Corona and Private International Law: A Regularly Updated Repository of Writings, Cases and Developments

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The coronavirus has created a global crisis that affects all aspects of life everywhere. Not surprisingly, that means that the law is affected as well. And indeed, we have seen a high volume of legislation and legal regulations, of court decisions, and of scholarly debates. In some US schools there are courses on the legal aspects of corona. Some disciplines are organizing symposia or special journal issues to discuss the impact of the pandemic on the respective discipline.

Private international law has not (yet?) consolidated discussions of the relevance of the crisis for the field, and of the field for the crisis (though the new EAPIL blog is running a very valuable series). But of course, private international law matters are crucial to countless issues related to the epidemic - from production chains through IP over possible vaccines to mundane questions like the territorial application of lockdown regulations.

Knowledge of these issues is important. It is important for private international lawyers to realize the importance of our discipline. But it is perhaps even more important for decision makers to be aware of both the pitfalls and the potentials of conflicts of law.

This site, which we hope to update continually, is meant to be a place to collect, as comprehensively as possible, sources on the interaction of the new coronavirus and the discipline. The aim is not to provide general introductions into private international law, or to lay out sources that could be relevant. Nor is this meant to be an independent scholarly paper. What we try to provide is a one-stop place at which to find private international law discussions worldwide regarding to coronavirus.

For this purpose, we limit ourselves to the discipline as traditionally understood—jurisdiction, choice of law, recognition and enforcement, international procedure. Coronavirus has other impacts on transnational private law and those deserve attention too, but we want to keep this one manageable.

Please help make this a good informative site. Please share any reference that you have - from any jurisdiction, in any legislation - and we will, if possible, share
them on this site. Please contact olbing@mpipriv.de

General

The European Law Institute has issued a set of Principles for the COVID-19 Crisis, covering a variety of legal topics such as Democracy (Principle 3) and Justice System (Principle 5) as well as Moratorium on Regular Payments, Force Major and Hardship, Exemption from Liability for simple Negligence (Principles 12 to 14). Ending with something everybody hopes for: Return to Normality (Principle 15).

The Secretary General of the Hague Conference provided an online message from his home. Ensuing, the Permanent Bureau developed a Toolkit for resources and publications relevant to the current global situation.

The university of Oxford’s Blavatnik School of Government collects all measures by governments around the world in the “Coronavirus Government Response Tracker”.

Matthias Lehmann discusses the role of private international law on a number of issues – the impact of travel restrictions on transportation contracts, contract law issues for canceled events, canceled or delayed deliveries, but also liability for infections.

Online Workshops and Conferences

In time of travel restrictions and social distancing the academic exchange is still active and sometimes more diverse than before, since people from all around the world come together, as the great number of workshops and symposiums that are held online shows.

Contrary to the regular sessions of The Hague Academy of International Law’s Centre for Studies and Research, the upcoming edition is entirely online. The topic will be “Epidemics and International Law” and held from September 2020 to June 2021. The collective works will be published by the Academy. You will find application and programme here.

A comparative analysis of reactions in Japan and Germany on COVID-19 in private
and public law with scholars from both jurisdictions will be the topic of an online conference (in German) on August 19 to 20, 2020. To participate register here.

During a live youtube conference on July 23, 2020 Humberto Romero-Muci presented with several others his views on “Migrantes, pandemia y política en el Derecho Internacional Privado”. The video is still online.


Another webinar was held on “Vulnerability in the Trade and Investment Regimes in the Age of #COVID19”, which is available online, as part of the Symposium on COVID-19 and International Economic Law in the Global South.

A Mexican conference about Civod-19 and its impacts on private international Law was on June 25, 2020 on Zoom.

There was an online-workshop on “COVID-19 und IPR/IZVR” by Matthias Lehmann on Tuesday June 2, 2020 at 11:00 a.m.

As a follow-up of a webinar on PIL & COVID-19, Inez Lopez and Fabrício Polido give “some initial thoughts and lessons to face in daily life”

A group of Brazilian scholars organized an online symposium on Private International Law & Covid-19. Mobility of People, Commerce and Challenges to the Global Order. The videos are here.

The Organization of American States holds a weekly virtual forum on “Inter-American law in times of pandemic” (every Monday, 11:00 a.m., UTC-5h). One topic of many will be on “New Challenges for Private International Law” (Monday, June 15, 2020).

