

**60 Years T.M.C. Asser Instituut conference, The Hague, 24 October 2025**

## **'Adapting Private International Law in an Era of Uncertainty'**

**By Hans van Loon**

### **1. Introduction**

**2. What role for private international law in global governance?**

**3. The *Private Side of Transforming our World* project**

**4. The global turn of private international law**

**5. The underutilization of private international law**

**6. The need for private international law to contribute to achieving the SDGs.**

**7. Conclusion**

### **1. Introduction**

I am grateful and honoured to have been invited to deliver today's keynote speech. It also brings back memories of the invitation I received twenty years ago to say a few words when the Asser Institute celebrated its fortieth anniversary. The keynote speaker at the time was Lady Rosalyn Higgins, then President of the International Court of Justice, who spoke about “40 years of public international law”<sup>1</sup>. I followed her – then as Secretary General of the Hague Conference –, with “40 years of private international law”<sup>2</sup>. And Jaap de Zwaan, then Director of the Clingendael Institute, closed the line with “40 years of European law”<sup>3</sup>.

In her keynote, Rosalyn Higgins listed progress in various areas of public international law since the end of the Cold War. But she ended up on a more somber note, when she spoke about the shortcomings of the collective security system established by the Charter of the United Nations (UN): the prohibition of the use of force and the right to self-defense. And she concluded “We have in my view entered a period of increasing uncertainty” about the fundamentals of the international legal order.

---

<sup>1</sup> T.M.C. Asser Instituut (O. Ribbelink ed.), *Forty Years of International Law*, 7-14.

<sup>2</sup> *Ibid.*, 15-21

<sup>3</sup> *Ibid.*, 23-27

With hindsight, we can say that Rosalyn Higgins' words heralded the start of the 'age of uncertainty' to which the title of our conference today refers. We are currently witnessing even more intense unlawful use of force and abuse of the right to self-defense, leading to appalling violations of humanitarian law. In addition, we are seeing a breakdown of the multilateral trading system, increasing inequality between countries and within societies, a doubling of the number of displaced persons over the past decade, serious environmental degradation and depletion of resources, loss of biodiversity and, most fundamentally of all, the unabated continuation of global warming.

## **2. What role for private international law in global governance?**

In this bleak scenario, is there still a constructive role for private actors, private law and private international law, or is it solely up to public actors – States – and public and public international law to contribute to better global governance?

Tobias Asser would have been surprised by this question. Asser played a prominent role in the negotiations between States concerning the Suez Canal, the Congo and the Hague Peace Conferences, whilst at the same time championing private international law and taking the initiative for the Hague conferences on private international law. He moved effortlessly between public and private law, and between public law and private international law – fields which, for him, blended seamlessly into one another.<sup>4</sup>

The Asser Institute owes its broad mandate, public and private international law as well as European law, to Asser's versatility. Unfortunately, much of Asser's holistic vision was lost due to the rise of nationalism and its perverse excesses, which had already begun in Asser's own time. As a result, his (and Mancini's and Savigny's) international approach, gave way to a conception of private international law as part of *national* law, distinct from *international* public international law.

This divergence of public and private international law still plays us tricks today. It has left *private* international lawyers blind to its larger international law context and created a sort of insulated regulatory space for private interactions. And at the same time, it has left *public*

---

<sup>4</sup> A. Eyffinger, *T.M.C. Asser (1838-1913) Founder of The Hague Tradition – Dreaming the Ideal, Living the Attainable*, (2011). H. van Loon, *The Hague Conference on Private International Law: Asser's vision and an evolving mission*, *NIPR (Nederlands Internationaal Privaatrecht)* Vol. 30, (2012), pp. 358-361; also, in: *Hague Yearbook of International Law* V 24, (2012), 3-10

international lawyers blind to the actual and potential functions of private international law in global governance.<sup>5</sup>

Of course, we should not overestimate the role of private international law in global governance. Private law and private international law offer no solace when it comes to Rosalyn Higgins' concerns about the collective security system of the UN Charter. On the other hand, private international law *is* relevant to another important part of the Charter, namely Chapter IX, International Economic and Social Cooperation, for higher standards of living, full employment and universal respect for human rights, among others. Private international law *is* of importance to these objectives, although few people may have had private international law in mind when drafting the Charter of the United Nations – which, incidentally, came into force exactly 80 years ago today, on 24 October 1945.

