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INTER-AMERICAN JURIDICAL COMMITTEE.

NEW TECHNOLOGIES AND THEIR RELEVANCE FOR INTERNATIONAL JURISDICTIONAL COOPERATION

Table of Contents

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Abbreviations (in order of appearance in the text)

- CIDIP: Inter-American Specialized Conference on Private International Law
- MERCOSUR: Common Market of the South
- TRANSJUS: ASADIP Principles on Transnational Access to Justice
- ASADIP: American Association of Private International Law
- ICTs: Information and Communication Technologies
- UNCITRAL: United Nations Commission on International Trade Law
- COMJIB: Conference of Ministers of Justice of Ibero-American Countries
- OAS: Organization of American States
- CJI: Inter-American Juridical Committee
- UNCITRAL: United Nations Commission on International Trade Law
- CCCM: Civil and Commercial Code of the Nation (Argentina)
- STJ: Superior Court of Justice (Brazil)
- LPCALE: Fourth Book to the Cuban Procedures Law on the Economic Procedure
- AMEDIP: Mexican Academy of Private and Comparative International Law
- AIG: Government Innovation Authority (Panama)
- DRCI: Department of Asset Recovery and International Legal Cooperation (Brazil)
- INCADAT: International Child Abduction Database
- IRIS: Reference Institute for the Internet and Society (Brazil)
- HCCH: Hague Conference on Private International Law
- e-APP: Electronic Apostille Program

I. BACKGROUND

At its 98th Regular Session (April 5-9, 2021) the Inter-American Juridical Committee (hereinafter, CJI) approved, for inclusion in the CJI's Agenda, the topic "New technologies and their relevance for international legal cooperation" (OEA/Ser. Q, CJI/doc. 637/21 of April 6, 2021).

The topic proposed and approved falls within the theme "Promotion and study of areas of legal sciences", contained in the mandates of the General Assembly to the American Juridical Committee (see document "Mandatos.AG.ES.2021.pdf"). The summary, operative paragraph 8 provides: "To request the CJI to promote and study those areas of juridical science that facilitate international cooperation in the inter-American system for the benefit of the societies of the Hemisphere."

The objective proposed by the CJI is the preparation of a Guide of good practices in matters of international jurisdictional[1] cooperation for the Americas, which will be useful to law operators (judges, attorneys, etc.) to obtain the maximum possible benefit from the tools offered at present by technology, when enforcing the existing conventional and autonomous instruments in the area.

As a first step in addressing the issue, in my capacity as rapporteur I prepared a questionnaire that, within the cooperation framework established between the CJI and the American Association of Private International Law (ASADIP), was sent to various specialists in the region and to which six responses were received. Those answers were reflected in the first progress report.

At the 99th Regular Session of the CJI, held in August 2021, Dr. Moreno Rodríguez emphasized the need for dialogue with other organizations. He suggested contacting Luca Castellani of UNCITRAL.

Dr. George Galindo mentioned the need to consider the social and economic differences among the various states of the region, an issue taken into account when preparing the First Draft of the Guide to Best Practices in International Jurisdictional Cooperation for the Americas (hereinafter, Guide).

In this sense, this rapporteur considers that the "Guide to Best Practices in International Jurisdictional Cooperation for the Americas" should recommend, propose, suggest taking into account, but not impose the solutions it contains.

The September 16 meeting between the OAS, The Hague Conference on Private International Law, and Legal Advisors of the Foreign Ministries suggested that the OAS member states be invited to answer questionnaires regarding two new topics on the agenda of the Inter-American Juridical Committee, including one referring to "New technologies and their relevance for international legal cooperation." To date, responses have been received from the foreign ministries of Argentina, Canada, Costa Rica (prepared by the Office of Cooperation and International Relations, Area of International Law), Ecuador, Panama (Mr. Otto A. Escartín Romero, Director in Charge of Legal Affairs and Treaties, and Mr. Juan Carlos Arauz Ramos, President of the Panama Bar Association), Mexico, and Uruguay (Dr. Marcos Dotta, Director of International Law Affairs of the Ministry of Foreign Affairs).

II. PRESENTATION OF THE TOPIC

When proposing this theme to the CJI, I explained that it was my belief that we all agree that the pandemic caused by COVID-19 has forced us to resort to technology in order to continue operating in the most diverse aspects of life: familiar, social, professional, teaching areas, among many others. The situation has accelerated the application of technology in the practice of Law, developing some tools already in use and applying them to other areas where the use of technology had not been explored. I am referring to electronic notifications, judicial hearings - and arbitrations - either via Zoom or through the

[1] The term "jurisdictional" is used in this report to refer to cooperation between authorities that perform jurisdictional functions on a regular basis, even if they do not belong to the judicial branch *strictu sensu,* as is the case, for example, of the Administrative Contentious Court in Uruguay (*Tribunal de lo Contencioso Administrativo*). International cooperation between administrative authorities is not covered. See in this sense: Didier Opertti Badán, *Exhortos y Embargos de Bienes Extranjeros. Medios de cooperación judicial internacional*, Montevideo, Ediciones Jurídicas Amalio M. Fernández, 1976, particularly p. 29, 38 and 41-43.

use of other platforms, and electronic communications between judicial authorities, among many others. This has shown that certain acts of international jurisdictional cooperation can be expedited, therefore shortening times while maintaining all the necessary guarantees of authenticity and privacy.

I consider that the analysis of this issue would allow updating the mechanisms of international jurisdictional cooperation provided for in several Inter-American Conventions, for example, the Inter-American Convention on Letters Rogatory, the Inter-American Convention on Receipt of Evidence Abroad (both approved by CIDIP-I, Panama, 1975), the Inter-American Convention on the Enforcement of Precautionary Measures, the Inter-American Convention on Extraterritorial Efficacy of Foreign Judgments and Arbitral Awards (both approved in CIDIP-II, Montevideo, 1979), among other inter-American instruments, which, due to chronological reasons, do not refer to the technological mechanisms available today. However, these Conventions do not close the doors to such innovations.

By way of example, note that Art. 15 of the Inter-American Convention on Letters Rogatory establishes that: "This Convention shall not limit any provisions regarding letters rogatory in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties or preclude the continuation of ***more favorable practices in this regard that may be followed by these States***" (emphasis added). The materialization of these practices can be found, for example, in the **ASADIP Principles on Transnational Access to Justice (TRANSJUS)**, which can be applied "where the parties have agreed that procedural aspects of their legal relationship shall be governed by them, unless expressly prohibited by the law of the forum," and also [These Principles may be applied] as long as such application is technically feasible and does not result in an outcome manifestly incompatible with the fundamental principles of the applicable law (art. 1.3).

The idea is to work on the identification of the questions that are technically feasible, and which could be implemented in the practice, without the need to modify or replace the prevailing legal/conventional texts, and on cases lacking conventional standards.

Initially, I proceeded to explore, through the aforementioned questionnaire, among other tools, the current situation of the different countries regarding the use of technological tools in matters of international jurisdictional cooperation, in order to analyze which issues may benefit from the use of technology capable of improving practical enforcement of the aforementioned Conventions, with a view to the **drafting, by the CJI, of a Guide on good practices in international jurisdictional cooperation for the Americas**.

This Guide of good practices could indicate and enable technological mechanisms that allow prioritizing procedural speed without compromising the security and effectiveness of substantial rights over formalities, since latter´s sole reason for existing is to guarantee substantial rights. In the case of notices, for example, the content of the warrant would not be amended, because changes occur in the media on which the information is based, that is, from material hard copies to electronic communications.

In conclusion, I believe that technological progress is here to stay and that we must not only accept it but also use it with a view to improving international jurisdictional cooperation in all matters. Without jeopardizing progress in normative matters, we can use, as far as possible, the instruments that are currently available, such as the inter-American conventions referred to above, but updating them in practice through the Good Practices Guide to be prepared by the CJI.

III. THE QUESTIONNAIRE

The countries that answered the questionnaire have ratified various conventional instruments, both regional and universal.

In general, all the countries that answered the questionnaire have autonomous regulations in force regarding international jurisdictional cooperation.

All the responses received to the questionnaire show the use of technological mechanisms, to a greater or lesser extent. Some do so in compliance with some regulation in force in their countries,

usually autonomously, given that the conventional ones, for chronological reasons, do not expressly provide for such mechanisms, although they do not prohibit them.

