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CHALLENGES OF INTERNATIONAL LAW AT THE TIME OF THE CENTENARY OF THE HAGUE ACADEMY OF INTERNATIONAL LAW

Jean-Marc Thouvenin
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100

YEARS and beyond

ANS et au-delà

reducing inequalities and powering economic growth. Moreover, robust private international law frameworks allow for cross-border access to credit, finance, and capital, and humanising such frameworks not only ensures that people can participate in the global economy but will also benefit from it to break the poverty cycle. Humanised private international law frameworks promote development-oriented policies; these in turn support productive human activities, entrepreneurship, and innovation.

VI. Conclusion: ensuring a human future for private international law

Private international law is not a mere embellishment but a pragmatic response to the challenges of our times. In recognising the intrinsic dignity and rights of individuals, the continued humanisation of private international law resonates with the lived realities of diverse individuals and communities. Through this lens, legal considerations extend beyond the cold calculus of jurisdiction and enforcement, embracing the ethos of justice and fairness in a world marked by cultural diversity.

As we navigate the terrain where law intersects with the human experience, the humanisation of private international law emerges as an ethical imperative. It reflects a commitment to safeguarding the rights and dignity of individuals, irrespective of their geographical location. In this era of interdependence, where the actions of one ripple across borders, a private international law framework attuned to the human condition is a necessity.

HUMANISATION AND BEYOND: PRIVATE INTERNATIONAL LAW IN SUPPORT OF THE UN SUSTAINABLE DEVELOPMENT GOALS 2030

Hans van Loon *

I. Introduction: The Sustainable Development Goals

On 25 September 2015 the General Assembly of the United Nations unanimously adopted the Resolution "Transforming our World: the 2030 Agenda for Sustainable Development", following the adoption of this Agenda by the Summit of World Leaders [1]. On 1 January 2016 the Agenda, "a plan of action for people, planet and prosperity", with seventeen Sustainable Development Goals (SDGs) came into force. So, this year, 2023, marks the halfway point in achieving these Sustainable Development Goals, the SDGs, and in September 2023 the General Assembly will assess where the World stands in relation to their realization, and the challenges ahead [2].

The SDGs build on the Millennium Development Goals (MDGs) which covered the period 2000-2015 [3]. The eight MDGs centered on issues of special importance to developing countries, including: eradicate poverty, improve basic human health, enhance food security, educational opportunities, and gender equality. They met with some success, in particular in reducing extreme poverty, but failed to fully achieve their objectives [4].

The SDGs have a dual nature: they continue to pursue the goal of development, but in addition, they aim at achieving global sustainability – which the 1987 Brundtland report *Our Common Future* defined as "meeting the needs of the present without compromising the ability of

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1. United Nations General Assembly, "Transforming our world: the 2030 Agenda for Sustainable Development" A/RES/70/1 (21 October 2015), see online, Transforming our world: the 2030 Agenda for Sustainable Development Department of Economic and Social Affairs (un.org), hereinafter also referred to as: 2030 Agenda.
2. See Political Declaration of the High-Level Political Forum on Sustainable Development Convened Under the Auspices of The General Assembly, A/HLPF/2023/L.1, N2326194.pdf (un.org).
3. Millennium Development Goals | UNDP.
4. See the UN Millennium Development Goals Report 2015, https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf.

future generations to meet their own needs" [5]. Thus, the SDGs add a large number of new goals to the MDGs, many of which are aimed at "protect[ing] the planet from degradation, including though sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change. . ." [6].

Indeed, there is growing evidence that the Earth has entered a new stage in its development, the "Anthropocene" [7], where human activity has become a dominant force on our planet, with unanticipated adverse consequences for the Earth's life-support systems, risking exceeding, and exceeding already, planetary boundaries, with potentially irreversible catastrophic effects.

This gives the 2030 Agenda a more universal character than the MDSs, as sustainability is an all-encompassing issue that concerns both the "Global South" and the "Global North", both present and future generations, and both human beings and life on Earth in general. The SDGs "highlight challenges that require substantial behavioral changes on the part of the residents of developed countries as well as efforts to improve the circumstances of those living in developing countries" [8].

