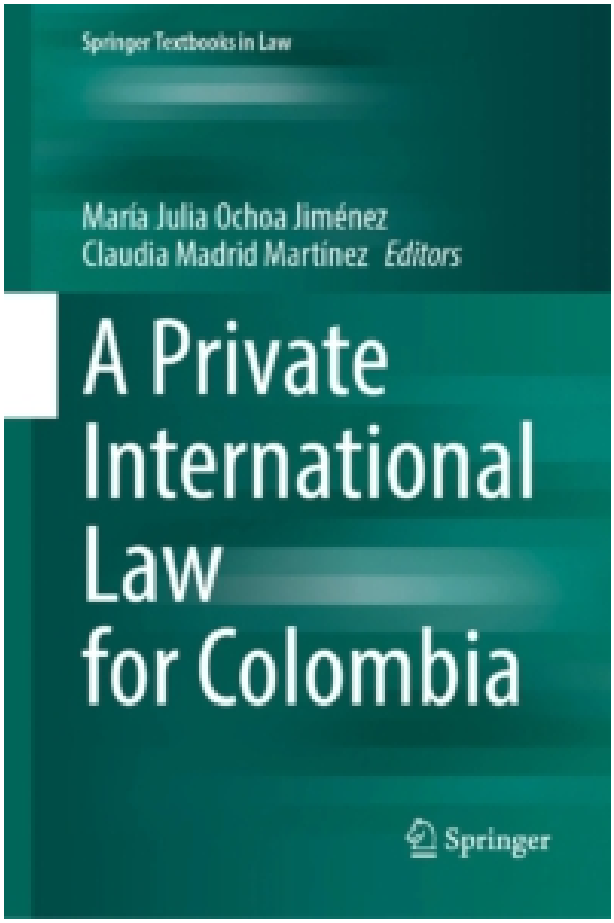
Jiménez and Martínez on A Private International Law for Colombia



Colombian private international law research has been witnessing a notable period of renewed scholarly activity. Following a previous announcement on this blog of the publication of a volume dedicated to the *Colombian Draft Project on Private International Law*, a further significant contribution has now been published, this time offering a broader and more systematic perspective on the field. This new contribution takes the form of a book edited by María Julia Ochoa Jiménez (Loyola University) and Claudia Madrid Martínez (University of Antioquia), entitled "*A Private International Law for Colombia*", published in the *Springer Textbooks in Law* series (Springer, 2025).

According to the publisher's website, the book offers a "[c]omprehensive study of issues underlying PIL, particularly in Latin America and Colombia", provides "[s]ystematical analysis of PIL rules in Colombia, allowing readers to understand how they deal with global issues", and "[a]ddresses rules in force, critically

examines them and, accordantly, presents and discusses a legislative proposal".

In the Preface, the editors themselves describe the "book's approach" as "unique". According to them, the book's "main objective is to address how the most relevant issues in each of the main areas of this legal field manifest themselves in Colombia, analyzing them in a way that is both exhaustive in disciplinary terms and critically engaged."

The book's blurb reads as follows:

> *The book, which systematically analyzes private international law rules contained in the Colombian legal system, contributes to the study and knowledge of this legal field, and also has a positive impact on its practical application. In addition, attention is given to the need for a special legislation that not only fits the Colombian reality and takes into consideration the evolution of private international law in Latin America. The book appeals to a worldwide audience. It enables readers to better understand how private law deals with a variety of situations in the Global South. Such situations can be linked to virtually all global phenomena, including at least two: cross-border migration and international trade. Regarding this, Colombia stands out in Latin America because, although it has traditionally been the origin of many migrants, in recent years it has also come to play an important role as a destination and transit country for migrants from different regions. In addition, Colombia's economic growth has led it to become part of several international trade agreements, for example, with the Andean Community, Venezuela, Mexico, MERCOSUR, Chile, the Northern Triangle, which includes Guatemala, El Salvador and Honduras, and also with Canada, the European Free Trade Association (EFTA), the United States, the European Union, South Korea, Costa Rica and the Pacific Alliance, of which Chile, Colombia, Mexico and Peru are members. All this, while resulting in an increase in situations with foreign elements that must be dealt with by national authorities, makes it unavoidable to know the Colombian private international law to know the legal landscape of the region in relation to global issues that currently must be addressed worldwide. Thus, the book is of interest to students in different countries. They find in it a guide to understand the theory and dogmatics of private international law in Latin America and Colombia. The academic relevance of the*