A. Legislation

1) Is your country a party to the conventional instruments listed below?

a. Inter-American Convention on Letters Rogatory (Approved at CIDIP-I, Panama, 1975) and the 1979 Additional Protocol.

There are 18 States Parties to this Convention: (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Spain, the United States, Uruguay, and Venezuela) and 15 signatories of its Protocol (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, the United States of America, Uruguay, and Venezuela).[2]

b. Inter-American Convention on the Taking of Evidence Abroad (approved at CIDIP-I, Panama, 1975) and its 1984 Additional Protocol.

There are fifteen States Parties to this Convention: Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, the Dominican Republic, Uruguay, and Venezuela.[3]

The States Parties to the Additional Protocol, on the other hand, are only five: Argentina, Ecuador, Mexico, Uruguay, and Venezuela.[4]

c. Inter-American Convention on Execution of Preventive Measures (approved at CIDIP-II, Montevideo, 1979).

There are seven States Parties to this Convention: Argentina, Colombia, Ecuador, Guatemala, Paraguay, Peru, and Uruguay,[5]

d. Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (approved at CIDIP-II, Montevideo, 1979)

There are ten States Parties to this Convention: Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.[6]

e. Protocol of cooperation and jurisdictional assistance in civil, commercial, labor and administrative matters (MERCOSUR, Las Leñas, 1992)

There are four States Parties to this Protocol: Argentina, Brazil, Paraguay, and Uruguay.[7]

f. Supplemental Agreement to the Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor, and Administrative Matters.

There are three States Parties to that Agreement: Argentina, Paraguay, and Uruguay.

g. Agreement on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor, and Administrative Matters between the States Parties of MERCOSUR, the Republic of Bolivia, and the Republic of Chile

There are six States Parties to that Agreement: Argentina, Brazil, Chile, Ecuador, Paraguay, and Peru

h. Convention on Procedural Equality of Treatment and Letters Rogatory.

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[2] https://www.oas.org/juridico/spanish/firmas/b-46.html (last accessed: July 13, 2021).
[3] http://www.oas.org/juridico/spanish/firmas/b-37.html (last accessed: July 13, 2021).
[4] http://www.oas.org/juridico/spanish/firmas/b-51.html (last accessed: July 13, 2021).
[5] https://www.oas.org/juridico/spanish/firmas/b-42.html (last accessed: July 13, 2021).
[6] http://www.oas.org/juridico/spanish/firmas/b-41.html (last accessed: July 13, 2021).
[7] https://iberred.org/convenios-civil/protocolo-de-las-lenas-de-cooperacion-y-asistencia-jurisdiccional-en-materia-civil (last accessed: July 13, 2021).

There are two States Parties to that Agreement: Uruguay and Argentina.

i. Agreement on Mutual Recognition of digital signature certificates of MERCOSUR

There are two States Parties to that Agreement: Argentina and Uruguay.

j. Other instruments, bilateral and otherwise.

Some relevant Conventions on the topic under study are included herein:

- Agreement of October 5, 1961, Suppressing the Requirement of Legalization of Foreign Public Documents

Several countries in the region are parties to this Agreement.[8]

- The Hague Convention on the Notification or Transfer Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965)

The following countries in the Americas are parties to this convention, among many others from other regions: Argentina, Brazil, Canada, Costa Rica, United States, Mexico, Nicaragua, and Venezuela.[9]

- The Hague Convention to Facilitate International Access to Justice (1980)

Only two countries in the Americas are parties to this convention (Brazil and Costa Rica), among others from other regions.[10]

- Hague Convention of November 23, 2007, on the International Collection of Alimony for Children and other Family Members and Protocol on the Law Applicable to Alimony Obligations

Only one country in the Americas is party to this convention (Brazil), among others from other regions.[11]

- Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

The following countries in the Americas are parties to this convention, among many others from other regions: Argentina, Brazil, Costa Rica, United States, Mexico, Nicaragua and Venezuela.[12]

- MERCOSUR Protocol on Precautionary Measures

Parties to this Protocol: Argentina, Brazil, Paraguay and Uruguay.

In addition, there are multiple bilateral agreements on topics on international jurisdictional cooperation that bind several States in the region.

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8. See full list at https://www.hcch.net/es/instruments/conventions/status-table/?cid=41 (last accessed: July 13, 2021).
9. See full list at https://www.hcch.net/es/instruments/conventions/status-table/?cid=17 (last accessed: July 21, 2021).
10. See full list at https://www.hcch.net/es/instruments/conventions/status-table/?cid=91 (Last accessed: July 21, 2021).
11 See full list at https://www.hcch.net/es/instruments/conventions/status-table/?cid=133 (Last accessed: July 21, 2021).
12 See full list at https://www.hcch.net/es/instruments/conventions/status-table/?cid=82 (Last accessed: July 21, 2021).

2) Does your country have autonomous regulations in force regarding international jurisdictional cooperation? Which are they?[13]

In general, all the countries that answered the questionnaire have autonomous regulations in force regarding international jurisdictional cooperation.

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that the autonomous regulations on the matter are contained in arts. 2610, 2611 and 2612 of the Civil and Commercial Code of the Nation, Law No. 26994, which came into force on August 1, 2015. In addition, there are 24 provincial regulations and the City of Buenos Aires on the recognition of foreign judgments; such diversity relies on the federal system of Argentina. In the case of the Civil and Commercial Procedural Code of the Nation, Law No. 17454 of 1967, amended in 1981 by Law No. 22434, the matter is regulated in arts. 517 to 519.

The CCCN regulates issues such as equal procedural treatment to foreign litigants, cases in which - in addition to the obligations assumed by international conventions -, Argentine judges must provide broad jurisdictional cooperation in civil, commercial and labor matters and international procedural assistance, among others. The Code of Civil and Commercial Procedure of the Nation regulates issues such as the recognition and execution of foreign judgments.

It should be noted that the express text admits that "Argentine judges are empowered to establish **direct communications with foreign judges** who accept the practice, as long as the guarantees of due process are respected" (art. 2612 CCCN)

In **Bolivia**, José Manuel Canelas refers to the new Civil Procedure Code, promulgated in 2013, which contains a final chapter on "International Judicial Cooperation": an important innovation in the legislation of his country.

In **Brazil**, Valesca Raizer and her team present a very extensive report that synthetically establishes that there is "a substantial set of regulations in force on international legal cooperation", and highlights those contained in the 1988 Constitution of the Federative Republic of Brazil, in the Law of Introduction to the Rules of Brazilian Law - LINDB (Decree-Law No. 4657 of 09/04/1942, amended by Law No. 12376 of 12/30/2010), "compiling various Private International Law norms, including issues related to international legal cooperation), the **Code of Civil Procedure CPC/200**5 (Law No. 13105, of March 16, 2015) that establishes "a systemic regime for international legal cooperation, provided for in Title II "On the Limits of National Jurisdiction and International Legal Cooperation". The primacy of the conventional rules provided for in the International Treaties on international legal cooperation to which Brazil is a party is established, as opposed to the autonomous infra constitutional rules. They also mention Resolution No. 9/2005 of the Superior Court of Justice - STJ, the Internal Regiment of the Supreme Federal Court-STF, and Inter-Ministerial Policy No. 501, of March 21, 2012, between the Ministry of Foreign Affairs and the Ministry of Justice.

In **Colombia**, José Luis Marín reports that the autonomous regulations in force in his country regarding international jurisdictional cooperation are to be found in the General Code of the Process, Law 1564 of 2021 [Article 41].

In addition, the Rapporteur mentions Decree 491 of 2020, which establishes that: "In order to maintain continuity in the provision of alternative justice services, arbitration processes and extrajudicial conciliation procedures, amicable composition and personal insolvency procedures of non-merchant natural persons will be processed through the **use of communication and information technologies**, in accordance with the administrative instructions issued by the arbitration and conciliation centers and the public entities in which they are processed, as the case may be. Said public entities and centers will make available to the parties and proxies, arbitrators, conciliators, amiable compositors, **the electronic and**

[13] By "autonomous norms" we understand those norms of Private International Law that emanate from the Parliament of a State, that is, that are of internal or national source, and not international, such as treaties and conventions.

virtual means necessary for the receipt of documents and the holding of meetings and hearings. This will make available electronic addresses for the receipt of arbitration demands, requests for extrajudicial conciliation, amiable composition, insolvency of a non-merchant natural person, and any document related to their processes or procedures; this will also allow sending **communications and notifications electronically, as well as carrying out virtually all types of meetings and hearings** at any stage of the arbitration process, the conciliation process, the amicable solution or bankruptcy of a non-merchant natural person. In the event of not having sufficient technology to do so, the center or public entity may enter into agreements with other centers or entities to carry out and promote actions, processes and procedures." (art. 10).