### **3. The *Private Side of Transforming our World* project**

Here the project *The Private Side of Transforming our World* comes in. Ten years ago, in September 2015, the United Nations adopted the 2030 Agenda for Sustainable Development, Transforming our World.<sup>6</sup> It offers a plan for “people, planet and prosperity”, with 17 goals for global action until 2030, the Sustainable Development Goals, or SDGs. The Agenda is not only aimed at States, but also at civil society, the business community and the private sector, academia, “and all people”.<sup>7</sup>

However, the Agenda seems to focus primarily on public actors and States for its implementation. It refers to various treaties in the field of public international law, but the role of private and private international law is not addressed at all. And yet, many of the problems that the Agenda aims to tackle are both caused and can be solved by private action. Indeed, the SDGs presuppose the functioning of private international law in cross-border situations.

This absence of private international law in the UN Agenda prompted Ralf Michaels, Veronica Ruiz and me to set up a global project to investigate the actual role of private international law in global governance, its hidden role, so to speak, and its potential to help change our world –

---

<sup>5</sup> A Mills, *The Confluence of Public and Private International Law – Justice, Pluralism and Subsidiarity in the International Constitutional Ordering of Private Law*, (2009)

<sup>6</sup> *Transforming our world: the 2030 Agenda for Sustainable Development*, United Nations General Assembly A/RES/70/1 (25 September 2015), [Transforming our world: the 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs](#).

<sup>7</sup> *Ibid.* par.52.

our “era of uncertainty”. We began by calling for papers on the role and potential of private international law in relation to each of the 17 SDGs. We expected a dozen or so papers. In fact, we received over 130 proposals from all over the world.

A conference at the Max Planck Institute in Hamburg in September 2021 resulted in the book *The Private Side of Transforming our World* with contributions from across the globe.<sup>8</sup> The Hamburg conference was then followed by three *regional* conferences on PIL and sustainable development, one in Latin-America, in Asunción, in 2022<sup>9</sup>, one in Asia, in Wuhan, in November 2024<sup>10</sup>, and one in Africa, in Pretoria, in July of this year<sup>11</sup>, and more are coming.<sup>12</sup> The conferences in Latin America and Asia have resulted in open-access online publications; the conference in Wuhan has also been published in a print journal, and the publication on the conference in Pretoria is in preparation.

Three main findings emerged from all this. First, the idea that private international law has a role to play in achieving Agenda 2030 has resonated with scholars across the world. Secondly, many contributors share the feeling that, in our quest for a more sustainable world, there is generally too much emphasis on inter-State relations, liabilities and remedies, and too little on access to justice and remedies for private actors. Thirdly, many feel that private international law must urgently become more aware of the SDGs, commit more strongly to their achievement, and, if necessary, re-conceptualise itself.

I suggest we take a closer look at these three points.

#### 4. The global turn of private international law

---

<sup>8</sup> R Michaels, V Ruiz-Abou-Nigm and H van Loon (eds), *The Private Side of Transforming our World – UN Sustainable Development Goals 2030 and the Role of Private International Law*, (2021), [https://www.stradalex.eu/en/se\\_rech/search/root/d44d72a77bc58b9455fc2b5ad4f31fd84d2e83bdc7fab88e88a3433077dd59b::1](https://www.stradalex.eu/en/se_rech/search/root/d44d72a77bc58b9455fc2b5ad4f31fd84d2e83bdc7fab88e88a3433077dd59b::1) (open access).

