HANS VAN LOON

Private International Law in Support of Sustainable Development – Impulses from Osnabrück

I. Introduction

Christian von Bar's 70th birthday anniversary on 5 May 2022 falls halfway through the fifteen-year period of the United Nations' 2030 Agenda for Sustainable Development. On 25 September 2015, the UN General Assembly adopted the Resolution *Transforming our World: the 2030 Agenda for Sustainable Development*[1]. The Agenda's 17 Sustainable Development Goals (SDGs) supported by 169 targets, and numerous indicators, "balance the three dimensions of sustainable development: the economic, social and environmental" and seek to "stimulate action over the [period 2015–2030] in areas of critical importance for humanity and the planet". Although not binding, the SDGs articulate global aspirations for the current decade. They are not only addressed to states and international institutions, but appeal to all, including the private sector and civil society.

The recently published book *The Private Side of Transforming our World*[2] highlights the role, actual and potential, of private international law in advancing each of the 17 SDGs. This chapter in honour of *Christian von Bar* focuses on the private international law aspects of a selection of these SDGs.

The context for this contribution is given by the themes of the three cutting edge conferences which *Christian von Bar* organized in 1992, 1994 and 1998, in cooperation with the Hague Conference on Private International Law. The first was on "The Outlook for Private International Law after the End of the Cleavage in Europe", the second on "International Environmental Liability law – on the Way to a Convention on the Legal Aspects of International Environmental Liability", and the third on "Islamic Law and its Reception by the Courts in the West". Not only did *Christian von Bar* make these conferences possible, including by his miraculous fundraising abilities that enabled splendid hospitality in Osnabrück, but he and his staff also superbly edited three conference books on each of these themes, with contributions in German, English and French[3].

Despite major changes in the world since the 1990's, all three themes have kept their topicality – and the books their value as research tools – also in light of Agenda 2030. We will discuss the three conference themes in relation to relevant SDGs in the following order: the East-West integration in Europe, the interaction between Islamic law and secular law, and, finally, environmental accountability. The first and the second theme have certain SDGs in common; the third has everything to do with the strong message of Agenda 2030 to protect the planet's ecosystem.

---

[1] UN GA A/RES/70/1 (hereinafter "The 2030 Agenda"), see A/RES/70/1 Transforming our world: the 2030 Agenda for Sustainable Development (un.org).

[2] *Michaels/Ruiz Abou-Nigm/van Loon* (eds.), The Private Side of Transforming our World – UN Sustainable Development Goals 2030 and the Role of Private International Law, (hereinafter: "The Private Side"), 2021. See The Private Side of Transforming our World – UN Sustainable Development Goals 2030 and the Role of Private International Law – Intersentia (open access).

[3] *Christian von Bar* (ed.), Perspektiven des Internationalen Privatrechts nach dem Ende der Spaltung Europas, 1993; *Christian von Bar* (ed.), Internationales Umwelthaftungsrecht I – Auf dem Wege zu einer Konvention über Fragen des internationalen Umwelthaftungsrechts, 1995; *Christian von Bar* (ed.), Islamic Law and its Reception by the Courts in the West, 1999.

II. Private international law aspects of the East-West integration in Europe – SDGs 5: Achieve gender equality and 8: Promote sustained economic growth and decent work for all

1. "The End of the Cleavage in Europe" – the challenge of building a sustainable Europe

The Osnabrück conference took place in April 1992 in times of momentous geopolitical change. In December 1991 the Soviet Union had fallen apart, preceded by the reunion of Germany and the integration of the former DDR into NATO and the European Community, and the dissolution of COMECON and the Warsaw Pact. Only two months after the conference, Slovenia and Croatia declared independence and a series of wars broke out in Yugoslavia leading to its dissolution in 2002. In 2004 eight Central and Eastern European (CEE) states, Estonia, Latvia, Lithuania, Poland, Hungary, the Czech Republic, Slovakia and Slovenia joined what since 1993 had become the European Union (EU), followed by Romania and Bulgaria in 2007 and Croatia in 2013.

While the Fall of the Berlin Wall in 1989 and the invention of the World Wide Web in the same year marked the beginning of contemporary globalisation, and the accessions of the CEE states to the EU seemed to confirm the "End of the Cleavage in Europe", the dynamics of these processes gave rise to new tensions and cleavages that persist to this day. The EU as a whole may be part of the "Global North", but within the EU socio-economic and cultural discrepancies remain.