Article 11 of Decree 491 of 2020 establishes the following: "During the period of mandatory preventive isolation, the authorities referred to in article 1 of this Decree that do not have a **digital signature**, may validly sign the acts, orders and decisions that they adopt by means of a mechanical autographed signature, digitized or scanned, depending on the availability of these media. Each authority will be responsible for adopting the internal measures necessary to guarantee the security of the documents executed by these means."

Decree 806 of the year 2020 is also mentioned, and Article 1 establishes that: "This decree aims to **implement the use of information and communication technologies in judicial proceedings and to streamline the judicial processes** before the ordinary jurisdiction in civil, labor, family and litigation matters - and also in the administrative, constitutional and disciplinary jurisdiction, as well as the actions of the administrative authorities exercising jurisdictional duties and in **arbitration processes**, during the term of validity of this decree. (…)"

Article 2 of Decree 806 of 2020 refers specifically to the use of information and communication technologies and establishes that "**Information and communication technologies must be used in the management and processing of judicial processes** and ongoing matters, in order to facilitate and expedite access to justice, as well as to protect judicial officers and also the users of this public service.

"Technological means will be used for all actions, hearings and proceedings and the parties in the process will be allowed to act in the suits or procedures through the **digital means** available, avoiding demanding and fulfilling face-to-face or similar formalities that are not strictly necessary. Therefore, the actions will not require handwritten or digital signatures, personal presentations or additional authentications, nor will they be incorporated or presented on physical media.

"Judicial authorities will publish through their websites the official communication and information channels through which they will provide their services, as well as the **technological mechanisms** employed.

"With regard to enforcement of international conventions and treaties, special attention will be paid to rural and remote populations, as well as to ethnic groups and people with disabilities who face **barriers when trying to access information and communication technologies, so as to guarantee that accessibility criteria** are applied. It should also be assessed if any reasonable measure is required, in order to ensure the right to the administration of justice on equal terms with other people."

"PARAGRAPH 1. All necessary measures will be taken to guarantee due process, publicity and the *audi alteram partem* principle in the application of **information and communication technologies**. To this end, the judicial authorities will seek **effective virtual communication** with the users of the administration of justice and will adopt the pertinent measures so that they can become aware of the decisions and exercise their rights."

"PARAGRAPH 2. The municipalities, legal entities and other public agencies will, to the extent of their possibilities, facilitate access to virtual procedures from their own headquarters."

Dr. Marín also mentioned the jurisprudence factor, especially Decision C-420 of 2020 by the Constitutional Court.

In **Cuba**, Taydit Peña Lorenzo informed that the autonomous norms in force in her country as regards international jurisdictional cooperation are contained in the following normative bodies:

- Law No. 7, on Civil Administrative and Labor Procedure, of August 19, 1977. Official Gazette No. 34 of August 20, 1977 (Last update: April 6, 2004), including Decree-Law 241/2006, which incorporates the Fourth Book to the Cuban Procedures Law on the Economic Procedure (hereinafter LPCALE).
- State Notary Public Law, Law No. 50 of December 28, 1984, published in Regular Official Gazette No. 3 of March 1, 1985.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that the autonomous regulations of Mexico in matters of international jurisdictional cooperation are basically "those contained in the Fourth Book of the Federal Code of Civil Procedures, namely "International Procedural Cooperation" (articles 543 to 577). These provisions are in accordance with the Inter-American Conventions adopted by Mexico on the matter, resulting from 1988 amendments to the civil legislation, thanks to the endeavors of the Mexican Academy of Private and Comparative International Law (AMEDIP). This legislation does not contain express references to the use of any particular technology, precisely in view of when it was enacted."

In **Uruguay**, the autonomous norms on international jurisdictional cooperation are contained in the General Code of Procedures (1988), Articles 91, 126, 143, and 524-543.

The **use of electronic file, electronic document, simple computer encoding, electronic signature, digital signature, electronic communications and the constitution of an electronic address** is hereby authorized **in all judicial and administrative cases that are processed before the Judiciary**, with the same legal effectiveness and probative effect as their conventional equivalents. The Supreme Court of Justice is empowered to regulate such use and order its gradual implementation". Joint Resolution No. 7637 of 9/16/2008 of the Supreme Court of Justice on electronic notifications issued the regulatory norms applicable to this piece of legislation, "the main purpose being to provide security to the new system against possible technical and practical difficulties."

In **Venezuela**, María Alejandra Ruiz mentions the Law of Private International Law, promulgated on August 6, 1998 (Official Gazette 36511).

B. Practice in Jurisprudence and Central Authorities

3) With reference to the compliance with any of the conventional or autonomous regulations in force in your country, does the jurisprudence and/or the Central Authority of your country use technological mechanisms?

All the responses received to the questionnaire show the use of technological mechanisms, to a greater or lesser extent. Some do so in compliance with some regulation in force in their countries, usually autonomously, given that the conventional ones, for chronological reasons, do not expressly provide for such mechanisms, although they do not prohibit them.

In **Argentina**, according to the Foreign Ministry of that country, "the situation triggered by the health emergency caused by the COVID-19 virus prompted the Argentine Central Authority to go paperless and respond digitally to requests for assistance. This entailed an enormous challenge, considering the significant flow of paper documentation received daily."

The report adds, "Fortunately, according to experiences shared at international and regional forums, using technological means for jurisdictional cooperation has been positively received not only in the Argentine Republic but also globally."

> Finally, it reports something encouraging about the goals of this work: "...that, in the framework of the last meetings of the Technical Commission of Justice during the meetings of Ministers of Justice of Mercosur and Associated States, the delegations discussed the possibility of adopting an instrument with recommendations for the electronic processing

of requests, using videoconferences and electronic signatures, and implementing measures to ensure a high security margin for electronic exchanges."

Perhaps the Guide being prepared by the CJI will be the intended instrument for Mercosur, but with a broader scope of application, covering not only the countries of that economic integration body but all the member countries of the OAS.

In **Bolivia**, according to José Manuel Canelas, the **digital signature** is beginning to be used.[14]

In **Brazil**, according to Valesca Raizer and team, "the Superior Court of Justice - STJ, responsible for the enforcement of Letters Rogatory and for the homologation and execution of Foreign Judgements uses three artificial intelligence tools: **Socrates, Athos and E -Juris. Socrates** is the early identification of legal disputes in special appeals. One of the duties of the tool is to automatically indicate the constitutional permissiveness invoked for the filing of the appeal, the legal provisions questioned, and the paradigms cited that justify the divergence. In turn, **Athos** is meant to locate - even before they are distributed to the judges - the cases that can be assigned for trial under the rule of repetitive appeals. In addition, the platform monitors cases with convergent or divergent opinions between the divisions of the Superior Court of Justice - STJ, cases with notoriously relevant matters and also possible distinctions or annulments of qualified precedents. Finally, **E-juris** is used by the STJ Secretariat of Jurisprudence to extract the legislative and jurisprudential references of the decision, in addition to indicating the main successive sentences on the same legal issue. The Superior Court of Justice is developing a fourth tool, the **Unified Table of Issues (Tabela Unificada de Assuntos - TUA)**, which aims to automatically identify the subject of the case for distribution to court sessions, according to the relevant area of law. "

Furthermore, in order to facilitate the preparation of requests for international legal cooperation, the **Central Authority** (Ministry of Justice and Public Security) has adopted **guided electronic forms,** which "provide guidance on the correct compliance with the mandatory information and examples. The applicant must save and print the form, which must follow the normal procedure of a request for cooperation, with the signature of the judicial authorities and physical delivery by mail. In addition, they use the **Electronic Information System**, a document management tool and electronic processes, a system which allows external users to file electronic requests. "

Costa Rica reports, "Although there is no legal impediment, in practice, using technological mechanisms is limited to certain judicial offices, certain issues and certain stages of international legal cooperation procedures, both in matters related to the recognition and enforcement of foreign judgments and awards, as well as active and passive international judicial assistance."