<sup>9</sup> *Revista Direito.UnB* | Setembro-Dezembro, 2023, V. 07, N.3, T.II., <https://www.bing.com/search?q=Revista+Direito.UnB+%7C+Setembro-Dezembro%2C+2023%2C+V.+07%2C+N.3%2C+T.I.+&form=ANNH02&refig=69eb27f4d4504536b82b8e7f5d7d5d30&pc=U531>

<sup>10</sup> R Michaels, V Ruiz-Abou-Nigm, H van Loon (eds) Special Issue: Private International Law and Sustainable Development in Asia, *Chinese Journal of Transnational Law*, September 2025 V 2 (2) <https://journals.sagepub.com/doi/10.1177/2753412X251369398>

<sup>11</sup> <https://lawschoolsgloballeague.com/events/the-summer-academic-conference-2025/>

<sup>12</sup> See also the dedicated website of the Max Planck Institute, Hamburg, <https://www.mpipriv.de/1490772/sdg-verwandte-projekte>

First, the fact that the project has attracted private international law scholars from around the world suggests that what has been called the ‘global turn’ in private international law is starting to gain traction worldwide. To see this in perspective, remember that only 60 years ago, when the Asser Institute was founded, private international law was essentially a branch of sport practiced in Europe, the US, and to some extent Latin America. It was regarded as a rather marginal aspect of *national* legislation. Subsequently, we saw a regional, *European* dimension to private international law emerge in Europe, reinforced by the transfer of legislative powers in the field of private international law to the European Union, following the Treaty of Amsterdam of 1997

Ten years later, in 2007, the EU became a member of the Hague Conference, which enabled – empowered – the EU to act as a global player in the Conference’s unification work. This, in turn, gave a boost to the Conference’s global role. The EU played a prominent role in the negotiations on the 2005 Hague Choice of Court Convention, the 2007 Hague Convention on Support for Children and Families, and the 2019 Hague Judgments Convention. Moreover, the EU played a leading role in the entry into force of these Conventions.<sup>13</sup>

So, you see, the idea of a *global* horizon of private international, its global turn, is only a recent realization of the impact of globalization on private international law.<sup>14</sup> Now, what is so encouraging is that our Project confirms that this global perspective apparently appeals to private international law scholars worldwide, and opens new possibilities for dialogue, reflection, and cooperation across the world.

An example. In his contribution to our book on *SDG 6 Clean Water and Sanitation*, Richard Opong, from Ghana teaching in Canada, refers to litigation in the Global North, such as the Vedanta case in the UK<sup>15</sup>, concerning environmental damage in Africa caused by subsidiaries of parent companies in Europe. Opong acknowledges that allowing such lawsuits against multinationals in the Global North can be useful. It gives individuals and communities in the global South access to justice. At the same time, he argues, litigating these claims outside the States where the harm occurred comes at the expense of empowering those States’ judicial and

---

<sup>13</sup> See, in more detail, H van Loon, « Quelques remarques sur la complémentarité des efforts mondiaux et européens pour unifier le droit international privé », Ch.21 in J-Y Carlier, S Francq (eds), *Vers un code européen de droit international privé – Liber amicorum Marc Fallon* (2025), 397-411.

<sup>14</sup> *Idem*, “The Global Horizon of Private International Law”, Inaugural Lecture, Private International Law Session 2015, *Recueil des cours*, V 380, 1-108 (2016), [The Global Horizon of Private International Law Inaugural Lecture, Private International Law Session, 2015 \(Volume 380\)](#)

<sup>15</sup> UK Supreme Court, 10 April 2019, *Vedanta Resources PLC and another v Lungowe and others* [2019] UKSC 20

legal systems to develop the necessary expertise to handle those claims. It might be “another form of environmental colonialism”.<sup>16</sup>

Opong has a point here. He makes us reflect on the obviousness of the Brussels/Lugano jurisdictional system with its rigid grounds of jurisdiction. Not that *forum non conveniens* should be introduced, the system helpfully offers predictability and certainty. Rather, we should think of mechanisms for judicial communication and cooperation, including perhaps joint hearings, as are currently being discussed in the Hague Conference’s parallel proceedings project<sup>17</sup>, or even for the transfer of jurisdiction as in the 1996 and 2000 Hague Conventions.<sup>18</sup>

### **5. The underutilization of private international law**

The second finding of our project was that many share the feeling that in our quest for a more sustainable world, there is too much emphasis on inter-State relations, liabilities and remedies, and too little on access to justice and remedies for private actors.

