



INSTITUTIONAL FRAMEWORK FOR INTERNATIONAL  
JUDICIAL COOPERATION: OPPORTUNITIES AND  
CHALLENGES FOR NORTH AMERICA

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## I. INTRODUCTION

The dynamic and complex forces of globalization<sup>1</sup> have created a growing and pressing need for legal certainty and stability at a global scale. However, existing legal institutions, legal provisions, legal remedies, and public and private forums all over the world have already shown their limitations and inability to efficiently adapt and respond to the challenges posed by globalization. As a result, we are already paying a high price for not having an efficient global legal order.

The absence of a global legal order has facilitated the expansion of international organized crime, international terrorism and uncontrolled international unfair competition and commercial piracy, to mention a few of the consequences.

Even people's private lives are being affected. Families of expatriates working for multinational corporations and international organizations can attest to the negative consequences of not having an efficient global legal order. For instance, collecting alimony and child support from employees of multinational corporations receiving their salaries in the most exotic places around the world can be a real hassle, not to mention international abduction of children by their own parents.

Indeed, the rise and evolution of supranational realities are pressing—to their very limits—many of the legal institutions, legal provisions, legal remedies, and public and private forums that have been a fundamental part of our daily lives.

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<sup>1</sup> “Globalization is unstoppable. Even though it may only be in its early stages, it is already intrinsic to the world economy. We have to live with it, recognize its advantages and learn to manage it. That imperative applies to governments, who would be unwise to attempt to stem the tide for reasons of political expediency. It also goes for companies of all sizes, who must now compete on global markets and learn to adjust their strategies accordingly, seizing the opportunities that globalization offers. Ralph Amisshah, *The Autonomous Contract; Reflecting the Borderless Electronic – Commercial Environment in Contracting* (1997), available at: <http://www.jus.uio.no/lm/the.autonomous.contract.07.10.1997.amisshah/doc.html> (quoting Maria Lievanos Cattai, *The Global Economy – an Opportunity to be Seized*, I.C.C. BUS. WORLD, July 17, 1997, available at [http://www.iccwbo.org/home/news\\_archives/1997globalec.asp](http://www.iccwbo.org/home/news_archives/1997globalec.asp)) (Last visited on September 9, 2007).

We live in a world of legal means and remedies developed under the model of the modern State. We are governed by legal frameworks created and developed to respond and deal with issues confined to the limits and boundaries of nation-states, and not for supranational realities or issues posed by the global village.

In the face of this, developing some sort of solution that allows the rule of law to respond to these challenges would seem urgent, a matter of priority. However, most legal solutions to these pressing needs have proven quite limited in terms of scope, reach and efficiency, and most lack of viable means to be enforced effectively within a real context, despite the general consensus on the need to find one.

The question of how to find and implement viable legal solutions is still in the air. Although much thought has been given to these issues, much more is needed. With this context in mind, the present article will focus on the institutional framework for international judicial cooperation. I will first address the current situation in Europe and Ibero-America, presenting a summary of what has been done in these regions in terms of developing legal solutions and institutions to frame and implement international judicial cooperation.

The European Union has accomplished some of the most significant and successful goals in this area. Europeans are committed to transferring and adapting their good practices to Ibero-American settings. So far, they have apparently been very successful at this.

Then, I will address the total lack of an institutional framework for international judicial cooperation in North America. The discussion will focus on the opportunities and challenges that any serious effort faces to developing and implementing the desperately needed institutional framework for the three countries in North America: Mexico, the United States and Canada.

The issues concerning the institutional framework for international judicial cooperation in North America should be addressed by working in at least three areas simultaneously:

- a) Setting a “priority agenda,” that is, reaching a consensus on the pressing issues affecting the three countries in North-America that require immediate and urgent attention;
- b) An implementation agenda, which, among other things, would include the creation and development of an institutional framework for international judicial cooperation among these countries; and
- c) A sustainability agenda, which, among other things, needs to address the complexities of the different legal traditions shaping the legal lives of the countries in North America. In discussing sustainability, this essay will highlight Canada’s significant work in the field of “Civil Law-Common Law Bijuralism” because much can be learned from this.

Finally, I will present my conclusions and opinions.

## II. INSTITUTIONAL LEGAL FRAMEWORK FOR INTERNATIONAL JUDICIAL COOPERATION

It is generally acknowledged that international treaties are one of the best solutions for creating a legal framework on an international scale.<sup>2</sup> However, reaching such solutions —having a single treaty actually developed, signed and ratified— implies a very difficult, slow and often tortuous process, before even considering their actual implementation and administration, assuming they are made and put in effect.

Negotiating an international treaty requires significant commitment in terms of time and effort from all the countries involved. One of the major problems with international treaties is that once they come into effect, they are almost frozen in time. In practical terms, it can be said that international treaties are carved in stone because amending and updating them is an endeavor of Herculean proportions.

In the context of North American countries, the first step to amend and update an international treaty requires agreement from the presidents of the United States and Mexico, as well as from the Prime Minister of Canada. That is hard enough by itself, but on top of that, this process would also require ratification from the U.S. and Mexican Congresses, as well as from the Canadian Parliament.

Significant efforts have been made in dealing with this aspect of rigidity associated with international treaties.<sup>3</sup> However, in historical terms, it is too early to evaluate the efficiency of these methods.<sup>4</sup>

In any case, there are two very important examples in the field of international business transactions that provide both the means for establishing

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<sup>2</sup> *Cfr.* "...there is no issue that provokes more discussions, there is not a more confusing legal field, than that of private international law. Not only does every country have its own principles, its own international law, but there is none where private international law is completely filled with unsolved issues in the face of which the layman cannot understand a thing and learned people frequently find themselves in a true state of total despair... Current scholars believe this anarchic situation is an irrevocable fate, discussing if anything how to order it, through an opportunistic approach... This is why the only known solution is that of international treaties." Ernest Frankenstein, *Una doctrina moderna de derecho internacional privado*, REVISTA GENERAL DE DERECHO Y JURISPRUDENCIA, t. IV (1933). Author's translation of the Spanish translation made by Mr. Eduardo Triguero Saravia. Cited by Felipe de J. Tena, DERECHO MERCANTIL MEXICANO CON EXCLUSIÓN DEL MARÍTIMO 577 (19th ed., Porrúa, 1978).

