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PECULIARITIES OF ACHIEVING THE SUSTAINABLE DEVELOPMENT GOALS IN INTERACTION WIT PRIVATE INTERNATIONAL LAW

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Voronov K. Peculiarities of achieving the sustainable development goals in interaction wit private international law.

Regrettably, the triple global catastrophe of pollution, natural loss, and climate change coexists with the global socioeconomic problems of poverty and inequality. Temperatures are increasing at an unprecedented rate; biodiversity is disappearing swiftly, with potentially dire consequences for all of us; and pollution is becoming a global issue, killing millions of people annually and continuing to worsen. There is no normative vacuum in which the 169 targets and 17 Sustainable Development Goals (SDGs) were born or placed. They are based on international law and designed to be compliant with the commitments made in a number of soft law instruments and international agreements. There is, of course, a connection between international law and the SDGs. What kind of relationship do they have? How much and how may the SDGs and international law complement one another to improve systems integration .In an effort to leverage the relationship for global sustainability, this paper investigates these issues from two angles. First, do the SDGs play a key role in bringing together different international organizations to work toward the ultimate goal of sustainable development? Most international institutions function in relative isolation and may pursue conflicting interests since they are engrossed in their respective mandates and goals. Goal-setting, as a governance technique to prioritize, motivate, and provide direction, has been proposed by some observers as a way to improve the overall performance of current institutions in fostering sustainable development. Insofar as providing consistency to an otherwise divergent and even inconsistent set of institutional arrangements, how effective are the SDGs likely to be? Second, is it conceivable that international law will aid in the integrated implementation of the SDGs? The SDGs themselves have come under fire for lacking consistency, even though they pride themselves on being “integrated and indivisible. This is a problem since the Millennium Development Goals (MDGs) experience has demonstrated that achieving these governance goals on their own could have unforeseen consequences. While certain MDG targets were achieved, the MDGs’ spirit was not. Then, despite its fragmented structure, how and to what degree may international law integrate the SDGs and aims and aid in the achievement of long-term sustainable development.

Key words: private international law, sustainable development, millennium development goals, conflict rules, soft law.

Воронов К.М. Особливості досягнення цілей сталого розвитку у взаємодії з міжнародним приватним правом.

На жаль, потрійна глобальна катастрофа – забруднення, природні втрати та зміна клімату – співіснує з глобальними соціально-економічними проблемами бідності та нерівності. Температура зростає з безпрецедентною швидкістю; біорізноманіття стрімко зникає, що може мати жахливі наслідки для всіх нас; забруднення стає глобальною проблемою, яка щорічно вбиває мільйони людей і ситуація продовжує погіршуватися. 169 завдань і 17 Цілей сталого розвитку (ЦСР) існують не в нормативному вакуумі. Вони ґрунтуються на міжнародному праві і розроблені таким чином, щоб відповідати зобов’язанням, прийнятим у низці інструментів «м’якого права» та між-

народних угод. Безумовно, існує зв'язок між міжнародним приватним правом і ЦСР. Якого роду зв'язок між ними існує? Наскільки ЦСР і міжнародне приватне право можуть доповнювати одне одного для покращення системної інтеграції? Прагнучи використати цей взаємозв'язок для глобального сталого розвитку, в цій статті досліджуються ці питання під двома кутами зору. По-перше, чи відіграють ЦСР ключову роль в об'єднанні зусиль різних міжнародних організацій для досягнення кінцевої мети сталого розвитку? Більшість міжнародних інституцій функціонують у відносній ізоляції і можуть переслідувати суперечливі інтереси, оскільки вони занурені у свої цілі. Постановка цілей, як метод управління для визначення пріоритетів, мотивації та спрямування, була запропонована деякими вченими як спосіб покращити загальну ефективність нинішніх інституцій у сприянні сталому розвитку. Наскільки ефективними можуть бути ЦСР, якщо вони забезпечать узгодженість розрізнених і навіть непослідовних інституційних механізмів, наскільки ефективними вони можуть бути? По-друге, чи можна припустити, що міжнародне приватне право допоможе в комплексному впровадженні ЦСР? Самі ЦСР піддаються критиці за відсутність послідовності, хоча їх основаю є те, що вони є «інтегрованими та неподільними». Досвід Цілей розвитку тисячоліття (ЦРТ) показав, що досягнення цих цілей окремо може мати непередбачувані наслідки. Хоча певні завдання ЦРТ були досягнуті, дух ЦРТ не був реалізований. Тоді, незважаючи на свою фрагментарну структуру, виникає питання якою мірою міжнародне право може інтегрувати ЦСР та сприяти досягненню довгострокового сталого розвитку.