This confirmed our feeling that the SDGs, and also most global instruments relevant to the SDG’s, tend to have a blind spot for the role of private and private international law. In his Chapter on ‘SDG 14: Life Below Water’ Tajudeen Sanni from South Africa argues that the Convention on the Law of the Sea (UNCLOS), although it is called ‘the Constitution of the Sea’, does not provide standing, access to justice and remedies to local communities suffering harm in the marine space. Instead, UNCLOS leaves it to the States to make ‘recourse ... available in accordance with their legal systems for... relief [for] damage caused by pollution of the marine environment by natural or legal persons under their jurisdiction’. But this does not work, he argues, because what is needed is a full and effective private international law regime of responsibility, accountability and liability. And he makes similar observations on the 1992 Convention on Biological Diversity (CBD).<sup>19</sup>

And if we also look at climate change, we see that neither the 1992 Rio Climate Convention (UNFCCC) nor the 2015 Paris Agreement provide civil or administrative mechanisms with remedies for citizens.

All these important *global* public international law instruments would better achieve their goals if they did not depend only on States for their implementation but also created space for private legal action including uniform rules on private international law.

---

<sup>16</sup> *The Private Side...* (fn 8), 189-216

<sup>17</sup> See text proposal, <https://assets.hcch.net/docs/007c2a52-2611-4470-b1dc-4d041c77f7c4.pdf>

<sup>18</sup> 1996, Articles 8,9; 2000, Art 8

<sup>19</sup> *The Private Side...*(fn 8), 441-462

However, what is so interesting is that both the Rio Convention and the Paris Agreement have been successfully invoked by citizens in cases against both governments and companies. Starting with the Urgenda case<sup>20</sup>, and now also in the Milieudefensie-Shell climate case<sup>21</sup>, Dutch courts have accepted that these treaties, although they formally bind States only, have a reflex effect in Dutch civil tort law, and we see similar developments in climate change litigation around the world.<sup>22</sup>

Another example of too much emphasis on inter-State relations, and too little on access to justice and remedies for private actors is from a different field: cross-border labour. The Agenda on decent work of the International Labour Organisation (ILO) is central to SDG 8 *Promote ...full and productive employment, and decent work for all*. However, as Ulla Liukkunen from Finland notes in her chapter ‘SDG 8: Decent Work and Economic Growth’, the ILO has not focused on the *transnational* dimension of decent work.<sup>23</sup> Forty years ago, the ILO commissioned a survey on the law applicable to international employment relations, but there was no follow-up. So, there remains an urgent need for global system of private international law to ensure adequate protection of labour rights in transnational situations.

If we move from the global to the *regional* level and turn to the European Union, there is no doubt that the EU has made important strides in private international law – building, certainly at the start, on work done by the Hague Conference. The Corporate Sustainability Due Diligence Directive (CSDDD) enacted in July 2024 establishes, parallel to a public supervision system, a civil liability regime for adverse impacts on human rights and the environment.<sup>24</sup> In order to create a level playing field, that civil liability regime not only applies to companies based in the EU, but also to firms based in third countries which are active on the EU market. Surprisingly, however, the Directive does not establish the necessary private international law rules for lawsuits involving such third country-based firms.