The 2030 Agenda not only appeals to public bodies such as States, and ". . . international institutions, local authorities, indigenous peoples" – whose relationship to nature can also inspire a rethinking of fundamental notions of law – but also explicitly appeals to "civil society, business and the private sector, the scientific and academic community – and all people" [9].

The SDGs are based on a goal-setting strategy, not on the traditional rule-making approach, which may explain in part why they have not drawn the attention of – public and private – international lawyers they

5. World Commission on Environment and Development, *Our Common Future*, Oxford (OUP) (1987), Chapter 2, Towards Sustainable Development, see online, Our Common Future: Report of the World Commission on Environment and Development (un.org).

6. 2030 Agenda, Preamble, p. 2.

7. See W. Steffen *et al.*, "The Anthropocene: From Global Change to Planetary Stewardship" (2011), 40 (7) Ambio, 739-761. For implications for politics and law-making, see J. Purdey, *After Nature: A Politics for the Anthropocene* (2015), and E. Webster and L. Mai, *Transnational Environmental Law In The Anthropocene – With Reflection on The Role of Law in Times of Planetary Change* (2021), with contributions by, among others, J. E. Vinuales, K. Bosselmann and L. J. Kotzé.

8. O. R. Young *et al.*, "Goal Setting in the Anthropocene: The Ultimate Challenge of Planetary Stewardship", in N. Kanie and F. Biermann, *Governing through Goals*, MIT Press, Cambridge/London (2017), p. 54.

9. The 2030 Agenda, Declaration, para. 52.

deserve. However, in many respects they depend for their attainment on the role, and indeed the rule of law, the promotion of which is called for in SDG 16.3.

However, while the Agenda refers to instruments and institutions in the field of *public* international law, there is a complete absence of any explicit reference to the role of private international law. And yet, most transactions, investments, destruction of the environment, GHG emissions, are a matter of private activity, governed primarily by private including commercial law and, in cross-border situations, private international law.

II. SDGs and private international law

Some examples will illustrate the role of private international law in relation to the SDGs [10].

A. SDG 5.3. Eliminate . . . child, early and forced marriage. . .

Gender equality and empowerment of women and girls were already an ambition of the MDGs. They remain a vital objective of Agenda 2030, as SDG 5. Although slowly declining, the practice of child marriage is still widespread. According to the latest UNICEF report on this matter, an "estimated 640 million girls and women alive today were married in childhood" [11]. Girls may be forced into such marriages, and they may become victims of violence and abuse, and be likely to contract HIV. Therefore, there may be very good reasons to protect a girl when such a marriage was concluded abroad and she arrives in a country that opposes child marriage and refuses recognition of such a marriage as contrary to that country's fundamental norms, its public policy.

But not all child marriages are forced marriages. A child marriage may be a way to protect the honour of a child, notably in refugee

10. See generally, R. Michaels, V. Ruiz Abou-Nigm and H. van Loon, *The Private Side of Transforming our World – UN Sustainable Development Goals 2030 and the Role of Private International Law*, Intersentia (2021), https://www.intersentiaonline.com/library/the-private-side-of-transforming-our-world-un-sustainable-development-goals-2030-and-the-role-of-p (open access).

11. UNICEF, *Is an End to Child Marriage within Reach? Latest Trends and Future Prospects*, May 2023, p. 5, https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/. "Despite global advances, reductions are not fast enough to meet the target of eliminating the practice by 2030. In fact, at the current rate, it will take another 300 years until child marriage is eliminated", *ibid.*, p. 4.

situations, or in the case of war [12]. A law that bluntly annuls a foreign marriage concluded with a child under sixteen, regardless of whether the marriage is valid under the normally applicable foreign law without considering the consequences, as the German Act to combat child marriage (Art. 13 (3) (1) EGBGB) does, is not acceptable, as the German Constitutional Court has recently ruled [13].

