

## RETHINKING PRIVATE INTERNATIONAL LAW: THE EMERGENCE OF THE “PRIVATE”

This panel was convened at 2:15 pm, Friday, April 5, by its moderator, Rahim Moloo of Freshfields Bruckhaus Deringer, who introduced the panelists: Benedict Kingsbury of New York University School of Law; Julie Maupin of Duke University School of Law; Mathias Reimann of the University of Michigan Law School; and Peter Trooboff of Covington & Burling.\*

### INTRODUCTORY REMARKS BY RAHIM MOLOO<sup>†</sup>

Public international law has been having its midlife crisis for some time. This has, in the main, been about its role vis-à-vis politics. It is, perhaps, time for private international law to have its midlife crisis. Private international law, however, is not often compared to a field outside of the law, but is often juxtaposed against public international law. What is the role of private international law vis-à-vis public international law? More fundamentally, “what is private international law?” The ASIL Private International Law Interest Group convened a conference in November 2012 at Duke University to address this topic. And the goal of this panel is to engage the broader ASIL community in that discussion.

In searching for definitions of private international law, I came across a 1926 article by W.E. Beckett, which defines private international law as consisting “of principles of private law which determine: (i) in what circumstances the courts of a country have jurisdiction to pronounce judgment; and (ii) the law which they must apply in deciding the different matters upon which they have jurisdiction to pronounce, *and of nothing else.*”<sup>1</sup> Just over a decade later at an ASIL Annual Meeting in 1939, Professor Magdalene Schoch suggested that private international law was the “legal regulation of international social and economic relationships between individuals.”<sup>2</sup> ASIL itself provides a definition of private international law on its website. It defines private international law as “the body of conventions, model laws, national laws, legal guides, and other documents and instruments that regulate private relationships across national borders.”<sup>3</sup> These definitions are important insofar as they make clear that it is *unclear* what exactly the scope of private international law is.

This panel, however, is not about choosing between competing definitions. It covers private international law as both a technique and a substantive body of law. In particular, the panel will consider private international law: (a) as dealing with conflicts between laws, and as a technique to deal with those conflicts; and (b) as a system of law that governs transnational private relations.

\* The panelists are grateful to Nathaniel Khng, Associate at Freshfields Bruckhaus Deringer US LLP, for summarizing the proceedings for this panel.

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<sup>1</sup> W.E. Beckett, *What is Private International Law?*, 7 BRIT. Y.B. INT’L L. 73, 94 (1926) (emphasis in original).

<sup>2</sup> Magdalene Schoch, *Conflict of Laws and Private International Law*, 33 ASIL PROC. 81, 82 (1939).

<sup>3</sup> Louise Tsang, *Private International Law*, AMERICAN SOCIETY OF INTERNATIONAL LAW, <http://www.asil.org/erg/?page=pil>.