Foreign Sovereign Immunity in Exequatur Proceedings: Notes on the District Court of The Hague's Decision of 5 June 2025

La inmunidad soberana en el procedimiento de exequátur: notas sobre la decisión del Tribunal de Primera Instancia de La Haya del 5 junio 2025

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Abstract: On 5 June 2025, the District Court of The Hague rejected the request for exequatur of a Ukrainian ruling holding energy giant Gazprom jointly and severally liable for damages caused by the Russian Federation in Ukraine. Despite the entry into force of the 2019 Hague Judgments Convention between Ukraine and the Netherlands, the Dutch judge declared itself incompetent on foreign sovereign immunity grounds. This decision underscores the close interplay between private and public international law, raising important questions about the future circulation of judgments during periods of high legal and geopolitical uncertainty.

Keywords: 2019 Hague Judgments Convention, sovereign immunity, territorial tort exception, Ukraine, Russia

Resumen: El 5 de junio de 2025, el Tribunal de Primera Instancia de La Haya rechazó la solicitud de exequátur de una sentencia ucraniana que consideraba al gigante energético Gazprom responsable solidario de los daños causados por la Federación de Rusia en Ucrania. A pesar de la entrada en vigor de la Convención de La Haya de 2019 entre Ucrania y los Países Bajos, el juez neerlandés se declaró incompetente por motivos de inmunidad soberana extranjera. Por lo tanto, esta decisión pone de relieve la estrecha interacción entre el derecho internacional privado y el público, y plantea importantes cuestiones sobre la futura circulación de sentencias en períodos de gran incertidumbre jurídica y geopolítica.

Palabras clave: Convención de La Haya de 2019, inmunidad soberana, territorial tort exception, Ucrania, Rusia

I. Introduction

1. On 5 June 2025, the District Court of The Hague rejected the request for exequatur of Zhnyva, a Ukrainian company, which sought recognition and enforcement of a judgment by the Commercial Court of Zaporizhzhia Oblast against multinational energy corporation Gazprom. A state-owned company of the Russian Federation, Gazprom had been found jointly and severally liable for the damages caused by Russian armed forces in the Zaporizhzhia and Kherson regions. Through the application of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Hague Convention),[1] the Dutch court excluded its own jurisdiction to recognise and enforce the Ukrainian ruling in the Netherlands, due to the Russian Federation's state immunity.[2] Shortly after, Gazprom's asset—which had been seized in September 2024—were released.[3]

2. The proceedings before the District Court of The Hague represented an important testing ground for the 2019 Hague Convention, celebrated as "a turning point in international judicial cooperation",[4] against the tumultuous field of state immunity. This decision also bears substantial practical significance since the Gazprom case stems from the inability of Ukrainian parties to obtain compensation upon the—insufficient—Russian assets available in Ukraine. Accordingly, a comprehensive system of compensation necessarily becomes dependent on cross-border enforcement.[5] Through this decision, however, the District Court of The Hague refused to follow the Ukrainian courts' judicial activism, highlighting the delicate interplay between private and public international law.

II. Factual Background and Procedural History

3. Zhnyva, a Ukrainian agricultural company based in Odessa, had rented eighteen grain silos in Zaporizhzhia and Kherson regions, which it had to abandon following the aggression of the Russian Federation in February 2022. The contents of the silos were subsequently lost. On 5 December 2022, Zhnyva instituted tort proceedings against the Russian Federation before the Commercial Court of Zaporizhzhia Oblast. Since the Russian Federation chose not to appear, on 2 February 2023 the Commercial Court entered a default judgment and ordered it to pay a compensation of about €85 million plus the litigation costs. The Commercial Court considered that the Russian Federation did not enjoy immunity before Ukrainian courts in cases where compensation is claimed for damages that have arisen as a result of the military aggression of Russia against Ukrainian citizens.[6]

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[1] Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters of 2 July 2019 (entry into force: 1 September 2023), Tractatenblad 2024, 42.

[2] Rechtbank Den Haag (District Court of The Hague), 5 June 2025, ECLI:NL:RBDHA:2025:12573.

[3] Y. Prots, 'Russian Gazprom Wins Asset Release in Dutch Court after Claims by Ukrainian Companies, Reuters Reports', *The Kyiv Independent*, 23 July 2025 <https://kyivindependent.com/russian-gazprom-wins-asset-release-in-dutch-court-following-claims-by-ukrainian-companies-reuters-reports/> accessed 9 January 2026.

[4] X. Kramer, 'Scope of Application: Challenges, Compromises and Chances' in M. Weller, J. Ribeiro-Bidaoui and M. Brinkmann (eds), *The HCCH 2019 Judgments Convention : Cornerstones, Prospects, Outlook*, Oxford, Hart, 2023, p. 3.

[5] As observed by I. Badanova, 'Jurisdictional Immunities v Grave Crimes: Reflections on New Developments from Ukraine', *EJIL: Talk!*, 8 September 2022 <https://web.archive.org/web/20240617020500/https://www.ejiltalk.org/jurisdictional-immunities-v-grave-crimes-reflections-on-new-developments-from-ukraine/> accessed 13 January 2026.

[6] Господарський суд Запорізької області (Commercial Court of Zaporizhzhia Oblast), 2 February 2023, Case No. 908/1100/22.