<sup>3</sup> For example, article 7 of CISG (the United Nations Convention for the International Sale of Goods) made it possible to use case law from different jurisdictions around the world to develop a body of case law on CISG matters. The same method has been followed by other UNCITRAL treaties and UNIDROIT principles on contracts.

<sup>4</sup> I am not aware of any study evaluating the success of any of these efforts in dealing with the aspect of rigidity associated with international treaties. However, I believe that at this point there are insufficient elements to give an opinion on this issue.

a stable legal framework and the flexibility required to update it whenever it may be required: Incoterms<sup>5</sup> and ICC rules for international letters of credit,<sup>6</sup> both published<sup>7</sup> by the International Chamber of Commerce.<sup>8</sup> However, Incoterms and ICC rules can only work within the context of a contractual agreement between private parties. Therefore, the desired aim is to find legal solutions that can work and operate in a supranational setting even when the will of the parties involved is absent.

The paradox is that even though we are living in a period where nation-states are already in decline, we are still under the strong influences of the paradigms of nation-states. The framework of these paradigms still determines our current understanding of private international law. Today, international treaties and domestic laws are still the law of the land in each country and territory, and the rules on conflicts of laws are still the rule of thumb in private international legal relations.

In a sense, we are walking on a tightrope. One of the major challenges for international legal cooperation is developing suitable and flexible means and structures, which can also respond to the needs of the global society and be congruent with each national system. Specifically, responding to the challenges of international judicial cooperation in North America would require a carefully crafted institutional framework. A framework of this kind would sustain relations among the judiciaries of North American countries, facilitating international judicial cooperation processes, and providing both suitable and flexible means and structures. That is, it would be an institu-

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<sup>5</sup> Incoterms 2000 is a publication of the International Chamber of Commerce ([www.iccwbo.org](http://www.iccwbo.org)).

<sup>6</sup> ICC Uniform Customs and Practice for Documentary Credits, UCP 600. 2007 Revision.

<sup>7</sup> Incoterms and ICC Uniform Customs and Practice for Documentary Credits are official publications of the ICC, a private organization, and are voluntarily adopted by private parties.

<sup>8</sup> “The International Chamber of Commerce (ICC) is an international organization that works to promote and support global trade and globalization. It serves as an advocate of world business in the global economy, in the interests of economic growth, job creation, and prosperity. As a global business organization, made up of member states, it helps the development of global outlooks on business matters. ICC has direct access to national governments worldwide through its national committees among others. To attain this objective, ICC has developed a range of activities. The ICC International Court of Arbitration is the most respected service of its kind in the world. Its voluntary rule-writing for business spreads best practice in areas as varied as banking, marketing, anti-corruption and environmental management. Their policy-making and advocacy work keeps national governments, the United Nations system and other global bodies apprised of the views of the world business on some of the most pressing issues of the day.” Wikipedia, the Free Encyclopedia. [http://en.wikipedia.org/wiki/International\\_Chamber\\_of\\_Commerce](http://en.wikipedia.org/wiki/International_Chamber_of_Commerce) (last visited on September 27, 2007).

tional framework that can be both responsive to the needs of the global village and be congruent with the national systems of each one of the countries concerned.

I will now explore some significant steps that have been taken in this direction, both in Europe and Ibero-America.

### 1. *Europe*

Today, international judicial cooperation in Europe operates on the concept of a common judicial space<sup>9</sup> and the three most important institutional players behind international cooperation among the European judiciaries are Eurojust, the European Judicial Network and liaison magistrates.<sup>10</sup>

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<sup>9</sup> The Working Document of the European Parliament “Liberty, Security, Justice: An Agenda for Europe,” dated March 24-25, 1999, states “a Judicial Space in Europe also means an area of common peace and common security.” This document also adds that “[we] must in general begin thinking in terms of Europe as a common judicial space. Parents must, for example, be able to rely on the fact that a decision on shared custody will apply throughout the Union. And victims of crime must be able to assert their rights, despite the fact that the EU’s legal systems differ one from another. Work in these and a series of other areas is a basic prerequisite if the concept of Europe is not to become unsustainable. Integration and the struggle for more freedom must never occur at the expense of people’s security and law and order. Cooperation in the fields of justice and home affairs is now into its sixth year. A number of initiatives have been taken and in many areas we can show impressive results. In addition we have a deeper understanding of what remains to be done. The new Treaty also sets up an ambitious goal for the future: namely ‘...to keep and develop Europe as an area of freedom, security and justice.’ As an overall expression of objectives this is particularly apt. The combination of the concepts of freedom, security and justice provides a simple, clear and at the same time ambitious indication of the direction of future work. What is required now is to define the concrete implications of this new concept.” Working Document, European Parliament, Liberty, Security, Justice: An Agenda for Europe. 24-25 March 1999. pp. 8 and 15. [www.europarl.europa.eu/workingpapers/libe/pdf/106\\_en.pdf](http://www.europarl.europa.eu/workingpapers/libe/pdf/106_en.pdf) (Last visited on September 27, 2008). Accordingly, the term is broadly used to refer to the territorial space of the European Union where judicial activity takes place in compliance with the European Union’s institutional framework. This concept has been also used in criminal matters when dealing with judicial mechanisms between two countries, such as the Treaty for the Suppression of Extradition between Italy and Spain. This term has also been used within the Ibero-American context to refer to the judicial space of Ibero-American countries in which the European Union has sponsored the creation of an institutional framework for judicial cooperation (e.g. Red Iberoamericana de Escuelas Judiciales). <http://www.cjf.gob.mx/encuentroconsejos2002/docs/riaej.pdf> (Last visited on September 28, 2007).

