Private International Law and the outbreak of Covid-19: Some initial thoughts and lessons to face in daily life

Written by Inez Lopes (Universidade de Brasília) and Fabrício Polido (Universidade Federal de Minas Gerais)

Following the successful repercussion of the **Webinar PIL & Covid-19: Mobility of Persons, Commerce and Challenges in the Global Order,** which took place between 11 and 22nd May 2020, the Scientific Committee headed by Prof. Dr Inez Lopes (Universidade de Brasília), Prof. Dr Valesca R. Moschen (Universidade Federal do Espírito Santo), Prof. Dr Fabricio B. Pasquot Polido (Universidade Federal de Minas Gerais), Prof. Dr Thiago Paluma (Universidade Federal de Uberlandia) and Prof. Dr Renata Gaspar (Universidade Federal de Uberlandia) is pleased to announce that the Webinar´s videos are already available online (links below). The committee thanks all those professors, staff and students who enthusiastically joined the initiative. A special thank is also given to the University of Minas Gerais and the Brazilian Centre for Transnational and Comparative Studies for the online transmissions. The sessions were attainable to both participants and the audience.

On the occasion of the Webinar, scholars and specialists from Argentina, Brazil, Uruguay, Mexico, Portugal, Spain and the United Kingdom shared their preliminary views on Private International Law (PIL) related issues to the existing challenges posed by Covid-19 outbreak in Europe and the Americas. The main objective of the Webinar was to focus on the discussions on three main multidisciplinary clusters for PIL/Covid-19 research agenda: *(I) Private International Law, International Institutions and Global Governance in times of Covid-19*; (*II) Protection of persons in mobility and Covid-19: human rights, families, migrants, workers and consumers; (III) International Commerce and Covid-19: Global supply chains, investments, civil aviation, labour and new*

technologies.

The initiative brought together the ongoing collaborative research partnerships among peers from the University of Brasília-UnB, Federal University of Minas Gerais-UFMG, Federal University of Uberlândia-UFU, Federal University of Espírito Santo-UFES, State University of Rio de Janeiro, Federal Rural University of Rio de Janeiro, FGV Law/São Paulo, Federal University of Paraná, Federal University of Rio Grande do Sul, Universidad Nacional del Litoral/Argentina, Universidad de la República/Uruguay, CIDE/Mexico, University of Coimbra/Portugal, University of Minho/Portugal, Universidad de València/Spain, University of Edinburgh/UK, and besides to members of the American Association of Private International Law – ASADIP, the Latin American Society of International Law, the Latin American Research Network of International Civil Procedure Law and the Brazilian Association of International Law.

The proposal for e-gathering specialists was made in line with the intense academic engagement to explore potential critical views related to current and future avenues for Private International Law during a pandemic crisis. One could remark the strong narratives about "global" and "domestic" health crises and their interactions with the practical operation of PIL lawmaking and decision-making processes. More generally, participants raised several issues on how PIL framework, norm-setting and dispute resolution mechanisms would be intertwined with global health emergencies, national public health interests, social isolation and distancing, inequalities, poverty, the demise of social protection on global scale and restrictions on the mobility of families, groups, individuals, companies and organizations during a pandemic crisis.

The Webinar participants also talked about an expedite PIL agenda on core issues related to state and non-state actors' practices during Covid-19 health crisis, challenges to international commerce, investment, labour and technologies and enforcement of human rights in cross-border cases. In view of the three clusters and specific topics, the Webinar sessions went into the analysis of the actual and potential impacts of Covid-19 outbreak on PIL related areas, its methodologies and policy issues. Participants highlighted that the PIL sectors on applicable law, jurisdiction, international legal (administrative and judicial) cooperation and recognition of foreign judgments will remain attached to the objective of resolving urgent cases, such as in the field of family and migration law (e.g. cases of international abduction, family reunion vs. family dispersion), consumer law,

labour law, international business law and overall in cross-border litigation (e.g. reported cases involving state immunity, bankruptcy, disruption of global supply chains).

Likewise, there was a converging view amongst participants that PIL and its overarching principles of cooperation, recognition and systemic coordination will be of a genuine practical meaning for what is coming next in Covid-19 pandemic. Also, values on cosmopolitanism, tolerance and integration going back to the roots and veins of the Inter-American scholarship to PIL studies (since the end of 19th century!) may help to improve institutions dealing with local, regional and global. Likely those principles and values could provide PIL community with 'cautionary tales' in relation to existing trends of opportunistic nationalism, refusal of cooperation and threats with foreign law bans (for example, with regard to specific states, migrants and even businesses). As to policy level and to State practices (connected to international politics and public international law), participants have raised various concerns about the mobility of persons, sanitary barriers and national campaigns perniciously devoted to spreading xenophobia, marginalising groups, minorities and migrants. Some participants have also referred to the dangers of unilateral practices of those States advocating a sort of international isolation of countries and regions affected by Covid-19 without engaging in cooperation and dialogues. Even in those extreme cases, there will be harmful consequences to PIL development and its daily operation.