The Court's definition of "marriage" as protected by the German constitution includes a marriage celebrated abroad under foreign law even at a young age provided it was entered into freely. The judgment thus has private international law implications, which the German legislator must now consider in its revision of the law declared unconstitutional. The most appropriate solution under private international law would be for the revised law to prescribe a case-by-case approach, subject to a public policy check. Should the law continue to nullify foreign child marriages concluded with a child below sixteen, then at least, as "a minimal solution", it must "extend post-divorce maintenance to them, and enable the couple to affirm their marriage, either openly or tacitly, once they are of age" [14].

The example shows that a legislative strategy to combat child marriages aimed at safeguarding fundamental rights, requires, in regard to cross border situations, the fine-tuning of private international law to ensure that the policy, justified in principle as a humanizing measure, does not in turn result in a breach of fundamental rights in an individual case [15].

12. For an example, see e.g., OLG Bamberg, 12 May 2016, 2 UF 58/16, FamRZ 2016, 1270, which inspired the law mentioned hereinafter.

13. Judgment of 1 February 2023, published 29 March 2023, see online, Bundesverfassungsgericht – Decisions – Act to Prevent Child Marriages is incompatible with the Basic Law due to the failure to address the legal consequences of the invalidation of child marriages concluded abroad and the lack of possibility for a marriage to be recognised as valid after the age of majority is reached.

14. Ralf Michaels, "Foreign Child Marriages and Constitutional Law – German Constitutional Court Holds Parts of the German Act to Combat Child Marriages Unconstitutional", 30 March 2023, https://conflictoflaws.net/?s=child+marriage.

15. See also *Resolution Human Rights and Private International Law* adopted by the Institut de Droit International adopted on 4 September 2021, Article 13, Marriage: 1. Human rights law requires recognition of marriages based on the free and full consent of two spouses. 2. Child marriage and marriage concluded in the absence of the free and full consent of the spouses infringe upon human rights and shall not be recognized. 3. In interpreting and applying the forum's imperative norms which oppose the recognition of a marriage celebrated in a foreign country under the conditions of paragraph 2, 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 or of the forced victim, as well as on concerned third parties. And see G. Bayraktaroglu-Ozcelik, in *The Private Side* (fn. 10), pp. 159-188 (at 184-187).

B. SDG 6. Ensure availability and sustainable management of water . . . SDG 15. Protect, restore, and promote sustainable use of terrestrial ecosystems. . .

When effective practical and legal measures are not enough to protect the environment and the people and livestock that depend on it, civil litigation can provide relief. In cross-border cases, the role of private international law then becomes prominent.

In the European Union, private international law, regarding both rules on jurisdiction of the courts and on the applicable law, has become a strategy to achieve the environmental objectives of the Union in situations where the cause of environmental damage is located in one country, but the damage occurs in another. The Treaty on the Functioning of the EU provides that the Union shall aim at a high level of environmental protection [16]. Both the Brussels I (recast) regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [17] and the Rome II regulation on the law applicable to non-contractual obligations [18] facilitate access to justice to victims of environmental damage, offering them customized choices both regarding jurisdiction and choice of law in environmental disputes.

Increasingly, victims of environmental harm caused in the "Global South" by subsidiary companies of parent companies in the "Global North" take those companies to court. While courts in the US have tended to limit the ability for claimants to bring such cases, those in the UK and the Netherlands have recently enabled claimants to proceed in important cases, relevant to SDGs 6 and 15 [19].

16. TFEU, Article 192 (2): Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

17. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), in particular Article 7 (2) as interpreted by the CJEU in C-21/76 *Handelskwekerij G. J. Bier BV* v. *Mines de potasse d'Alsace SA*.

18. Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), in particular Article 7. Recital 25 refers to Article 192 (2) (formerly 174) TFEU as a justification of this provision.

19. See H. van Loon, "Principles and Building Blocks for a Global Legal Framework for Transnational Civil Litigation in Environmental Matters", *Uniform Law Review*, 23 (2) (2018), pp. 298-318 9 at 305-313. see online, Principles and building blocks for a global legal framework for transnational civil litigation in environmental matters | Uniform Law Review | Oxford Academic (oup.com).