According to the TEU the EU "shall work for the *sustainable development* of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress …" (art. 3.3). The EU contributed to the Agenda 2030 and is committed to all 17 SDGs. "Sustainable development is a core principle of the Treaty on European Union and a priority objective for the Union's internal and external policies"[4]. However, establishing an internal market that is both "highly competitive" and "social", and ensuring "the free movement of persons … in conjunction with appropriate measures with respect to external border controls, asylum, immigration …" continue to be huge challenges for the EU.

2. Private international law aspects of the integration process, in the light of the SDGs

The new CEE Member States were all bound by the new private international law legislation, which, following the new EU competences established by the 1997 Amsterdam Treaty, rapidly came into being – often inspired by Conventions drawn up by the Hague Conference. At the time of the 1992 Osnabrück conference, Poland (in 1984), Hungary (in 1987), and Romania (1991) had already joined the Conference. They were quickly followed by Slovenia, the Czech Republic, Slovakia, Croatia, Estonia, Bulgaria and Lithuania. This swift development, reinforced by a *hausse* in ratifications by these states of Hague Conventions which the EU considered essential for their accession, helped people, families and businesses of these countries to integrate into the extended EU, and connect with the world.

The influence on the private international law of CEE EU Members, of the "acquis" developed in Western Europe before "the End of the Cleavage" is undeniable. But, as the Osnabrück conference brought out, there also was an influence in the opposite direction.

---

[4] https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_en.

a) Private international law and SDG 5: Achieve gender equality[5]

As *Christian von Bar* recalled during the 1992 conference, the CEE countries had been pioneers in realizing the equality of men and women in their choice of law rules, thereby exerting a ground-breaking influence on international family law in the whole of Europe[6].

The Brussels II and Rome III Regulations in matters of divorce, the Succession Regulation and the Regulations on property relations of spouses and of partners all ensure gender equality. This corresponds to the EU's commitment to SDG 5. The Hague Conventions in the field of family and succession law likewise respect the equality of women and men[7].

In contrast to the equality of men and women in international family law on which there is general agreement, the views on gender *orientation* are deeply divided. SDG 5 does not explicitly address sexual orientation. But since SDG 4.a calls for "educational facilities that are … gender sensitive", SDG 10.2 for "social, economic and political inclusion of all … irrespective of … sex … or *other status*", and SDG 16.9 presupposes respect for identity[8], gender orientation must be deemed to be included in SDG 5, as an aspirational goal.

Gender orientation has turned out to be a stumbling block in the EU, especially in the internal relations with most CEE countries, attached to traditional identity and family values. The Regulation on matrimonial property regimes abstains from specifying ‚marriage', leaving its definition to the national laws of the Member States[9], thus respecting (constitutional) definitions of marriage as "a union between a man and a woman". Yet, apparently the mere possibility that the Regulation would have to be applied to same sex-spouses made the Baltic States, Poland, Slovakia, Hungary and Romania decide not to join the Regulation. *A fortiori,* they refused to participate in the Regulation on the property consequences of registered partnerships[10].

However, CEE nationals using their freedom of movement within the EU may move and settle in other EU Member States, under the laws of which they may validly enter into a same-sex relationship – following which they may resettle in their home country.

Both EU law and the European Convention on Human Rights (ECHR) respect the freedom of states to restrict marriage to couples of different sex, considered by several CEE countries to be an essential aspect of their cultural identity. But the CJEU and the ECtHR have made it clear that this does not give their authorities the right to deny any effect to a same-sex marriage validly concluded abroad. Where a national of an EU Member State that reserves marriage to a man and a woman, has validly entered into such a marriage with a third country national (TNC) "Article 21(1) TFEU must be interpreted as precluding … the Member State of which the Union citizen is a national from refusing to grant that [TNC] a right of residence in the territory of that Member State on the ground that [its] law does not recognise marriage between persons of the same sex"[11]. Admittedly, the CJEU did not

---

[5] See *Bayraktaroğlu-Özçelik,* in: The Private Side (fn. 2).

[6] Comment *von Bar,* in: Perspektiven (fn. 3), p. 27.

