

Sustainable European private international law - the SEPIL perspective

This post was written by Jachin Van Doninck (SEPIL coordinator, Vrije Universiteit Brussels) and Jerca Kramberger Škerl (University of Ljubljana)

It is fair to say that the attention for sustainability and sustainable development has seen a steady increase. The past decade, the United Nations has set out the Sustainable Development Goals (SDGs), based on the urgent need to shift the world onto a sustainable and resilient path. These SDGs are finding their way into policy making on every level and are also inspiring research in the legal field.[i] Recent scholarship has raised awareness for the potential of private international law to strengthen the SDGs' plan of action (e.g. the seminal work edited by R. MICHAELS, V. RUIZ ABOU-NIGM and H. VAN LOON, 2021).[ii] Private International Law is also and increasingly being classified as a governance tool[iii] of a political nature.[iv]

The SEPIL network, funded by the EUTOPIA UNIVERSITY alliance explores the sustainability of European private international law as a system, i.e. in itself. Thus, the project's intention was to move away from existing research on how private international law can be instrumentalized for the purpose of attaining the greater good (e.g. the Shell cases in The Netherlands and in the UK, reported on the conflictflaws blog), and to question to what extent sustainability can (or must) exert a system-building function *within* this area of the law. Taking into account that PIL acts as potent tool for achieving the SDGs, the research group delved into the question of the sustainability of this tool in itself, thus 'operating' mainly within the SDG 16 (Peace, Justice and Strong Institutions).

SEPIL organised two closed seminars in Ljubljana (29-30 September 2022) and Brussels (24-25 October 2022). The goals of the meetings were threefold:

- to catch up with the state of the art of the research on sustainability and law, both regarding the individual SDGs and the sustainability of law;
- to try to delimitate the question(s) of PIL as a tool to achieve sustainable development and sustainability as a tool to enhance PIL;

- to explore the research potential of the aforementioned SEPIL idea.

The Ljubljana edition was kicked off by Anna Maria Wilmot (VUB), who presented an outline of her current PhD research on the interplay between sustainability and the Belgian system of civil adjudication. She explained how any attempt at a systemic appraisal of the sustainability of European private international law would have to begin with a clear understanding of sustainability as a layered concept. Jachin Van Doninck (also at VUB) connected Anna Maria's research with the SEPIL project by elaborating on how legal scholarship and the courts are heavily involved in instrumentalizing private international law for the purpose of attaining sustainability and sustainable development. He pointed out that a fundamental analysis of the sustainability of private international law itself is lacking, which is precisely where SEPIL's research focus would lie. University of Ljubljana's Jerca Kramberger Škerl continued with an overview of the UN Sustainable Development Goals and a short presentation on how private international law can, first, serve as a tool to attain those goals, and second, adapt itself to respect those goals. In the afternoon, these SDGs were made concrete through topical examples. A first one was offered by University of Gothenburg's Anna Wallerman Ghavanini through her presentation on judicial protection for victims of discrimination in EU private international law, explaining that effective access to justice (SDG 16) for victims of discrimination (SDG 5) reveals shortcomings in the current private international law framework. Second, University of Ljubljana's Filip Dougan focused on the interplay between the UN Sustainable Development Goal 5 (Gender Equality) and the EU private international law. Erik Björling, also from the University of Gothenburg, then challenged our thinking with the question "Can retrospective civil procedure be prospective?". Using notions of procedural legal theory (naming, blaming, claiming, rational discourse, reduction of complexity), he touched on several core issues of private international law such as jurisdiction, choice of law and enforcement. The stage had been set for the Brussels edition.