---

<sup>20</sup> District Court The Hague, 24 June 2015, *Urgenda Foundation v. The State of the Netherlands*, [ECLI:NL:RBDHA:2015:7196](https://www.rechtspraak.nl/ECLI:NL:RBDHA:2015:7196), [Rechtbank Den Haag, C/09/456689 / HA ZA 13-1396](https://www.rechtspraak.nl/Rechtspraak/Rechtspraak%20aan%20den%20Haag/C/09/456689/HA_ZA_13-1396) (English translation), confirmed by the Hague Court of Appeal (on different grounds) and subsequently by the Dutch Supreme Court, 20 December 2019, [ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf](https://www.rechtspraak.nl/ECLI:NL:GHDHA:2019:1000)

<sup>21</sup> Court of Appeal The Hague, 12 November 2024, *Shell PLC cs v. Vereniging Milieudefensie cs.*, [ECLI:NL:GHDHA:2024:2100](https://www.rechtspraak.nl/ECLI:NL:GHDHA:2024:2100), [Gerechtshof Den Haag, 200.302.332/01](https://www.rechtspraak.nl/Rechtspraak/Rechtspraak%20aan%20den%20Haag/200.302.332/01) (Engelse vertaling) (appeal to the Supreme Court pending).

<sup>22</sup> See the Columbia Sabin Center *Climate Litigation Database*, <https://www.climatecasechart.com/>, search for UNFCCC and Paris Agreement.

<sup>23</sup> *The Private Side...* (fn 8), 245-281.

<sup>24</sup> *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859*, Art 29, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02024L1760-20260318>, see also fn 33 infra.

This is a problem, because the Brussels Ia/bis Regulation does not offer a common forum to sue such third country companies, but leaves that to national law of the Member States. And the same applies when it comes to suing subsidiaries and suppliers based in third countries together with the lead company based in a Member State. And with respect to applicable law, the choice of law option that Article 7 of the Rome II Regulation offers to victims, only extends to environmental torts, not to human rights. That's why the GEDIP made proposals to fill these jurisdictional and applicable law gaps in the CSDDD, but so far without success.<sup>25</sup>

The CSDDD builds on the UN Principles on Business and Human Rights, the UNGPs, the 'Ruggie Principles'. There we have a very encouraging example of the coming together of the *public* sphere and the *private* sphere. The Ruggie Principles require companies to exercise due diligence in respect of human rights, and in fact give *them* – *private* entities – responsibilities, which used to be the competence of *public* authorities.<sup>26</sup>

Sure, the UNGPs are non-binding, soft law, and they do not turn companies into subjects of public international law. Yet, they break through the insulated regulatory space for private relations. Moreover, they provide a hook for private and private international law litigation on human rights and the environment, including global warming, e.g., in the Milieudefensie-Shell case.

## **6. The need for private international law to contribute to achieving the SDGs**

This brings us to the third finding of our project: there is an urgent need to make private international law more aware of its role in the global legal architecture and more involved in the achievement of the SDGs, and if necessary to reconceptualise itself.

In some fields of private international law this awareness is already alive, in others it is still dormant or absent. Regarding persons and families, the widely embraced Hague Children's Conventions reflect a worldwide realisation of the need to coordinate the diversity of rules on protection of children and families under civil law and enable direct transnational cooperation between courts and administrative bodies. And these Conventions are influenced by

---

<sup>25</sup> Recommendation of the European Group of Private International Law (GEDIP) concerning the Proposal for a directive of 23 February 2022 on Corporate Sustainability Due Diligence, following up on its Recommendation to the Commission of 8 October 2021, <https://gedip-egpil.eu/wp-content/uploads/2022/07/Recommendation-GEDIP2022E.pdf>

<sup>26</sup> A. Duval, "Ruggie's Double Movement: Assembling the Private and the Public Through Human Rights Due Diligence", *Nordic Journal of Human Rights* (2023), [Ruggies Double Movement- Assembling the Private and the Public Through Human Rights Due Diligence - A. Duval - 2023.pdf](#)

international and regional human rights instruments, especially the 1989 UN Convention on the Rights of the Child (UN CRC). They shape their effect across international borders.<sup>27</sup>

In addition to this “vertical dimension” – ensuring respect for human rights in the transnational sphere, think also of the 2021 Resolution of the *Institut de Droit International on Human Rights and Private International Law*<sup>28</sup> – private international law continues to fulfill its vital “horizontal” function as a system that acknowledges the variety of legal cultures and systems in our world and seeks to reduce conflicts between them.