4. On 5 June 2024, Zhnyva initiated proceedings against Gazprom, Gazprom Capital, and Gazprom International Limited Liability Company ("Gazprom") before the same court, with the Russian Federation figuring as an interested third party to the proceedings. With this action, Zhnyva sought a declaration of identity between the Russian Federation and Gazprom. On 27 August 2024, the Commercial Court found them jointly and severally liable for the damages for which Zhnyva had already been awarded compensation—on account of Gazprom being the alter ego of the Russian Federation. As such, Gazprom was held liable even if it did not directly commit the tortious acts in question.[7]

5. The alter ego test which the Zaporizhzhia Commercial Court applied built on the case law of the European Court of Human Rights (ECtHR)[8] and the Ukrainian Supreme Court.[9] First, the Commercial Court considered Gazprom's legal status under national law and its level of institutional independence, finding that Gazprom was established and is partly regulated by state law (which ensures that the Russian Federation remains its majority shareholder). Second, the court investigated Gazprom's activities and the degree of state supervision and control over them. It concluded that Gazprom served a specific public purpose: to operate the unified gas supply system of the Russian Federation and ensure the stability of domestic and external gas supplies, thus supporting the Russian political leadership and its geopolitical goals. The court also observed that, to this end, the Russian political leadership maintains a high degree of factual control over Gazprom's operations, at times even adopting strategic decisions to the detriment of its commercial interests. Finally, the court observed that the Russian Federation effectively treats the assets of Gazprom as if they belonged directly to the Russian Federation.

6. About two months later, on 25 October 2024, Zhnyva requested exequatur for the decision relating to Gazprom before the District Court of The Hague, in order to seek enforcement in the Netherlands. In doing so, it relied on the 2019 Hague Convention and Article 985 of the Dutch Code of Civil Procedure.

III. Decision of the District Court of The Hague

7. The District Court first assessed the applicability of the 2019 Hague Convention. The Convention has been in force between the Netherlands and Ukraine since 1 September 2023, pursuant to its Article 16. Since Zhnyva initiated proceedings against Gazprom on 5 June 2024, the decision of the Zaporizhzhia Commercial Court against Gazprom fell within the Convention's temporal scope. The Dutch court focused on the decision against Gazprom, instead of that against the Russian Federation, based on the argument that Zhnyva sought recognition and enforcement of the former. The close connection between the two decisions did not preclude the temporal application of the 2019 Hague Convention. In the eyes of the Dutch court, the Gazprom decision could, in principle, be recognised and enforced independently of the ruling against Russia.

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[7] Господарський суд Запорізької області (Commercial Court of Zaporizhzhia Oblast), 27 August 2024, Case No. 908/1100/22.

[8] More specifically, *Case of Liseytseva and Maslov v. Russia* (Applications nos. 39483/05 and 40527/10), 9 October 2014; and *Case of Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (Application no. 60642/08), 16 July 2014.

[9] In particular the Supreme Court's decision in the *Prominvestbank* case (Case No. 910/4210/20), which addressed the enforcement of an international arbitral award against the Russian Federation through the seizure of shares in PJSC Prominvestbank held by the State Development Corporation "VEB RF", alleged by the claimant to be an alter ego of the Russian Federation. The Ukrainian Supreme Court test in *Prominvestbank* assumes that state-owned companies are separate legal entities that, as such, are not responsible for the debts of the state, *unless* they represent *de facto* organs of the state. Courts are therefore required to assess: [1] whether the company is established for the performance of commercial purposes; [2] whether the company performs functions inherent to state bodies (i.e., performs a public function not characteristic of private individuals); [3] whether such a company carries out other activities and whether they are main/independent or auxiliary to the performance of its public function; [4] what is the degree of control by the state; [5] whether the company's property is separated from the property of the state.

8. The District Court refrained from making a clear determination regarding the Convention's material applicability. The court was satisfied *prima facie* that the decision in question was a civil/commercial matter as set out in Article 1(1) of the 2019 Hague Convention. However, it also considered that this question, and in particular Gazprom's objection that decisions relating to the conduct of armed forces fell outside the scope of the Convention, was best addressed within the assessment of the issue of sovereign immunity from jurisdiction. The court thus deferred these questions and proceeded based on the presumptive application of the 2019 Hague Convention.

9. Since the Convention does not entail a principle of mutual trust, courts are required to review the jurisdiction of the court of origin.[10] This review extends to immunity considerations as a potential bar to the exercise of its judicial powers. For the District Court, the obligation to conduct such a review *proprio motu* stemmed from Article 13a of the General Provisions Act, a principal law of constitutional rank which provides that the judiciary may act only within the limits that international law provides. The court went on to clarify that the obligation to assess state immunity not only had been formulated by the Dutch Supreme Court[11] but it also emanated from the decision of the International Court of Justice (ICJ) in *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*.[12] Exequatur proceedings do no differ in that respect, and the court considered itself bound to assess sovereign immunity as a potential bar to its jurisdiction, irrespective of the stance of the court of origin on that matter.

10. The Dutch court took the reasoning of the Zaporizhzhia Commercial Court, which had found the Russian Federation liable for Zhnyva's loss of grain, as the point of departure for its immunity assessment. In the Ukrainian judgment, the damage had been causally linked to the military aggression and occupation of Zaporizhzhia and Kherson regions, since Russian armed forces had left the silos unattended, thus enabling looting by third parties and representatives of the Russian Federation. However, the District Court of The Hague considered this close link as evidence that these acts were committed in the exercise of governmental authority (*iure imperii*). As such, they were covered by sovereign immunity from jurisdiction, leading the Dutch court to declare its incompetence to recognise and enforce the decision of the Zaporizhzhia Commercial Court against Russia.

