

Samtleben, Jürgen: Internationales Privat- und Prozessrecht in Lateinamerika. Tradition und Reform. Band I: Rechtsordnungen; Band II: Gesetzestexte (Kombipaket). – Düren: Shaker Verlag 2023. VIII, 788 S. + XVI, 1.132 S. (Schriften der Deutsch-Brasilianischen Juristenvereinigung. 56.) – ISBN 978-3-8440-9064-2.

Reviewed by **María Julia Ochoa Jiménez***

I. *Jürgen Samtleben's* work on Latin American private international law is unique. It offers an unparalleled level of exhaustiveness, systematicity and depth. Although some Latin American authors have analysed the subject in their respective jurisdictions from a comparative perspective, and the process of regional cooperation has since the 19th century involved the search for common approaches and solutions, we are infinitely indebted to *Samtleben* for the way in which he attentively observes Latin American private international law. He has done so not only from the perspective of an eagle that sees the “legal evolution of one continent from another”,¹ but also from that of an ant that carries out “deep and patient research in different Latin American countries”.² His doctoral thesis “Internationales Privatrecht in Lateinamerika: Der Código Bustamante in Theorie und Praxis”, whose German version was published in 1979 and whose updated version translated into Spanish by Carlos Bueno-Guzmán appeared in Argentina four years later, is essential reading for all those interested in the subject. The same can be said for “Rechtspraxis und Rechtskultur in Brasilien und Lateinamerika”, published in 2010, as well as for his copious monographic publications. “Internationales Privat- und Prozessrecht in Lateinamerika: Tradition und Reform”, which is part of the series “Schriften der deutsch-brasilianischen Juristenvereinigung”, goes further along this path. This book is much more than a compilation of single texts with extensive and careful cross-referencing. In its two volumes, *Samtleben* generously shares with us the result of a lifetime devoted to the study of international private and procedural law in Latin America, which he has revised and updated in recent years with the expertise and wisdom that characterize his efforts.

II. The first volume focuses on the legal systems. It begins by offering an overview of Latin American private international law that allows us to see how a legal field with nearly two centuries of tradition in the region has been set in motion in recent decades. Here the reader is provided with regional trends in specific topics related to the main questions in the field, such as the conflict of laws regarding persons and family, property and succession, and trade, as well as international procedure, including competence and recognition of foreign judgments. *Samtleben* also takes a historical account to analyse the harmonization envisaged by the Tratado de Unión, Liga i Confederación Perpetua of 1826 that led to the regional codification process initiated with the Treaty of Lima of

* Dr. iur., Assistant Professor, Universidad Loyola, Sevilla, Spain; mjochoa@uloyola.es.

¹ *Jürgen Samtleben*, *Derecho Internacional Privado en América Latina, Teoría y Práctica del Código Bustamante* (1983) VIII.

² *Samtleben*, *Derecho Internacional Privado* (n. 1) VIII.

1878. In this way, he makes us aware of the importance of being familiar with the historical development of the field, since, as he says: “In Latin America in particular, I have repeatedly found that one can only understand certain regulations if one is familiar with their historical development” (p. 783). He thus goes further and reviews the legacy of the Pan-American Conferences, among which the Code of Private International Law annexed to the 1928 Havana Convention (Bustamante Code) stands out, as well as the 1889/1940 Montevideo Treaties. As can be seen throughout this volume, this process continued in the second half of the 20th century and has thus far proceeded in the 21st century, with two different harmonizing developments standing out: the Specialized Conferences on Private International Law (CIDIP) organized by OAS (the Organization of American States) – some of which (CIDIP-II, CIDIP-III and CIDIP-IV) *Samtleben* attended as a German observer – that gave origin to the Inter-American Conventions,³ and the harmonization of private international law *lato sensu* as developed within the framework of MERCOSUR.