In such cases, the role of private international law, especially of jurisdiction, becomes crucial. Victims of environmental damage caused by a company based in the EU, may sue that company in the court of its domicile [20]. Importantly, this forum is a *firm* one, because the doctrine of *forum non conveniens* [21] has no place in the Brussels I regulation [22]. An EU-based company may therefore be sued in the courts of its home-State, even for damages caused outside the EU, and by plaintiffs from outside the EU [23], with the prospect of a final decision from those courts.

The Brussels I Regulation does not, however, resolve the question of whether the non-EU-based subsidiary of such an EU parent company can be sued together with the parent in the courts of an EU member State. This question is left to national law, but important recent rulings in the UK [24] and the Netherlands [25] have confirmed that this is possible.

C. SDG 13. Take urgent action to combat climate change

Private international law also plays an important role in *transnational climate change* cases. For example, in *Lliuya* v. *RWE AG* [26], the Brussels I regulation guarantees Peruvian farmer Lliuya a court in Germany to sue energy giant RWE domiciled in Germany. Lliuya claims that RWE, having knowingly contributed to climate change by emitting substantial volumes of greenhouse gases and consequently to the melting of the glacier behind his village, is, in part, liable for the damage he suffered because he had to build pipelines to protect his village from excess water. Likewise, the Lugano Convention provides a court in Switzerland for four islanders of Pari in Indonesia to take the major cement producer

20. Article 4 (1): Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State; Article 63 (1): For the purposes of this Regulation, a company . . . is domiciled at the place where it has its: *(a)* statutory seat; *(b)* central administration; or *(c)* principal place of business.

21. The common law doctrine that allows a court to dismiss a civil action, even though the court has jurisdiction over the case and the parties, where a more convenient alternative forum exists in which to try the action.

22. CJEU 1 March 2005, C-281/02 *Andrew Owusu* v. *N. B. Jackson*.

23. CJEU, 13 July 2000, C-412/98 *UGIC* v. *Group Josi*.

24. UK Supreme Court, 10 April 2019 [2019] UKSC 20, *Vedanta Resources PLC and another* v. *Lungowe and others*.

25. See, Court of Appeal The Hague, 18 December 2015, ECLI:NL: GHDHA: 2015:3586, ECLI:NL: GHDHA:2015:3587, and ECLI:NL: GHDHA:2015:3588, interlocutory judgments in the three cases of *Dooh* et al., *Akpan* et al. and *Oguru and Efanga* et al. v. *Royal Dutch Shell PLC and Shell Petroleum Development Company of Nigeria LTD* et al.

26. See online, The Climate Case: *Saúl* v. *RWE* | *Germanwatch e.V.*

Holcim, based in Switzerland, to court for its alleged contribution to the loss of livelihoods caused by the submergence of their islands [27].

D. SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all. . .

While SDG 16 does not specifically refer to transnational situations, there is no doubt that these are part of its call for "access to justice for all" [28]. The above examples illustrate the importance of transnational justice (which requires the recognition of rights validly created abroad subject to public policy, certainty about the jurisdiction of courts, predictability of choice of law. . .) and its transversality as it extends to all SDGs.

At the global level, much of the work of the Hague Conference on Private International Law (Hague Conference, HCCH) [29] is devoted to facilitating access to justice in cross-border situations through the adoption of multilateral treaties or conventions and other international instruments [30], and monitoring and supporting their practical operation [31], including through its regional offices for Latin America and the Caribbean and Asia Pacific. The 1965 Hague Service, 1970 Evidence and 1980 Access to Justice Conventions [32] together form a basic global infrastructure for access to justice across the full breadth of civil and commercial disputes, including those on family, family property and inheritance issues, employment, commercial transactions, tenancy or landlord, financial, and environmental

27. See online, Climate litigation – the case of Pari Island against Holcim (foei.org).

28. See C. Whytock, "Transnational Access to Justice", *Berkeley Journal of International Law*, Vol. 38 (2020), 154-184, rightly pointing out the importance and distinctiveness of the transnational aspect of access to justice.