11. Since the Dutch court implicitly accepted the Zaporizhzhia Commercial Court's finding that Gazprom represented an alter ego of the Russian Federation, the latter's sovereign immunity from jurisdiction extended to the claim against Gazprom for which Zhnyva was seeking recognition and enforcement. The court briefly discussed Article 12 of the United Nations Convention on the Jurisdictional Immunities of States and Their Property (UNCSI)[13] as a possible exception to immunity but found its status as customary international law to be uncertain, and its applicability limited to the *forum delicti*.

12. Consequently, the District Court declared itself incompetent to recognise and enforce the decision against Gazprom in light of Russia's sovereign immunity from jurisdiction and ordered Zhnyva to pay the litigation costs.

IV. Commentary

1. Applicability of the 2019 Hague Convention

13. The District Court of The Hague held that the decision against Gazprom for which Zhnyva sought exequatur fell within the temporal scope of application of the 2019 Hague Convention, procee-

[10] T. Domej, 'Recognition and Enforcement of Judgments (Civil Law)' in J. Basedow and others (eds), *Encyclopedia of Private International Law*, Cheltenham, Edward Elgar, 2017, p. 1474.

[11] Hoge Raad (Supreme Court), 1 December 2017, ECLI:NL:HR:2017:3054.

[12] *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* ICJ Rep 2012, p. 99.

[13] United Nations Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004 (not in force), UNGA Res A/59/508.

ding on the assumption that the Convention also applied *ratione materiae*. Both conclusions come with their respective challenges.

A) Material Scope of Application

14. By deferring the question of the material applicability of the 2019 Hague Convention to the immunity assessment, the Court implicitly refused to engage with Article 2(1)(n) of the Convention, which excludes from the scope of its application "activities of armed forces, including the activities of their personnel in the exercise of their official duties". This subparagraph is a corollary of the nil-effect clause in Article 2(5), whose purpose it is to secure the sovereign immunity of states from jurisdiction.[14]

15. The court's decision to defer the qualification of the acts underlying the tort reveals a lack of nuance in its reasoning. In particular, the court seems to equate the issue of the material applicability of the 2019 Hague Convention to decisions concerning the conduct of armed forces with the question of whether the underlying acts qualify as *acta iure imperii*. The wording of Article 2(1)(n), however, gives reason to believe that there is no perfect congruence between these two issues. The addition "*including* the activities of their personnel in the *exercise of their official duties*" (emphasis added) suggests that the meaning of "activities of armed forces" goes well beyond the issue of their qualification. The Explanatory Report confirms this interpretation, stating "that activities of armed forces are in any event outside the scope of the Convention and that States are not obliged to recognise or enforce judgments on these matters, irrespective of whether those activities qualify as *acta iure imperii* in the State of origin or in the requested State."[15] Private individuals or entities who have incurred damages as a consequence of hostilities will therefore be unable to rely on the 2019 Hague Convention to seek the recognition and enforcement of judgments awarding compensation for such damages.[16]

16. That, in turn, leads the present authors to the conclusion that the 2019 Hague Convention did not, in fact, apply to the decision for which Zhnyva sought exequatur.[17] The court appears to have been committed to rule on the matter of state immunity, making an unconvincing assumption about the material applicability of the Convention and collapsing it into the question of state immunity. In doing so, the court concentrates its attention on the sovereign immunity from a jurisdiction it might not have in the first place.[18] However, in the absence of an applicable international instrument of private international law, domestic rules would have been available as a residual pathway to establishing jurisdiction. According to the Dutch Supreme Court, a foreign judgment may be recognised in the Netherlands if

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[14] Kramer (n 4).

[15] F. Garcimartín and G. Saumier, *Explanatory Report on the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, The Hague, HCCH, 2020, § 66.

[16] J. Mohlin and Y. Sushinets, 'Seeking Justice across Borders: Enforcing Foreign Judgments amid Contemporary Armed Conflicts', *International Bar Association*, 4 April 2024 <https://web.archive.org/web/20260114095234/https://www.ibanet.org/seeking-justice-across-borders> accessed 14 January 2026.

[17] See also P. Rossi, 'Dutch Court Denies Exequatur of Ukrainian Judgment against Gazprom under the Hague Judgments Convention', *EAPIL*, 24 July 2025 <https://web.archive.org/web/20260109091645/https://eapil.org/2025/07/24/dutch-court-denies-exequatur-of-ukrainian-judgment-against-gazprom-under-the-hague-judgments-convention/> accessed 9 January 2026.

[18] The relationship between jurisdiction and immunity is complex and domestic courts have developed a variety of different understandings: H. Fox and P. Webb, *The Law of State Immunity*, 3rd edn, Oxford, Oxford University Press, 2015, pp. 82–85. Even within Dutch jurisprudence, there does not seem to be perfect consistency. In the present case, the court concluded that it was not competent (*onbevoegd*) to hear the claim against Gazprom; in a decision of the court of first instance of Bonaire, on the other hand, the court declared itself competent on the basis of the UNCITRAL Model Law on International Commercial Arbitration before turning to the question of Venezuela's state immunity: Gerecht in eerste aanleg van Bonaire (Court of First Instance of Bonaire), 1 February 2019, ECLI:NL:OGEABES:2019:3. The present authors therefore treat immunity as preconditioned upon the existence of jurisdiction; in cases where the court of another state can establish jurisdiction for proceedings against another state, that state enjoys immunity from the exercise of that jurisdiction, i.e., the adjudication of the claim.

