

Available as of next week in Recueil des cours: Mario J. A. Oyarzábal, The Influence of Public International Law upon Private International Law in History and Theory and in the Formation and Application of the Law

The lectures of Mario J. A. Oyarzábal entitled “The influence of public international law upon private international law in history and theory and in the formation and application of the law”, which were delivered at The Hague Academy of International Law in 2020, will be published on 22 March 2023 in the Collected Courses of the Academy (*Recueil des cours de l’Académie de droit international de La Haye*, Vol. 428, 2023, pp. 129 *et seq.*).

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The summary below has been provided by the author.

As its title suggests, this course explores the influence of public international law upon private international law, in the history and the theory as well as in the formation and the application of the law.

The course focuses on the biggest transformations that have taken place on the international plane over the course of the last century and assesses how that has affected the legal landscape, raising questions as to the scope and the potential of private international law and the suitability of the traditional sources of international law to address the role of private actors and the incursion of public law in the private arena.

Chapter I analyses how the concepts of public and private international law have

evolved over time, from the *Jus Gentium* and the origins of the conflict of laws to the rise of sovereignty and positivism which led to the exclusion of private disputes connected with more than one State from the domain of international law. Particular attention is given to the developments in international relations and international law that took place since the second half of the 20th century – institutionalization, decolonization, human rights, globalization – which have produced a profound transformation in the sources, the method and ultimately the scope of private international law. The significance for private international law of the human rights movement and the regime for the protection of foreign investors are assessed from both backward and forward-looking perspectives.

Chapter II addresses the public international law sources of private international law in an ever-changing world. Starting with the sources stated in the Statute of the International Court of Justice, it delves into the relevance of other international sources of private international law such as community law, human rights standards and non-legally binding norms (or soft law), party autonomy and reciprocity. The law of treaties – their interpretation and the conflict of treaties – as applied to private international law is explored in certain detail, as well as the role – and potential – of the jurisprudence of the International Court of Justice in the determination of the rules of private international law in certain areas.

The **last Chapter** examines the interaction of public and private international law in selected areas: jurisdictional immunities – of foreign States, diplomats and international organizations – and the right of access to justice; mutual legal assistance – in relation with the 2019 Hague Judgments Convention, and the so-called “MLA initiative” on a convention for the investigation and prosecution of international crimes; sovereign debt restructuring processes in light of Argentina’s experience; the international law principle of the best interests of the child as applied to abducted, migrant and refugee children; international sports law with special focus on FIFA and football; international arts law under the 1970 UNESCO Convention and the 1995 UNIDROIT Convention and general international law; cybercrime as well as cryptocurrencies. The private international law issues relating to nationality, deep seabed mining, and sea level rise – which are the subjects of public international law – are also briefly presented.

Having analyzed the prevailing trends, the lectures survey three areas in which

the interconnectivity of actors, activities and norms are present requiring public/private law solutions: international economic law – in relation to climate litigation and the human rights preoccupations present in the investment protection regime, as well as the issue of economic and financial sanctions which have exacerbated with the war in Ukraine; international data flows and the threat they pose to personal data protection in particular; and the protection of vulnerable persons and groups including older adults, tourists and migrants.

This course takes a pragmatic problem-solving approach, which nonetheless is systemic and based on principles, and argues that while public and private international law are and should be kept as separate legal fields, both are needed to address an increasing number of issues.

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