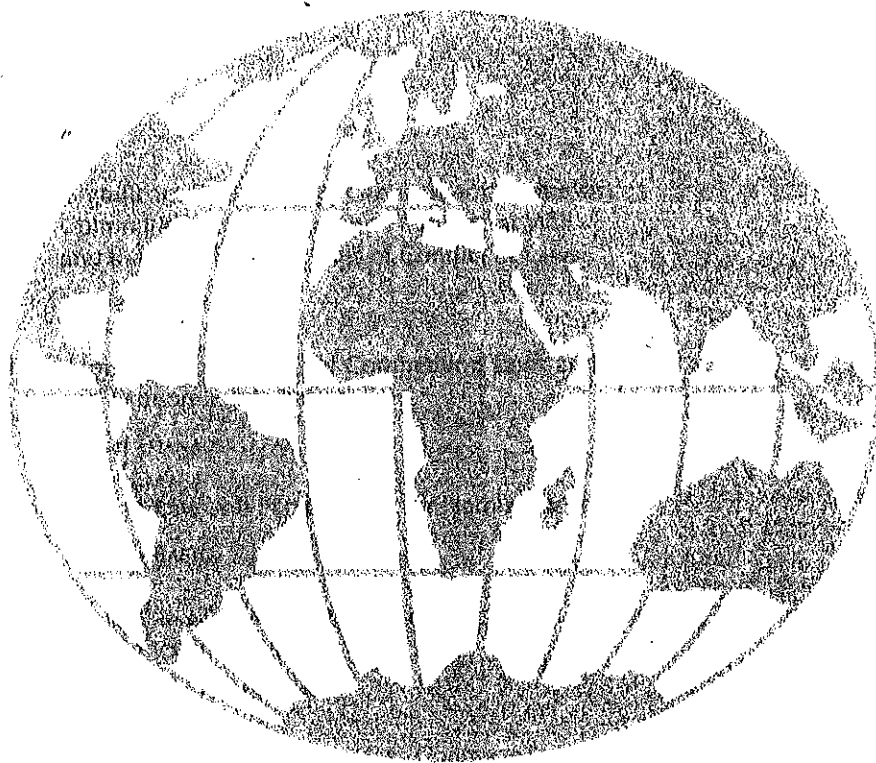


UNIFORM LAW REVIEW
REVUE DE DROIT UNIFORME
2004-3



UNIDROIT



Parties and arbitrators do, in the main, conduct proceedings in a rarefied non-national or international legal environment). L'arbitrage peut être détaché de la loi de l'Etat du siège pour autant qu'il n'ait pas à rechercher la coopération des juridictions locales, mais cela ne signifie pas qu'il puisse opérer dans le "vide juridique". Les parties peuvent en effet demander l'aide des juridictions nationales à l'égard de certaines questions comme la reconnaissance des accords compromissaires, les mesures provisoires etc. Toutefois les auteurs admettent qu'une possibilité de conflit entre l'autonomie des parties et les systèmes nationaux (des parties ou du siège de l'arbitrage) persiste tout de même.

Cette conception quant à la hiérarchie des sources est reflétée au sein de chaque chapitre. On ne s'étonnera donc pas de la place de premier plan accordée aux règlements d'arbitrage, aux dispositions des instruments internationaux et à l'étude des sentences arbitrales. Peut-être aurait-on aimé trouver indiqué que certaines solutions, parmi celles que les auteurs considèrent désormais consolidées, ne reçoivent pas (ou du moins, pas encore) une application systématique, notamment de la part des juridictions étatiques.

Les 28 chapitres de l'ouvrage portent sur : la notion d'arbitrage (chapitres 1-5 – définition par rapport à d'autres moyens de solution des litiges, origines et sources de sa réglementation, formes – arbitrage *ad hoc* et administré –, concepts d' "international" et de "commercial", et les différentes théories concernant sa nature juridique) ; l'accord arbitral (chapitres 6-10 - l'autonomie de la clause compromissoire et identification de la loi applicable, validité, interprétation, rédaction de l'accord et arbitrabilité des litiges) ; le tribunal arbitral (chapitres 11-14 – composition, obligations et droits des arbitres ; récusation, substitution et renonciation ; compétence – et contrôle de la *potestas iudicandi*) ; les arbitrages aux parties ou aux contrats multiples (chapitres 14-17) ; la loi applicable au fond du litige (chapitres 18-19) ; les questions de procédure (chapitres 20-23 – commencement de l'instance, instruction, mesures provisoires) ; la sentence arbitrale (chapitres 24-26 – types et contenu de la sentence ; son annulation ; sa reconnaissance et son exécution) ; enfin, la dernière partie fort intéressante et cohérente avec l'approche des auteurs, est consacrée aux arbitrages impliquant des Etats ou des entités publiques et portant sur les investissements (chapitres 27-28).

L'ouvrage contient une bibliographie en général récente et pour l'essentiel en langue anglaise ; sa consultation est rendue aisée par de nombreux index.

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Diego P. Fernández Arroyo, *Derecho Internacional Privado Interamericano – Evolución y Perspectivas*, Mexico, Universidad Anáhuac del Sur & Miguel Ángel Porrúa Grupo Editorial, 2003. 150 pp. ISBN 970-701-397-4.