(1) the jurisdiction of the court of origin is based on an internationally generally accepted ground of jurisdiction;
(2) the judgment was given in proceedings that meet due process-standards;
(3) the recognition of the judgment is not contrary to Dutch public policy; and
(4) the judgment is not irreconcilable with a judgment given by a Dutch court between the same parties, or with an earlier foreign judgment given in proceedings that involve the same parties and the same cause of action, provided that the earlier foreign judgment is susceptible to revision.[19]

17. Admittedly, relying on Dutch private international law instead of the 2019 Hague Convention would not have changed the outcome of the proceedings—Russia's sovereign immunity would still have led to a dismissal of the claim. Nevertheless, it could have contributed an exemplary treatment of state immunity to an established body of case law on the recognition and enforcement of foreign judgments. Under the chosen approach, however, the court built its assessment on the sand of a material application that is wrongly presumed, setting a questionable precedent for the future application of the 2019 Hague Convention.

B) Temporal Scope of Application

18. With respect to the applicability *ratione temporis* of the 2019 Hague Convention, it is important to consider that Zhnyva sought exequatur not for the decision against the Russian Federation of 2 February 2023 but rather that against Gazprom of 27 August 2024, which postdates the entry into force of the 2019 Hague Convention on 1 September 2023. The court readily accepted what might very well have been a strategic decision on the part of the claimant to bring a legal dispute that predated the entry into force of the Convention between Ukraine and the Netherlands into its temporal scope of application.

19. In the view of the court, the decision against Gazprom could be recognised and enforced independently of that against Russia. There is some merit to this argument. After all, different *petita* underlay the two decisions: Zhnyva sought tort liability against Russia in the first decision, and a declaration of identity between Russia and Gazprom in the second. Moreover, attempting to obtain compensation from a sovereign state's alter ego companies represents a sensible way of enforcing a decision on tort liability in the modern configuration of state commercial engagement.[20]

20. What is more doubtful is whether courts should accept this as a strategy to bring a claim within the temporal scope of application of the 2019 Hague Convention. After all, the underlying tort of the two decisions is the same, and liability for it had been determined in a decision that predated the Convention's entry into force. Conversely, the second decision merely clarified from whom the claimant may seek compensation. The two decisions even share the same docket number. By simply accepting their distinction for temporal purposes, however, the court cleared the path for strategic litigation in which post-judgment motions to extend liability to third parties could be used to bring specific cases within the Convention's temporal scope.[21] Thereby, the court missed a chance to clarify what criteria should be used to determine the time of institution of the relevant proceedings for the purposes of the temporal applicability of the Convention. Instead, it implemented a minimalist test—based on the two decisions' independent enforceability—which glosses over the intricacies of the procedural history of the case and proves little instructive for other courts dealing with similar situations.

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[19] T. Bens and B.V. Houtert, 'Netherlands' in T. Lutzi, E. Piovesani and D. Zgrabljic Rotar (eds), *Recognition and Enforcement of Non-EU Judgments*, Oxford, Hart, 2026, pp. 276–277, based on Hoge Raad (Supreme Court), 26 September 2014, ECLI:NL:HR:2014:2838, 3.6.4.

[20] See C. Miles, 'State Debts and State-Owned Corporations: Trans-Atlantic Perspectives' (2021) 81 *Questions of International Law*; P. Webb, 'Immunities and States' Alter Egos' (2025) 42 *Journal of International Arbitration*.

[21] Rossi (n 17).

21. The Dutch court's approach to the level of connection between the two Ukrainian decisions also appears to be somewhat in contradiction with its focus on the question of state immunity. On the one hand, the court found the two decisions to be independent enough for the second one to fall within the temporal scope of application of the 2019 Hague Convention. On the other hand, it considered that, for the purposes of state immunity, there was "undeniably a close connection between the two judgments" and that it could not exercise its jurisdiction "because Gazprom is regarded as one with the Russian Federation and the conviction of Gazprom is based entirely on the conviction of the Russian Federation." If that is the case, the court's conclusion that the decision against Gazprom could be independently recognised and enforced seems less convincing. If the Dutch court's exercise of jurisdiction is premised on the decision against Russia, it might have erred as to the separation of the cases for the purposes of the temporal applicability of the 2019 Hague Convention.

2. Immunity and Circulation of Judgments

A) The Ukrainian Approach to Sovereign Immunity

22. Under customary international law, states and their property are immune from the jurisdiction of foreign courts.[22] The doctrine of sovereign immunity underwent major developments during the twentieth century, when domestic courts started to confine it to state conduct that is genuinely sovereign in nature (*acta iure imperii*), excluding private or commercial acts (*acta iure gestionis*).[23] When acting as private parties, states are therefore treated as such for jurisdictional purposes and, in principle, do not enjoy immunity. While the distinction between *acta iure imperii* and *acta iure gestionis* is not always clear,[24] acts committed by the armed forces of a state in the course of conducting an armed conflict fall squarely under the first category.[25]

23. The decision of the Zaporizhzhia Commercial Court of 2 February 2023, however, reflects a different approach to foreign sovereign immunity. Rather than engaging in an assessment of the sovereign or commercial character of the conduct at issue, the court approached the immunity defence through the lens of state rights and responsibility. Based on the understanding that the damages alleged by Zhnyva were causally linked to the armed aggression which the Russian Federation carried out against Ukrainian territory, the court refused to characterise such conduct as an expression of sovereign power. This conclusion was grounded in the principle that no state has the right to intervene through armed aggression in another state. By exceeding the limits of its sovereign rights, the Russian government was therefore deemed to have lost its privilege of immunity from adjudicative jurisdiction in connection with the consequences of that conduct.

