Transforming legal borders: International judicial cooperation and technology in private international law – Part I

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This post will be divided into two Views. This is Part I.

Abstract: In a globalized world, International Judicial Cooperation (IJC) and advanced technologies are redefining Private International Law (PIL). The convergences between legal collaboration among countries and technological innovations have revolutionized how cross-border legal issues are approached and resolved. These tools streamline international legal processes, overcoming old obstacles and generating new challenges. This paper explores how this intersection reshapes the global legal landscape, analyzing its advantages, challenges, and future prospects.

Keywords: private international law, international judicial cooperation, new technologies, videoconferencing, Iber@, Apostille.

I. INTRODUCTION

In an increasingly interconnected context, international judicial cooperation (IJC) and the advancement of new technologies have been linked in a notable way, reshaping the landscape of private international law (PIL). The dynamic interaction between these two elements has triggered a profound change in how cross-border legal issues are treated and resolved.

Since ancient times, IJC has been essential to address disputes involving multiple jurisdictions. From the harmonization of laws to the enforcement of judgments in foreign countries, the interaction of legal systems has been a constant challenge. However, in recent times, the emergence of technologies has brought with it revolutionary tools and approaches that are transforming IJC.

As borders become more transparent in the digital world, the implications for PIL are immense. Direct judicial communications, videoconferencing, and other technological innovations are streamlining cross-border legal processes. These technological solutions are not only overcoming traditional obstacles in international judicial cooperation but are also giving way to new challenges that require careful evaluation.

This work explores the convergence between these two fields: assistance between jurisdictions and adopting technological innovations. In this way, we propose researching their intersections and how the transnational legal scenario is transformed, with some specific references to Argentine PIL. Collaboration between nations in the search for legal solutions and the potential of new technologies to accelerate these processes are intertwined in a dynamic symbiosis that redefines PIL's scope and very nature. In this framework, it is essential to understand the joint evolution of IJC and new technologies to anticipate how this relationship will continue to shape this discipline in the future.

II. INFLUENCE OF TECHNOLOGY ON PIL

There is no doubt that the phenomenon of globalization has impacted all branches of the law without distinction. Historically, the primary purpose of PIL was to ensure the continuity of legal relations across different jurisdictions[3]. However, we must recognize that the impact of globalization, the emergence of telecommunications, and the widespread growth of the use of the means of transportation, have led to the movement of people beyond borders. Added to these phenomena is the rise of electronic commerce and online contracting platforms. All these conditioning factors generate a multiplication of private legal relations with foreign elements.

As indicated by Calvo Caravaca and Carrascosa González,[4] the emergence of the Internet produces a shock wave in all branches of law, but more specifically in PIL, a subject that is revealed as the main protagonist in the repercussions of cyberspace in the legal field. The use of online tools globalizes international private legal situations and, therefore, increases their number and variety.

It is a fact: internationalization is not foreign to the eyes of a jurist. However, from the perspective of our subject, the virtualization of borders through the Internet has managed to put classic concepts established since the Middle Ages in

crisis. Undoubtedly, the environment has been transformed, and the law – although always behind – has accompanied the new demands of an increasingly digital society at its own pace.

These trends expand with the increase in regional integration processes, by which States generate agreements to promote the circulation of goods, people, diplomatic relations, reduction of customs fees, etc. Without hesitation, these processes even check the basic foundations of the States. And with this, transnational relations achieve an ever greater increase, so their extension requires their inclusion in legislative agendas.[5]

To this complex panorama of challenges and questions, disruptive technologies are now added that are already seen as the protagonists of the new era. Artificial intelligence, smart contracts, the blockchain, the Internet of Things (IoT), and the analysis of large volumes of data (big data) are demanding an exhaustive examination of the basic paradigms of law in general and the PIL in particular.

These technologies are rapidly transforming procurement methods, the way business relationships are established, and governance systems, raising fundamental questions about applying PIL rules and protecting the rights and interests of the parties involved.

International organizations have also echoed these modern challenges. Organizations such as the World Trade Organization (WTO)[6], the Institute for the Unification of Private Law (UNIDROIT)[7] and the United Nations Commission on International Trade Law (UNCITRAL)[8] are taking a leading role in the development of practical guides intended to harmonize solutions to the possible legal consequences derived from the use of these tools.

III. IMPACT OF NEW TECHNOLOGIES ON INTERNATIONAL JUDICIAL COOPERATION

In recent years, a series of tools and mechanisms have been consolidated that, promoted by the benefits derived from the use of technology in the process, seek to generate a more direct connection between authorities to provide assistance. Clear examples of this are direct judicial communications, electronic requests, and the use of videoconferences. These innovations are accompanied by different

cooperation networks: the central authorities, key actors in the operation of the agreements, which facilitate legal cooperation; judicial networks[9] and contact point networks.