Part of the Brussels edition was dedicated to discussing selected reading materials, featuring Schultz' "Carving up the internet", *EJIL* 2008, 799; Salminen and Rajavuori's "Private International Law, Global Value Chains and the externalities of transnational production: towards alignment?", *Transnational Legal Theory* 2021, 230; Meeusen's "Interaction between EU Regulations and Member State Codification of Private International Law: from patchwork to

network”, and Weller and Schulz’s “Political private international law. How European are Overriding Mandatory Provisions and Public Policy Exceptions?”.^[v] Directly or indirectly, these materials nourished our thinking on PIL from a policy perspective, e.g. by questioning the Savignian outlook of European private international law or the interplay between European and national initiatives in this field of law. Inspired by Rizcallah’s work on mutual trust,^[vi] Jachin Van Doninck closed the first day of the Brussels edition with a presentation on “SEPIL and fundamental legal values: a ‘mutual trust’ perspective”, reflecting on sustainability as a governance principle in the field of PIL.

The next day, SEPIL had the pleasure to welcome University of Antwerp’s Thalia Kruger as guest speaker. Her involvement in and contribution to the R. Michaels, V. Ruiz Abou-Nigm and H. van Loon volume provided the setting for an exchange on the criticism directed against the SDGs for their alleged insistence on growth and the pitfalls of a European-centred approach to PIL. A guided tour to the Belgian Court of Cassation ignited queries on how the Dutch and French speaking chambers of the Court try to prevent discrepancies in their case law and made us come full circle: how can private international, and any legal framework with ‘systemic’ aspirations for that matter, become sustainable?

All in all, this research community has successfully identified several crucial issues concerning the sustainability of European PIL as well as established a research platform for the continued pursuit for more sustainable legal solutions. As is often the case, the questions brought forward outnumber the answers at this stage: How does PIL *in itself* achieve sustainability (SDG 16), and how can it contribute *as a tool* for promoting other SDGs? How is national autonomy to be balanced with harmonization in the regulation of PIL? What role for mutual trust? And how can digitalization contribute to sustainability? Future research should address these questions systemically as well as bottom-up, exploring the sustainability of PIL in relation to various SDGs. With sustainability taking an ever more central position in legal research and practice alike, we foresee that the field will continue to develop, and we look forward to contributing to this development.

SEPIL is short for Sustainable European Private International Law. With funding from the EUTOPIA UNIVERSITY alliance, it brings together six researchers:

Jachin VAN DONINCK and Anna Maria WILMOT (Vrije Universiteit Brussel), Jerca KRAMBERGER ŠKERL and Filip DOUGAN (University of Ljubljana); and Anna WALLERMAN GHAVANINI and Erik BJÖRLING (University of Gothenburg).

[i] V. MAUERHOFER, D. RUPO AND L. TARQUINIO (eds.), *Sustainability and law: general and specific aspects*, Cham, Springer, 2020, 773 p.

[ii] 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*, Cambridge, Intersentia, 2021, 574 p., (open access)

[iii] 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" in 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*, Cambridge, Intersentia, 2021, 13.

[iv] M.-P. WELLER and A. SCHULZ, "Political private international law. How European are Overriding Mandatory Provisions and Public Policy Exceptions?" in J. VON HEIN E.-M. KIENINGER and G. RÜHL (ed.), *How European is European Private International Law? Sources, Court Practice, Academic Discourse*, Antwerp, Intersentia, 2019, (285) 286.

[v] The latter two were published in J. VON HEIN E.-M. KIENINGER and G. RÜHL (ed.), *How European is European Private International Law? Sources, Court Practice, Academic Discourse*, Antwerp, Intersentia, 2019.

[vi] C. RIZCALLAH, *Le principe de confiance mutuelle en droit de l'Union européenne. Un principe essentiel à l'épreuve d'une crise des valeurs*, Bruxelles, Bruylant, 2020, 666 p., reported here; for a different perspective, based on trust management, see M. WELLER, "Mutual Trust": A Suitable Foundation for Private International Law in Regional Integration Communities and Beyond?" in *Collected Courses of The Hague Academy of International Law - Recueil des cours*, vol. 423, 2022, reported on the conflictoflaws blog.