The Report adds, "In most judicial offices, electronic means are used only as a support and/or backup for files. In some, they are used for issuing, signing and notifying resolutions."

"They are also used for communication among offices of the Judiciary and certain public institutions to obtain information (National Registry of movable and immovable property, powers of representation, etc.) and to execute certain judicial decisions (e.g., recording vital and civil events such as divorces or adoptions in the Civil Registry).

"In most cases, submitting original physical documents is required when apostilled or legalized through diplomatic or consular channels."

"In active and passive international judicial assistance (letters rogatory or warrants, obtaining evidence, etc.) issuing physical documents is required, including copies as stated in some international instruments, since they must be transmitted through the General Secretariat of the Supreme Court of Justice and the Ministry of Foreign and Religious Affairs to the different diplomatic and consular representatives in charge of sending requests to the central or competent authority of the other country, or vice versa."

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[14] See, for example, the website of the digital apostille: https://www.cancilleria.gob.bo/apostilla/node/14

In **Cuba**, Taydit Peña Lorenzo reports that the jurisprudence and the Central Authority of her country adopt technological mechanisms to send documentation via **email and telephone calls**. In view of the C-19 pandemic, **Video calls** are used in the case of notifying initiation of international procedures.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that the jurisprudence and the Central Authority of their country **use technological mechanisms**, not in compliance with the conventional or autonomous regulations in force in Mexico, since they do not prohibit them either. "As of the pandemic, the process accelerated in some courts of federal entities such as in the State of Mexico, in Nuevo León and now in Mexico City, in addition to the Federation, with the issuance of administrative agreements allowing consultation of and access to electronic files, as well as the release of hearings and proceedings. In certain cases, for example voluntary divorce lawsuits in the State of Mexico, procedures can be solved 100% electronically. "

Finally, the informants provide examples of electronic services offered by some courts at the state level.

The Report of the Mexican Permanent Mission to the OAS reaffirms the foregoing and adds further details.

In **Panama**, so far, the jurisprudence and the Central Authority have not used any technological mechanism to comply with any of the conventional or autonomous regulations in force in the country.

In **Uruguay**, Daniel Trecca reports that the judicial and central authorities of his country employ "**institutional email and cloud-based accounts** for the receipt and forwarding of letters rogatory; **videoconferencing** is also used in the case of statements rendered abroad; **electronic signatures** are also common."

In **Venezuela**, María Alejandra Ruiz reports that "**electronic documents** and **electronic signatures** are frequently used in State agencies," and refers to the *Infogovernment Law* that regulates the **use of information technology** in the Public Administration. Article 26 of said law indicates that "the electronic files and documents issued by the Public Power and the People's Power, containing electronic certifications and signatures, have the same legal validity and probative effect as files and documents in physical form."

4) Are technological instruments, tools or mechanisms, such as those indicated in the following list, or others, used in your country?

All the responses received refer to the use of some of the technological instruments, tools or mechanisms listed in items a) to h) of this question, some more than others, as outlined below.

In **Argentina**, according to its Foreign Ministry, "The International Legal Assistance Department of the Ministry of Foreign Affairs, International Trade and Religion has managed to adapt to the new demands of the current situation, using computer tools in pursuit of efficiency in its activity as a Central Authority. Examples include implementing electronic files, receiving and dispatching electronic documents, electronic communications with Central Authorities and local judicial authorities, incorporating electronic signatures, and others."

According to José Manuel Canelas, in **Bolivia** there is a legal possibility to use technological instruments, tools or mechanisms, "although in practice this currently does not occur."

In **Brazil**, according to Valesca Raizer and her team, "**Law No. 11419**, of December 19, 2006, established **the computerization of judicial processes, communication of orders and transmission of procedural documents** in the country (art. 1). (…) In addition, **the 2015 Code of Civil Procedure**, in Article 193, establishes that **procedural acts may be totally or partially electronic, while** Article 246, Item 1 addresses **the possibility of electronic summons and notifications.** "

In **Colombia**, José Luis Marín informs that in his country electronic files, documents and signatures are being used, as well as electronic communications, notifications and summons of orders,

resolutions and sentences (alone or with documents attached), as well as electronic court injunctions. However, neither the digital signature nor the constituted electronic address is currently in use.

In **Cuba**, Taydit Peña Lorenzo reports that in her country electronic documents, digital signatures, electronic communications and notifications and summons of orders, resolutions and sentences (alone or accompanied by documents) are in use.

In **Venezuela**, María Alejandra Ruiz reports that electronic files are not used in her country, but that "physical documents are still in use, although communicating by email is allowed." Electronic documents are used as well as electronic signatures, communications and addresses (although only for tax purposes; according to the Organic Tax Code, the use of an electronic fiscal address can be requested). Similarly, notices and summons of orders, resolutions and sentences (alone or accompanied by documents), as well as judicial summons, can be delivered by electronic means. Digital signatures are not used for the time being.

a. Electronic records/files

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that in some jurisdictions **the electronic file system is used, but this is not the case in most situations**. "The Civil and Commercial Code of Procedures of the province of Corrientes, adopted on April 21, 2021, as Law No. 6556/2021, provides for electronic files and notifications, but not in international cases."

In **Bolivia**, José Manuel Canelas reports that Article 99 of the Code of Civil Procedures establishes that: "Case records start with the first presentation or initial brief, subsequent actions are incorporated chronologically and successively, and further **procedures may be electronic**."

In **Brazil**, according to Valesca Raizer and her team, "**electronic files are used in electronic processes, while audio** files, photos, conversations on social networks, among others, can be used as proof of evidence'. In the case of physical processes, these files can also be used and stored on CDs or pen drives".

Costa Rica reports that electronic files are used "in the vast majority of judicial processes in the so-called Online Management system. Parties can access them using a username and password requested at any judicial office and linked to the identity or residence card number."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that electronic files are used in some states, such as Nuevo León, the State of Mexico, Mexico City, and the Federal Judicial Branch.

It is starting to be used in **Panama**.

In **Uruguay**, Daniel Trecca informs that electronic files are used and regulated in Law 18237 and in Decree No. 7637 of the Supreme Court of Justice. However, at present, the courts continue to work with the files in paper format, without prejudice to a digital record being kept of file movements.

In **Venezuela**, María Alejandra Ruiz reports that electronic files are not used in her country, since files are still in physical format. However, corresponding by email is allowed.

b. Electronic documents

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that electronic documents are being used.

In **Bolivia**, Canelas reports that Article 144 (II) of the Civil Procedure Code states that: "(…) documents and digital signatures and email-generated documents are considered legal means of proof, subject to conditions provided for in the Law."[15]

In turn, Section III states: "The parties may use any other means of proof not expressly prohibited by law, and which they consider conducive to the demonstration of their claims. These means of proof

[15]See also Art. 150 (IV).

will be promoted and judged applying by analogy the provisions relating to similar means of evidence contemplated in this Code and, failing that, in the manner provided by the judicial authority. "

Law 1173 on the abbreviation of criminal procedures establishes similar provisions in the case of criminal procedures.[16] Telecommunications Law No. 164 of 2011 also indicates that documents in electronic media are considered as valid evidence and proof.[17]

In **Brazil**, according to Valesca Raizer and team, electronic documents are used by the Brazilian judiciary, especially in electronic processes. The certificates and procedures carried out, mainly by notarial clerks, are all done electronically, according to the system adopted by each Court, as indicated above. In relation to the documents prepared by the parties, they are normally digitized and attached to the electronic process or are even produced entirely in digital media. Since 2020, notaries have an online service managed by the Notarial Digital Authentication Center (Cenad), through which documents can be digitally notarized and then forwarded by email or by other forms of online communication. To do so, operators simply need to complete the online registration form on the website https://cenad.e-notariado.org.br/.

In **Costa Rica**, electronic documents are used in the vast majority of judicial processes.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that electronic documents are used in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation.

Panama only uses governmental electronic documents because they have their own regulations. However, they must be electronically signed or the entity, through the General Secretary of the legal department, musts sign them as true copies of the original."

In **Uruguay**, Daniel Trecca informs that electronic documents are used and that they are regulated by Law No. 18237.

In **Venezuela**, María Alejandra Ruiz reports that electronic documents are used.

c. Electronic signature

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that electronic signatures are used.