Although the application of new technologies was not considered when most of the regulations and agreements that we have today were negotiated, there is no regulatory obstacle to their use since the operation of such instruments is substantially optimized through the application of these modern tools.

In the field of soft law, the Principles of the American Association of Private International Law (ASADIP), Chapter 4, *"Interjurisdictional Cooperation"*, article 4.7, provides in this regard: *"As long as the security of the communications can be guaranteed, judges and other judicial officials shall promote and foster the use of new information and communication technologies, such as telephone communications, videoconferencing, electronic messaging and any other means of communication appropriate for effecting the requested cooperation"*.

Most of the current regulations contain requirements incompatible with the communication technologies we have available today. In pursuit of a more favorable interpretation of the implementation of ICT, article 4.5 of the ASADIP Principles on Transnational Access to Justice (TRANSJUS Principles), approved by the Assembly of the American Association of Private International Law, in its meeting held in Buenos Aires, on November 12, 2016, points out that:

"*...the requested State shall interpret and apply the rules on inter-jurisdictional cooperation in a particularly flexible manner, minimizing the relevance of formalities. The courts of the requested State may act ex officio, making normative adjustments as necessary in order to carry out the corresponding procedural measures. Where the law does not prescribe a specific form, method or means for the cooperation sought by the requesting State, the courts of the requested State shall have the authority to adopt any appropriate measures to carry out the requested assistance, always with a view to protecting the fundamental procedural safeguards.* "

It follows from this principle "*the need to seek the delicate balance between the duty of cooperation, through available and suitable means, and respect for the guarantees of due process*".[10]

III.I. Electronic transmission of requests. Iber@.

Firstly, electronic requests are those that are transmitted within the framework of an international judicial procedure by which the court of one State requires a court of another State to provide judicial assistance or the execution of a procedural act (*e.g.,* notification, evidence), and which is formalized through electronic means.

A vitally important tool in the context of international judicial cooperation is the Iber@ electronic communication platform. This system, characterized by its confidentiality, security, ease of use, and access, is used both by the contact points of the Ibero-American Network for International Legal Aid (IberRed) [11], and by other relevant networks, such as Eurojust, the General Secretariat of INTERPOL and the Ibero-American Network of Specialized Prosecutors Against Trafficking in Human Beings.

User access is required, as provided by the General Secretariat of IberRed, previously designated by the institutions that make up the Network. Then, each user generates a private password, which must be renewed every six months. It should be noted that Iber@ does not impose specific requirements beyond a computer and an internet connection, allowing one to log in from anywhere in the world.[12]

Once the user is authenticated in the system, he or she accesses the platform through the IberRed portal and select the institution to which to direct their query: a Contact Point, a Liaison, or a National Member of Eurojust. After submitting the query, the designated recipient receives an email notification. Subsequently, he or she is asked to enter the platform to view the request.

An important boost for this platform came with the ratification of the Treaty on the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities, which took place in Medellín in July 2019, commonly known as the Medellín Treaty. For the full status, click here.

As Mercedes Albornoz and Sebastián Paredes point out[13], this instrument does not regulate the formal, procedural, or substantial requirements of the request but instead offers a renewing and perfected perspective of the existing treaties on international cooperation. The proposed innovation, in line with current times,

involves eliminating the traditional transmission of requests for international assistance in paper format and instead favoring the Iber @ electronic platform as the main means (Article 1). However, its use is not mandatory (Article 4).

Unquestionably, cross-border cooperation demands the incorporation of new technologies to guarantee effective judicial protection, which requires collaborative efforts on the part of States. The ultimate objective is to achieve the digitalization of existing mechanisms in the field of international judicial cooperation. In this trajectory, the Iber@ platform presents a significant opportunity, considering its distinctive security characteristics, immediacy, and friendly accessibility.

III.II. e-Apostille. Digitization of evidence and documents.

Another fundamental tool in the framework of international judicial cooperation is the digitization of evidence and documents. At that level, and explicitly concerning public instruments, the electronic apostille is a simplification and streamlining mechanism for the circulation of such documents. Broadly speaking, it is a digital document that is transmitted electronically, allowing a country to expedite the authentication of public documents to produce their effects in other States[14]. This is the electronic implementation of the Hague Apostille, the single and simplified authentication process for public documents provided for by the 1961 Hague Convention[15]. It is carried out by electronic means and on an electronic public document.