In this volume (published in Spanish), a revised version of a lecture given at the XXVI. International Law Course organized by the Inter-American Juridical Committee in 1999, the Argentine-born author, a professor of private international law at the Universidad Complutense de Madrid in Spain since 1997 and an honorary professor at the Universidad Nacional de Córdoba in Argentina who has represented Argentina at UNCITRAL and participated in CIDIP VI as a special guest of the OAS, brings all his considerable expertise

on inter-American and international trade law, his conceptual clarity and analytical skills to bear on a synthesis and a projection of the investigations that he has been carrying out since 1990 about various aspects of inter-American private international law.

The volume is set out in five chapters. The first part of Chapter 1 characterizes what the author calls "the Latin American legal family" and its circumstances, as well as the elements that set it apart from other legal systems, particularly the European systems that have exerted such a strong influence in Latin America. The fact that most Latin American countries have adopted "domicile" in preference to "nationality" as a connecting factor in person- and family-related issues is the most telling example of this. But the author convincingly argues that the unification of law in Latin America owes more to the emergence, over the years, of concrete common interests than to the fact of belonging to a specific legal family. The second part of this chapter summarizes the nerve centers and structure of codification in the region, *i.e.* Latin America (Montevideo Treaties of 1889 and 1940, and the Bustamante Code), Inter-America (CIDIP), Ibero-America, and Central and South America.

Chapter 2 deals primarily with the elements of codification of inter-American private international law from a historical perspective: the ideals of sovereignty and independence and other political motivations that informed the first codification attempts in the late 19th century; the failed attempt to establish uniform rules of private international law embodied in the 1878 Treaty of Lima; the codification work of the Montevideo Treaties and their counterweight, the Bustamante Code, as well as the reasons for the lack of impact of antagonistic Latin Americanism and Pan-Americanism, and the concentration of codification power in the hands of the Organization of American States (OAS) ever since the First Inter-American Specialized Conference on Private International Law (CIDIP) in Panama City in 1975.

Chapter 3 is devoted to the work and importance of CIDIP: the renovation of inter-American conventional private international law *vis à vis* the Montevideo Treaties and the Bustamante Code; the problem of compatibility between treaties, practically unknown in America until the CIDIP Conventions came into force, which leads to the question of the aim of CIDIP codification, *i.e.*, whether CIDIP is intended as an independent system of conventional private international law enjoying a certain autonomy from international codification elsewhere, or if, on the contrary, it is heading to become an "appendix" of the latter with limited room for manoeuvre. The author argues from the realistic point of view that CIDIP should be expected to define and pursue a juridical production appropriate to the needs and particularities of the region, exempt from any out-to-date attempt to configure a "system" in itself. He emphasizes what he considers to be one of the most important effects of CIDIP: the modification, by several Latin American countries such as Mexico, Peru, Venezuela, Paraguay and Uruguay, of internal laws on private international law based on or following solutions contained in CIDIP Conventions, thus leading to the indirect homogenisation of State systems of private international law in the region.

Chapter 4 refers to inter-American private international law in light of the new wave of economic integration in the Americas and the juridical integration process it has led to, at a sub-regional level this time. Special emphasis is placed on MERCOSUR (the Southern Cone Common Market created by Argentina, Brazil, Paraguay and Uruguay in 1991 (Treaty of Asuncion)) as an example of sub-regional codification of private international law, because of its achievements in the fields of jurisdiction, recognition and enforcement of foreign judgments, and so-called international judicial assistance. After commenting

succinctly on the different texts on private international law issues adopted by MERCOSUR, the author analyses the CIDIP influence on MERCOSUR Conventions; the successes and failures of MERCOSUR private international law, dwelling in particular on the Organisation's methods of work and on the difficulties encountered in the adoption and enforcement of MERCOSUR legislation by the member States, as well as efforts to overcome them.

The fifth and last chapter is probably the most important of all. With the suggestive title "Present and future of codification of private international law in America", the author comments on the particularities of the latest CIDIP (VI), noting a new lease of life within CIDIP in recent years, mainly in the field of traffic of minors and their protection, with the ratification of several CIDIP conventions by Brazil and other countries that had steered clear of CIDIP until then. But the crucial question Fernández Arroyo poses for the future is: "Is CIDIP necessary?". He argues that in order to (re-)define CIDIP's role and its viability as a center for the codification of private international law and international trade law, several issues will have to be studied responsibly and in depth, such as: the real interest of the OAS in the codification of private law and the related need for a permanent OAS agency devoted full time to that task; the lack of budgetary resources and the possibility of securing private financing; the role of the Inter-American Juridical Committee and the shortage of private international law specialists among its members; the problem of ratification and enforcement of CIDIP legislation in the OAS member States; the relationship between CIDIP Conventions and other international conventions, especially those adopted at sub-regional level, such as those of MERCOSUR; and finally, the need – if any – for regional codification in the current state of world affairs. Those questions answered, the author rightly points out that there are three priority subjects for CIDIP to deal with: commercial and patrimonial issues, including contracts, secured transactions and uniform rules for bills of lading; minors and family-related issues, including the effects of separation and divorce, protection of children and non-marital forms of cohabitation, and international judicial assistance. Last, the author emphasizes that the success of CIDIP will depend upon the support and commitment of public and private organizations interested in its legislation and the participation of specialists so as to guarantee a better product.

The volume makes an invaluable contribution to the legal literature and will prove a useful source for academics and practicing lawyers in the Americas or indeed for anyone interested in the unification of private law and juridical integration in this very dynamic part of the Western Hemisphere. The volume cannot be expected to provide easy or definitive answers to the uncertainties and contradictions that currently bedevil the development of inter-American private international law and indeed, such was not the author's aim: his – largely fulfilled – purpose was to provide elements for analysis and informed proposals for the elaboration of modern and adequate private international law rules for the OAS members States.

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