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[22] This form of state immunity represents a corollary of the principle of equality among sovereign States, and plays a crucial role in avoiding diplomatic tensions and preserving international harmony: see, in general, P.-T. Stoll, 'State Immunity' in R. Wolfrum (ed), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2011. See also, in general, C. G. Van Der Plas, T. Dieben and M. Van Leyenhorst, *State Immunity in Civil Proceedings - Comparative Notes and Critical Analysis,* The Hague, Asser Press, 2025.

[23] R. Garnett, 'Foreign State Immunity: A Private International Law Analysis' in A. Orakhelashvili (ed), *Research Handbook on Jurisdiction and Immunities in International Law*, Cheltenham, Edward Elgar, 2015, p. 360.

[24] S. Oeter, 'The Law of Immunities as a Focal Point of the Evolution of International Law', *Immunities in the Age of Global Constitutionalism*, Leiden, The Netherlands, Brill | Nijhoff, 2014, p. 360.

[25] Under the "nature" test, codified by a number of state immunity statutes, an act is considered to be public rather than commercial if in represents an exercise of governmental authority that could not be performed by a private individual or entity: see C. Sun and A. Llamzon, 'Acta Iure Gestionis and Acta Iure Imperii' in R. Grote, F. Lachenmann and R. Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law*, Oxford University Press, 2018. For example, in evaluating whether international art loans from state museums should qualify as acta iure imperii or acta iure gestionis, the United States District Court for the District of Columbia observed that "there is nothing 'sovereign' about the act of lending art pieces", as any private institution or individual could engage in such an activity: *Malewicz v City of Amsterdam* [2005] 362 FSupp2d 298, § 314.

24. The Ukrainian court delineated the limits of sovereign rights in the context of aggressive war, in particular, in light of Articles 2(4) and 1(1) of the United Nations Charter[26] which require member states, respectively, to refrain from the threat or use of force against the territorial integrity or political independence of any state and to maintain international peace and security through effective collective measures against acts of aggression or other breaches of the peace. Against this backdrop, the court reframed the rejection of the Russian Federation's immunity defence as an obligation incumbent upon Ukrainian courts, most notably under Article 6(1) of the European Convention on Human Rights,[27] which requires states parties to ensure effective access to justice within their jurisdiction.[28] The court further connected this obligation to Ukraine's duties arising from its international counterterrorism commitments. Finally, the judgment drew upon the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration).[29]

25. It is important to note that the approach to the issue of sovereign immunity adopted by the Zaporizhzhia Commercial Court does not represent an isolated or controversial position within the Ukrainian judicial landscape. The rejection of aggressive war as a lawful exercise of state sovereignty has been expressly endorsed by the Ukrainian Supreme Court, notably in case no. 308/9708/19. That case originated from a Ukrainian civilian's claim for moral damages against the Russian Federation, following the death of her husband during a combat mission in the Luhansk region in the summer of 2014. By its Resolution of 14 April 2022, the Supreme Court overturned the lower courts' dismissal of the claim, holding that the activities of the Russian Federation that led to the death of the claimant's husband could not be characterised as sovereign acts enjoying judicial immunity.

26. Considering that, until 24 February 2022, the Russian Federation denied the presence of its troops in Ukraine, plaintiff argued that "the [Russian Federation's] use of its own military units and equipment without distinctive signs, the complete denial of the participation of Russian servicemen in hostilities on the territory of the [Ukrainian] State, and other actions clearly indicat[ed] that the armed aggression of the Russian Federation against Ukraine is not an act of public authority committed with a public purpose." This position relies on the assumption that a state should be precluded from invoking immunity based on *acta iure imperii* where it does not itself recognise the relevant acts as falling within the sphere of sovereign authority.[30] The Supreme Court's reasoning that a war of aggression is not covered by sovereign immunity because it represents a gross violation of international law, however, extends the Russian Federation's potential liability into the phase of full-scale war.

27. These recent interpretative developments concerning the concept of state immunity within Ukrainian courts appear to be driven by the need to respond to the surge in compensation claims that Ukraine has faced since the outbreak of the Russo-Ukrainian war in 2014.[31] The expansive interpretation of Article 79 of the Law of Ukraine "On Private International Law" is thus directly linked to the unprecedented scale of damage caused by Russian military operations. The approach which the Zaporizhzhia Commercial Court adopted in its 2023 ruling, however, rests on an understanding of foreign sovereign immunity as a principle *ex comitate* rather than *de iure*, whereby reciprocity, instead of legal obligations,

[26] Charter of the United Nations of 26 June 1945 (entry into force: 24 October 1945), XV UNCIO 335.

[27] Convention for the Protection of Human Rights and Fundamental Freedoms of 11 April 1950 (entry into force: 3 September 1953), ETS No. 005.

[28] Building, in particular, on *Case of Oleynikov v. Russia* (Application no. 36703/04), 14 March 2013.

[29] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (24 October 1970), UNGA Res 2625 (XXV).

[30] B. Karnaukh, 'Territorial Tort Exception? The Ukrainian Supreme Court Held That the Russian Federation Could Not Plead Immunity with Regard to Tort Claims Brought by the Victims of the Russia-Ukraine War' (2022) 5 *Access to Justice in Eastern Europe*, pp. 171–172.