> "To understand the full range of access-to-justice problems that exist in the world, access to justice studies must include the perspective of parties in transnational disputes, understand these problems in the context of the global legal system, and treat them as problems of global governance, not only domestic governance" (at p. 156).

29. See www.hcch.net.

30. Notably, the 2015 Principles on Choice of Law in International Commercial Contracts.

31. See generally, H. van Loon, "The Global Horizon of Private International Law", Inaugural Lecture, 2015, *Recueil des cours*, Vol. 380 (2015), Brill, Nijhoff Leiden/ Boston 2016, pp. 9-108.

32. *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and Convention on International Access to Justice.*

issues. They are relevant to all SDGs, as is the 1961 Apostille Convention [33] which facilitates the cross-border circulation of public documents.

Several Hague Conventions, building on the judicial and administrative cooperation systems of these instruments, aim to ensure or promote desired *substantive outcomes*: the return of wrongfully removed children, the protection of children in general as well as in the context of adoption, the recovery of maintenance for children and families, and the protection of adults [34]. They may be relevant, for example, in the context of SDGs 1, 2, 3, 5, 8, targets 16.2 and 16.9, and 17 [35]

III. The potential of private international law to complement basic instruments of public international law

A. Private international law can support the objectives of public international law

While at the regional level the complementarity of private international law and public international law is gradually increasing [36], at the global level they continue to a large extent to "live apart together" [37]. Greater awareness of how these broad fields of law complement each other and how private international law can be used to advance public international law goals would strengthen the role of law in achieving the SDGs.

B. Example: The Conventions on the Law of the Sea and on Biodiversity

Take for example the UN Convention on the Law of the Sea, UNCLOS. The UNCLOS has been described as the "international

33. *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*.

34. The 1980 Hague Convention on the Civil Aspects of International Child Abduction, 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, 1993 Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (with its 2007 Protocol on Applicable Law to Maintenance Obligations), and the 2000 Convention on the International Protection of Adults.

35. See the Chapters on each of these SDGs in *The Private Side*. . . (fn. 10).

36. In addition to the growing role of private international law in achieving the policy objectives of the European Union, the European Court of Human Rights now often considers the role of private international law in the context of the European Convention on Human Rights. The same goes for the Inter-American Commission and Court of Human Rights in respect of the American Convention on Human Rights.

37. Cf. Th. H. de Boer, "Living Apart Together: The Relationship between Public and Private International Law", *Netherlands International Law Review* 57 (02), 2010.

basis upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources" [38]. However, its dispute settlement procedures are essentially written for States, and only exceptionally open to entities other than States. Nor does the Convention provide standing, access to justice and remedies to, e.g., local communities who are suffering harm in marine space caused by foreign companies, but leaves it to the States to make

> "recourse...available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or judicial persons under their jurisdiction" (Art. 235 (2)).

Yet, enabling such communities to act before the courts – both local courts and the International Tribunal for the Law of the Sea, ITLOS – could contribute, bottom-up, to reaching UNCLOS's aims [39]. Private international law could provide the principles and techniques for this purpose, and thereby contribute to the achievement of SDG 14, *Conserve and sustainably use the oceans, seas, and marine resources for sustainable development* [40].

Similar remarks can be made regarding the 1992 Convention on Biodiversity, CBD. By contrast to UNCLOS, the CBD expressly recognizes the presence of local communities and calls on States "as far as possible and as appropriate" to "support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced" (CBD, Art. 10 *(d)*). But the Convention does not provide a *mechanism* for such remedial action [41].

Both these important global instruments of public international law would better achieve their goals, and thereby SDGs 6, 15, 13, if they did not depend only on States and international organisations for their implementation, but also acknowledged the contribution of private

38. Agenda 21, 17.1, Annex II Res. 1 of the 1992 Rio Conference Report.

39. Cf. Article 235 (3) UNCLOS:

> "With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in . . . the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds."