<sup>10</sup> *Cfr.* Prontuario de Auxilio Judicial Internacional [Guide to International Judicial Cooperation]. Consejo General del Poder Judicial [General Council of the Judiciary]. Ministerio de Justicia [Ministry of Justice]. Fiscalía General del Estado [State Attorney General’s Office]. [www.prontuario.org](http://www.prontuario.org) (Last visited on September 27, 2007.)

In reference to the relation between international judicial cooperation and the European common judicial space, Javier Luis Parra<sup>11</sup> has written:

This term —an end in itself more than a fact— covers initiatives that advance mutual and reciprocal knowledge of [European] legal systems, programs that confer mutual and reciprocal acknowledgment of court rulings, international instruments aimed at moving toward substantive and procedural legislation, the implementation and enforcement of court rulings, as well as concrete actions concerning processing and implementing requests for assistance among judicial agencies.<sup>12</sup>

According to Mr. Parra, European channels for judicial cooperation can be classified into three categories, namely: legal resources, virtual resources and institutional resources.

**Legal Resources:** are made up of the entire normative framework and community regulations in particular, providing a legal basis for establishing a strengthened assistance system within the European Union: acts of communication, obtaining evidence, shaping jurisdiction, acknowledgment and implementation...

**Virtual Resources:** a set of practical tools that provides assistance online and is especially suited to better implementing active international judicial cooperation.

**Institutional Resources:** represented by a network of institutional agents established to facilitate and mediate for effective judicial cooperation.<sup>13</sup>

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<sup>11</sup> Mr. Javier Luis Parra is the Governing Secretary of the High Court of Justice of Murcia and a contact point for the European Judicial Network in Civil and Commercial Matters.

<sup>12</sup> A translation of *Vademecun de Cooperación Jurídica Internacional*. <http://www.vademecumjuridico.org/esp/03.php?a=3> (Last visited on September 20, 2007.) Original in Spanish: “Dentro de esta expresión, en sí misma, más un fin que una realidad, se enmarcan tanto las iniciativas de promoción del conocimiento mutuo recíproco de los sistemas legales, los programas de medidas de reconocimiento mutuo de resoluciones judiciales, los instrumentos internacionales dirigidos a la aproximación de legislaciones sustantivas y procesales, la ejecución y cumplimiento de resoluciones judiciales, como las concretas acciones consistentes en el despacho y ejecución de solicitudes de asistencia entre órganos judiciales.”

<sup>13</sup> *Id.* Translation of the following text in Spanish: “Recursos legales: vienen integrados por toda la arquitectura normativa, en especial reglamentos comunitarios, que dan soporte jurídico al desarrollo de un régimen reforzado asistencia dentro de la UE: actos de comunicación, obtención de pruebas, determinación de competencia, reconocimiento y ejecución... Recursos virtuales: conjunto de herramientas prácticas que ofrecen asistencia vía web especialmente idóneas para un mejor desarrollo de la cooperación judicial internacional activa. Recursos institucionales: representado por el tejido de agentes institucionales puestos en marcha para facilitar e intermediar la efectiva cooperación judicial.”

For purposes of this article, I will mainly focus on: Eurojust, the European Judicial Network (also EJNI) and liaison magistrates.

The relationship between the European Judicial Network, Eurojust and the liaison magistrates set up in the Joint Action of 22 April 1996 is natural and complementary as regards facilitating judicial cooperation in cross-border cases. The EJNI is a decentralized network of contact points which advise and assist judicial authorities in Member States when judicial cooperation is necessary. Eurojust is a central unit with wide possibilities for coordination in cross-border cases. Their relations are based on consultation and complementarity to avoid duplication of efforts. Seconded liaison magistrates in Member States also encourage judicial cooperation by exchanging legal information to promote mutual understanding. Eurojust may, on a case-by-case basis cooperate with liaison magistrates that, at the same time, can be appointed as contact points of the EJNI.<sup>14</sup>

#### A. Eurojust

The first European institution to work in the field of international judicial cooperation was the European Union's Judicial Cooperation Unit, also known as Eurojust.

Eurojust is a new European Union body established in 2002 to enhance the effectiveness of the competent authorities within Member States when they are dealing with the investigation and prosecution of serious cross-border and organized crime.

Eurojust stimulates and improves the co-ordination of investigations and prosecutions... supports the competent authorities of the Member States in order to render their investigations and prosecutions more effective...

Eurojust fulfils a unique role as a new permanent body in the European legal area. Its mission is to enhance the development of Europe-wide co-operation on criminal justice cases. This means that Eurojust is a key interlocutor with the European institutions such as the Parliament, the Council and the Commission.

The College of Eurojust is... composed of 27 National Members, one nominated by each EU Member State. The national members are senior, experienced prosecutors or judges; some national members are supported by Deputies and Assistants.

Eurojust was created by an EU Council Decision of 28 February 2002 No. 2002/187/JHA (OJ L 63/1, 6.3.2002, amended by Council Decision of 18 June 2003 No 2003/659/JHA (OJ L 245/44, 29.9.2003). It operated from Brussels on a provisional basis from 1 March 2001 and moved to

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<sup>14</sup> Freedom Security and Justice. [http://ec.europa.eu/justice\\_home/fsj/criminal/network/fsj\\_criminal\\_network\\_en.htm](http://ec.europa.eu/justice_home/fsj/criminal/network/fsj_criminal_network_en.htm) (Last visited on September 23, 2007).

The Hague in December 2002. Eurojust and Europol signed an agreement on close cooperation on 9 June 2004.<sup>15</sup>

## B. *European Judicial Networks*

### a. The European Judicial Network on Criminal Matters

There are two European judicial networks working under the common name of European Judicial Network: the original European Judicial Network, which was the first of its kind and the European Judicial Network on Civil and Commercial Matters, which was established later.

The original European Judicial Network (EJN) was the “first structured mechanism of the judicial cooperation in the EU to become truly operational.” It was created by a Joint Action of the European Council adopted on June 29, 1998 (OJ L 191 of 07 July 1998, p.4), inspired on the principle of direct contact between competent judicial authorities, “with the purpose of creating a network of experts to ensure the proper execution of mutual legal assistance requests” in the area of judicial cooperation on criminal matters.”<sup>16</sup>

The EJN is a non concentrated, dynamic structure, with horizontal character and possessing only the minimum integration level necessary to its functioning. Therefore, flexibility is its main character.