[7] In contrast to the old Hague Conventions (1902–1905), tuned to (the nationality of) the man. For the role of the Hague instruments in advancing the SDGs (in particular SDG 16 and 17) see Information Document for the 2020 Hague Conference's Council on General Affairs and Policy, No 3 b5770a41-afef-4118-a2a9–39f939d4d832.pdf (hcch.net).

[8] On which *Corneloup/Jinske Verhellen,* in: The Private Side (fn. 2).

[9] Recital (17) EU Regulation 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

[10] EU Regulation (EU) 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

[11] CJEU 5 June 2018, Case C-673/16, Coman, see also CJEU 14 December 2021, V.M.A. ./. Stolichna obshtina, rayon 'Pancharevo' Case C 490/20.

address the *civil* law aspects of the marriage, but there can hardly be any doubt that those should also be given effect, including where both spouses are EU citizens. Likewise, the ECtHR has ruled that Article 8 of the ECHR implies a positive obligation for the Contracting States to recognize the existence of a same-sex marriage lawfully entered into abroad and to allow this marriage to be converted into a registered partnership or civil union[12].

b) *Private international law and SDG 8: Promote sustained economic growth and decent work for all*[13]

The TFEU secures the freedom of movement for workers within the Union without any discrimination on the basis of nationality between workers of Member States as regards employment, remuneration and other conditions of work and employment (art. 45). However, this freedom may clash with the freedom of establishment and the freedom to provide services in other Member States (arts. 49 and 56).

The radical reforms towards opening CEE markets in the 1990's, followed by liberalization due the integration into the EU, first led to deindustrialization and high unemployment and then to the establishment of a low-wage sector which fitted into European supply chains. And so the freedom of movement of workers resulted in a flood of migration from East to West. This caused tensions in terms of the internal market's social dimension, and adversely affected SDG 8, in particular its "decent work for all" objective.

On the one hand, a perception grew that those migrants unduly benefited from employment rights and social benefits in the West. Felt most strongly in the UK, this culminated in the Brexit vote which led to a new cleavage, this time on Europe's West side. On the other hand, the freedom of establishment and of providing services tempted employers in the West to take advantage of cheap CEE labour, thus creating another source of tension. Initially, such employers could feel comforted by the CJEU's judgments in *Viking*[14], allowing reflagging a Finnish vessel as Estonian, and *Laval*[15], allowing the posting of Latvian workers to Sweden while leaving little or no scope for the Swedish tradition of collective bargaining. At the time, the Court had no difficulty in finding that national labour law and industrial action in accordance with such laws can constitute unlawful barriers to the exercise of economic freedom and free movement rights.

EU legislation in the field of private international law has sought to (re-)balance the "economic" and the "social", and thereby ensure "decent work". The Brussels I Regulation (arts. 20–23) protects workers under an individual employment contract in respect of their access to the courts, and Rome I (arts. 8 and 9) does the same for the applicable law[16]. This goes some way to protect workers from CEE countries against "social dumping".

Moreover, in response to *Viking* and *Laval,* and notwithstanding opposition from CEE Member States, the Posted Workers Directive has been revised[17]. The host Member State must now guarantee that, whatever the law applicable to the employment relationship, workers posted to its territory enjoy the terms and conditions of employment regarding

[12] ECtHR 21 July 2015, Oliari v. Italy, and 14 December 2017, Orlandini v. Italy. But Poland does not give up, and the question whether their authorities may prevent their nationals from entering into a same-sex marriage by refusing to issue a required document such as a birth certificate is currently pending before the ECtHR, nrs.78030/14 and 23669/16.

[13] See *Liukkunen,* in: The Private Side (fn. 2).

[14] CJEU 11 December 2007, Case C-438/05, Viking.

[15] CJEU 18 December 2007, Case C-341/05, Laval.

[16] For a recent application of Art. 8 Rome I, see CJEU 15 July 2021, Joined Cases C-152/20 and C-218/20, Gruber Logistics.

[17] Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, as amended, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01996L0071–20200730.

several hard core matters, such as maximum working hours and minimum pay rates (art. 3). To enforce this right, workers may institute proceedings in the Member State where they are or were posted (art. 6). The European Commission's Social Rights Action Plan presented on 4 March 2021, like the SDGs at the global level, sets "headline targets" for the EU by 2030 to reinforce EU' social dimension[18].