40. See T. Sanni, SDG 14: Life below water, in *The Private Side*. . . (fn.10), pp. 441-462.

41. *Ibid.*

action, including by providing uniform rules on private international law [42].

C. *Example: The Conventions of the International Labour Organisation*

An example in a different field comes from the work of the International Labour Organisation. The ILO's Decent Work Agenda with its four pillars – job creation, social protection, rights at work, and social dialogue – is now an integral part of SDG 8 *Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.* Nevertheless, as Ulla Liukkunen points out, the ILO has not comprehensively addressed the transnational dimension of decent work in terms of labour rights [43]. Even the 2006 ILO Maritime Labour Convention, which goes beyond ILO's standard supervisory mechanism by a more direct enforcement framework of guaranteeing employer compliance [44], does not provide access to justice for seafarers [45].

Existing regulatory systems, including various national systems of private international law on labour contracts and labour in general, do not effectively combat various forms of social dumping, do not adequately protect posted workers, and where they provide protection, that protection does not extend to cross-border work that is not based on labour contracts. In other words, there is currently an imbalance between the global legal order for decent work and cross-border protection of labour rights.

The existing ILO instruments would be more effective if complemented by a global system of private international law rules to provide adequate protection of labour rights in transnational situations, thereby also furthering the objectives of SDG 8 [46].

42. Cf. D. P. Fernández Arroyo and M. M. Mbengue, "Public and Private International Law in International Courts and Tribunals: Evidence of an Inescapable Interaction", (2018), 56 (4) *Colombia Journal of Transnational Law* 797, 801.
43. U. Liukkunen, SDG 8: Decent Work and Economic Growth, *The Private Side. . .*, (fn. 10), pp. 245-281
44. J. Whitlow and R. Subasinghe, "The Maritime Labour Convention, 2006: A Model for other Industries?", *International Journal of Labour Research* 7, No. 1-2 (2015): 117-132, see online, IJLR 2015, Vol. 7, Issue 1-2 (ilo.org).
45. See Title 5. Compliance and enforcement . . . 4. The provisions of this Title shall be implemented bearing in mind that seafarers and shipowners, like all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals, or other dispute resolution mechanisms. The provisions of this Title do not determine legal jurisdiction or a legal venue.
46. See U. Liukkunen, *op. cit.* (fn. 43).

IV. The need for private international law to engage more vigorously in achieving the SDGs

A. *The ordering role of private international law in the global legal architecture*

If the previous section can be seen as a call to public international lawyers to become more aware of the potential of private international law to support their work on the international legal order in the light of the SDGs, there is an equal need for private international lawyers to become more aware of the larger public international law context of their discipline. As Alex Mills has forcefully argued, private international law functions as a system for the ordering of regulatory authority in the field of private and commercial law. It thus has a "public constitutional" function, a system that acknowledges the variety of legal cultures and systems in our world, and seeks, "horizontally", to reduce conflicts between them, and, "vertically", to embody and/or recognize fundamental norms defined at a higher (global, regional, or federal) level [47].

In some areas of law this awareness is already awake, in others it is still dormant. The widely embraced Hague Children's Conventions mentioned above (II.), reflect a worldwide realisation of the need to coordinate the diversity of civil rules on protection of children and families and to create systems of direct cross-border cooperation between courts and administrative bodies for this purpose. They accord with, and reinforce, international human rights instruments, especially the UN Convention on the Rights of the Child, in international situations. The spin-off at the global level of this confluence of private and public international law has been considerable: monitoring of the practical operation of the Conventions and encouragement to join them by the UN Committee on the Rights of the Child, cooperation with UNICEF and international NGOs to promote and further their correct application, etc. This serves several SDGs: 1 (End poverty especially of children [48]), 5 (Achieve gender equality), 8 (Decent work, ending child labour), 16 (access to justice, provide legal identity).