The EJN is composed of contact points of the Member States, as well as of the European Commission.

National contact points are designated by each Member State among Central authorities in charge of international judicial co-operation, judicial authorities and other competent authorities with specific responsibilities in the field of international judicial co-operation, both in general and for certain forms of serious crime, such as organized crime, corruption, drug trafficking or terrorism.

Keeping in mind EJN’s flexibility and in view its wide dissemination through out the whole EU territory, the responsibility was each Member State to choice [*sic*] and appoint the contact points. The process takes place according to their constitutional rules, legal traditions and internal structure, providing effective coverage for all forms of serious crimes throughout the country. The result is the existence of almost 400 national contact points throughout the 27 Member States.

Contact points are “active intermediaries,” with the task of facilitating judicial cooperation between Member States, particularly in order to com-

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<sup>15</sup> Europe. Agencies of the European Union. [http://europa.eu/agencies/pol\\_agencies/eurojust/index\\_en.htm](http://europa.eu/agencies/pol_agencies/eurojust/index_en.htm) (Last visited on September 22, 2007).

<sup>16</sup> *Cfr.* European Judicial Network. <http://www.ejn-crimjust.europa.eu/about-ejn.aspx> (Last visited on September 22, 2007).

bat different forms of serious crime. The Joint Action states they will enable local competent authorities to “establish the most appropriate direct contacts.”

Other functions mentioned in the Joint Action are: to provide the legal and practical information necessary for the local authorities to prepare an effective request for judicial co-operation, as well as coordinating functions in cases where a series of requests from local judicial authorities in a Member State needs coordinated action in another Member State.<sup>17</sup>

#### b. The European Judicial Network on Civil and Commercial Matters

The European Judicial Network on Civil and Commercial Matters was established by means of a European Council decision dated September 28, 2001 (2001/470/EC), as a direct result of a special Council meeting “devoted to the establishment of an area of freedom, security and justice in the European Union” (Tampere, Finland, Autumn 1999).<sup>18</sup>

The network consists of representatives of the Member States’ judicial and administrative authorities and meets several times each year to exchange information and experience and boost cooperation between the Member States as regards civil and commercial law.

The main objective is to make life easier for people facing litigation of whatever kind where there is a transnational element - *i.e.* where it involves more than one Member State.

The European Union currently has a wide variety of national legal systems, and this diversity often creates problems when litigation transcends national borders.

Individuals and firms, and even more so the legal professions, will find it very useful to have access to knowledge about the various national systems of civil and commercial law and the legislative instruments of the European Union and other international organizations including the United Nations, the Hague Conference and the Council of Europe.<sup>19</sup>

#### c. Liaison Magistrates

A liaison magistrate is an “official with special expertise in judicial cooperation, who has been posted in another State, on the basis of bilateral or multilateral arrangements, in order to increase the speed and effectiveness of judicial cooperation and facilitate their better mutual understanding be-

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<sup>17</sup> *Id.*

<sup>18</sup> *Cfr.* European Judicial Network on Civil and Commercial Matters. [http://ec.europa.eu/civiljustice/index\\_en.htm](http://ec.europa.eu/civiljustice/index_en.htm) (Last visited on September 23, 2007).

<sup>19</sup> *Id.*

tween the legal and judicial systems of the States in question.”<sup>20</sup> However, these are not officials with extraterritorial powers, nor persons assigned to engage in “limited, nonintrusive forms of self-help” in another State, with the tacit support of the authorities of the host State, or agents who may act in violation of international law or the laws of the host State.<sup>21</sup>

Liaison magistrates work within the forest of bilateral and multilateral agreements and arrangements. They are the experts regarding which of these agreements and arrangements can best be applied to specific cases, how the requests should be formulated, and who should be contacted.

The concept of the liaison magistrate is based on the positive experiences with the growing network of liaison officers used to promote cooperation between law enforcement agencies. In transnational law enforcement, the liaison officer uses direct contacts to facilitate and expedite the collection and exchange of information, in particular information of a strategic nature...

The liaison magistrates form a small and select body of international experts in judicial co-operation. They are the fixers, the problem-solvers. As our societies are becoming more international, our prosecutors and our courts will have to co-operate more intensely with one another, within the framework of international law. Individual prosecutors and judges often lack the training, specialization and language skills that are required in the specialist area of judicial cooperation. As a consequence, we will inevitably have to rely increasingly on the expertise of the liaison magistrates.<sup>22</sup>

## 2. *Ibero-America*

The expression Ibero-America is used to refer to the countries located in the Iberian Peninsula: Spain, Portugal and Andorra; as well as the Portuguese and Spanish-speaking countries in the American Continent.<sup>23</sup>

The Ibero-American Summit is a forum for political harmonization on matters concerning the region, taking as a basis the common accord of the Ibero-American countries with the principles of representative democracy and respect for human rights, fundamental liberty and self-determination of the people. This mechanism saw the light of day in Guadalajara, Mexico in 1991, during preparations for the celebration of the Quincentenary of the

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<sup>20</sup> *Cfr.* The Second Meeting of Nordic and Baltic Ministers of Justice. November 2, 2001, Tallinn, Radisson SAS Hotel [http://meeting.just.ee/topic3\\_2.php?menyy=t3](http://meeting.just.ee/topic3_2.php?menyy=t3) (Last visited on September 23, 2007).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Argentina, Brazil, Bolivia, Mexico, Cuba, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, the Dominican Republic, Uruguay and Venezuela.

Discovery of the Americas, with the common element of cultural identity between the Latin American and Iberian peoples.

At each summit meeting a declaration is issued named after the city where the meeting was held. The Guadalajara and Madrid (1992) declarations are considered as being foundational, that is to say, they set out the aims of the Ibero-American Group.