book is also reflected in its usefulness for scholars working in private international law and comparative law. It allows for an in-depth study of the problems that underly private international law in this part of the Global South. It is structured and written in such a way that it can be used as a textbook in undergraduate and graduate courses in subjects such as comparative law, private international law, international contracts, international trade, and international movement of persons and goods.

The book consists of **18 chapters** divided into **six sections** and comprises a total of **VIII + 308 pages.**

The Table of contents includes the following:

Introduction (Pages 1-14)

María Julia Ochoa Jiménez

The lack of systematic studies hinders the development of private international law in Colombia. Academics, practitioners, or judges may encounter difficulties when faced with the application of the private international law rules contained in the Colombian legal system, which are scattered in various legal instruments. This volume not only systematically analyzes the technical mechanisms contained in such rules but also outlines the historical and theoretical context in which they exist. In addition, attention is given to the need for special legislation that fits Colombia's reality and takes into consideration the developments of private international law in Latin America. This volume also embodies an effort to consider some of the global challenges facing Colombian private international law today in relation to issues concerning the protection of human rights, including those of the most disadvantaged groups.

Introductory Notions

Colombian Private International Law: Three Dimensions, One Perspective (Pages 17-29)

María Julia Ochoa Jiménez

> *This and the next chapters address, in an introductory manner, two fundamental questions that lie at the root of private international law and serve to understand its broad conceptual scope. Both questions are approached from the Colombian perspective, considering the current situation of the discipline in the country. The first question, which is dealt with here, is quite wide and refers to the role that private international law plays in today's world. Thus, this chapter outlines what lies behind the national, international, and global dimensions of private international law, and also the relevance it has when it is particularly considered from the global perspective. The second question, on which the next chapter focuses, is not less vast and concerns the interactions between comparative law and private international law.*

Private International Law and Comparative Law: A Colombian Approach (Pages 31-44)

María Julia Ochoa Jiménez

> *This chapter, and the previous one, address, in an introductory manner and from the Colombian perspective, two fundamental questions that lie at the root of private international law and serve to understand its broad conceptual scope. The first question, which is dealt with in the previous chapter, refers to the national, international, and global dimensions of private international law, and the relevance it has when it is particularly considered in the latter perspective. Here, the focus is on the second question, which is not less vast and concerns the interactions between comparative law and private international law. In this regard, this chapter explores how some forms that the former adopts can be identified in the different ways in which the latter is practiced in Colombia.*

An Introduction to the Private International Law of the Latin American Countries

Today (Pages 45-54)

Eugenio Hernández-Bretón

This chapter provides a comprehensive overview of the evolving landscape of private international law in Latin America. It highlights how Latin American countries have historically followed a territorialist approach but have increasingly modernized their legal frameworks over the past twenty-five years. Countries such as Venezuela, Uruguay, and Panama have enacted new Acts, while others like Cuba and Mexico have introduced reforms focusing on specific areas like international family law and civil procedure. Despite this modernization, traditional instruments like the Bustamante Code and Montevideo Treaties continue to coexist with these new legal developments. The chapter emphasizes the importance of continued academic and judicial engagement to assess the effectiveness of these evolving legal frameworks in practice.

International Procedural Law

International Jurisdiction in Colombia (Pages 57-75)

Claudia Madrid Martínez

This chapter explores the rules on international jurisdiction in Colombia. It examines the criteria used to determine which courts have jurisdiction over private international law cases, which is the initial step in resolving such cases. It takes account of Colombian current law and the rules included in the Draft General Act on Private International Law for Colombia prepared by IADIP.