47. A. Mills, "The Confluence of Public and Private International Law – Justice, Pluralism and Subsidiarity in the International Constitution Ordering of Private law", Cambridge University Press, 2009.
48. See B. D. Mezmur, SDG 1: No Poverty, *The Private Side. . .*, pp. 29-55.

B. Potential for more synergy between private international law and global human rights in other areas of the law of persons and families

There is potential for more such synergy between private international law and global human rights in other areas of the law of persons and families, including in respect of the UN Covenant on Civil and Political Rights (e.g., Art. 23, the right to marry, and the Hague Conventions on marriage and divorce, and their consequences), and the UN Conventions on the Elimination of Violence Against Women, CEDAW, and on the Rights of Persons with Disabilities, CRPD (for which the Hague Conventions on protection of children and of adults provide a multilateral private international law complement, see e.g., Arts. 7, 12, 16 and 32 of the Convention on the International Protection of Adults) [49].

C. A major persistent global problem: lack of birth registration

A major concern remains. Policies and rules concerning children, and indeed all persons, presuppose that the person has a legal existence and identity, as called for by SDG 16.9: by 2030, provide legal identity for all, including birth registration.

According to the latest update of UNICEF's regular report on birth registration in the world (2023), however, "1 in 4 children in the world under the age of 5 do not officially exist". "Functioning civil registration systems are the main vehicles through which a legal identity for all – and target 16.9 – can be achieved . . . While most countries have mechanisms in place for registering births, systematic recording remains a serious challenge, highlighting the urgent need to improve and strengthen civil registration and vital statistics." [50]

In addition, to respond to the call *SDG 10.7*, *Facilitate orderly, safe, regular*, and *responsible migration and mobility of people* . . . it is crucial to facilitate the *portability* across borders of birth certificates and other identity documents.

49. *Ibid.*, see H. van Loon, "The Present and Prospective Contribution of Global Private International Law Unification to Global Legal Ordering", in F. Ferrari and D. P. Fernández Arroyo, *Private International Law – Contemporary Challenges and Continuing Relevance*, Elgar, (2019), pp. 214-234 (at 221-223).

50. UNICEF, Birth registration (June 2023), see online, Birth registration – UNICEF DATA.

It is for good reasons, then, that the 2021 Resolution of the IDI on Human Rights and Private International Law [51] in its Article 12 – Registration and documentation of identity, provides that: *Every person has the right to be registered immediately after birth, and to have their identity, including name and date of birth, recorded in a document accessible to the public and portable across borders.*

The issue of identity in a cross-border context was addressed to some extent in the 1993 Hague Convention on Adoption. It is also highly relevant to the current work of the Hague Conference [52] and the European Union [53] on parentage and surrogacy. To achieve SDG 16.9 around the world, much work needs to be done: establishing and improving functioning civil status systems, providing access to reliable civil status documents, evidencing family ties, and proving one's age. Facilitating proof of legal identity across borders serves the proper outcome of applying private international law, and thereby of migration policies based on human rights [54].

D. Party autonomy under scrutiny

Several SDGs invite a new look at party autonomy, the ability of private actors in cross-border situations to agree on how to settle their disputes by choosing the court or arbitral tribunal and the law applicable to their relationships. Party autonomy is a fundamental achievement of private international law. It enables a choice of legal regulation in cross-border situations best adapted to the needs of the parties. It recognizes a certain international "sovereignty" to persons [55]. Party autonomy can thus provide the proper legal regime for transnational contracts aimed, among others, at ensuring food security (SDG 2), health (SDG 3), education (SDG 4), availability of water and sanitation (SDG 6), access to energy (SDG 7), decent work (SDG 8), and developing sustainable infrastructure (SDG 9). As mentioned above, in EU private international tort litigation, party autonomy may also assist victims of environmental harm, including adverse effects of climate change.

51. See fn. 15.

52. See online, HCCH | The Parentage/Surrogacy Project.

53. Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, https://commission.europa.eu/document/928ae98d-d85f-4c3d-ac50-ba13ed981897_en.