During the VIII summit meeting of the Ibero-American Conference (Porto, 1998) the creation of a Cooperation Secretariat was approved, with headquarters to be established in Madrid. The objectives of the Secretariat are:

- to contribute to the consolidation of the Ibero-American Community of Nations founded on its shared values.
- to contribute to the development of cooperation, approximation and interaction among the actors in Ibero-American cooperation.
- to strengthen specific Ibero-American characteristics.

These objectives interrelate with the following areas of emphasis:

- the diffusion of common languages and cultures.
- the interaction of the societies and expansion of mutual understanding.
- the strengthening of institutions.<sup>24</sup>

From a perspective of international judicial cooperation, the general trends of Ibero-American summits have made possible the creation of the following institutions: the Ibero-American Judicial Summit, the Ibero-American Network of Judicial Information and Documentation (Iberius), the Ibero-American Classroom, the Ibero-American Network of Judicial Schools, and the Juan Carlos I Judicial School of Central America and the Caribbean.

#### A. *The Ibero-American Judicial Summit*

The Ibero-American Judicial Summit is an organization that gives structure to cooperation and agreement among the judiciaries of the twenty-three countries of the Ibero-American community of nations, gathering the highest authorities and government agencies of the Ibero-American judicial systems in a single forum. It assembles Presidents of Supreme Courts and High Tribunals of Justice, and the highest Ibero-American judicial council officials.

The main purpose of the Ibero-American Judicial Summit is to “adopt officially approved projects and actions, with the conviction that a common cultural background based on respect for existing differences is a unique in-

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<sup>24</sup> Ibero-American Summit. <http://www.mre.gov.br/cdbrasil/itamaraty/web/ingles/relext/mre/orgreg/cupula/apresent.htm> (Last visited on September 23, 2007.) Ibero-American summits are held once a year in one of the countries of the region. Each conference adopts a central theme.

strument that contributes to strengthening the judiciary, and consequently the democratic system.”

Under its current structure, as of June, 2004, the Ibero-American Judicial Summit is the result of merging or converging the two previous structures: the Ibero-American Summit of Presidents of Supreme Court and High Tribunals of Justice and the Ibero-American Conference of Judicial Councils.<sup>25</sup>

### B. *The Ibero-American Network of Judicial Information and Documentation (Iberius)*

The Ibero-American Network of Judicial Information and Documentation, Iberius, is defined as a community for cooperation, agreement and mutual support in the field of legal information and documentation. Since its inception, it was not created as a virtual community, (it did not fall under the definition of yet another online network), but a real community of cooperation.

Additionally, it rose out of the need to strengthen national judiciary branches in terms of legal information by providing well-established structures on a professional basis, that is, through Documentation Centers aimed at guaranteeing stability, quality information, regular updates of information and project sustainability.

This defines the two main components of this project:

1. The network project itself.
2. National projects for creating or building up Documentation Centers.

Hence, it is a broad-ranged and long-term project to establish an Ibero-American Network of Judicial Documentation Centers, with Documentation Centers as the agencies that assist in the access of systematized, managed and processed legal information.

However, to guarantee Network's sustainability as well as its quality and regular information updates, it envisions the establishment of Documentations Centers in countries where none exist, or building up those that already do.

The website and the project are both instruments and a means.<sup>26</sup>

### C. *The Ibero-American Classroom*

The Ibero-American Classroom Project of the General Council of the Judiciary was conceived as an express request from the 1997 Ibero-American

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<sup>25</sup> Translation of Secretaría Permanente, Cumbre Judicial Ibero-Americana. <http://www.cumbrejudicial.org/eversuite/GetRecords?Template=default&app=cumbres> (Last visited on September 23, 2007).

<sup>26</sup> Translation of Iberius. Red Iberoamericana de Información y Documentación Judicial. <http://www.iberius.org/eversuite/GetRecords?Template=default&app=iberius> (Last visited on September 23, 2007).

Summit of Presidents of Supreme Courts and High Tribunals of Justice held in Madrid. The General Council of the Spanish Judiciary was formally asked to create an Ibero-American Classroom, envisioned by all as a forum for specialized legal education/training and discussion aimed at Ibero-American judges.

Established in April 1998, it has since carried out various ongoing activities. This training program for Ibero-American judges pursues the following goals, among others:

- Providing expertise in the field of judicial education to the Ibero-American legal community.
- Strengthening existing relations among the Supreme Courts and Tribunals, as well as among Judiciary Councils in Ibero-American countries.
- Consolidating a meeting place for highly specialized Spanish and Ibero-American judges, so that they can become a point of reference in the different fields related to the exercise of jurisdictional duties.
- Implementing an Ibero-American judicial community that makes it possible to exchange experiences, information and research projects.<sup>27</sup>

#### D. *The Ibero-American Network of Judicial Schools*

The Ibero-American Network of Judicial Schools (IANJS) was created within the framework of the “2nd Conference of Ibero-American Judicial Councils” and approved at the “6th Ibero-American Summit of Presidents of Supreme Courts and High Tribunals of Justice” held in Spain in May 2001. It is a networking community for mutual cooperation, agreement and support among Judicial Schools and Public Centers for Judicial Training in Ibero-America, contributing to the exchange of information about legal programs, methodologies and training systems, making it possible to organize activities for its members and planning joint training activities. All this is based on a flexible organizational structure that respects the independence of each member.

The Network strives to be seen:

- As a model for Ibero-American organization and integration in the field of judicial training for its contribution the good management of the common judicial space to thus strengthen judicial systems and the Rule of Law.
- By the judiciaries and the beneficiaries of the public service of justice, as a reliable strategic instrument for institutional development in judiciaries, for the consolidation of a democratic, just and humane society; as well as for its professionalism, ethics, efficiency, transparency and commitment.

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<sup>27</sup> Translation of Consejo General del Poder Judicial. Aula Iberoamericana. <http://www.poderjudicial.es/eversuite/GetRecords?Template=cgkj/cgkj/principal.htm> (Last visited on September 23, 2007).