In **Brazil**, according to Valesca Raizer and team, "the electronic signature has legal validity, being recognized by the legislation. Provisional Measure No. 2200-2 / 2001 establishes the Brazilian Public Keyword Infrastructure (ICP-Brazil) and recognizes digital signatures and other electronic means of proof on the authorship and integrity of documents. Law No. 14063/2020, in turn, deals with the use of electronic signatures in interactions with public entities of the country. In addition, Decree No. 10543 regulates the use of this tool in the federal public administration. It is important to emphasize that in Brazil documents bearing a digital or physical signature enjoy exactly the same validity."

In **Costa Rica**, electronic signatures are used "by judges of the Judicial Power".

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that the electronic signature is used in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation.

The electronic signature of the Public Registry is recognized in **Panama**.

In **Uruguay**, Daniel Trecca informs that the electronic signature is used and that it is governed by Law 18237. It is becoming increasingly common for international letters rogatory to be issued by Uruguayan Courts in electronic format and electronically signed. They come with a QR code to substantiate their authenticity.

In **Venezuela**, María Alejandra Ruiz reports that the electronic signature is used in her country.

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16. See Art. 9 and the Fourth and Ninth Transitory Provisions.
17. See, among others, Art. 6 (IV).

d. Digital signature

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that digital signatures are used.

In **Brazil**, according to Valesca Raizer and team, "the digital signature, also known as qualified electronic signature, enjoys high reliability and requires a digital certificate issued by a Certification Authority, in accordance with Provisional Measure No. 2.200-2. Law No. 14.063 / 2020, as mentioned above, establishes that the digital signature is allowed in any electronic interaction with the public."

In **Costa Rica**, digital signatures are used and accessible to all, being regulated by the government.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that the digital signature is used in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation.

In **Uruguay**, Daniel Trecca informs that the digital signature is used and that it is regulated by Law 18237.

In **Venezuela**, María Alejandra Ruiz reports that the digital signature is not used in her country.

e. Electronic communications

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that electronic communications are being used.

In **Brazil**, according to Valesca Raizer and her team, "both the Code of Civil Procedure and Law No. 11.419 establish the possibility for summonses to be issued electronically. However, it is necessary for the parties to secure registration in the system in which the electronic process is inserted. Accordingly, in Brazil, parties are normally summoned by mail, using the Notice of Receipt (AR) solution. In relation to summons, these are more usually delivered electronically, given the need for attorneys to register in the systems. Other communications, as well as any clarification, can also be made virtually through institutional emails. However, the possibility of making such communications in person or by phone is not excluded."

In **Costa Rica**, "regular electronic means are used for informational communications, sending and receiving documents for judicial proceedings."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that electronic communications are used in some states, such as Nuevo León, the State of Mexico, Mexico City, and the Federal Judicial Branch.

In **Panama**, electronic communications "can be verified as genuine before a Notary Public, but information must be managed and authenticated by a suitable computer expert within the Republic of Panama."

In **Uruguay**, Daniel Trecca informs that electronic communications are used and that they are governed by Law 18,237. However, at the judicial level, they are limited to communications with public agencies and persons whose electronic domicile is registered in the file. When a foreign letter rogatory is received, the addressee of the measure is not registered in the system, so all notifications continue to be made in paper format and in person.

In **Venezuela**, María Alejandra Ruiz reports that electronic communications are used in her country.

f. Electronic address for service

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that electronic addresses for service are used.

In **Bolivia**, Canelas reports that Article 72 of the Civil Procedure Code indicates that the parties "may also communicate to the judicial authority that they have electronic means (...) such as the address for service, in order to receive notifications and summons."

Law 1173 on the abbreviation of criminal procedures establishes similar provisions in the case of criminal procedures.[18]

In **Brazil**, according to Valesca Raizer and team, "all judges and public servants of the Judiciary working with electronic processes have a registry enabling them to carry out their activities and procedures electronically, as well as communicate with each other. In addition, they also have professional email accounts that allow communication with the parties and their attorneys, exclusively through digital means, with face-to-face and telephonic services. The Public Ministry, the Public Defender's Office and other attorneys must also register in the system to be able to send judicial documents, documents in general, as well as to receive summons. In addition, the Public Ministry has its own system that allows communication between employees."

In **Costa Rica**: "It is possible to give an email address as a "permanent electronic address" for all judicial processes (Article 3 of Judicial Notifications Act No. 8687 of December 4, 2008). It is not mandatory and can be modified or revoked."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that the electronic address for service is used in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation.

They are not used in **Panama**.

In **Uruguay**, Daniel Trecca informs that the electronic address for service is used and that it is regulated by Law 18237 and by Decree No. 7648 of the Supreme Court of Justice. Lawyers are required to establish their electronic procedural domicile whenever they file or answer a lawsuit. These electronic domiciles are managed by the judicial branch, which assigns them individually to each lawyer and notary public.

In **Venezuela**, María Alejandra Ruiz reports that in her country the electronic address for service is used, although only for tax purposes. According to the Organic Tax Code, petitioners can request an electronic tax address.

g. Notifications and summons of orders, resolutions and sentences (alone or accompanied by documents) by electronic means

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that Notifications and summons of orders, resolutions and sentences (alone or accompanied by documents) are processed by electronic means, and that:

"The Civil and Commercial Procedure Code of the province of Corrientes, enacted on April 21, 2021, through Law No. 6556/2021, provides for electronic notifications:

Article 108. *Electronic notification. The notification will proceed ex-officio to the electronic address, only for the following resolutions: […]*

However, the Code does not include electronic means in the case of notification to a defendant who is domiciled abroad.

Article 445. *Defendant domiciled abroad. If the defendant resides outside the Republic, the judge will establish the type of notification and the term in which he/she has to appear, taking into account the distances and the available possibility of communication*.

The Civil and Commercial Code of Procedures of the province of Chaco, approved by Law No. 559 of 2016, published on March 8, 2017, refers to the topic:

Article 166: *Notification by electronic means. The Superior Court of Justice will issue the regulations that determine through which virtual means the intervening parties and their legal assistants*

[18] See footnote 3.

can be informed of the different procedural acts carried out in the records and will be able to adapt them by the same means according to the technological advances produced. "

In **Bolivia**, Canelas reports that Article 82 of the Civil Code of Procedures states: "*After the summons with the claim and the counterclaim, the judicial actions in all the instances and phases of the process must be immediately notified to the parties by the Court or Tribunal clerk or by electronic means, pursuant to the provisions in this Section.*"[19]

Law 1173 on the abbreviation of criminal procedures establishes similar provisions in the case of criminal procedures.[20]

In **Brazil**, according to Valesca Raizer and the Brazilian team, "both the Code of Civil Procedures and Law No. 11419 establish the possibility for both summons and subpoena to be made through electronic means. However, it is necessary for the parties to secure registration in the system in which the electronic process is inserted. Accordingly, in Brazil, parties are normally summoned by mail, using the Notice of Receipt (AR) solution. In relation to summons, these are more usually delivered electronically, given the need for attorneys to register in the systems. However, there are some notifications and injunctions of orders, resolutions and judgments that require personal compliance, through the court officer, for example, as in execution processes, so that the debtor's assets are duly registered."

In **Costa Rica**, electronic means are used for "judicial resolutions: rulings, orders and sentences. In some cases (initial transfer of a lawsuit, imputation of charges, and others), legal notification is required in person or at a physical domicile."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that notifications and intimations of orders, resolutions and sentences (either alone or with documents attached) by electronic means are used in some states, such as Nuevo León, State of Mexico, Mexico City and the Judicial Power of the Federation.

They are not used in **Panama**.

In **Uruguay**, Daniel Trecca informs that notifications and summons of orders, resolutions and decisions (either alone or accompanied by documents) are delivered by electronic means and that they are regulated by the Resolutions of the Supreme Court of Justice Nos. 7637, 7644 and 7648. However, they are only used in cases where the person to be notified has a registered electronic procedural domicile in the file. This is not the case for notifications requested by international letters rogatory. In this case, although the international letter rogatory is often received electronically by the Central Authority of Uruguay, which in turn forwards it to the competent court in the same way, the Court then prints it and notifies it in person and in hardcopy. Subsequently, in some cases, the Court sends the proof of notification to the Central Authority electronically. If it does not, the Central Authority digitalizes it and returns it to the foreign Central Authority electronically.