1. This volume also delves into the situation in each national jurisdiction, observing where appropriate the influences coming from other systems. It deals with twenty Latin American countries, sixteen of which are grouped into three parts. The first part is dedicated entirely to Brazil, a country with which *Samtleben* has a special connection and where Latin American students had the opportunity to receive classes from him. Beyond the uniqueness of its Portuguese colonial past and its enormous size, the author treats Brazil separately because of the particularities of its independence process, which distanced itself from the violent breakup that characterized independence wars in the old Hispanic colonies. As *Samtleben* points out, the way in which the independence process unfolded in Brazil led to a lesser relevance of the sovereignty principle in Brazilian private international law and a broader openness to foreign law as compared to the rest of Latin America, where the application of the *lex fori* by means of unilateral solutions was privileged during the formation of the republics. After analysing Brazil’s private international law system, the author focuses on its international procedural law by comparing the regime with German law and by analysing Germany’s competence as a member state of the European Union to engage in judicial cooperation with Brazil.

2. The following two parts of the first volume are devoted to the international private and procedural law systems of the countries that form Hispano-America. The systems of Argentina, Dominican Republic, Panama, Peru, Uruguay, and Venezuela, all of which have general codifications of private international law, are grouped together for this reason, although each is analysed individually. The chapter devoted to each national legal system deals with both conflict of laws and international procedure. This is the only part

3 Some of the Inter-American Conventions deal with general matters, e.g., general rules of private international law (1979, CIDIP-II) and the extraterritorial validity of foreign judgments and arbitral awards (1979, CIDIP-II), while others deal with more specific matters, e.g., international commercial arbitration (1975, CIDIP-I), conflict of laws concerning bills of exchange, promissory notes, and invoices (1975, CIDIP-I), conflict of laws concerning checks (1975, CIDIP-I), conflict of laws concerning the adoption of minors (1984, CIDIP-III), and support obligations (1989, CIDIP-IV).

of the book in which there are writings by guest authors. Thus, the 2021 special law of Uruguay is commented on by *Samtleben* together with Uruguayan Professor Gonzalo A. Lorenzo Idiarte, and the chapter on Venezuela is authored by Venezuelan Professor Eugenio Hernández-Bretón. Further, this volume discusses the regulations and reforms in Bolivia, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Cuba, Nicaragua, and Paraguay, which have so far not adopted comprehensive special codifications. In order to analyse these legal systems, different structures are necessarily followed. Thus, for example, the chapter on Bolivia deals only with some issues related to international procedural law because the country lacks special private international law provisions. And in the case of Chile, the author presents two major family law issues – marriage and divorce with foreign elements – based on the peculiar case of Pablo Neruda and the reforms in this area introduced in 2004.

3. The situation of international private law and international civil procedure in Colombia, Ecuador, Haiti, and Mexico is also considered, albeit in a general context. These countries are, for example, treated in the overview of Latin American private international law included in the introductory part, together with the rest of the countries of the region. *Samtleben* analyses here three principles through which European law greatly influenced Latin American private international law in the 19th century. The first is the principle of territoriality, a Dutch influence largely extended throughout the region by the 1855 Chilean Civil Code drafted by Andrés Bello. The second is the principle of nationality, an influence of Italian origin that was included not only in national law but also in regional treaties (e.g., the Treaty of Lima of 1878). And the third is the principle of domicile that, according to *Samtleben*, replaced the principle of nationality when it became illusory in practice due to massive immigration. *Samtleben* also takes these countries into account when addressing two additional topics that he discusses separately in the introductory part – choice of court agreements and international commercial arbitration.