The following policies have been outlined to achieve this purpose:

1. Assist in the consolidation of constitutional and democratic States of law and justice.
2. Strengthen justice as a public service by improving judicial training and attaining the professional excellence of public servants in the field of justice, especially judges.
3. Strengthen Ibero-American judiciaries by promoting ongoing work at Judicial Schools and public legal training centers.
4. Reinforce Ibero-American judicial integration through understanding among members of the judiciary of the legal and judicial systems in other Ibero-American countries, as well as instruments for national and international cooperation and training of members of the judiciary to foment this understanding.
5. Uphold elements inherent to Ibero-American legal culture and identity.<sup>28</sup>

#### *E. The Juan Carlos I Judicial School of Central America and the Caribbean*

The General Council of the Judiciary and the Spanish Agency for International Cooperation in collaboration with the Supreme Courts of the region have created –as of 2005– the Juan Carlos I Judicial School of Central America and the Caribbean.

This school emerges as a result of the Guatemalan Judiciary's Juan Carlos I School. With the assistance of the General Council of the Judiciary and SAIC financing, it was established in 1998. Aware that this school's term as a bi-lateral project was about to end, the project was restructured to give way to a regional one.

The general purposes of the Juan Carlos I School are:

1. To contribute to the consolidation of democratic processes initiated in the region,
2. To support the processes strengthening of the Rule of Law,
3. To assist governability, and
4. To promote mechanisms and synergies for regional integration in the sector of justice.

Under its current structure and with headquarters in the city of La Antigua, Guatemala, it organizes activities for three weeks with the assistance of teachers from Nicaragua, El Salvador, Honduras, Panama, Costa Rica, the Dominican Republic and Guatemala, and led by lecturers from those countries and Spain. All this is carried out under academic guidance from the General Council of the Judiciary of Spain.

This is an ambitious project because the Juan Carlos I School for Central America and the Caribbean was conceived as a first step in implement-

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<sup>28</sup> Translation of Red Iberoamericana de Escuelas Judiciales. <http://www.riajej.org/content/view/1/42/lang.es> (Last visited on September 23, 2007).

ing two more similarly structured regional judicial schools in the Andean Community and MERCOSUR.<sup>29</sup>

### 3. *The EUROsociAL Program and its Justice Consortium*

The EUROsociAL Program of the European Union is one of the most important programs for economic development in the world today. Eventually, it could even be deemed the most important effort existing in this field. The EUROsociAL Program aims to develop a new and more effective and efficient way of implementing international development programs.<sup>30</sup>

The EUROsociAL program aims to promote economic development by contributing to “generate or reinforce social cohesion processes in Latin America” by increasing the efficacy and efficiency of public policies that actually influence strengthening social cohesion.<sup>31</sup>

The implementation of EUROsociAL is carried out by a set of institutions from the European Union and Latin America, grouped in consortia for the sectors of Education, Taxation, Justice and Health. The management of the Employment sector has been entrusted to the International Training Centre of the International Labour Organization.

The internal coherence of the actions is guaranteed by an Intersectorial Coordination and Guidance Committee —ICGC—, which includes representatives from all the consortia, and works permanently through an Executive Secretary Office or Coordination Office. The strategic guidelines of the Programme are established by a Joint Committee formed by the European Commission, the Inter-American Development Bank (IADB), the Economic Commission for Latin America (CEPAL) and the United Nations Development Programme (UNDP). The Joint Committee also guarantees the integration of the actions carried out with other development initiatives in course in the region and with the Millennium Development Goals.<sup>32</sup>

These goals are to be achieved by implementing individual and coordinated actions in the five different sectors.<sup>33</sup>

<sup>29</sup> Translation of Consejo General del Poder Judicial. <http://www.poderjudicial.es/ever-suite/GetRecords?Template=cgkj/cgkj/principal.htm> (Last visited on September 23, 2007).

<sup>30</sup> The first meeting of the program’s Executive Secretariat, Joint Committee and the consortia of the five sectors was held in Cuernavaca, Mexico, in September 2005.

<sup>31</sup> *Cfr.* EUROsociAL Programme. Aims and methods. <http://programaeurosocial.eu/index.php?PHPSESSID=qu25gakleuf6t6kfdumnl9tgr2&nIDMenu=3&nIDSeccion=3> (Last visited on September 27, 2007).

<sup>32</sup> *Cfr.* EUROsociAL Programme. Implementation, Guidance and Coordination. <http://programaeurosocial.eu/index.php?PHPSESSID=qu25gakleuf6t6kfdumnl9tgr2&nIDMenu=20&nIDSeccion=20> (Last visited on September 27, 2007).

<sup>33</sup> *Id.*

Based on the premise that economic development cannot be sustained in conditions where social cohesion does not exist, the EUROsociAL program realizes that the program needs to have effective parallel influence in the five sectors mentioned above. That is, the education sector cannot be strengthened while sacrificing the health sector, or the justice sector cannot be strengthened while sacrificing the employment sector. Therefore, program activities must have a parallel and effective influence in generating or reinforcing social cohesion processes.

The first stage of the EUROsociAL program method is to identify experiences and practices in each sector that has proven successful, efficient and sustainable in a given country or region. The second step is to identify potential receivers that may be interested in implementing these successful experiences in their own reality. The third step is a process that facilitates transplanting these experiences to the receivers' actual cultural and legal setting.

This method has at least two initial advantages. First of all, the owner of the successful experience is usually ready and willing to demonstrate and share all its benefits. Meanwhile, the recipients are generally ready to learn and put their best effort towards the process of legal transplants because they truly want to solve their current needs.

The next step in the EUROsociAL Program is to efficiently work with those inter-relating and inter-communicating actions that make the program effective across the different sectors. Finally, the program is inductive, intuitive and flexible because its structure allows it to learn from its own processes and adapt to the changing conditions and demands of reality.