In **Venezuela**, María Alejandra Ruiz reports that in her country, notifications and intimations of orders, resolutions and sentences are delivered (alone or accompanied by documents) by electronic means.

h. Judicial summons

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that judicial notifications are made by electronic means.

In **Brazil**, according to Valesca Raizer and team, "all these tools are used to some extent in the judiciary. It must also be said that, due to the Covid-19 pandemic, the use of these tools has intensified enormously, making them accessible to a greater number of people."

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[19] See also Article 83.

[20] See footnote 3.

In **Costa Rica**, "Personal or physical notification is legally required in most cases (initial transfer of suits, imputation of charges, and others)."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that judicial injunctions can be notified electronically in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation, as long as they do not involve judicial proceedings of a coercive nature such as liens or searches, which continue to be filed personally.

They are not used in **Panama**.

In **Uruguay**, Daniel Trecca reports that judicial injunctions are in use and that they are regulated by the Decree No. 7644 of the Supreme Court of Justice. However, in this regard, the same observations made in the answer to item (g) apply.

In **Venezuela**, María Alejandra Ruiz reports on the use of electronic judicial injunctions in her country.

5) For the purposes of communications, notifications, summons and others,

For the purposes of communications, notifications, intimations, etc., the requirements and what is admitted or not vary from one country to another. Personal and institutional emails, an exclusive email system for electronic notifications in judicial processes, and WhatsApp are used. As for electronic addresses and the electronic contractual addresses, some countries have regulated them, but others have not. Regarding management systems and adequate computer support to ensure the minimum requirements to validate notifications, communications, summons and others, differences are also seen among countries, although most of the countries that sent in information have suitable systems. Communications between judicial authorities and/or between central authorities via electronic means generally operate—with exceptions—in all countries for which information was received, albeit with a broader scope in some than in others. Electronic notifications, subpoenas and others by judicial authorities and/or central authorities to the parties are admitted by most but not all of the countries that sent in responses.

a. Are individuals required to have special institutional emails, or are they delivered to their personal email accounts?

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that personal emails can be used in such cases.

In **Bolivia**, Canelas reports that the jurisprudence shows that notifications are made by WhatsApp or through personal email accounts.[21]

In **Brazil**, according to Valesca Raizer and team, "the members of the Judiciary must use institutional mail accounts for communications, notifications and judicial summons. However, when it comes to parties in a dispute and attorneys, no special email account is required."

In **Colombia**, José Luis Marín informs that in his country "a private email account is not required, because a notification can be made to personal or institutional email addresses, depending on the interested party, who must provide an email account regardless of whether it is personal or institutional, that is, it all depends on the choice of the party."

In **Costa Rica**, "Almost any email address can be used, as long as it is on the official list of addresses authorized to receive judicial notifications, which can be self-managed at https://pjenlinea3.poder-judicial.go.cr/vcce.userinterface/"

In **Cuba**, Taydit Peña Lorenzo reports that the above communications can be delivered to personal email accounts.

[21] See, for example, Constitutional Sentences 0114/2021-S3, and 0131/2021-S3.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "in some states, such as Nuevo León or the State of Mexico the Court provides an institutional email account. In Mexico City and the Judicial Branch of the Federation, this is done through private email accounts."

Panama does not require it.

In **Uruguay**, Daniel Trecca informs that: "In accordance with the provisions of SCJ No. 7637," every person, body, or professional must provide an electronic address, for the judicial matters being processed or to be processed and for the administrative procedures that are aired before and/or linked to the judicial activity." To this end, the Judiciary installed an exclusive electronic mail system for electronic notifications in judicial processes, this being the only means admitted for this purpose."

In **Venezuela**, María Alejandra Ruiz reports that individuals are not required to have special email accounts, they simply need to indicate their personal e-mail addresses.

b. Is the electronic address system regulated in your country, and specifically the electronic contractual address?

In **Brazil**, according to Valesca Raizer and team, "the Electronic Tax Address (DTE) is regulated, which allows the registration of cell phones and email addresses to receive notices. In addition, in some states, such as São Paulo, the Taxpayer's Electronic Address is regulated by Law No. 15406/2011, which establishes the communication between the Municipal Finance Secretariat and the citizen. There is no specific regulation on the electronic contractual address."

In **Costa Rica**, "In the judicial area, it is possible to give an email as a 'permanent electronic address' for all judicial processes (Article 3 of Judicial Notifications Act No. 8687 of December 4, 2008). It is not mandatory and can be modified or revoked." At the contractual level, a contractual domicile can be indicated, but this must be a residence or a real domicile for individuals, or the registered office or real domicile for legal entities (Article 22 of Judicial Notifications Act No. 8687 of December 4, 2008).

In **Cuba**, Taydit Peña Lorenzo informs that in her country the electronic address, and in particular the electronic contractual address, are not regulated.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "the courts mentioned allow electronic addresses to be provided for procedural purposes, but coercive proceedings require a physical address. In the legislation, digital means and email addresses are allowed for receiving notifications, but the validity of a transcendent notification, for example a summons, is not yet duly regulated, nor is it duly recognized by jurisprudence."

This is not regulated in **Panama**.

In **Uruguay**, Daniel Trecca informs that: "The electronic address established for processes before the Judiciary is regulated by Law No. 18237 and by various Decisions of the SCJ, among them decisions 7637, 7644 and 7648."

In **Venezuela**, María Alejandra Ruiz reports that the electronic address is not regulated in her country. However, it is possible for the parties to agree to it by virtue of the principle of the autonomy of the will of the parties.

c. Are they carried out at the contractual electronic address established abroad?

In **Argentina**, according to María Blanca Noodt Taquela and Julio C. Córdoba, communications, notices, summons and other notifications can be delivered to the contractual electronic address abroad.

In **Brazil**, according to Valesca Raizer and team, "there is no regulation on the electronic contractual address but, in contracts between absentees, the place of formalization is considered to be the address of the offeror which, in international electronic contracts, for example, is the place where the server of the home-page is situated. In the case of Court procedures, the domicile of the defendant is considered to be the court of jurisdiction."

In **Costa Rica**, "Judicial notifications can only be given using the means authorized in Judicial Notifications Act (No. 8687 of December 4, 2008), so a contractual domicile can be established as long as it is a physical location, inside or outside of the national territory."

In **Cuba**, Taydit Peña Lorenzo informs that communications, notifications, summons and others are not made at contractual electronic addresses established abroad.

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "According to the enforcement of Mexican regulations, digital media and email addresses are recognized for receiving notifications, but the validity of a transcendent notification, for example a writ of summons, is not yet duly regulated, nor duly developed by the jurisprudence."

They are not used in **Panama**.

In **Uruguay**, Daniel Trecca informs that communications, notifications, summons and others are not made at a contractual electronic address established abroad.

d. Does your country have management systems and adequate computer support to guarantee the minimum requirements that allow validation of notifications, communications, summons and others, such as the authenticity of the documents, the assurance that the document or the warrant comes from the authority they claim they come from, etc.?

In **Bolivia**, Canelas reports that, although he cannot provide a clear answer, he would like to "highlight the creation of the Agency for the Electronic Government and Information and Communication Technologies, which reflects the State's efforts to modernize public administration. This entity must "manage, articulate and update the Electronic Government Implementation Plan"[22] proposed by the Government as an agenda for 2017–2025.[23] Likewise, the Digital Citizenship Legislation (Law No. 1080), approved through a web platform by Congress in 2018[24], for the purpose of advancing e-government and granting digital credentials to citizens,[25] are worthy of mention. This rule states that "documents or applications generated through digital citizenship, or digitally signed, must be accepted or processes by all the public and private institutions that provide public services, with applicable sanctions for "responsibility for the public function."[26]

Between 2017 and 2018, two online portals have been created for procedures involving the State, which should become a substantial improvement in the structure of interoperability between government entities. On the one hand, the "State Procedures Portal" was established, under the direction of <https://www.gob.bo/)>; and, on the other hand, the "Digital Company Platform" <https://empresadigital.gob.bo/>, to constitute a single point of contact for companies and other entities of economic nature.[27]

In 2018 the Digital Archive was created,[28] which was set up to be "[a] decentralized registry for data chronological order and integrity and digital documents. (…)." The data stored in the archive "will have full legal validity regarding their integrity and duration in the case of court and administrative matters, including those to be executed and controlled by the Government."[29]

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[22] See Article 7 of Supreme Decree 2514 that creates this institution.
[23] See report available at https://tinyurl.com/e7h74nac
[24] El Deber (national daily), "Diputados aprobaron ley de ciudadanía digital usando plataforma web," Santa Cruz, 2017, https://tinyurl.com/y32zx9ua
[25] See, for examples, Articles 1 and 8.
[26] Article 8 (II).
[27] Informative Dissemination by AGETIC; https://tinyurl.com/y23tpswh
The AGETIC has informed that the "Digital Enterprise Platform" could include blockchain technology; https://tinyurl.com/y23tpswh
[28] According to Supreme Decree 3525 of 2018.
[29] Art. 16.