International Judicial Cooperation in Colombia (Pages 77-92)

Luis Alfredo Pinilla

This chapter provides an introduction to the Colombian regulation on international cooperation in civil and commercial matters. It describes the

international treaties to which the country is a party, as well as the national legal framework on the subject. To this end, the chapter briefly presents the essential aspects of the most relevant treaties for Colombia. In doing so, it addresses in particular the 1965 Hague Service Convention and the 1970 Hague Evidence Convention. Furthermore, the chapter describes how letters rogatory and exhortos are regulated in domestic legislation. It also comments briefly on the proposal for international legal cooperation contained in the IADIP Draft General Act.

Extraterritorial Effect of Judgments in Colombian Private International Law (Pages 93-108)

María Julia Ochoa Jiménez, José Luis Marín Fuentes

This chapter deals with how the Colombian legal system addresses the recognition and enforcement of foreign judgments and arbitral awards. In order to do this, it presents the relevant rules of the General Code of Procedure Law of 2012 and Act No. 1563 of 2012. Attention is also paid to the ways in which these rules have been applied in practice by the Civil Chamber of the Supreme Court of Justice. Such a practical approach allows us to introduce the novelties included in the IADIP Draft General Act on Private International Law for Colombia.

Applicable Law: Cross-Cutting Questions

Sources and Methodological Plurality of Private International Law in Colombia (Pages 111-125)

Claudia Madrid Martínez

This chapter deals with two issues concerning the general theory of private international law considering the Colombian context: the sources of private international law and its methodological plurality. It addresses the complex interplay of sources in Colombian private international law and how it is rooted

in a combination of international treaties and domestic laws that challenges the identification of a hierarchical order between them. The chapter also examines how the methodological plurality of Colombian private international law involves the application of internationally mandatory rules, special substantive rules, and conflict rules, highlighting its diverse and layered approach.

Application of Foreign Law in Colombia (Pages 127-133)

Claudia Madrid Martínez

The application of foreign law is one of the most intricate aspects of private international law. This issue entails both procedural and substantive complexities. In many cases, judges opt to apply their domestic law due to the challenges of understanding foreign legal systems. This chapter delves into procedural implications, distinguishing when foreign law is treated as law or as a fact. Moreover, it outlines the Colombian legal framework, emphasizing the "mixed system" that makes both judges and parties responsible for knowing foreign law and that must be balanced by some flexible guidelines that have been provided by the Constitutional Court.

General Institutions in Colombian Private International Law (Pages 135-160)

Claudia Madrid Martínez

This chapter focuses on the general rules and concepts of private international law that address the challenge of determining applicable law in cross-border cases. It discusses how Colombian private international law lacks codified rules on these institutions, as well as the way in which the IADIP Draft addresses them, in particular following the Inter-American Convention on General Rules of Private International Law.

Property

Property Rights in Colombian Private International Law (Pages 163-184)

María Julia Ochoa Jiménez

> *This chapter deals with how the lex rei sitae rule is introduced in Latin America in general and in Colombia in particular. It critically discusses its inclusion in the legal instruments currently in force in Colombia and takes into account how it is approached in the IADIP Draft. After briefly describing how this proposal refers to intellectual property, the chapter turns to the quite innovative regulation it contains regarding the international restitution of cultural property in general and of Indigenous cultural objects in particular. Finally, the chapter briefly refers to the IADIP Draft's rules on mobile conflicts and jurisdiction before concluding with some final remarks.*

International Intellectual Property Contracts in Colombia: Applicable Law and Dispute Resolution (Pages 185-197)