Justice sector activities are headed by the Justice Consortium, which is made up of 10 institutional members acting under the leadership of the Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas (FIIAPP) of Spain. In addition to the FIIAPP, the other members of the consortium are the Consejo General del Poder Judicial from Spain; the École Nationale de la Magistrature from France; the German Foundation for International Legal Cooperation; the National Council of Justice Office from Hungary; the Secretaría de Reforma do Judiciario from Brazil; the Suprema Corte de Justicia from Costa Rica, the Consejo Superior de la Judicatura from Colombia; the Centro de Estudios Jurídicos de las Américas and the Instituto Tecnológico de Estudios Superiores Monterrey from Mexico.<sup>34</sup>

The Justice Consortium began work in December 2005. One of the strategies the Justice Consortium follows is that of working through existing Ibero-

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<sup>34</sup> Cfr. EUROsociAL Programme. Eurosocial Justice. <http://programaeurosocial.eu/index.php?PHPSESSID=qu25gakleuf6t6kfdumnl9tgr2&nIDMenu=33&nIDSeccion=33> (Last visited on September 27, 2007).

American and country networks in the justice sector, including Iberius and the Ibero-American Judicial Summit.

### III. OPPORTUNITIES AND CHALLENGES FOR NORTH AMERICA

Canada, the United States and Mexico offer a very interesting microcosm. These three countries have strong economic, commercial and cultural ties with each other,<sup>35</sup> and yet there are significant differences between them. However, not many comparative studies have been made among these North American countries and almost no work has been done in the field of international judicial cooperation among them.<sup>36</sup>

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<sup>35</sup> “The North American Free Trade Agreement exceeded all expectations and consolidated Mexico as the United States’ second trade partner with transactions of over 100 billion dollars in the first half of the year...” unofficial translation of Communiqué No. 1725 from the Office of the Mexican President, Piedras Negras, Coahuila, (September 3, 1999), <http://zedillo.presidencia.gob.mx/pages/vocero/boletines/com1725.html> (Last visited on May 1, 2006). “After NAFTA was put in effect ten years ago, the largest free trade area of the world was created. It comprises 406 million people producing more than 11.4 billion dollars worth of good and services. This makes North America one of the largest free trade areas in the world with more than a third of the world GDP. Total trade between NAFTA countries has more than doubled, going from 288.55 billion dollars in 1993 to almost 626 billion dollars in 2003. Currently, Mexico is the United States’ second trade partner after Canada. Mexican exports to the United States grew 342% over the first ten years, going from 42.85 billion dollars in 1993 to 146.80 billion dollars, improving the population’s living conditions and reducing poverty in Mexico. In Mexico, the export sector is the main generator of employment: one out of every five people in Mexico work in this sector and almost half of the 3.5 million jobs created in Mexico between 1995 and 2000 were a direct result of NAFTA and the increased exports. Jobs in the export sector pay 37% more than other employments in the manufacturing sector.” Translation of U.S. Embassy in Mexico, [http://www.usembassy-mexico.gov/sataglance\\_trade\\_info.html](http://www.usembassy-mexico.gov/sataglance_trade_info.html) (Last visited on May 1, 2006). Figures for 2003 are found in this same page. “The United States is Mexico’s main trade partner. Bilateral trade with this country amounts to 71% of Mexico’s entire foreign trade. 87% of Mexican exports go to the United States, while it receives 55% of the United States’ imports. The integration reached during the 11 years NAFTA has been in effect explains the figures. The flow of Mexican trade grew 211.5% between 1993 and 2004. Mexican exports grew by 285% in this period, which generated a trade balance that has benefited our country over the last ten years.” Translation of Mexican Embassy in the United States, [http://www.embassyofmexico.org/index.php?option=com\\_content&task=view&id=258&Itemid=89](http://www.embassyofmexico.org/index.php?option=com_content&task=view&id=258&Itemid=89) (Last visited on May 1, 2006). “Mexico is still the United States’ second trade partner with a trade balance of 24.889 billion dollars in the month of February...” Office of the President of Mexico, EL UNIVERSAL ONLINE (April 12, 2006), <http://www.presidencia.gob.mx/buenasnoticias/?contenido=24460> (Last visited on May 1, 2006).

<sup>36</sup> Actually, I have to be more specific: Other than my book *THE CORRELATION BETWEEN PERSONAL JURISDICTION AND FOREIGN JUDGMENTS (A COMPARATIVE LAW STUDY ABOUT CANADA, THE UNITED STATES AND MEXICO)* (VDM Verlag, December 19, 2008), and my article *Entre la jurisdicción, la competencia y el forum non conveniens* (BOLETÍN

While Canada is a constitutional monarchy with a parliamentary form of government, the United States and Mexico are republics under a presidential system. These three countries are federal States, but actual practice of federalism in each one is very different. Furthermore, while Mexico's legal system belongs to the Roman-Germanic tradition, most of the U.S. and Canada belong to the common law tradition. And there is more: Puerto Rico and Louisiana in the United States, as well as Quebec in Canada, are rooted in the Roman-Germanic tradition. Accordingly, the common law and the Roman-Germanic traditions have to coexist harmoniously in the interactions that the domestic systems of Puerto Rico, Louisiana and Quebec have in the federal realm of their respective countries.

The North American countries and the world can learn many important lessons from the working coexistence between the common law and Roman-Germanic legal traditions. At least in Canada, this situation has produced important developments in what is known today as Canadian Bijuralism.<sup>37</sup> In my opinion, Canadians (probably without having clear conscience of it) are developing the model that will frame supranational law and global legal interaction in the 21st century.

There are significant and contrasting legal differences between Canada, the United States and Mexico: differences in paradigms, approaches, concepts, structures, procedures, etcetera. It is within this context of legal diversity that these three countries must coexist, interact and work together. The judiciaries of the three countries in North America have a unique opportunity to functionally strengthen judicial cooperation in the region.

The question is how to do it?

One of the first steps lies in creating the conditions that allow these goals to be achieved successfully. This requires us to understand and respect our respective cultural and legal identities. Respect and understanding is needed in terms of what is unique to each country, what is different in each one; common goals; goals that are not in common; what they wish to achieve together; what they may not want to achieve together; and also what they can and should learn from each other.