[31] See I. Izarova, Y. Hartman and S. Nate, 'War Damages Compensation: A Case Study on Ukraine' (2023) 12 *F1000Research*.

govern the relations among states.[32] In this vein, the Ukrainian Supreme Court has expressly stated that "a necessary condition for observing [the principle of sovereign immunity] is mutual recognition of the country's sovereignty; thus, where the Russian Federation denies the sovereignty of Ukraine and wages a war of aggression against it, there is no obligation to respect or observe the sovereignty of that State." While animated by an understandable partisan spirit, this judicial trend departs from the position of the ICJ in *Jurisdictional Immunities*, where the Court held that the applicability of state immunity cannot be made contingent upon the gravity of the alleged breach of international law.[33]

B) The Territorial Tort Exception to Sovereign Immunity

28. In (re)examining the immunity from jurisdiction of the Russian Federation, the first element considered by the District Court of The Hague was the applicability of Article 12 UNCSI to Zhnyva's claim. Given the tortious character of the conduct in question, the Dutch court's choice to begin with the evaluation of the so-called "tort exception" is easily explained. This provision excludes immunity precisely in the context of proceedings relating to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by a foreign state in the territory of the state whose courts have been presented with the compensation claim.

29. Notably, in its 2023 decision against the Russian Federation, the Zaporizhzhia Commercial Court appears to have deliberately refrained from making an explicit reference to Article 12 UNCSI. The wording of the ruling, however, echoes this provision, as it characterises the dispute as one "on compensation for damage caused to an individual, their property, health, life." Moreover, the court referenced the Ukrainian Supreme Court's Resolution of 14 April 2022, which read in Article 12 UNCSI, as well as Article 11 of the European Convention on State Immunity,[34] a rule of customary international law—as such applicable independently from the ratification, by Ukraine and the Russian Federation, of these two conventions.[35] The court also inferred a similar rule from the Friendly Relations Declaration, although that instrument does not, in fact, entail any such exception.

30. The District Court of The Hague took a different view on Article 12. First, the court questioned its status as a rule of customary international law. Then, it excluded its applicability to Zhnyva's claim, on the ground that this provision operates only before the courts of the state in whose territory the relevant conduct occurred. Article 12, commonly referred to as the "Territorial Tort Exception,"[36] is in fact premised on the existence of a sufficiently close territorial connection between the harmful act and the forum state. This connection is reflected in two cumulative requirements: first, that the act or omission giving rise to the damage occurred, at least in part, within the territory of the adjudicating forum; and second, that the author of the act or omission was present in that territory at the time it occurred.[37]

31. Both conditions were satisfied in the claim which Zhnyva had originally brought before the Ukrainian courts: the loss of grain occurred in Zaporizhzhia and Kherson regions in connection with the Russian invasion of those areas. However, the Dutch court's reasoning illustrates that, in the absence of a principle of mutual trust, the 2019 Hague Convention does not clearly regulate the circulation of jud-

[32] On the historical evolution of these diverging conceptualisations of sovereign immunity, see T.M. De Boer, 'Living Apart Together: The Relationship between Public and Private International Law' (2010) 57 *Netherlands International Law Review*, pp. 186–193.

[33] *Jurisdictional Immunities* (n 12) 91.

[34] European Convention on State Immunity of 16 May 1972 (entry into force: 11 June 1976), ETS No. 074.

[35] Relying on the ECtHR jurisprudence in *Case of Cudak v. Lithuania* (Application no. 15869/02) of 23 March 2010 and *Oleynikov v. Russia* (n 28).

[36] Fox and Webb (n 18) pp. 468–483.

[37] Thus excluding transboundary injuries, trans-frontier torts or damage, including spill-overs, shelling and shootings across borders: International Law Commission, 'Draft Articles on Jurisdictional Immunities of States and Their Property, with Commentaries', 1991, UNGA Res A/46/10.

gments rendered pursuant to Article 12 UNCSI, thereby factually limiting their practical effect to the territory of the forum state. Conversely, the 1971 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters[38] expressly clarified that the courts of the state of origin were to be regarded as having jurisdiction in situations corresponding to those contemplated by Article 12 UNCSI. That the 2019 Hague Convention should not address this matter when a closely related instrument does so makes this silence appear to be at the very least a considerable oversight on the part of the drafters, and perhaps even a strategic omission.

32 Nevertheless, this narrowing of Article 12 UNCSI's scope is consistent with the ICJ's findings in *Jurisdictional Immunities,* where the Court excluded the applicability of the territorial tort exception to injuries caused by a foreign state's armed forces in the context of an armed conflict.[39] The ICJ's interpretation also confirms that Article 12 is ill-suited to facilitate the cross-border circulation of the judgments it produces, at least in the absence of explicit guidance in subsequent instruments of private international law. In this sense, *Jurisdictional Immunities* effectively neutralises Article 12 in situations such as the one which Zhnyva lamented.[40] Against this backdrop, it is rather surprising that the District Court of The Hague, in its decision on the claim against Gazprom, made no reference to this aspect of the authoritative ruling by the ICJ, whilst still citing the decision in order to ground its obligation to assess the question of state immunity.