Inevitably, the tragedies and lost lives in times of Coronavirus have made participants reflect upon the transformative potentials for international scholarship and policy in a multidisciplinary fashion. For example, as remarked in some panels, in order to engage in a constructive and policy-oriented approach, PIL scholarship could refrain from any sort of 'black-letter' reading or absenteeism concerning Covid-19. At this stage, a sort of 'political awareness' should be encouraged for studies in public and private international law. Issues on economic reconstruction (rather than simply 'economic recovery'), access to public health, disruptive technologies, generational environmental concerns, labour markets, access to credit will be highlighted in global governance talks during Covid-19 pandemic and beyond. Some participants conceive the moment as "reality shock" rather than "mindset change" in facing good/bad sides of the pandemic.

As a preliminary matter of housekeeping method, participants shared some conceptual and normative questions in advance to the Webinar as a kick-off stage. A first teaser was initially to generate discussions about the interplay between state actors, international institutions, International Health Law and PIL. One of the departing points was the impact of the global sanitary emergency on individuals, families, organizations and companies and overlapping goals of state powers, public ordering and transnational private regulation. In addition, participants raised further concerns on the current international institutional design and PIL roles. Covid-19 accelerated and openly exposed the weakness of international institutions in guiding States and recalling their obligations concerning the protection of citizens during national emergencies or providing aid to most states affected by the outbreak of a pandemic disease. That scenario reveals existing gaps and bottlenecks between international, regional and national coordination during health emergencies (for example, the World Health Organization, Organization of American States and the European Union in relation to Member States). Participants also proposed further questions whether a global health emergence would change current views on jurisdiction (prescriptive, adjudicatory and executive), particularly in cases where cooperation and jurisdictional dialogues are refused by states in times of constraints and ambivalent behaviours in global politics.

Interdisciplinary PIL approaches also allowed participants to draw preliminary lines on the intersectionality between global health, national policies and jurisdictional issues, particularly because of the distinct regulatory frameworks on health safety and their interplay with cross-border civil, commercial and labour matters. The Coronavirus outbreak across the globe paves the way to rethink roles and new opportunities for international organizations, such as the United Nations, WHO, WTO, the Hague Conference of Private International Law, European Union, ASEAN, Mercosur and Organization of American States. One of the proposals would be a proper articulation between governance and policy matters in those international institutions for a constructive and reactive approach to the existing and future hardship affecting individuals, families and companies in their international affairs during pandemics and global crises. Since Private International Law has been functionally (also in historical and socio-legal dimensions) related to “the international life” of individuals, families, companies, organizations, cross-border dealings, a more engaged policy-oriented approach would be desirable for the PIL/global health crisis interplay. To what extent would

it be possible to seek convergence between PIL revised goals, health emergencies, new technologies, governance and "neo-federalism" of organizations for advanced roles, new approaches, new cultures?

Some panels have directly referred to the opportunities and challenges posed ahead to PIL research agenda as well as to international, transnational and comparative studies. Both the Covid-19 outbreak and the global crisis require a study to continuously commit with inter- and multidisciplinary research and even strategically to recover some overarching values for a global order to be rebuilt. Reinforced and restorative cooperation, cosmopolitanism, ethics of care, solidarity and the entitlement of human rights (for instance, new proposed formulations for the right to development under the UN 2030 Agenda) are inevitably related to practical solutions for global health crises and emergencies. Humankind has been in a never-ending learning process no matter where in the globe we live. In a certain fashion, the despicable speech and behaviour of certain governments and global corporations' representatives during the fight against the coronavirus generated endurable feelings in scholarly circles worldwide. Besides, political agents' disdain regarding lost lives will never be forgotten.

How could PIL resist and respond to global challenges involving politics, international affairs and global health while at the same time it will be confronted with upcoming events and processes associated to extremist discourses and hatred, disinformation, historical revisionism, 'junk science' or everything else that disregards principles of global justice, international cooperation and protection of the rights of the person in mobility? Perhaps it is too early to reach consensus or a moral judgment on that. Nevertheless, the fight against Coronavirus/Covid-19 seems to extoll the powerful narratives of alterity, care, social protection, equalities, science, access to knowledge and education. Private International Law may play an important and critical role during forthcoming 'austerity projects' that may come during these dark sides and days of our History. As recalled by participants, the present requires our communities to engage in new proposals to support people, enterprises, consumers, workers and governments in their aspirations and endeavours for improving 'social contracts' or creating new ones. A pandemic crisis would not be the last stop or challenge.