Mexico's distinguished 19th century president Benito Juárez's famous phrase comes to my mind: "Among individuals, as well as among nations, peace is the respect of other's rights." In this context, peace should be understood not only as the absence of war, but also as the possibility of achieving efficient and successful interaction within a setting of respect and com-

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MEXICANO DE DERECHO COMPARADO 69-115, No. 121, 2008) I am not aware of any studies specifically focusing on the three North-American countries, or between Mexico and Canada. However, there are some important thematic studies on comparisons between the U.S. and Mexico, as well as between the U.S. and Canada.

<sup>37</sup> *Cfr.* Canadian Legislative Bijuralism Site: <http://doj.ca/en/bijurillex/index.html> (Last visited on September 27, 2007). Canadian Bijuralism: Studies on Canadian Bijuralism: [http://www.compare.law-droit.ca/welcome\\_en.php](http://www.compare.law-droit.ca/welcome_en.php) (Last visited on September 27, 2007).

pliance with the order that should exist under the rule of law; not only in our respective countries, but also among ourselves.

It is here where comparative law and the comparative law method<sup>38</sup> can play a significant role in trying to make sense of such legal diversity. We can only efficiently interact with others, if we make an effort to understand each other and develop the ability to work efficiently in the face of each other's paradigms.

An additional step may lie in learning from the ongoing processes taking place in the field of international judicial cooperation in Europe and Ibero-America. There is much to learn from the approach and the method currently under development in the EUROsocial program. At the same time, we also need to facilitate the process required for transferring these experiences to the diverse cultural and legal settings that exist today in North America.

However, as mentioned in the introduction of this article, to this date almost nothing has been done to develop an institutional framework for judicial cooperation in North America.

### *The San Antonio Initiative*

I believe the current state of affairs among the three countries in North America is not prepared, nor has evolved to the point in which having something similar to what has been done in Europe or Ibero-America in the field of an institutional framework for judicial cooperation is viable.

Accordingly, I think that under the current state of affairs among the three countries in North America, the best possibility is to have a permanent conference to that purpose. That is, a permanent space should be set up so that members of the judiciary from the three countries of North America can sit and discuss the issues affecting international judicial cooperation between them.<sup>39</sup>

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<sup>38</sup> On the meaning of comparative law, it has been said that "the expression implies an intellectual activity where the Law is the object and comparison is the process." Translation of Konrad Zweigert & Hein Kötz, *INTRODUCCIÓN AL DERECHO COMPARADO* 3 (2002). On the role of comparative law and the comparative law method, see "Comparing Comparisons: In Search of a Methodology" by Professor Hiram E. Chodosh. Hiram E. Chodosh, *Comparing Comparisons: In Search of a Methodology*, 84 IOWA L. REV. 1025 (1999). Different persons around the world undoubtedly share the same thoughts even without knowing each other. I do not agree with all the points Professor Chodosh makes, but I share many of them, as I do his intellectual queries. Actually, the conceptual content of comparative law and the search of the method within the context of legal phenomena and comparative law are questions that have also driven my intellectual interest and queries for the last thirty years.

<sup>39</sup> In the course of preparing for the 2007 annual US-Mexico Bar Association meeting, Mr. Wayne Fagan, the U.S. co-president, told me of his idea to have a judicial panel par-

To this purpose, participants from Mexico and the U.S. met during the 2007 US-Mexico Bar Association meeting which took place in San Antonio Texas, and received this idea of establishing a permanent conference for judicial cooperation with enthusiasm and a commitment was made to begin working towards it. The San Antonio meeting also had the participation of Spanish judge Fernando Martínez Pérez, appointed by the General Council of the Spanish Judiciary to attend the meeting in response to an invitation extended by the Eduardo Elizondo Chair.

In the course of the year, the Mexican delegation reiterated its commitment to this initiative. The Spanish Council of the Judiciary officially accepted to become an observer and advisor to this process, inviting the U.S. and the Mexican delegations to attend a seminar on European judicial cooperation in Aguilas, Spain. Mexican federal judge Jorge Meza Pérez attended this conference endorsed by the Mexican Council of the Judiciary.

At the San Antonio meeting, it was generally agreed that working towards a permanent conference on judicial cooperation for North America would require work on three levels:

- a) A priority agenda, including issues affecting the three countries of North America that require immediate and urgent attention. Since this agenda would require learning about each other at all times, especially during the early stages of such a serious effort, the comparative law method was suggested as a working tool for this purpose.
- b) An implementation agenda, which includes the need to create and develop an institutional framework for international judicial cooperation among the three countries; and
- c) A sustainability agenda, which needs to address the complexities of the different legal traditions shaping the legal lives of the these countries.

#### IV. CONCLUSIONS

Honoring the laws and the judicial procedures of foreign countries is a common matter for North American judiciaries. Judicial cooperation, especially in the field of enforcing foreign rulings has taken place among North American countries even in the absence of international treaties to that effect. Lessons should be learned from this reality because it offers a fertile

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allel to the annual meeting to be held in San Antonio, Texas, in October 2007, in hopes of instating this function as a permanent feature of USMBA annual conferences. I responded to this idea with enthusiasm and suggested we take advantage of the USMBA forum to take it a step further and discuss the possibility of creating a permanent conference for judicial cooperation in North America. Mr. Fagan agreed. I invited the Mexican delegation and in turn, Mr. Fagan did the same for the United States.

common ground to strengthen current judicial cooperation among the three countries in North America. Still, more needs to be accomplished.

Judicial cooperation requires the ability to understand the particulars of other legal systems, but the appropriate means need to be developed to facilitate this process. There are also significant lessons to be learned from European and Ibero-American accomplishments in developing institutional means and channels for international judicial cooperation. We should learn from and take advantage of the methods developed by EUROsociAL and the EUROsociAL Justice Consortium.

Finally, it is worthwhile noticing the utmost importance of the developments accomplished by Canada in the field of Roman-Germanic (Civil Law) — Common Law Bijuralism because a viable program for international judicial cooperation in North-America should necessarily take into consideration the legal cultural diversity in this region.