The Private Side of Transforming Our World. UN Sustainable Development Goals 2030 and the Role of Private International Law

By Ralf Michaels, Veronica Ruiz Abou-Niagm and Hans van Loon (eds.), Intersentia, 2021, 571 pages

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Adopted in 2015, the UN Agenda for Sustainable Development contains 17 Sustainable Development Goals (SDGs), to be attained by 2030. To achieve these objectives, both developed and "developing" countries should find a workable balance between economic, environmental and social aspects of development, while addressing the multiple causes and consequences of, *inter alia*, environmental depletion and economic inequalities. Halfway to the 2030 due date, many targets remain conspicuously out of reach, with efforts to address poverty and hunger experiencing major setbacks as a result of armed conflicts, and health and educational goals being negatively impacted by the COVID-19 pandemic (United Nations, The Sustainable Development Goals Report 2023: Special Édition, available at https://unstats.un.org/sdgs/report/2023/The-Sustainable-Development-Goals-Report-2023.pdf). Meanwhile, the generational imperative to address climate change, "the greatest challenge of our time", risks transforming into the greatest global failure of all time.

Piecemeal progress highlighted by recent progress reports calls for renewed commitments and efforts by all stakeholders, as well as innovative approaches by experts from a range of legal disciplines. Answering this need, this book explores the overlooked role and methods of private international law for achieving the SDGs. After the launch of the SDGs, legal scholars were quick to associate the successful realisation of the SDG with states' fulfilment of their obligations under public international law (R. E. Kim, The nexus between international law and the sustainable development goals, (2016) 25(1) Review of European, Comparative & International Environmental Law. 15-26). Private international law was, at the outset, missing from the scholarly and policymaking debate. Yet, as the editors of this long-needed contribution point out, "[m]ost transactions, most investments, most destruction of our environment, happen not through public but through private action…" (p. 9). With time passing and an ever-smaller window of opportunity, finding effective solutions also rests on the successful mobilisation of private international law resources.

The chapters of the book each examine a different SDG in turn, uncovering regulatory gaps and obstacles to their realisation, while also identifying private international law tools to address them. The results of this praiseworthy intellectual exercise unmistakably show that private international law lies at the heart of the many policy and legal dilemmas that confront policymakers today: how to reduce poverty while fostering economic prospects? How to achieve prosperity while avoiding environmental destruction? How to promote private investments and technological innovations and simultaneously pursue equality and human rights? This book seeks to provide meaningful legal answers without overly indulging in technicalities.

Each chapter makes a worthy contribution to the debate, although some stand out for the topicality of the subjects and the breadth of the ground they cover. Picking a few illustrative examples, Eduardo Alvarez-Armas approaches the commitment to climate action through private international climate change

litigation. This, the author persuasively suggests, could potentially trigger further public debates on climate action and raise democratic scrutiny over the behaviour of multinational corporations. At the same time, the chapter unveils private international law's under-researched role in supporting policies for the mitigation of, and adaptation to, climate change. Among others, it examines how result-oriented jurisdictional and choice-of-law rules could widen the protective framework for victims of environmental damage, including giving affected parties the option to choose more than one law in addition to the law of the place of injury. It also examines the existing obstacles to utilising private international law rules in a strategic way; for example, it shows that tort-based compensation may not always work as a deterrent against man-made climate disasters, and its use ultimately depends on the economic power of the tortfeasor, among others.

The complementing contribution by Nikitas Hatzimihail, dedicated to affordable and clean energy, once more emphasises the potential contradictions to pursuing distinct SDGs in isolation and without support from private international law. In a world where only some regions have access to reliable energy – let alone, clean energy – the legal framework must be able to channel private investments in countries lagging behind, while at the same time ensuring that the transition from fossil-based systems to renewable energy brings mutual benefits. To this end, it must account for the risks posed by the growing demand for rare-earth materials essential for clean energy production, storage and use. Private international law can help in both respects by ensuring that investments promote technological innovation where it is needed the most, while not undermining the prospects of countries which possess those materials but have lower environmental standards and weaker private international law traditions.