**State Liability**

Some thoughts are given to compensation suits brought against China for its alleged responsibility in the spread of the virus. One main issue here is whether China can claim sovereign immunity.
In the United States, several suits have been brought in Florida (March 12), Nevada (March 23) and Missouri (April 21) against China, which plaintiffs deem responsible for the uncontrolled spread of the virus, which later caused massive financial damage and human loss in the United States. Not surprisingly officials and scholars in China were extremely critical (see here and here).

But legal scholars, including Chimène Keitner and Stephen L. Carter, also think such suits are bound to fail due to China’s sovereign immunity, as do Sophia Tang and Zhengxin Huo. Hiroyuki Banzai doubts that the actions can succeed since it will be difficult to prove a causal link between the damages and the (in-) actions by the Chinese Government. Lea Brilmayer suspects that such a claim will fail since it would be unlikely, that a court will assume jurisdiction. Tom Ginsburg lays out the legal issues in an interview in German. Fabrizio Marrella discusses the Italian perspective. Brett Joshpe analyzes China’s private and public liability in the domestic and international framework.

A Republican Representative is introducing two House Resolutions urging the US Congress to waive China’s sovereign immunity in this regard; such a waiver has also been proposed by a Washington Post author. The claim has also found support by Fox News.

Interestingly, there is also a reverse suit by state-backed Chinese lawyers against the United States for covering up the pandemic. Guodong Du expects this will likewise be barred by sovereign immunity.

In the UK, the conservative Henry Jackson Society published a report suggesting that China is liable for violating its obligations under the International Health Regulations. The report discusses ten (!) legal avenues towards this goal, most of them in public international law, but also including suits in Chinese, UK and US courts (pp 28-30). Sovereign immunity is discussed as a severe but not impenetrable barrier.

**Contract Law**

Both the pandemic itself and the ensuing national regulations impede the fulfilment of contracts. Legal issues ensue. An overview of European international contract law and the implications of COVID-19 is given here and here.
The UNIDROIT Secretariat has just released a [Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 health crisis](#).

Bernard Haftel highlights three different techniques to apply COVID-19 legislation to an international contract: as lex contractus, as lois des police and through consideration within the applicable law.

Gerhard Wagner presents COVID caused defaults under the aforementioned ELI principles.

If a contracting party is unable to perform its contractual obligations, incapacity to perform can be based on force majeure or hardship. Some contributions suggest to apply for force majeure certificates which are offered by most countries, for example by China, Russia. How such a certificate can influence contractual obligations under English and New York Law is shown by Yeseung Jang. The German perspective is given by Philip Reusch and Laura Kleiner, further the South Korean, French and the Common Law perspective on force majeure have been published. Bruno Ancel compares the French and American approach. The difficulty to implement appropriate force majeure clauses in a contract is shown by Matteo Winkler.

The CISG has long been of very little importance in international contract law but now is subject to many discussions. André Janssen and Johannes Wahnschaffe dedicate a detailed analysis to exemptions from liability and cases of hardship under the CISG.

Victoria Lee, Mark Lehberg, Vinny Sanchez and James Vickery go beyond force majeure implications on contracts in their expert analysis.

William Shaughnessy presents issues which might occur in international construction contracts.

Another crucial aspect is the application of overriding mandatory rules on international contracts. Ennio Piovesani discusses whether Italian decree-laws enacted in view of the pandemic can operate as overriding mandatory rules and whether that would be compatible with EU law. So does Giovanni Zarra on international mandatory rules. Aposotolos Anthimos adds the Greek perspective, Claire Debourg the French to the discussion.
The applicability of self-proclaiming mandatory provisions in Italian law in respect to package travels in general and the Directive (EU) 2015/15 on package travel in particular, is discussed by Fabrizio Marongiu Buonaiuti.

Matthias Lehmann considers more broadly possible private international law issues and responses under European law. José Antonio Briceño Laborí and Maritza Méndez Zambrano add the Venezuelan view.

The crisis hits in particular global value and production chains. Impacts are discussed by Tomaso Ferando, by Markus Uitz and Hemma Parsché and by Anna Beckers, though neither focuses specifically on private international law.

Caterina Benini explains a new Italian mandatory rule providing a minimum standard of protection for employees.

Klaus Peter Berger and Daniel Behn in their historical and comparative study on force majeure and hardship, highlight that such remedies are quite regular to find and fit to distribute the risk emanating from such a crisis evenly.

Tenancy

Caused by fear of loss of tenancy and the resulting evictions several countries have altered their tenancy laws accordingly. An overview of some jurisdictions can be found in the current issue of the “Zeitschrift für Europarecht, Internationales Privatrecht und Rechtsvergleichung” (ZfVR 2020, Vol. 3)(German).

