

# The Role of Private International Law Academia in Latin America

*Written by Alexia Pato, Senior Research Fellow at the University of Bonn*

On 10 September 2019, I had the immense pleasure to attend a Conference on the role of private international law (PIL) academia in Latin America (LATAM), which took place in the fast-paced environment of the Max Planck Institute for Comparative and International Private Law (MPI) in Hamburg. The Conference was organised and chaired by **Ralf Michaels** and **Verónica Ruiz Abou-Nigm**. I thank them both for their warm welcome and congratulate them for the success of the Conference, which honours the long-standing PIL tradition in LATAM and encourages collaborative learning beyond borders.

This well-structured event encompassed two roundtables: whereas the first one dealt with PIL culture in LATAM, the second one discussed the impact of PIL schools of thought. Speakers of both roundtables prepared short handouts and submitted research questions to the audience, which created a fertile ground for interactions. The following paragraphs summarise the content of the presentations, as well as the follow-up discussions.

## **The PIL Culture in LATAM**

The first roundtable discussed the specific features of academia in LATAM. In particular, **María Mercedes Albornoz** highlighted that many PIL scholars cumulate academic and professional positions. This might be unfortunate, as the time dedicated to research tends to decrease. A call for more interactions between PIL scholars around the world was made, in order to foster the exchange of ideas and the search for solutions to global concerns. This could be achieved through, e.g. the introduction of double university degrees or visiting programs for professors.

In that respect, the specific role of both the MPI and the Uruguayan Institute of Private International Law (IUDIP) was emphasised by Gonzalo Lorenzo Idiarte and Jan Peter Schmidt. First, **Gonzalo Lorenzo Idiarte** explained the key role of law Institutes in promoting scientific activities. Additionally, they help universities to deal with the increasingly higher number of students and the corresponding

teaching workload. In particular, the IUDIP is active in organising academic events – such as conferences and reports – and regularly drafts PIL texts. The IUDIP is trying to acquire more visibility and encourage scholars to visit.

As for the MPI, **Jan Peter Schmidt** pointed out that the Institute has contributed to fruitful academic exchanges. On the one hand, many PIL scholars in LATAM visited the MPI and hence, participated to the diffusion of Latin American PIL in Europe. They often helped the MPI in its role of providing legal opinions to German courts on the application of foreign, Latin American law. Indeed, scholars are of utmost importance, as they provide access to “remote” literature and court decisions. On the other hand, renown PIL experts, such as Jürgen Samtleben, Paul Heinrich Neuhaus and Jürgen Basedow, reinforced the links of the MPI with LATAM countries.

Finally, **Inez Lopes** insisted on the role of ASADIP (*Asociación Americana de Derecho Internacional Privado*), which gives LATAM countries a voice at the global level. The influence of such an association is potentially huge. Vertically, it can assist LATAM countries in implementing international conventions and advise governments. Horizontally, since ASADIP takes part in several international organisations – such as the HCCH, UNIDROIT, UNCITRAL and OAS – it has a chance to participate in the decision-making process.

The language in which scientific works should be written was extensively discussed with the audience. In particular, should LATAM scholars publish in English? On the one hand, it was highlighted that English is a language that enables Latin American PIL to gain a global dimension. Indeed, the diffusion of knowledge in a globalised setting mainly takes place in that language. On the other hand, legal English describes the law of common law countries. Therefore, using English to describe PIL in LATAM could be perceived as a cultural mismatch.

### **The Impact of PIL Schools of Thought in LATAM**

The second roundtable highlighted the fundamental role of scholars in drafting PIL acts and conventions. In Argentina, Ramírez, Vargas Guillemette and Alfonsín fostered the development of PIL, thanks to their rather avant-gardist ideas, as **Cecilia Fresnedo de Aguirre** explained. More recently, outstanding scholars contributed to the elaboration of PIL rules within the framework of international

organisations, such as the HCCH, UNIDROIT and the OAS.

Although academia boosts the creation of PIL, parliaments tend to blatantly disregard PIL issues and texts. For example, Gonzalo Lorenzo Idiarte and Cecilia Fresnedo de Aguirre explained the challenging legislative path of the Uruguayan General Private International Law Bill. Academics drafted this text and presented it to the parliament, which rejected it three times (!). Its approval is still pending at the time I write those lines.

In Venezuela, the same trend is observable, as **Javier Ochoa Muñoz** explained. The Venezuelan Private International Law Bill was first drafted in 1965 but only approved in 1999, thanks to the work and energy of Tatiana Maekelt. Here too, an academic supported the development of PIL. Additionally, Tatiana Maekelt encouraged the creation of the ASADIP in 2007 and set up a successful Master Program in Private International and Comparative Law.

At the regional level, the Inter-American Specialized Conferences on Private International Law (CIDIP), organised under the auspices of the OAS, played an important role in the codification and harmonisation of PIL in LATAM. Today, however, this process stalls and, as a consequence, **Valesca Raizer Borges Moschen** asked if and how the role of the OAS should be redefined. She noted the increasing role of the Inter-American Juridical Committee and the preference for the creation of flexible PIL instruments.

Since international codifications came to a standstill, **Sebastián Paredes** explained that, in the recent years, LATAM countries have engaged in individual, uncoordinated efforts to codify and modernise their PIL rules. This certainly created coordination issues and further complicated the quest for harmonised solutions to collective problems.

Finally, in his closing speech, **Jürgen Samtleben** talked about his first steps as a PIL academic in LATAM. He delighted the audience with many anecdotes and a touch of humour.