54. See extensively, S. Corneloup and J. Verhellen, SDG 16: Peace Justice and Strong Institutions (focusing on SDG 16.9), *The Private Side*. . . (fn. 10), pp. 505-540.

55. See A. Mills, *Party Autonomy in Private International Law*, Cambridge University Press, 2018.

However, party autonomy carries risks for sustainability if it leads to exploitation of weaker parties and to negative externalities including breaches of human rights, damage to the environment and corruption, e.g., in the case of international trade and investment involving economically powerful companies and developing countries with a weak legal, economic, and social infrastructure [56].

Recent international instruments, such as the 2005 Hague Choice of Court Convention and the 2015 Hague Principles, take care to exclude party autonomy concerning consumer and employment contracts and offer additional tools to avoid unjust outcomes of party autonomy [57]. Together with the promotion of these instruments, however, more work is needed to regulate party autonomy regarding the excluded consumer and employment contracts (as argued above III.C), and to ensure that party autonomy leads to sustainable results.

Practicing lawyers, corporate lawyers, including in-house counsel, will need to become increasingly aware of possible negative effects, including externalities, of their contract work [58]. *Scholars* of private international law will need to delve deeper into how the integrity of the Earth's life support systems, ecological integrity, can be recognised as a fundamental principle or *"Grundnorm"* of international law, similar to international human rights [59]. Subject to further refinement, such a norm could inspire rules on jurisdiction, applicable law and recognition and enforcement of decisions, and inform traditional corrective mechanisms, such as mandatory rules that override parties' choices or limit the impact of such choices through public policy, to help prevent or remedy harm to people and to the planet [60].

56. See, in relation to education, K. Beiter, SDG 4: Quality education; to cross-border infrastructure projects, V. Bath, SDG 49: Industry, Innovation and Infrastructure, and to sustainable use of terrestrial ecosystems, forests and land, D. Stamboulakis and J. Sanderson SDG 15: Life on Land, in *The Private Side*. . . (fn. 10), pp. 125-158, 283-316 and 463-503.

57. E.g., Choice of Court Convention, Article 6 *(c)*, Principles, Article 9 *(e)*.

58. See e.g., A. Ramasastry, "Advisers or Enablers? Bringing Professional Service Providers into the Guiding Principles Fold", *Business & Human Rights Journal*. 1-19 (2021), S. Vaughan, "Existential Ethics: Thinking Hard About Lawyer Responsibility for Clients' Environmental Harms", *Current Legal Problems*, Vol. XX (2023), pp. 1-34.

59. R. Kim and K. Bosselman, "Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law", *Review of European, Comparative International Environmental Law*, 24 (2) (2015), pp. 194-207, see online, Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law (wiley.com).

60. See further, *The Private Side*. . . (fn. 10), Introduction, 3.3.6. Furthering Sustainability via Overriding Mandatory Rules and Public Policy?, pp. 23-24.

V. Conclusion

United Nations Agenda 2030 reflects many of today's great challenges. Its Sustainable Development Goals appeal not only to public actors in the international arena, States and international institutions, but also to civil society, business and the private sector. Halfway through the 2030 Agenda, the SDGs are seriously lagging behind. Much stronger action is needed from both public and private actors to achieve the seventeen goals.

Although the Agenda is a goal setting, not a rule-making instrument, it requires significant behavioural changes. This is where law comes in, and private international law has a constructive role to play in this regard. Conversely, the SDGs provide an orientation for the further development of private international law as a humanising force, and beyond as an instrument to respect the integrity of ecological systems and the planet.

The current compartmentalisation in private international law and public international law including human rights law deprives practitioners and scholars of awareness of their complementary role in addressing the practical goals of the 2030 Agenda. There are objectives of public international law that could be more fully achieved by recognising the role of private action, and therefore, in cross-border situations, seeking the support of private international law (above III). Conversely, private international lawyers need to be more aware of, and engage with, the broader, including public international law context of their daily work on cross-border private law relationships and transactions (above, IV), recognising the governance role of private international law in the global legal architecture.