Tort

Next to state liability, a lively but less political discussion on civil liability in international tort law has evolved.

An extensive overview about damages and Corona under Indian international tort law is given by Saloni Khanderia.

General implications of the coronavirus on product liability and a possible duty to warn costumers, without specific reverence to conflict of laws.
In Austria, a consumer protection association is considering mass litigation against the Federal State of Tyrolia and local tourist businesses based on their inaction in view of the spreading virus in tourist places like Ischgl. A questionnaire is opened for European citizens. Matthias Weller reports.

Florian Heindler discusses how legal measures to battle the virus could be applicable to a relevant tort case (either as local data or by special connection), by analyzing the hypothetical case of a tourist who gets infected in Austria.

Jos Hoevenars and Xandra Kramer discuss the potential of similar actions in the Netherlands under the 2005 Collective Settlement Act, WCAM.

Family Law

Implications also exist in family law, for example regarding the Hague Abduction Convention.

In an Ontario case (Onuoha v Onuoha 2020 ONSC 1815), concerning children taken from Nigeria to Ontario, the father sought to have the matter dealt with on an urgent basis, although regular court operations were suspended due to Covid-19. The court declined, suggesting this was “not the time” to hear such a motion, and in any way international travel was not in the best interest of the child. For the discussion see here.

Aspects of travel restrictions in international abduction cases are analysed by Gemme Pérez.

A general overview of abduction in times of corona was published by Nadia Rusinova. Another contribution by her covers recent case law and legislation on remote child related proceedings which were conducted during the last weeks around the world. She also highlights, that COVID-19 measures can impact Article 8 ECHR.

A recent webinar also discussed the impact on the Hague Abductions Convention.

Also cases of international surrogacy come into mind which are affected by COVID-19, as Mariana Iglesias shows.
Personal Data

The protection of personal data in transnational environments has always been a controversial topic in conflict of laws. Jie Huang shows, that due to COVID-19 existing tensions between the EU, the USA and China are reflected in their conflict of laws approach.

Economic Law

The crisis puts stress on global trade and therefore also economic law. Sophie Hunter discusses developments in the competition laws of various countries (though with no explicit focus on conflict of laws issues).

A list of authors from around the world analyses the interrelation between “Competition law and health crises” in its international context in the current issue Concurrences.

Intellectual Property

Due to lockdowns and school closures, online work and teaching has exorbitantly increased but, as Marketa Trimble stresses, with little notion of transnational copyright issues.

To tackle those a prominently endorsed letter to the World Intellectual Property Organization, emphasizes the need to ensure that intellectual property regimes should support the efforts against the Coronavirus and should not be a hindrance.

Public Certification

In times of lockdown and closed borders notarization and public certification become almost impossible. Therefore, various countries have adjusted their legislation. You will find an overview here.
Dispute Resolution

Regulations against social contact and lockdowns make physical presence in court rooms impossible and thereby put pressure on courts. Some courts suspend their activities except for urgent matters (one international abduction case in which this becomes prevalent is discussed in the family law section.) Developments in Italy are discussed here, developments in English law here.

Another possibility is the move to greater digitalization, as discussed comparatively by Emma van Gelder, Xandra Kramer and Erlis Themeli. The Hague Conference on Private International Law (HCCH) published a Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention, discussed also with reference to Corona by Mayela Celis.

In litigation, virtual hearings become a prominent measure to overcame restrictions on physical presence. While in on some jurisdiction such hearings are possible, Luigi Malferrari discusses the question if such hearings should also be enabled before the CJEU.

Maxi Scherer takes the crisis as an opportunity to analyse virtual hearings in international arbitration. Complications and long-term effects of virtual arbitration are presented here. Mirèze Philippe however sees this development as a positive game changer not just in health aspect but also to protect the environment and saving time as well as travelling costs.

A very broad presentation of legislation in France, Italy and Germany in civil procedure, including cross border service and taking of evidence as well as its implications on international child abduction and protection, is given by Giovanni Chiapponi.

Jie Huang examines the case of substitute service under the Hague Service Convention during the pandemic in the case Australian Information Commission v Facebook Inc ([2020] FCA 531).

A US project guided by Richard Suskind collects cases of so-called “remote courts” worldwide.

The EU gives information about the “impact of the COVID-19 virus on the justice
field” concerning various means of dispute resolution.

Gilberto A. Guerrero-Rocca analyses the impacts of COVID-19 on international arbitration in relation to the CISG.

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**Personal Data**


**Economic Law**


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**Public Certification**

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