In **Brazil,** according to Valesca Raizer and her team, the mechanisms referred to in the question already exist. “The processing of the request for legal cooperation by the Central Authority has a management system and adequate computer support that guarantee the authenticity of the documents and even allow it to be used as a valid means of evidence in legal proceedings. In Brazil, the Department of Asset Recovery and International Legal Cooperation, an agency of the Ministry of Justice, is the central authority responsible for sending and receiving requests. As of April 5, 2021, this body began to receive requests for international legal cooperation through the use of the digital petition resource in the Electronic Information System - SEI.”

> “This platform allows external users to send their requests, follow the process, enter petitions, sign and file digital documents and other facilities, thereby contributing to the efficiency of actions taken. The SEI eliminates the physical processing of documents and reinforces precautions related to the protection of information, avoiding risks such as loss of documents and eliminating the use of hard-copies, printers and electricity. Agencies will be able to check the immediate receipt of the document and avoid the uncertainty of receiving the request, and the attachment of documents will also be facilitated. The SEI will also produce records on the progress of the process, allowing consultations, verifications and audits. In addition, it will increase the efficiency of the processing activities, since the system itself automatically makes documents and processes available to the specialized technical area, dispensing filtering and forwarding procedures. “

The Brazilian report adds that “the DRCI also coordinates the National Network of Technology Laboratories against Money Laundering - Rede-Lab.”, And that “Brazil approved and promulgated The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents: The Hague Apostille Convention, a certificate of authenticity issued by the signatory countries of The Hague Convention attached to a public document to certify its origin (signature, position of agent, seal, or stamp of the institution).”

In **Colombia**, José Luis Marín reports that his country has adequate management systems and that computer supports are also provided.

Costa Rica answered in the affirmative.

In **Cuba**, Taydit Peña Lorenzo reports that “the Court, as well as the International Commercial Arbitration Court, enjoy the necessary support for this and for the Registries of branches and foreign representations attached to the Chamber of Commerce of the country.”

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that in the states where the use of technologies has been developed (some states, such as Nuevo León, the State of Mexico and Mexico City), the Judicial Branch of the Federation and the Federal Court of Administrative Justice, have adequate management systems in operation, as well as computing aids that guarantee the minimum requirements to validate notifications, communications, summons and other items, such as the authenticity of the documents, thus assuring the claimed origin of the document or the warrant, among other items.

In **Panama** they do exist, but “only government entities and the Government Innovation Authority (AIG from the Spanish) provide support in this regard.”

In **Uruguay**, Daniel Trecca informs that his country has management systems and adequate computer supports in operation that guarantee the minimum requirements to allow validating notifications, communications, summons and others, such as the authenticity of the documents, the security that the document or the letter rogatory come from the authority mentioned, etc. He adds that “the judges issue their letters rogatory with electronic signatures, which are verifiable through a QR code.”

In **Venezuela**, María Alejandra Ruiz reports that her country does not have such a system, although it does have a legal basis encouraging the use of technology. On the other hand, they lack adequate equipment or management systems and computer support.

e. How does communication between judicial authorities and/or between Central Authorities operate by electronic means?

The Foreign Ministry of **Argentina** reports, "The vast majority of letters rogatory issued by the International Legal Assistance Department of the Ministry of Foreign Affairs, International Trade and Religion are received through the institutional email cooperacion-civil@mrecic.gov.ar. Subsequently, upon meeting the requirements of applicable regulations, the letters rogatory are sent—in digital format—to the competent local judicial authorities or to the central authorities for the formalities of style." mailto:cooperacion-civil@mrecic.gov.ar

In **Brazil**, according to Valesca Raizer and her team, the Federal Justice "instituted COOPERA, a program of the Federal Council of Justice, an agency of the Superior Court of Justice, in association with the Department of Asset Recovery and International Legal Cooperation, in turn an Agency of the Ministry of Justice to allow federal judges to send and receive requests for international legal cooperation through guaranteed access by digital means. Based on the request made by the judicial authority, this agreement between the Federal Council of Justice - CJF and DRCI - allows for communications between judicial and central authorities.

In **Colombia**, José Luis Marín reports that this issue is regulated by Law 527 of 1999.

In **Costa Rica**, "In matters of Private Law, communication by electronic means only occurs among judicial offices, consulates and, indirectly, authorities of other countries, in preparing to obtain evidence or other procedural actions. For cooperation to materialize, it is always necessary to send a formal request through diplomatic channels, as described below. In active and passive international judicial assistance (letters rogatory and warrants, obtaining evidence, etc.), issuance of physical documents is required, including the copies indicated by some international instruments, since they must be transmitted through the General Secretariat of the Supreme Court of Justice and the Ministry of Foreign and Religious Affairs to the different diplomatic and consular representatives in charge of sending requests to the central authority or competent authority of the other country, or vice versa."

In **Cuba**, Taydit Peña Lorenzo reports that "Communication is done by email messaging and by telephone. Official authorities do communicate with some computerized Registries, as is the case of Registries for Acts of Last Will and the Registry of criminal records."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "It is not yet customary to use electronic means in Mexico for the transmission of letters rogatory, although some courts such as the State of Mexico are already issuing them. When Mexican Foreign Ministry is asked to proceed with communications through electronic means, the response is invariably that they lack internal protocols to do so."

In **Panama**, it operates through the "Document Management System provided by the AIG (Government Innovation Authority)."

In **Uruguay**, Daniel Trecca reports that: "The Central Authority of Uruguay has institutional electronic mailboxes, from which it sends and receives letters rogatory. In the case of civil cooperation, the box used is cooperacioncivil@mec.gub.uy; in the case of criminal cooperation, the box used is cooperacionpenal@mec.gub.uy and for requests for international return of minors, visitation and food benefit, procedures are implemented through menor@mec.gub.uy."

These e-mails are accessible to all lawyers working in each section, which avoids the use of personal e-mail addresses that limit access, should their holder be unable to open it for any reason (leave of absence, resignation, etc.). All of the country's courts have an institutional box, to which we refer all international letters rogatory. Most are subsequently returned to us electronically.

Electronic communication between central authorities is preferable, provided that the foreign central authority so permits. For the purposes of sending abroad letters rogatory issued by Uruguayan courts, or the return of letters rogatory received from abroad, if files exceed the size limit they are uploaded to an institutional "cloud" and a secure download link is sent to the foreign central authority. It should be noted that an in-house server is used for this purpose, which guarantees the security and confidentiality of the documents stored there.

Uruguay recently ratified the Treaty on the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities. Pursuant to Article 1, this Treaty regulates the use of the lbcr@ electronic platform as a formal and preferential means of transmitting requests for international legal cooperation between central authorities within the framework of treaties in force between the parties that provide for direct communication between said institutions. It has been ratified by Andorra, Cuba, Spain, Portugal and Uruguay, and is currently being implemented. Once implemented, it will be a very useful tool for the electronic transmission of letters rogatory, ensuring security and confidentiality.

f. How do notifications, summons and others, forwarded by judicial authorities and/or Central Authorities to the parties operate through the use of electronic means?

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that:

"Cases of jurisprudence in which notifications by electronic means have been admitted:

In a case of unilateral divorce, the Court ordered the notification by email to the spouse domiciled in England, due to the impact of the COVID 19 pandemic and border closures ordered by the Argentine government and other countries. (Family Court No. 1, Tandil (Province of Buenos Aires) 07/29/2020, G., EA v. W., B. r. Unilateral Divorce filing, published by Julio Córdoba in DIPr Argentina and commented by AB Zacur and F. Robledo in RIDII 13, December 2020 and by N. Rubaja and C. Iud in: LL 03/12/2020. http://fallos.diprargentina.com/2020/12/g-e-c-w-b-s-divorcio-por-presentacion.html?m=1

The notification of the divorce claim by unilateral presentation by email or WhatsApp messaging to the defendant domiciled in Spain was also authorized, taking into account the unprecedented health crisis caused by COVID-19 (Chamber of Appeals in Civil and Commercial of Morón (province of Buenos Aires), Panel II, 04/13/2021, MJ-JU-M-132497-AR | MJJ132497 | MJJ132497).