Regarding the use of technological tools, the Special Commission, when evaluating the practical operation of the Apostille Convention, reiterated in several meetings that the spirit and letter of the Convention *"do not constitute an obstacle to the use of modern technology"*, even affirming that the use of said technology can significantly improve the application and operation of the Convention.

In 2006, the Hague Conference (HCCH), together with the National Notary Association of the United States of America (NNA), officially launched the electronic Apostille Pilot Program (e-APP), which was a pilot program until 2012, when it became a permanent program.

The e-APP allows for a much more effective performance of the Convention,

considerably increasing security. It can be used with any type of technology and does not privilege the use of one technology over another, so the state parties can freely choose the one that best suits their needs and structures. The e-APP comprises two components: the issuance of e-Apostilles and the operation of e-registers.

The Hague Conference periodically organizes International Fora on the e-APP to discuss and promote its implementation. In 2021, the twelfth Forum on the e-APP was held via videoconference for the first time, and during its celebration, the effects of the COVID-19 pandemic on the operation of the Apostille Convention were pointed out, and the e-APP. Specifically, the number of (e-)Apostilles requested and issued decreased, and public services were hampered by restrictions, prompting a transition towards online services. However, they also noted that Contracting Parties that had already implemented the e-APP, particularly the e-Apostille component, reported fewer issues.

Currently, 53 countries have implemented one or two components of the e-APP. Faced with technologies in constant innovation, the 1961 Hague Convention *"remains in force and has even increased its number of ratifications by designing the electronic Apostille Program (e-APP) with the objective of guaranteeing that the Convention functions in a manner effective, safe and uninterrupted, we opted for the incorporation of technology, in this case, through the issuance of electronic apostilles (e-Apostilles) and the use of electronic records (e-Registrie*s)[16]*."* The e-APP provides the Apostille Convention with renewed energy and relevance, ultimately seeking to extend the scope of the Convention to the electronic medium and strengthen its important benefits by making its operation more effective and secure. In this way, we see how the incorporation of new technologies is possible to optimize the operation of existing agreements and facilitate international judicial and administrative cooperation, and thus promote access to justice.

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[6] The World Trade Organization prepared a work directed by Emmanuelle Ganne in which the impacts of blockchains on global trade are analyzed. GANNE, Emmanuelle. Can blockchains revolutionize international trade? 2018.

Available at: https://www.wto.org/spanish/res_s/booksp_s/blockchainrev18_s.pdf. Accessed: 7 July 2024.

[7] For its part, since 2020, UNIDROIT has commissioned a specialized group, at the initiative of some European countries, to prepare a regulatory instrument that contains principles and practical guides on Digital Assets and Private Law. For more details: https://www.unidroit.org/work-in-progress/digital-assets-and-private-law/#1456405893720-a55ec26a-b30a . Accessed: 7 July 2024.

[8] Since 2022, the UNCITRAL Working Group on Electronic Commerce has been analyzing legal issues related to the digital economy. They have especially dedicated themselves to making a legislative proposal for artificial intelligence and automated contracting. More information at: https://uncitral.un.org/es/working_groups/4/electronic_commerce. Accessed: 7 July 2024.

[9] As an example, we mention the International Hague Network of Judges, a group of judges who jointly cooperate on requests for international return of children. For more details: International Network of Judges of The Hague. Available at: https://www.hcch.net/es/instruments/conventions/specialized-sections/child-abduction/ihnj. Accessed: 7 July 2024.

[10]SCOTTI, LUCIANA . op. cit., 2020, p. 428.

[11]The Ibero-American Network of International Judicial Aid (IberRed) constitutes a valuable collaboration network in areas of civil and criminal law. The Network is made up of Central Authorities and members of the Ministries of Justice, and other judicial bodies from 22 Ibero-American countries. It is also made up of the Supreme Court of Puerto Rico. The basic objective is to optimize the operation of the current civil and criminal assistance agreements, and to strengthen cooperation between the member countries of the Ibero-American Community of Nations. Such a structure constitutes a fundamental advance in the construction of an Ibero-American Judicial Space. In order to safeguard effective judicial protection, it aims to strengthen international legal cooperation mechanisms and, in addition, simplify the instruments and tools currently in force. Its official languages are Spanish and Portuguese IBERO-AMERICAN NETWORK OF INTERNATIONAL JUDICIAL AID. https://iberred.notariado.org/, 2014. Accessed: 7 July 2024.

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[14] Private documents, in order to be apostillised, require prior certification by a notary public.

[15] It is worth remembering that the 1961 Hague Convention eliminated the requirement for legalization of foreign public documents, replacing it with the

apostille. This Convention is one of the most accepted and applied international treaties globally. It is currently in force in 126 States, making it one of the most successful international instruments in the field of international legal and administrative cooperation.

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