However, more awareness and work are needed to make private international law fit for sustainable development. Let me mention two rather fundamental issues that currently present a challenge for private international law. The first is its traditional focus on individuals and individual entities rather than on collectivities. The second challenge concerns party autonomy and its limitations.

### **6.1. Individuals and Collectivities**

Historically, private international law is focused on individuals and is not calibrated to collectivities. This is a problem, in several fields of private international law. First, in the field of civil legal action by groups of concerned citizens, in consumer matters, cartel damage claims, damage claims for large infringements of data rights and in environmental including climate change litigation. Such cases often have cross-border dimensions, but as it stands, private international law is not developed to deal with all the issues which may come up. Yet, such bottom-up action by concerned citizens plays a significant role in transforming our world.

The second example of the need for private international law to focus more on collective entities, concerns the cross-border regulation of responsible business conduct of companies in a value chain, which is *also* essential if we want to achieve the 2030 Agenda. There again, private international law struggles to fully capture the operation of the actors in the value chain.

A few brief remarks on both examples, first on collective proceedings.

#### **6.1.1. Collective Redress**

The Brussels Ia/bis Regulation, the 2005 Hague Choice of Court Convention and the 2019 Hague Judgments Conventions all basically follow the classic model *Aulus Agerius* sues

---

<sup>27</sup> See, also on the potential of more interaction between private international law and human rights, H van Loon, “The present and prospective contribution of global private international law unification to global legal ordering”, in F Ferrari, DP Fernández Arroyo, *Private International Law – Contemporary Challenges and Continuing Relevance* (2019), 214-234.

<sup>28</sup> [https://www.idi-ii.org/app/uploads/2021/09/2021\\_online\\_04\\_en.pdf](https://www.idi-ii.org/app/uploads/2021/09/2021_online_04_en.pdf)

*Numerius Negidius*.<sup>29</sup> They do apply to collective actions, but not without problems. Is an action brought by a competition authority against a company a civil or commercial matter? What about admissibility, standing, the way to determine the represented group?<sup>30</sup>

Proposals have therefore been made, including by Burkhard Hess and his team, to reform Brussels Ia/bis to adapt it to collective proceedings.<sup>31</sup> However, reforming multilateral treaties like the Hague Conventions is far more complex, so whilst some such issues may be solvable through interpretation, not all of them can. Anyhow, adaptation of private international law will be necessary.

### 6.1.2. Global Value Chains

Global value chains are under scrutiny, including from the perspective of private international law. I already mentioned that *Vedanta* illustrates how parent companies in the Global North can be sued for damage caused by their subsidiaries. In the Netherlands the case of the Nigerian farmers against Shell.<sup>32</sup>

The intention of the CSDDD was to create a uniform civil liability standard for companies regarding their adverse impacts on environment and human rights in the value chain. If a company violates this standard, it is liable for damage caused by its subsidiaries and business partners throughout the value chain.

However, the subsequent Omnibus I directive<sup>33</sup> deleted the uniform standard, narrowed the due diligence requirements to apply only to the company's direct (tier-one) business partners, and deleted the overriding mandatory application of the liability rules. As a result, the existing private international law has regained its full role. This makes the reforms of the Brussels Ia/bis and Rome II Regulations proposed by the GEDIP all the more necessary. But, above all, it largely raises again the question of how to strengthen the lead company's responsibility for negative social and environmental impacts in the value chain. The way forward here, I think,

---

<sup>29</sup> Cf Gaius' *Institutiones*, Book IV.