Ключові слова: міжнародне приватне право, сталий розвиток, цілі розвитку тисячоліття, колізійні норми, м'яке право.

Problem statement: Sustainable development has become a global priority since the late 1980s, and international law has been progressively catching up. The opportunity to further strengthen the legal standing of the sustainable development concept is presented by the adoption of the SDGs through a process led by United Nations (UN) Member States and including civil society.The SDGs are political objectives rather than mandates. The SDGs' underlying principles – some of which are based on international custom – as well as the manner in which they were established suggest that at least some of the goals and targets could be considered soft law.

Status of processing: The issue of interaction between sustainable development goals and private international law has been studied by such scholars as: Eduardo Álvarez-Armas, Vivienne Bath, Gülüm Bayraktaroğlu-Özçelik, Klaus D. Beiter, Sabine Corneloup, Klaas Hendrik Eller, Nikitas E. Hatzimihail, Thalia Kruger, Ulla Liukkunen, Benyam Dawit Mezmur, Ralf Michaels, Fabricio B. Pasquot Polido, Verónica Ruiz Abou-Nigm and others.

The aim of the article is to overlook the peculiarities of interaction between sustainable development goals and private international law

The main part. The UN General Assembly unanimously adopted the resolution "Transforming Our World: the 2030 Agenda for Sustainable Development" on September 25, 2015 [1]. The Resolution's major ideas are 17 Sustainable Development Goals (SDGs), along with numerous additional indicators and 169 related targets. The Sustainable Development Goals (SDGs) expand upon the UN Millennium Development Goals (MDGs), which were adopted in 2000 [2]. They do this by explicitly incorporating and advancing the MDGs' development priorities, which include eradicating poverty, enhancing food security, advancing education, and promoting gender equality.

They do however go farther in a significant way. In contrast to the MDGs, the SDGs place equal emphasis on development and sustainability. The SDGs are therefore "dual in nature." The pursuit of "development" is essentially constrained by the concept of "sustainability," as their primary objective is to shift society toward sustainability. Many of the SDGs' objectives are to "protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources, and taking urgent action on climate change." These are just a few of the many new goals that the SDGs add to the MDGs. With unanticipated negative effects on Earth's life-support systems and the potential to surpass so-called "planetary boundaries," human activity has grown to be a dominant force on the planet, potentially having catastrophic effects on ecosystems and future generations that could not be reversed.

The result of this dual focus is that the SDGs expressly cover the entire planet, whereas the MDGs did not. The SDGs were designed to be globally applicable and "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," in contrast to the MDGs, which focused on issues of particular importance to developing countries. Every one of the 17 Sustainable Development aims (SDGs) targets a particular issue or set of related concerns, sets forth comprehensive targets and governance aims to address them, and usually does so within a set timeline (often by 2030, occasionally by 2025 or 2020) [3]. The indicators that underpin the goals and targets are generated by UN Member States at the regional and national levels, and they are defined by a global indicator framework at the global level. The framework is evaluated annually, with a thorough review occurring every five years. Under the aegis of the UN Economic and Social Council, the High-level Political Forum on Sustainable Development is tasked with overseeing and revising the goals, targets, and indicators.