In light of the global reach of SDG 8, a recent proposal recommends that to promote "decent work" universally, the Hague Conference in consultation with the ILO, take up the drafting of "uniform private international law rules on employment contracts and labour relations"[19].

III. Private international law aspects of the interaction between Islamic law and secular law – SDGs 16: Promote peaceful and inclusive societies; 5:Achieve gender equality; 10.7: Facilitate orderly migration, and 16.9: Provide legal identity for all

1. Private international law and SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

The book on the 1998 Osnabrück conference on ‚Islamic Law and its Reception by the Courts of the West' remains an exceptionally rich reference source, not least because of its broad scope – it covers not only family and succession law but also commercial, including banking, law – and its depth of analysis – in particular of the varieties and nuances of Islamic law. The conference itself deepened mutual understanding between representatives from countries influenced by the sharia and those from secular legal systems. The book provides many illustrations of the crucial role of private international as a means of doing justice to individuals and families crossing borders, thereby contributing to the peaceful interaction between Western secular systems of law and religious legal systems South and East of the Mediterranean and beyond[20].

Three years later, such peaceful interaction was severely tested as a result of "9/11". The attacks on the World Trade Center in New York, the Pentagon in Washington DC and the crash of flight 93, and their aftermath spurred a movement to blame Muslims and the Islam collectively for the acts of individuals. Several US states started introducing legislation to prohibit the application of "Sharia" (and even "international") law in US courts. Their impact seems to have been limited, as opposed, however, to the influence of Islamophobia on migration policy. Similar reactions have cropped up in Europe. All this only strengthens the need for private international law as an essential instrument to temper "othering" people because of their religion.

The Osnabrück conference, and the tensions following 9/11, inspired the Hague Conference to take the initiative for the "Malta Process", a series of meetings which started in 2004 in Malta, between judges and administrative authorities from Western and Sharia-influenced States, centered on cross-border protection of families and children. The idea

[18] https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-action-plan_en.

[19] See *Liukkunen* (fn. 13)

[20] Part IV of the book deals with Islamic law and international commerce, including authoritative observations on "Islamic banking". This sensitized the Hague Conference to securities under Islamic law, which were taken into account in the negotiations on the 2006 Hague Securities Convention (concluded in 2002).

was to create an ambiance in which differences between the legal systems represented could be better understood, common concerns and shared principles identified, and legal cooperation improved. Judges played an important role in finding common ground through their shared practical experience of family conflict. It was heartening to see how participating judges, when asked to resolve cases drawn from actual practice, arrived at similar solutions. Often, common sense led to practical outcomes that would do justice to all involved[21].

2. *Private international law and SDG 5: Achieve gender equality*

Administrative authorities and courts in the West continue to be faced with legal issues resulting from foreign institutions such as polygamous marriage and repudiation. SDG 5 does not explicitly prohibit polygamous marriage[22], although from a Western perspective it constitutes a prohibited form of discrimination. Given the social reality of polygamy in many countries where Sharia prevails, a flat denial of any effect to a polygamous marriage even in a concrete situation where it does not encroach upon the fundamental values of the forum state may violate respect for family life and individual and cultural identity under SDG 16.9. A case-by-case analysis is needed to determine whether in light of the forum state's involvement, the court, using the public policy shield, should refuse giving effect to the impugned foreign law or judgment.

Recently, this approach has come under pressure, both with respect to the recognition of unilateral divorces and child marriage occurring abroad. In *Sahyouni*[23] the Advocate general suggested that the prohibition of discrimination of women is so serious as to warrant unqualified rejection of the foreign law which permits a divorce by *talaq,* with no exception on a case-by-case basis, even if the wife accepts the divorce. The CJEU avoided the issue by ruling that the Rome III Regulation does not cover such divorces. The Court must have realized that following the Advocate General would result in a decision that would in practice be unjust, notably when the woman is the one who applies for the recognition of the divorce, e. g. because she wishes to remarry[24].