<sup>30</sup> H. Van Loon, General Synthesis and Future Perspectives, in M Weller, J Ribeiro-Bidaoui, M Brinkmann, N Dethloff (eds.) *The HCCH 2019 Judgments Convention – Cornerstones, Prospects, Outlook* (2023), 355-382 (at 374-375)

<sup>31</sup> B Hess, D Althoff, T Bens, N Elsner, [The Reform of the Brussels Ibis Regulation: Academic Position Paper - University of Vienna](#)

<sup>32</sup> Court of Appeal The Hague, 18 December 2015 (Akpan cs. v Shell and Shell Petroleum Development Company of Nigeria), ECLI:NL: GHDHA:2015:3586;3587; and 3588, and 29 January 2021, ECLI:NL: GHDHA:2021:132;133 and 134

<sup>33</sup> Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements, [Directive - EU - 2026/470 - EN - EUR-Lex](#)

would be to further develop the idea of the global value chain as a *single entity* governed by the lead company, so that negative externalities can in principle be attributed to that lead company. This requires adjustments to substantive private law, but also, for example, in the field of private international jurisdiction rules, an extension of Article 8(1) Brussels Ia/bis on related actions, to defendants based in third countries.

## 6.2. Party autonomy and its limits

Finally, a word on party autonomy. Not surprisingly, party autonomy and its limits have emerged as a major theme in our project “The private side of transforming our world”. Party autonomy in private international law, whether regarding choice of court (or arbitration) or choice of law, is a way for parties to create advantages and wealth for themselves. Not so long ago, party autonomy in private international law was hailed as “un des principes de base du droit international privé ...consacrée comme liberté individuelle par plusieurs conventions et par diverses résolutions des Nations Unies”<sup>34</sup>

There is no doubt that party freedom in cross-border situations is an important achievement, endorsed by the Hague Conference’s 2015 Principles on Choice of Law in International Trade Agreements<sup>35</sup>. But we have now also become more aware of party autonomy’s negative human rights and environmental externalities. Several authors in our book therefore argue that public policy and overriding mandatory rules should curb such excesses. The problem is that these corrective mechanisms refer to essential domestic values, and generally those of the forum state, perhaps also of the EU, but not to global values.

Is there a way to give effect to global human rights and environmental norms, including for climate change, even when they are not embodied in the domestic law of the forum? In climate change tort cases, we have recently seen how in private tort litigation global norms such as those of the Paris agreement – although *Paris* does not itself create obligations for private actors – can nevertheless have effect and entail responsibility also for companies (cf *supra* 5.)

If this is possible in tort law, is it possible also in contract law for certain fundamental global norms to set limits to choice of court or choice of forum even if these limitations are not

---

<sup>34</sup> Institut de Droit International, Session of Basel - *L'autonomie de la volonté des parties dans les contrats internationaux entre personnes privées*. Note, however, that the resolution excludes from its scope employment and consumer contracts.

<sup>35</sup> [HCCH | Choice of Law in International Commercial Contracts Section](#)

expressed in domestic law? Interestingly, the CSDDD defines adverse environmental and human rights impact by reference to International Conventions, listed in two annexes, *irrespective of whether those Conventions are in force for the EU Member State concerned*. Here possibly lies the beginning of a global standard.<sup>36</sup> In any case, here, again, there is important follow-up work waiting for us to adapt private international law to our era of uncertainty.

I must conclude. The ongoing project, *The Private Side of Transforming our World*, has shown that the link between private international law and sustainable development is increasingly seen as a new field both for global research and global action. It has brought to light the important role that private international law already plays in global development, but also how it can hinder it. It can no longer ignore important dilemmas, such as the tension between economic growth on the one hand and development, human rights and the global ecosystem on the other.

The project also highlights the potential of private international law, and how important it is to build on the global level upon what has already been achieved at regional and national levels in areas such as cross-border labour relationships and environmental damage.

In that sense, there remains for all of us a lot to do regarding the adaptation of private international law in an era of uncertainty!

---

<sup>36</sup> Cf. *The Private Side...*(fn 8), Introduction, 23-24.