One challenge is to clarify the implicit role of private international law, i.e., to provide specific examples of how private international law is already in place in relation to the SDGs. However, another is to evaluate the extent to which current private international law fulfills the SDGs and its own capacity to do so. The discipline faces three obstacles in this instance, but we are starting to find solutions. First, different nations have different approaches to private international law in their legal systems. For example, civil law and common law traditions differ, some nations – like the United States – have their own approaches, some are more "internationalists" than others, and many nations – with varying degrees of success – have appropriated private international law techniques and methodologies from other nations, other regions, and other legal traditions. Institutions in some nations might not have the authority – or even the sophistication – to acknowledge that they could apply a different law from their own, or that private parties could choose to use a foreign court or law for their business dealings, let alone their familial relationships.

Second, domestic law still frequently governs private international law. In order to address circumstances including a "foreign element," private international law primarily emerged as a domestic legal system after the nation-state was established in the 19th century. Private international attorneys, particularly those in Europe and the US, established the field within their home legal systems and exported its ideas and principles across international borders. The opposite was very infrequently true, as was the case when a number of Latin American nations initially ratified the Montevideo Treaties in order to adopt shared ideas and ideals on a global scale [4].

Third, private international law has long been seen as a formal, purely technical field that assumes legal system equivalency and has no regulatory or political significance. The strength and weakness of private international law is apparent in this regard. Its emphasis on personal connections is its strongest point. It has created sophisticated methods for assigning cases to laws and court orders as well as for promoting coordination and communication between agencies and courts. It has discovered ways to prioritize important and desired results. However, because of its concentration on the private sector, the discipline has frequently lost sight of the larger political, social, economic, and cultural context as well as the public (international) law. As a result, it has also failed to recognize its hidden governance role and the impact it has on the global ordering of legal authority in private law [5].

Private international law would not be relevant to fundamentally regulated concerns such as the SDGs, nor would it be able to address the growing North-South conflicts, if it were true that it had no regulatory effect and no governance role. Thankfully, we are aware that this is not a true portrayal. There are two possible regulatory uses for private international law [6]. First, regulatory legislation can be addressed by private international law principles. Second, it has independent regulatory effects similar to other laws: it takes part in naming winners and losers and creates incentives that may result in better or worse behavior.

In this context, it is useful to distinguish between the two functions that private international law serves in relation to human behavior: regulating and enabling. Its well-established regulatory function is exemplified by its laws and the underlying policies they have for weaker and vulnerable parties. Children and the elderly, for instance, are especially vulnerable in cross-border circumstances and require protection. Such protection is provided by several Hague, EU, and Inter-American private international law instruments. This private international legal framework and the 1989 United Nations Convention on the Rights of the Child, including its global application, are closely related in terms of children. The protection of those who are economically weaker than their counterparties in particular transactions, including customers and employees, is governed by private international law as well. This protection is frequently exacerbated in cross-border situations. Also, specific regulations have been created to shield people from environmental harm that occurs beyond national borders.

Outside of these circumstances, cross-border relationships and transactions are typically made easier by private international law. As previously said, modern private international law tends to give parties more leeway to operate outside the confines of their national legal systems and orders, allowing them to select an appropriate court or arbitral tribunal (party autonomy). The exchange of public documents across international borders, process serving, evidence collection, access to justice, and the recognition and enforcement of foreign judgements have all been made easier by the Hague Conventions on administrative and judicial cooperation as well as EU, Inter-American, and Mercosur instruments.

It is difficult to distinguish between the regulating and facilitating functions of private international law. If one party is successful in pursuing her rights against another, the same set of regulations that permit her to do so may also prohibit her from exercising her other rights. On the other hand, if those requirements are not satisfied, the other party will be free to pursue her objectives. More broadly, open-ended corrective rules apply to rules permitting private international law. Ex ante, or as "overriding mandatory norms," these standards may be applicable in the nation where the court is located, regardless of the choice of law regulations in that nation (in certain legal systems, these norms may even be derived from the law of a third state). Alternatively, they may apply ex post, if the outcome of applying a foreign law or upholding a foreign judgment in the relevant case will imperil the public policy of that nation. Nonetheless, the public policy exception and overriding required norms are ill-defined concepts with unpredictable regulatory consequences.