C) Immunity and Enforcement

33. The Gazprom decision underscores how the uncertainty surrounding sovereign immunity may spill over into post-judgment enforcement proceedings, thereby undermining legal certainty and the practical effectiveness of judicial remedies. Limitations such as those emerging from the Dutch ruling affect not only claimants seeking recognition and enforcement abroad, but also enforcement proceedings pursued within the jurisdiction of the original decision. A view across the Pond, to the case of *Agudas Chasidei Chabad v. Russian Federation*, is particularly illustrative in this regard.

34. The case, adjudicated within the District of Columbia Circuit, involved a collection of religious books, manuscripts, and other writings of particular significance to the Chabad Lubavitch movement. Parts of the collection were seized during the Bolshevik Revolution and the Russian Civil War (between 1917 and 1925), while other items were looted by Nazi Germany during the 1941 invasion of Poland and subsequently appropriated by the Soviet Red Army as "war booty." In 2004, a New York non-profit religious corporation sued the Russian Federation, the Russian Ministry of Culture and Mass Communication, the Russian State Library, and the Russian State Military Archive in the US in order to retrieve the collection. The proceedings led to a default judgment against all defendants, ordering the return of the collection to the plaintiff.[41]

35. As defendants failed to comply with the restitution order, plaintiff sought and obtained civil contempt sanctions in the amount of $50,000 per day until compliance. Once the sanctions had accrued to over $175 million and were made enforceable through interim judgments, plaintiff attempted to collect them by attaching the property of three companies located in the US that were owned and controlled by the Russian Federation, based on the alter ego doctrine.[42] At this stage, however, the District

[38] Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1 February 1971 (entry into force: 20 August 1979), 1144 UNTS 249.

[39] *Jurisdictional Immunities* (n 12) 62–78.

[40] Fox and Webb (n 18) p. 475.

[41] *Agudas Chasidei Chabad of US v Russian Federation* [2010] 729 FSupp2d 141.

[42] Tenex-USA, a third-tier subsidiary of the Russian State Atomic Energy Corporation; its parent company, Tenex Joint-Stock Company; and State Development Corporation VEB.RF (VEB), a Russian state development bank.

of Columbia Circuit Court rejected plaintiff's action and voided the underlying restitution order on grounds of sovereign immunity.[43]

36. The reconsideration of the parties' rights, fourteen years after the initial restitution order, stemmed from the evolving interpretation of the immunity framework established by the 1976 Foreign Sovereign Immunities Act (FSIA), and specifically its "expropriation exception."[44] Whereas the 2010 judgment proceeded on the assumption that the fulfilment of either of the exception's two clauses was sufficient to displace foreign state immunity, later jurisprudence has converged on the view that the second clause only extends jurisdiction upon state agencies and instrumentalities.[45] As the *Chabad* claim failed to satisfy the requirements of the first clause, the court ultimately held that the Russian Federation was immune from the restitution claim under the FSIA.

37. In that sense, it is interesting that the *Chabad* court expressly addressed the doctrine of jurisdictional finality, which extends principles of *res judicata* to jurisdictional determinations, excluding its applicability to the case at hand. It justified its conclusion on two grounds. First, the parties against which Chabad sought enforcement had not participated in the original proceedings and therefore did not have the opportunity to engage in the immunity assessment. Second, in the context of a default judgment, defendants were deemed to have preserved the right to raise jurisdictional objections at the enforcement stage. This case provides a further example of how immunity questions may resurface at later stages of proceedings, even long after their initial resolution, as views on immunity change not only across states, but also throughout time.

3. Alternative Pathways

38. The Dutch court's refusal to recognise and enforce the Ukrainian judgment against Gazprom as an alter ego of the Russian Federation might discourage other natural or legal persons who suffered damage from Russia's aggression from pursuing a similar litigation strategy. Since the Ukrainian courts' approach to the sovereign immunity of the Russian Federation as an aggressor state will most likely preclude the recognition and enforcement of their decisions abroad, claimants might choose to explore alternative pathways.

A) Arbitration

39. Rather than pursuing domestic litigation and seeking recognition and enforcement abroad, international arbitration might prove a more promising avenue. A piece of evidence which points in that direction is the arbitral award rendered by an International Chamber of Commerce tribunal in Zurich against Gazprom on 20 June 2025—within three weeks after the decision of the District Court of The Hague. In *Naftogaz v. Gazprom*, Ukraine's state-owned oil and gas company requested payment from Gazprom under a contract concerning gas transit services from 2019. The tribunal found that Gazprom had violated its obligations through a failure to make complete or timely payments, and Naftogaz was awarded $1.37 billion as a result.[46] This is only the most recent development of a protracted legal battle

[43] *Agudas Chasidei Chabad of United States v Russian Federation* [2024] 110 F4th 242.

[44] 28 U.S. Code § 1605(a)(3): "A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States".

[45] *Simon v Republic of Hungary* [2016] 812 F3d 127; *De Csepel v Republic of Hungary* [2017] 859 F3d 1094.

[46] *National Joint Stock Company Naftogaz of Ukraine v. Public Joint Stock Company Gazprom (III)*, ICC Case No. 27245/GL, Final Award of 20 June 2025.

between the two companies which originated in 2014, when Naftogaz sought compensation for the illegal expropriation of its assets in Crimea following annexation by Russia.[47] Naftogaz obtained a $5 billion award for which it is currently seeking enforcement across ten jurisdictions. The successful enforcement of the first award gives reason to believe that the more recent one might also realise at least part of its potential.[48]

40. *Naftogaz v. Gazprom* differs, of course, from the present case in that relief was sought against Gazprom for its own actions—and not as a mere alter ego of the Russian Federation. This might, however, precisely be the key to the success of the arbitration. Future legal actions against Gazprom can prove successful and effective when they amount to more than a legal strategy to circumvent state immunity by way of seeking recognition of domestic decisions directly at the enforcement stage.