SDG 5.3. calls for the elimination of "all harmful practices, such as child, early and forced marriage …". In principle, a child marriage concluded abroad should not be given effect. However, whether such recognition is in fact harmful to the child depends on the concrete circumstances. In certain situations, e. g. concerning refugees on an international journey, marriages may be concluded to provide social and material protection to the child. In such circumstances non-recognition of the marriage once the child enters a European country may be harmful to the child. Therefore, the recent IDI Resolution on Human Rights and Private International Law, rightly qualifies the principle – "Child marriage … infringe[s] upon human rights and shall not be recognized" – by requiring "… the court shall take into account all the circumstances of the case, with a view to avoiding any undesirable impact on the rights of the child …"[25].

---

[21] Cf. *Christian von Bar,* "Some tentative conclusions", in: Islamic Law (fn. 3), p. 233; *William Duncan,* "reflections on the Malta Process", in Permanent Bureau, A Commitment to Private International Law, 2013, p. 135. For the current state of the Malta process and the ongoing work on cross-border family mediation, see https://www.hcch.net/en/publications-and-studies/details4/?pid=5214.

[22] See *Bayraktaroğlu-Özçelik* (fn. 5), 4.1.

[23] CJEU 20 December 2017, C-372/16, Sahyouni.

[24] The 1970 Hague Convention on the Recognition of Divorces allows for the recognition of divorces provided they "follow judicial or other proceedings officially recognized in [the foreign state] and which are legally effective there." (Art. 1).

[25] Institut de droit international, Resolution of 4 September 2021, https://www.idi-iil.org/app/uploads/2021/09/2021_online_04_en.pdf. And see *Yassari/Michaels* (Hrsg.), Die Frühehe im

3. Private international law and SDGs 10.7: Facilitate orderly, safe, regular and responsible migration and 16.9: By 2030 Provide legal identity for all, including birth registration[26]

The real battle ground is the field of migration. Islamophobic movements, among others, on both sides of the Atlantic pressing for borders to be closed to economic migrants, refugees and asylum seekers, are putting SDG 10.7 to the test. For its effectiveness, SDG 10.7 requires the coordination of migration, private international and human rights law.

The case concerning the child SM before the CJEU brings this to the fore[27]. The child had been placed with an EU citizen by the Algerian courts. Contrary to the observations of all the governments, the Court (implicitly) recognized the *kafala* placement with its effects under Algerian law, and found that if this resulted in genuine family life with the guardian, this generated a situation which under arts. 7 and 24 of the EU Charter, must lead to a right of entry and residence as a dependent family member under Art. 3 (2) (a) of the 2004/38/EC Free Movement Directive. This is the correct approach: migration policies must, in principle and as a matter of human rights, follow the private international determination of personal status, not the other way round.

Such an integrated approach is needed for migration generally and globally, including migration of refugees and asylum seekers. The 1951 UN Refugee Convention (with its 1967 Protocol) offers a global system to protect refugees in outline. Its correct and humane implementation in Europe over the past few years has been blatantly lacking in many respects, but it offers at least a legal basis, also for supplementary protection of refugees.

An effective global framework for (other) migrants is still missing, and this has adverse impacts even on the application of the Refugee Convention[28]. To be effective, such an instrument should take as its starting point the human being moving from his or her country of origin for temporary work (SDG 8) or study (SDG 4[29]) in a receiving country. On that basis a system of inter-State cooperation could be built to facilitate the person's move as agreed by the two countries involved, coupled with minimum safeguards regarding their leaving the country of origin, entry and residence in the receiving country and return. Regular global meetings of all participating states would allow the sharing of practical experience and gradually improve the planning and management of such migration[30]. With that experience, the system might ultimately be further expanded to include certain forms of permanent migration. A proposal to this effect was discussed in the Hague Conference but not pursued. It continues to be discussed in legal doctrine.[31]

Recht – Praxis, Rechtsvergleich, Kollisionsrecht; see Mezmur, SDG 1, in The Private Side (fn. 2), 4.3, and see Yassari, Höherrangiges Recht, 2021.

[26] See *Corneloup/Verhellen,* in The Private Side (fn. 2).

[27] CJEU, 26 March 2019, Case C-129/18, SM.

[28] The 1990 UN Migrants Convention remains of little practical interest as long as Western countries stay away from it.

[29] On which see *Beiter,* in: The Private Side (fn. 2).