The chapter by Benyam Dawit Mezmur, dedicated to the eradication of poverty, highlights the multidimensional nature of this challenge – similarly to other SDGs – while also capturing the unfulfilled role of private international law in addressing poverty's amplifiers. Focussing on families on the move, it identifies weak points and blind spots at the intersection between migration governance, private international law and human rights, leading, among other things, to undermining the best interests of children and, in turn, greater risks of precariousness and poverty. The chapter by Sabine Cornelup and Jinske Verhellen delves deeper into migration policy, arguing that private international law rules have been instrumentalised for imposing restrictions through the back door. In the face of the large number of persons migrating via family reunification, for example, to put a cap on authorised entries, it suffices to challenge the existence of their family relations. Migration, however, the authors argue, should follow private international law and not the other way round.

When reading the contributions, one therefore frequently comes across insightful reflections on trends within the discipline, as well as relevant substantive law developments. One further example is provided by Ulla Liukkunen who, in her chapter, examines efforts to ensure decent work against the proliferation of atypical employment relations as well as subcontracting arrangements. In this context, traditional rules of private international law may not be as effective in protecting labour rights across borders. But, as she underlines, what is also noteworthy is the corresponding rise in jurisdictions of several high-income countries of result-oriented considerations in choice of law as well as overriding mandatory rules enabling the application of substantive labour law.

Far from being a set of neutral and disengaged norms – a romantic and

"neo-classical" thesis that still holds sways in some circles – private international law constitutes both a coordinating mechanism as well as a regulatory toolkit made of flexible rules and principles that could, in principle, help achieve substantial solutions in relations to the SDGs but also other justice issues that affect our world today. And yet, this is a discipline which remains on the margins of policymaking. The book may not be able to bridge the gap and find its way into all policymakers' hearts and minds, though. While targeted to a wide range of actors, including decision-makers and development experts, it will not make an easy read for laypersons with only a modicum of knowledge of private international law.

Do not expect a manual for outsiders, practitioners and activists, then. Only a few chapters contain reflections on how rules can be operationalised to better achieve the SDGs. More than an attempt to reshape practices around the SDGs or put private international law into the vocabularies of development experts, environmentalists or economists, this book speaks volumes about the state of private international law itself, especially among European specialists. Illustrating this, the book reveals and takes issue with the pernicious effects of imagined disciplinary boundaries between the public and the private, on the one hand, and the national and the international, on the other, that were for long engrained in the dominant legal consciousness. From this perspective, the book is more than just a mapping of instruments and methods, as it may come across at first sight. It is instead a call to reconfigure the discipline and recalibrate its methods to new global objectives.

And yet, the book does not manage to entirely fulfil what should then become a more ambitious and radical collective endeavour, as it omits vital questions concerning its past, present and future. While it reveals the "inequalities behind the technicalities" (p. 27), the overarching question of whether private international law is itself a sustainable tool, and whether *as of today* it contributes or instead weakens the fight for SDGs is not given strong attention in the collection – this, despite the fact that private international law is already a pillar of the global governance architecture. The chapters also indicate that for their authors, the centre of gravity of legislative initiatives and judicial innovations has *not* been in countries needing sustainable development the most. Likewise, the authors express a preference for harmonised conflict rules, but do not systematically engage with the question of the extent to which international commitments and harmonisation efforts may have to be balanced with national prerogatives – especially in low- and middle-income countries.

To their credit, the editors acknowledge that the book was not designed to provide all answers, but rather to raise relevant questions. From this perspective, it also constitutes a valuable contribution as it sets a research agenda and identifies gaps that ought to be filled by future investigations, at both conceptual and empirical levels. And yet, to reveal both the limits and prospects of private international law, one may argue that future research should not rest on a "progress illusion". With the globalisation project in profound crisis, to devise rules and principles underpinning cross-border exchanges and relations that are both socially and ecologically sustainable, neither the bright nor the darker side of private international law should be overlooked; rather, it should be confronted and challenged, if this discipline and its tools are to be used to advance everyone's well-being and prosperity.

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