4. The last part of the first volume reminds us that it is not possible to understand private international law without having in mind that it is a human creation. Recalling observations made by Haroldo Valladão, the author describes a constant that can be identified in the Latin American development of private international law – despite the existence of contrasts (or even contradictions). Namely, one sees a tendency to consider “the interests of all and not just those of a few” (p. 762). In this vein, the final part includes biographical notes on five prominent scholars who “have been significant for the development of private international law in whole Latin America” (p. 748). We are, among other things, informed about how the contributions by the Uruguayan Gonzalo Ramírez (1846–1911), the Cuban Antonio Sánchez de Bustamante y Sirvén (1865–1951) – who drafted the well-known Private International Law Code of 1928 – and the Brazilian Haroldo Valladão (1901–1987) transcended the borders of their respective countries. The same is done in relation to Werner Goldschmidt (1910–1987) and Tatiana de Maekelt (1925–2009), both Latin American scholars with a migrant background – the former from Germany and the latter from present-day Ukraine – who developed their academic careers in Argentina and Venezuela, respectively, and who gave an enormous impetus to the development of the field throughout the region. The volume concludes with two

texts in which *Samtleben* briefly shares some personal recollections from his fascinating fifty-year journey through Latin American private international law.

III. The second volume completes the first one with a compilation of national instruments and provisions in the field of international private and procedural law. Due to the cross-cutting nature of this legal field, relevant provisions are often found in various types of instruments (e.g., civil codes, commercial codes, procedural codes, or special regulations), and not only in private international law statutes. *Samtleben* thus carefully selects such provisions on the basis of their academic and practical interest. As he notes, only those provisions that have an explicit international relevance are included, while conflict-of-law rules as relating to public law are omitted. Nor has it been possible for him to include the provisions on ship seizure and arbitration in their entirety. Nevertheless, this compilation of 1,132 pages embracing twenty national jurisdictions is the most complete of its kind. The national instruments and provisions are arranged by country, which in turn are presented alphabetically. For each country, they are preceded by a brief description, a list of legal sources, and a complementary bibliography. Thereafter, they are presented conveniently in two columns: the text in its original language is reproduced on the left, and a German translation appears on the right, which is absent only if the respective provision corresponds to a model law, e.g., the UNCITRAL Model Law on Cross-Border Insolvency, as is indicated in due course.⁴ There are also helpful footnotes on the validity of the law or on the language used. This volume clearly illustrates *Samtleben's* contribution in making Latin American private international law known beyond the region, especially to German academics and practitioners.

This is also true of the first volume, in which the German language is predominant: the volume contains a total of forty-four texts, of which thirty-eight are in German, five in Spanish,⁵ and two in English.⁶ An edition of this work entirely in English would undoubtedly increase the book's accessibility in other regions of the world. But, above all, what is missed is a Spanish-language version of "Internationales Privat- und Prozessrecht in Lateinamerika: Tradition und Reform". Such a translation would facilitate the work's consultation by an immense public and make available to readers from Latin America – the group with the greatest interest in the international private law and procedural law of the region – a book that is fundamental for academics and practitioners, as well as for those who are learning the subject.

IV. This, of course, does not diminish the unparalleled value of *Samtleben's* work, which is essentially reflected in the usefulness his scholarship has had for decades, has today, and will continue to have in the future. For my part, I can say that the way in

4 This happens in Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Mexico, and Panama.

5 The texts in Spanish are "El derecho internacional privado en América Latina (2017)", "Cláusulas de jurisdicción y sumisión al foro en América Latina (2019)", "Métodos de armonización del derecho internacional privado en América Latina (2010)", "El divorcio de extranjeros en la República Dominicana (2020)", and "La evolución del derecho internacional privado en Nicaragua (2021)".

6 The texts in English are "Antonio Sánchez de Bustamante y Sirvén (1865–1951)" and "Closing remarks".

Literatur

which he addresses the development of private international law in Latin America since the 19th century has been of crucial assistance in helping me to understand why Latin American legal systems relate as they do with the legal systems of the rest of the world, and this has been key in my academic work, in terms of both teaching and research. “There is no doubt that our work has a direct influence on today’s legal environment, but we also pave the way for our successors”, states *Samtleben* in his “Schlusswort” to the work reviewed (p. 783). For me, nothing could be truer.