[30] The 1993 Hague Convention on Intercountry Adoption, which integrates private international law, human rights and migration could offer a model for such a system.

[31] See e. g., *Ruiz Abou-Nigm,* "Unlocking private international law's potential in global (migration) governance", in: *Ferrari/Fernández Arroyo* (eds.), Private International Law – Contemporary Challenges and Continuing Relevance, 2019, p. 196, and see *Laura Carballo Piñeiro,* "Labour Migration and Private International Law" in *Verónica Ruiz Abou-Nigm/Maria Blanca Noodt Taquela,* Diversity and Integration in Private International Law, EUP 2019, pp. 215–230.

IV. Private international law aspects of environmental liability – SDGs 6. Clean Water and Sanitation; 13: Combat climate change, 14: Reduce marine pollution, 15: Protect terrestrial ecosystems and halt biodiversity loss. 16.3: ensure equal access to justice for all[32]

In 1993, the Hague Conference decided to include in its work Agenda "the question of the determination of the law applicable, and possibly questions arising from conflicts of jurisdiction, in respect of civil liability for environmental damage". This decision prompted the 1994 Osnabrück conference ‚Towards a convention on the private international law aspects of environmental liability'. The book is still distinguished by its broad multidisciplinary approach, and its focus on a practical way forward.

In his summary of the outcome of the conference – the "Ten Points of Osnabrück" – *Christian von Bar* concluded that, based on the two-days intense discussions, there was broad support for a global convention on private international law aspects of the environment, even though its scope, and issues of detail which the conference discussed in depth, would need to be further explored.

Where do we stand today, almost thirty years later, at a time of mounting concern about the environment, climate and biodiversity? Obviously, the idea of a global Hague instrument did not materialise. The Hague Conference decided in 2010 to delete the topic from its Agenda. Similarly, early efforts of other organisations remained in vain[33].

However, this may not be the end of the story. Recent years have seen new developments, centered around corporate responsibility for environmental harm. Moreover, climate change has opened a new chapter in transnational litigation.

The 2011 UN Development Goals set the tone for an extended concept of corporate social responsibility, beyond the company's own operations, regarding all of its business relationships throughout their value chain, for human rights abuses but also for lack of environmental care. Then, in 2015, came the UN 2030 Agenda. Many of the SDGs highlight the urgent need to combat pollution of water, soil and air, increase renewable energy, ensure sustainable consumption and production, fight climate change, and halt biodiversity loss.

Various states have adopted, or are preparing, legislation to establish due diligence obligations for companies, extending beyond their borders, in respect of human rights and the environment[34]. Therefore, private international law is inevitably involved.

In respect of judicial jurisdiction, the exclusion of forum non conveniens (FNC) in the Brussels/Lugano instruments has enabled litigation against parent companies in the EU jointly with their subsidiaries, on corporate responsibility for environmental damage in Zambia and Nigeria.[35] The UK Supreme Court's judgment in *Vedanta,* however, shows that the exclusion of FNC may not count on unwavering support. To prevent a revival of the FNC doctrine after the UK's exit from Brussels I recast as part of Brexit, it would be important, contrary to the view expressed by the European Commission[36], to invite the UK to join the Lugano Convention.

---

[32] See *Oppong, Álvarez-Armas, Sanni, Stamboulakis* and *Sanderson,* all in: The Private Side (fn. 2).

[33] Neither the Council of Europe's 1993 Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, nor the UN Economic Commission's 2003 Kiev Convention on Damage caused by Industrial Accidents on Transboundary Waters, has come into force.

[34] Including the 2017 French Loi sur le devoir de vigilance and the 2021 German Sorgfaltspflichtengesetz.

[35] See *Vedanta Resources PLC and another v. Lungowe and others* [2019] UKSC 20, of 10 April 2019, followed by *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3, of 2 Feb 2021, and the judgments of the Hague Court of Appeal on Four Nigerian Farmers and Milieudefensie v. Shell of 29 January 2021: Shell Nigeria liable for oil spills in Nigeria (rechtspraak.nl).

[36] See https://ec.europa.eu/info/sites/default/files/1_en_act_en.pdf.