There is a clear and continuous trend toward promoting ethical business activity in terms of production patterns, both globally and regionally. An "international legally binding instrument on transnational corporations and other business enterprises with respect to human rights" is being developed by a working group of the General Assembly of the UN. The most recent draft, from August 2020, has a number of clauses pertaining to private international law. The European Union's Commission is developing a tool to impose due diligence requirements on businesses, in response to significant state initiatives.

A draft Directive requiring EU Member States to "lay down rules to ensure that undertakings carry out effective due diligence with respect to potential or actual adverse impacts on human rights, the environment, and good governance in their operations and business relationships" was adopted by the European Parliament on March 10, 2021, ahead of the Commission's proposals. There is also a clause on private international law in this proposal. Furthermore, recent judicial rulings on private international law, particularly those pertaining to the United Kingdom and the Netherlands, seem to support businesses' transnational liability for violations of human rights and environmental harm [7].

The SDGs' and other international governance instruments' widespread lack of application of or disrespect for private international law. The International Labor Organization has not concentrated on private international law concerns pertaining to labor contracts or labor market difficulties in its regulatory work. Therefore, there is still more work to be done in regional or national private international law initiatives to regulate these issues.

Individual employment contracts vary in the protection they afford under national private international law regimes, and frequently neither posted workers who are engaged in temporary work abroad nor non-employment contracts are covered. The EU's updated Posted Workers Directive46 creates a precarious balance between social and economic goals, namely the necessity for minimal protection for posted workers and the development of free movement of services [8].

The deficiency of private (international) law in safeguarding local populations that rely on the sustainable utilization of oceans, seas, and marine resources for their livelihood. These communities lack access to justice and are only governed by state and public law. "Specific mechanisms that aid private actions to tackle infractions on the marine space at a transboundary level" are absent from both the 1992 Convention on Biological Diversity (CBD) and the 1982 United Nations Convention on Law of the Sea (UNCLOS).

A number of chapters emphasize the necessity for increased involvement of private international law in achieving the SDGs, which goes beyond the notion of promoting current (and future) private international law more successfully. This could necessitate drawing a line between the body of knowledge known as private international law (the disciplinary realm) and the rules governing it (the normative sphere).

The concepts of development and sustainability have not received much attention in the normative or academic domains of private international law historically. But there are indications that this engagement is already making its way into the normative domain, where it is just beginning to emerge in the disciplinary arena.

Engaging the private sector in the agri-business sector more successfully is thought to provide a way to utilize private sector knowledge and much-needed capital to help modernize and distribute advantages to small farmers. Partnerships and community-supported agriculture, in particular, provide "complementary ways to rethink the political economy of food chains" [9]. Remittances are another area where public-private collaborations could have a significant influence. Although it hasn't yet materialized fully, this topic has already attracted a lot of attention in international fora, such as the UN and the Hague Conference. Regulators and banks should collaborate to find solutions that safeguard against risks like money laundering and enable remittances at acceptable costs.

Multi-stakeholder partnerships, however, come with their own set of difficulties, particularly when it comes to private international law. These are revealed, for example, in the context of urban governance, where a number of non-traditional multi-stakeholder partnership situations are investigated in relation to SDG 11 and present intriguing regulatory problems from the standpoint of private international law [10].

Conclusion. It is difficult to distinguish between the regulating and facilitating functions of private international law. If one party is successful in pursuing her rights against another, the same set of regulations that permit her to do so may also prohibit her from exercising her other rights. On the other hand, if those requirements are not satisfied, the other party will be free to pursue her objectives.

More broadly, open-ended corrective rules apply to rules permitting private international law. Ex ante, or as "overriding mandatory norms," these standards may be applicable in the nation where the court is located, regardless of the choice of law regulations in that nation (in certain legal systems, these norms may even be derived from the law of a third state). Alternatively, they may apply ex post, if the outcome of applying a foreign law or upholding a foreign judgment in the relevant case will imperil the public policy of that nation. Nonetheless, the public policy exception and overriding required norms are ill-defined concepts with unpredictable regulatory consequences.

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