For the sake of a peaceful and safe global community, PIL has 'tools and minds' to raise awareness about a balanced, fairly and universally oriented compromise to keep global, regional and national legal regimes operating in favour of the

mobility of persons, the recognition of foreign situations, enforcement of human rights, allocation of distributive international trade, as well as engaging in environmental and human development goals. For example, recent academic writings on hardship or 'force majeure' theories could indeed focus on technical solutions for international contracts and liability rules, which are suitable for accommodating certain interests (the 'zero-sum' game?) among public and/or private parties during Covid-19 and after that. Yet those reflections could not isolate themselves from a broader discussion on major social and economic hurdles associated to business environments worldwide, such as unequal access to finance, trade imbalance, precarious work, digital dispossession by new technologies and multi-territorial and massive violation of human rights. From now on, global fairness and solidarity appear to be crucial for a common talk and shared feeling for countries during their socioeconomic reconstruction. Cooperation remains a cornerstone to pursue equilibrium strategies and surely PIL and its academic community will remain a great place for an authentic and constructive exchange between ideas beyond PIL itself. Stay with your beloved, stay safe!

Inez Lopes *(Universidade de Brasília)*
Fabrício Polido *(Universidade Federal de Minas Gerais)*

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International Law, International Relations and Institutions: narratives on Covid-19 & challenges for Private International Law

05/11 – Monday – 10:30

Raphael Vasconcelos – State University of Rio de Janeiro; Fabrício B. Pasquot Polido – Federal University of Minas Gerais; Renata Gaspar – Federal University of Uberlândia

Video here

PIL, Global Governance, mobility of persons and Covid-19: enforcement of sanitary measures, international public policy and critical debates

05/12 – Tuesday – 16:30

Paula All – National University of Litoral/ Argentina; Rosa Zaia – Federal University of Uberlândia; Renata Gaspar – Federal University of Uberlândia

Video here

PIL, state immunity, international organizations and cross-border civil/commercial litigation in Covid-19

05/13 – Wednesday – 10:30

Valesca R. Borges Moschen – Federal University of Espírito Santo; Martha Olivar Jimenez – Federal University of Rio Grande do Sul; Fabrício B. Pasquot Polido – Federal University of Minas Gerais; Tatiana Cardoso Squeff – Federal University of Uberlândia

Video here

Emerging issues for international protection of consumer tourist and Covid-19

05/14 – Thursday – 10:30

Guillermo Palao Moreno – University of València/Spain; Tatiana Cardoso Squeff – Federal University of Uberlândia; Valesca R. Borges Moschen – Federal University of Espírito Santo

Video here

Covid-19, persons in mobility, social and sexual rights at transnational

level: violence, vulnerability, xenophobia and discrimination

05/15 – Friday – 10:30

Tatyana Friedrich – Federal University of Paraná; Mariah Brochado – Federal University of Minas Gerais; Francisco Gomez – University of València / Spain; Raphael Vasconcelos – State University of Rio de Janeiro

Video here

Global digital economy, data protection, online misinformation and cybersecurity in times of Covid-19: jurisdictional and international legal cooperation

05/18 – Monday – 10:30

Anabela Susana Gonçalves – University of Minho / Portugal; Alexandre Pacheco – Getúlio Vargas Foundation – FGV / Direito-SP; Fabrício B.P. Polido – Federal University of Minas Gerais; Inez Lopes – University of Brasília – UnB

Video here

Civil aviation and Covid-19: current landscape for transportation of passengers and international commercial transactions

05/19 – Tuesday – 10:30

Inez Lopes – GDIP-Aéreo-Espacial / University of Brasília; Fabrício B. Pasquot Polido – Federal University of Minas Gerais; Marcelo Queiroz – GDIP-Aéreo-Espacial / UnB and GETRA / UnB; Fernando Feitosa – GDIP-Aero-Espacial / UnB and GETRA / UnB

Video here

Covid-19, foreign investments, integrated markets and PIL goals: regulatory choices, critical infrastructure and litigation

05/20 – Wednesday – 10:30

Laura Capalbo – University of the Republic / Uruguay; Veronica Ruiz Abou-Nigm – University of Edinburgh / UK; Ely Caetano Xavier Junior- ICHS – Federal Rural University of Rio de Janeiro

Video here

Covid-19 & future of work in the global order: aspects of DIP, employment contracts, outsourcing and worker protection

05/21 – Thursday – 10:30

Marcia Leonora Orlandini – Federal University of Uberlândia; Marcel Zernikow – State University of Rio de Janeiro; Maurício Brito – GDIP-Transnational Justice / UnB

Full video here.

Covid-19, International commerce, global supply chains, WTO and beyond

05/22 – Friday – 16:30

María Mercedes Albornoz – CIDE / Mexico; Rui Dias – University of Coimbra / Portugal; Fabio Morosini – Federal University of Rio Grande do Sul; Renata Gaspar – Federal University of Uberlândia

Full video here

Covid-19, PIL and new technologies: research opportunities for Ph.D Students 05/19 – Tuesday – 19:00

Cecília Lopes – Master's Student / UFMG; Fernanda Amaral – Master's Student / UFMG

Full video here

Covid-19, PIL and protection of vulnerable communities: research opportunities for Ph.D Students

05/22, Friday – 10:30 – Márcia Trivellato – Doctoral candidate/ UFMG; Thaísa Franco de Moura – Doctoral candidate/ UFMG; Diogo Álvares – Master student/UFMG;

Full video here