In respect of choice of law, the recent Dutch climate change case of *Milieudefensie et al.v. RDShell*[37] raises the interesting question whether the adoption of a group policy by RDShell based in the Netherlands for its future CO2 emissions could be considered as an "event giving rise to the damage" according to Art. 7 Rome II Regulation, or just as a preparatory internal decision. In the former case, Dutch law, chosen by the plaintiffs, would apply under Art. 7. In the latter, as argued by the defendant, however, since any harmful event would only occur where the CO2 emissions actually take place the laws of all the countries where Shell is active would apply under Art. 4 (1). The Hague district court sided with the plaintiffs[38].

In respect of recognition and enforcement, given the broad special jurisdiction grounds of Brussels/Lugano regarding tort[39], judgments on environmental liability will generally be recognized and enforced under Chapter/Title III of these instruments. By contrast, the 2019 Hague Judgments Convention limits the recognition and enforcement of a judgment on a non-contractual obligation to that "arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the State of origin, irrespective of where that harm occurred" (Art. 5 (1) (j)). This restricts the categories of damage, including environmental harm, that qualify for recognition and enforcement under the Convention, and excludes judgments originating from the state where the harm occurred.

Meanwhile, work on legislation on corporate due diligence and liability, including regarding the environment goes on both at the regional and the global level.[40] The European Commission has announced the issuing of an instrument on corporate due diligence and accountability, for which the European Parliament proposed a draft directive on 10 March 2021. However, this draft left it to the Member States to deal with its private international law aspects. But without uniform rules on jurisdiction, on the overriding mandatory effect of the instrument's provisions, on applicable law, and recognition and enforcement, the new instrument risks falling short of its objectives[41]. At the global level, negotiations continue in the UN Human Rights Council on a "legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises", also in relation to the environment. The 2021 draft[42] contains broad provisions on jurisdiction (excluding FNC) and applicable law, as well as, interestingly in the light of the discussions at the Osnabrück conference, on mutual legal cooperation, in addition to substantive rules on protection of victims, prevention, access to remedy and liability.

This flourishing legislative activity on all fronts certainly shows a rising awareness of business' responsibility for what happens in its value chain across the world, including regarding the environment. But it by no means obviates the need for a global private international law convention on civil liability for environmental damage. As the Osnabrück conference showed, environmental responsibility raises a wide range of specific issues, including procedural ones, such as collective actions, or relating to judicial and administrative cooperation.

---

[37] Hague District Court, 26 May 2021, English translation, ECLI:NL:RBDHA:2021:5339.

[38] Royal Dutch Shell has appealed from the judgment.

[39] Art. 7 (2) Brussels I recast; Art. 5 (3) 2007 Lugano Convention.

[40] See also *Kruger,* in: The Private Side (fn. 2).

[41] This led the GEDIP at its meeting in September 2021 to its Recommendation … to the European Commission concerning the Private international law aspects of the future Instrument of the European Union on [Corporate Due Diligence and Corporate Accountability] Recommandation-GEDIP-Recommendation-EGPIL-final.pdf (gedip-egpil.eu).

[42] https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf.

V. Conclusion

The three Osnabrück conferences on East-West integration in Europe, Interaction between Islamic law and secular law, and Environmental liability seen through the lens of private international law, sowed seeds that continue to bear fruits. In retrospect, "the End of the Cleavage in Europe" in the title of the first meeting may have been overly optimistic. But its pan-European perspective and its eye for the specifics of Eastern/Central and Western Europe, remain essential for the building of a sustainable Europe, and the role therein of private international law, not least in light of SDGs 5 (gender equality) and 8 (decent work).

The conference on Islamic and secular law took place before "9/11", whose effects greatly raised the profile of the theme. It inspired the Hague Conference's initiative for the "Malta process". The "reception of Islamic law by the Courts in the West" has become a topical issue, even for the European Courts. Private international law offers means to bridge the cross-cultural legal differences involved, and thus plays an essential part from the point of view of SDGs 5, 16 (peaceful and inclusive societies); 10.7 (orderly migration), and 16.9 (legal identity).

Environment including climate figures high on Agenda 2030. The "Ten Points of Osnabrück" formulated by *Christian von Bar* are still standing. They could inspire a new global initiative to deal with the private international law aspects of environmental liability. In any event, private international law has a crucial role in the ongoing work on corporate social and environmental due diligence and accountability at the global, European and national levels.