italian)

Gaetano Vitellino, Research Fellow at Università Cattaneo LIUC of Castellanza, **Litispendenza e accordi confliggenti di scelta del foro nel caso *BNP Paribas c. Trattamento Rifiuti Metropolitani*** (*Lis Pendens* and Conflicting Choice of Court Agreements in *BNP Paribas v. Trattamento Rifiuti Metropolitani*; in Italian)

Gaetano Vitellino, Research Fellow at Università Cattaneo LIUC of Castellanza, **Note a margine di una pronuncia del Tribunale di Torino in materia societaria** (Remarks on a Decision of the Turin Tribunal on Corporate Matters; in Italian)

Chinese Practice in Private International Law in 2018

Qisheng He, Professor of International Law at the Peking University Law School, and Director of the Peking University International Economical Law Institute, has published a survey on the Chinese practice in Private International Law in 2018. The full title of the article is the following: The *Chronology of Practice: Chinese Practice in Private International Law in 2018*.

The article has been published by the Chinese Journal of International Law, a journal published by Oxford University Press. This is the 6th survey published by Prof. He on the topic.

Prof. He has prepared an abstract of his article, which goes as follows:

This survey contains materials reflecting the practice of Chinese private international law in 2018. **First**, the statistics of the foreign-related civil or commercial cases accepted and decided by Chinese courts is extracted from theReport on the Work of the Supreme People's Court (SPC) in 2018. **Second**, some relevant SPC judicial interpretations including the SPC Provisions on Several Issues Regarding the Establishment of the International Commercial Court are introduced. The SPC Provisions on Several Issues concerning the Handling of Cases on the Enforcement of Arbitral Awards by the People's Courts are translated, and the Provisions reflect a pro-arbitration tendency in Chinese courts. **Third**, regarding jurisdiction, a case involving the binding force of a choice of court clause under the transfer of contract is selected. **Fourth**, three typical cases, relating to the conflict of laws rules, are examined and deal with the matters such as personal injury on the high seas, visitation rights, as well as uncontested divorces. The case regarding personal injury on the high seas discusses the "extension of territory" theory, but its choice of law approach deviate from Chinese law. **Fifth**, two cases involving foreign judgments are cited: one analyses the probative force of a Japanese judgment as evidence used by the SPC, and the other recognises the judgment of a French commercial court. **Sixth,** the creation of a "one-stop" international commercial dispute resolution mechanism is discussed. This new dispute resolution mode efficiently coordinates mediation, arbitration and litigation. One mediation agreement approved by Chinese courts is selected to reflect this development. Finally, the paper also covers six representative decisions regarding the parties' status, the presumption of the parties' intention as to choice of law, and the validity of arbitration agreements.