Brenda Salas

> *In international contracts concerning intellectual property, the general principle is to resort to the autonomy of the parties' will. This means that the parties are free to determine both the law applicable to the contract and the means of dispute resolution. However, the question that arises in Colombia is how to determine the applicable law to the contract and the competent authority for conflict resolution when the parties have remained silent on these matters in an international contract concerning intellectual property. To this end, this chapter first analyzes the law applicable to the contract, then the competent authority for dispute resolution. Finally, it analyzes the regulation included in the Draft General Act on Private International Law for Colombia prepared by the Instituto Antioqueño de Derecho Internacional Privado.*

Persons and Family

Natural Persons in Colombian Private International Law (Pages 201-219)

Laura Victoria García Matamoros

This chapter focuses on the individual scope of the personal status. It first discusses its elements, particularly considering the private international law perspective. Furthermore, it presents the advantages and disadvantages of the criteria to determine the law that must be applied to cross-border situations. Finally, the chapter critically approaches the Colombian legal system, paying special attention to the current situation and to the solutions proposed by two recent law drafts: the Draft General Act on Private International Law for Colombia prepared by the Instituto Antioqueño de Derecho Internacional Privado in 2021 and the Draft Civil Code of Colombia presented by the Universidad Nacional de Colombia in 2023.

Marriage and Marital Unions in Colombian Private International Law (Pages 221-241)

Laura Victoria García Matamoros

This chapter first examines the international legal relationships that give rise to the formation of a family. It then analyzes the legal regulation of these aspects within the Colombian legal system. Subsequently, the chapter briefly discusses the relevant provisions of two proposals: the Draft General Act on Private International Law for Colombia, prepared by the Instituto Antioqueño de Derecho Internacional Privado in 2021, and the Draft Civil Code of Colombia presented by the Universidad Nacional de Colombia in 2023.

International Family Law in Colombia (Pages 243-258)

Gloria Rivera Ocampo

This chapter presents the main international treaties and instruments that make up Colombian international family law, particularly those that contain rules regarding child protection and international adoption, which refer to the general principles on this subject matter, i.e., safeguarding the best interest of

the child, non-discrimination, and efficiency in legal processes. Reference is also made to the fact that the lack of regulation on other issues, such as surrogacy and post-mortem insemination, poses complex challenges for Colombian family courts.

Commerce

Private International Law and Colombian Business Associations Law (Pages 261-275)

Juan Antonio Gaviria

The intersection between Colombian business association law and private international law is dealt with in this chapter. For this purpose, it identifies the current issues in the international interaction of for-profit entities and their shareholders or partners, studying the former under a double angle or edge: both as juridical persons, and therefore subjects of rights and duties, and international contracts. This entails analyzing the legal rules determining which companies are domestic and foreign and the legal relevance of such a distinction. The chapter also makes some comments on the IADIP Draft General Act on Private International Act for Colombia regarding business association law.

A New Beginning for Negotiable Instruments (Pages 277-288)

Daniel Rojas-Tamayo

Colombian private international law on negotiable instruments is intriguing: very few rules in recent codes and legislation contrast with a rather extensive regulation in antique treaties. Despite both choice-of-law and substantial rules, there are only three rulings of the Colombian Supreme Court on the subject matter. In this context, the IADIP Draft on Private International Law for Colombia studied in this chapter seems to offer a satisfactory and necessary regulation. Furthermore, the IADIP Draft modernizes Colombian law in various

manners, such as embracing a different connecting factor and introducing freedom of choice.

The Lex Mercatoria Method: Addressing International Private Cases Beyond Conflict of Laws (Pages 289-308)

Néstor Raúl Londoño Sepúlveda

This chapter examines the use of lex mercatoria as a substitute legal system for transnational private conflicts. The lex mercatoria is a set of ad hoc, international rules that originate from non-state entities and govern business transactions outside of the conventional conflict of law system. In international arbitration, for example, arbitrators frequently rely on it in the lack of clear national legal frameworks. These transnational rules continue to offer adaptable solutions in international trade, addressing legal gaps and enhancing both domestic laws and international treaties, despite criticism regarding their regulatory scattering. The chapter explores the development of the lex mercatoria, its origins, and its empirical application.