B) Register of Damage for Ukraine

41. In reaction to Russia's aggression against Ukraine, the Council of Europe has set up the Register of Damage caused by the Aggression of the Russian Federation against Ukraine, headquartered in The Hague, on 12 May 2023.[49] Article 1 of its Statute confers upon the register the mandate to "record […] evidence and claims information on damage, loss or injury" in connection to Russia's internationally wrongful acts against Ukraine. The Register serves as "the first component of a future international comprehensive compensation mechanism."[50] It allows for natural persons, legal entities, and the State of Ukraine to report damages suffered in connection with the aggression;[51] the priority currently is to record damages to private individuals.[52]

42. Claimants exploring the Register as an alternative pathway should, however, be aware that little to no progress has been made so far towards the creation of a compensation fund;[53] the future utility of the Register as a remedy for damages relating to the military aggression is thus uncertain. Still, it does seem at least not less likely that claimants would ultimately obtain compensation through the Register than on the basis of court decisions that third states cannot recognise and enforce.

V. Conclusion

43. The District Court of The Hague was right to deny Zhnyva's request for exequatur, although its reasoning was not always convincing nor airtight. Seemingly eager to pass judgment on the question of state immunity, the court glossed over concerns regarding the applicability of the 2019 Hague Convention, whose Article 2(5) seems to represent a major limit to the circulation of judgments under the Convention. In the absence of a principle of mutual trust between the courts of the states parties, both the court in the original jurisdiction and the one in the jurisdiction where recognition and enforcement

[47] *National Joint Stock Company Naftogaz of Ukraine v. Public Joint Stock Company Gazprom (I)*, SCC Case No. V2014/078/080, Final Award of 22 December 2017.

[48] In particular in connection to the Russian courts' assertion of jurisdiction upon sanctions-related disputes and the issuing of parallel anti-suit injunctions: see Aceris Law LLC, 'Naftogaz v. Gazprom: Final Arbitral Award Rendered, Enforcement Proceedings Imminent', *Aceris Law*, 13 July 2025 <https://web.archive.org/web/20260113121151/https://www.acerislaw.com/naftogaz-v-gazprom-final-arbitral-award-rendered-enforcement-proceedings-imminent/> accessed 13 January 2026.

[49] Council of Europe, *Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine* (16 May 2023).

[50] A. Mężykowska, 'Register of Damage for Ukraine' in M. Balcerzak and E. Cała-Wacinkiewicz (eds), *Legal Perspectives on the Russia-Ukraine War*, London, Routledge, 2025, p. 74.

[51] Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, *Categories of Claims Eligible for Recording* (RD4U-Board(2024)07-Rev1-EN).

[52] Mężykowska (n 50).

[53] ibid 82.

are sought must determine that they are *not* incompetent due to the sovereign immunity of a third state. This is a very high threshold—and one that effectively nullifies the territorial tort exception in connection to the recognition and enforcement process. Article 2(5) thus turns into a point of friction between the Convention's goal to achieve uniformity, and state immunity as a concept of public international law that continues to be hotly debated.

44. Even though it proved unsuccessful in this case, the Ukrainian approach to limit immunity for actions relating to aggressive war is not necessarily without consequence. The law of state immunity, after all, is "very much in the hands of domestic courts."[54] The recent and consistent Ukrainian jurisprudence in this sense still represents instances of state practice which can ultimately prove relevant for determining the content of customary rules of the international law on sovereign immunity.

45. At present, however, an exception to sovereign immunity from jurisdiction for acts connected to aggressive war, as formulated in Ukrainian case law, does not appear to exist in customary international law. With its decision, the District Court at The Hague pushed back against a lawfare strategy based on that assumption. As such, the present ruling identifies the immediate limits (at least in terms of circulation) to practices of judicial activism in connection to "political questions."[55] The strategy of discursively approximating the loss of grain to Russia's military aggression clearly backfired. After all, the close connection to the Russian aggression was a core argument for the Zaporizhzhia Commercial Court's decision not to recognise Russia's sovereign immunity. Before the District Court of The Hague, however, it was precisely the close connection between the tortious conduct and the Russian Federation's military aggression which the Ukrainian plaintiff continued to emphasise that obligated the court to respect Russia's immunity and led it to declare itself incompetent.

46. Finally, the decision of the District Court of The Hague shows that the day-to-day operating life of international law goes on. Even at a time when there seems to be little respect for international law among a concerning number of world leaders,[56] much of it remains intact and continues to function in the background.

[54] As observed by B. Conforti, 'The Judgment of the International Court of Justice on the Immunity of Foreign States: A Missed Opportunity' (2011) 21 *The Italian Yearbook of International Law Online*, p. 142.

[55] For a critical analysis of this phenomenon within Ukrainian borders pre-Russian invasion, see A. Koldashov and D. Hroza, 'Judicial Activism in Ukraine: Advantages, Risks and Legal Boundaries' (2024) 48 *Право та інновації*.

[56] M. Yang, '"I Don't Need International Law": Trump Says Power Constrained Only by "My Own Morality"', *The Guardian*, 8 January 2026 <https://web.archive.org/web/20260111020212/https://www.theguardian.com/us-news/2026/jan/08/trump-power-international-law> accessed 15 January 2026.