In another case in which the determination of provisional alimony had to be notified to the debtor domiciled in Canada, the National Civil Chamber authorized it to be carried out through a WhatsApp message (N.Civ.Ch., Holiday Panel, 01/25/21, BL, VP and others c. D., CS s. Alimentos: Modification, published by Julio Córdoba in DIPr Argentina in:

http://fallos.diprargentina.com/2021/03/b-l-v-p-y-otros-c-d-c-s-s-alimentos.html?m=1

In **Brazil**, according to Valesca Raizer and her team, "Article 246, V, of the Code of Civil Procedure, establishes that notifications and summons will be made electronically, as regulated by the legislation. Article 246, paragraph 1, of the Code of Civil Procedures of 2015, establishes that, with the exception of micro and small companies, public and private companies are obliged to keep a record in the electronic systems in order to receive summons, which will preferably be made by such means. **Law No. 11419/06 regulates the electronic process** in Brazil. Electronic communication of procedural acts is provided for in Articles 4 to 7 of Law No. 11.419 / 06. The Courts will create Electronic Justice Bulletins, available on the Internet for the publication of their own judicial and administrative acts, as well as for communication in general. Article 9 of the Law establishes that all notifications and summons, even from the Public Treasury, will be made by electronic means. In trials with appointed attorneys, notices and summons are carried out by means of the publication of the act in the electronic newspaper and by the email account previously informed to the Court."

In **Colombia**, José Luis Marín reports that this issue is regulated by Law 527 of 1999.

In **Costa Rica**: "Judicial resolutions are notified to the email indicated by the parties: rulings, orders and sentences, except in cases in which personal notification or a physical address is required by law (initial transfer of the lawsuit, imputation of charges, and others).

"Instant messaging (SMS) is also used to the designated mobile phone to send reminders about court hearings and other procedures, which does not replace notification by email or other means authorized by the regulations."

"Intimations of facts are not given by email. However, communication among central authorities is carried out once it is clear who the authorities are for each State."

In **Cuba**, Taydit Peña Lorenzo reports that "E-mail messaging is generally used. In this case, Instruction No. 207 of the Supreme People's Court of 2011 authorizes the Economic Chambers of the Provincial People's Courts to use email messaging to send the parties the "notice of notification" of Court decisions. Video Calls have been authorized, especially in these times of the COVID 19 Pandemic. We had a specific case of international abduction in which email messages were used."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "Notifications can be made electronically in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation. But in the case of coercive proceedings, such as search and seizures, they continue to be processed personally."

In **Panama**, "Notifications must be given personally according to article 1002 of the Panamanian Judicial Code..."

In **Uruguay**, Daniel Trecca informs that: "Each party, at the time of filing in a legal case, must establish an electronic address, at the electronic address provided by their sponsoring attorney/notary and also provided by the Judiciary. Henceforth, all notifications are made to the aforementioned box.

"If the notification is accompanied by existing hard-copy documentation, following electronic notification the recipient has 3 working days to retrieve the documents in question. If the interested party fails to withdraw the documents within this period, the notification will be deemed to have been made when these three days expire."

However, as already mentioned, since the addressee of the measure has not been previously registered in the file, they continue to be made in person and hardcopy, without prejudice that their return to the requesting State being later done electronically.

In **Venezuela**, María Alejandra Ruiz informs that in her country the notifications, summons and others made by the judicial authorities and/or the Central Authorities to the parties are made through email, text messages or WhatsApp messaging.

6) When the country is a party to the Inter-American Convention on Letters Rogatory:

a. Do judicial authorities and Central Authorities use "the most favorable practices", such as those contained in the TRANSJUS Principles, in accordance with art. 15 of the Convention?

In **Bolivia**, Canelas reports that: "At least in administrative matters, article 4 (j) is worth mentioning, as it refers to the principle of effectiveness, and states that" all administrative procedures must fulfill their purpose by avoiding undue delays." If certain procedures (including Private Law procedures) can achieve the same targets as certain actions of the public administration, then it is worth questioning whether they should not be equally effective in legal terms in Bolivia."

In **Brazil**, according to Valesca Raizer and her team, "among the procedural communication practices with the use of technology provided for in art. 4.7 of the TRANSJUS Principles, telephone calls and videoconferences, electronic messages and any other means of communication can carry out the cooperation requested."

In **Costa Rica**, "There is no evidence of application, in practice, of the TRANSJUS Principles instead of the requirements established by the Convention, but they are not incompatible with current regulations."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "Notifications can be made electronically in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation. But in the case of coercive proceedings, such as search and seizures, they continue to be processed personally."

They are not used in **Panama**.

In **Uruguay**, Daniel Trecca reports that: "The Central Authority of Uruguay has no record that the TRANSJUS Principles have been expressly invoked. Nevertheless, many of the practices established therein are frequently used.

In **Venezuela**, María Alejandra Ruiz provided a negative response.

b. Are electronic means or other technologies applied, for example, in the processing of warrants?

According to the Foreign Ministry of **Argentina**, "With regard to the Inter-American Convention on Letters Rogatory, the International Legal Assistance Department of the Argentine Foreign Ministry— in its capacity as the central authority of said Convention— processes most requests for legal assistance via electronic means. In exceptional cases letters rogatory must be sent in paper format to some countries in the region that do not accept such instruments via digital means."

In **Brazil**, according to Valesca Raizer and her team, the Federal Justice instituted COOPERA, as already explained above, regarding question 5) e.

In **Colombia**, José Luis Marín reports that:

> "Indeed, Article 103 of the Code of General Procedures [Law 1564 of 2021] establishes: "USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES. In all judicial proceedings, the use of information and communication technologies should be sought in the management and processing of judicial processes, in order to facilitate and expedite access to justice, as well as to expand its coverage".
>
> "Legal actions may be carried out through data messaging. The judicial authority must have mechanisms that allow generating, filing and communicating data messages.
>
> "Provided they are compatible with the provisions of this Code, the provisions of Law 527 of 1999, and those replacing or modifying it, and its regulations, shall apply."

In **Costa Rica**, "In active and passive international judicial assistance (letters rogatory, warrants, obtaining evidence, etc.) issuing physical documents is required, even with the copies indicated in some international instruments, since they must be transmitted through the General Secretariat of the Supreme Court of Justice and the Ministry of Foreign and Religious Affairs to the various diplomatic and consular representatives in charge of sending requests to the central authority or competent authority of the other country, or vice versa."

In **Cuba**, Taydit Peña Lorenzo reports that:

> "On this matter, the Cuban procedural norm in the second paragraph of Article 14 regulates the course of the procedure through the Ministry of Foreign Affairs, adapting its format to the provisions issued by said Ministry. To this end, the Governing Council of the Supreme People's Court, through Instruction No. 214 of March 27, 2012, approved the Methodology for processing requests for Cooperation, by means of which the process and intervention of the judicial body is ordered, regarding the various procedures that may be carried out through International Legal Cooperation and Verbal Notes. The Independent Department of International Relations of the Supreme People's Court is assigned the task of receiving, controlling and promoting all Requests for International Legal Cooperation and Verbal Notes, establishing that in all cases they will be processed through the Ministry of Foreign Affairs or through the designated Central Authority, with due observance of the agreements signed and, failing that, by virtue of the principle of international reciprocity."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report that "warrants can be transmitted and notifications made electronically in some states, such as Nuevo León, the State of Mexico, Mexico City and the Judicial Branch of the Federation. But in the case of coercive proceedings, such as search and seizures, they continue to be processed personally."

Panama does not use electronic means or other technologies for this purpose. Traditional documents continue to be used, "although due to the pandemic, incomplete progress has been made in this regard."

In **Uruguay**, Daniel Trecca reports affirmatively regarding the use of electronic means.

In **Venezuela**, María Alejandra Ruiz reports that: "Currently the Judiciary is opting for the use of technology; however, this modality having begun due to the pandemic, there is little information regarding the processing of letters rogatory by electronic means."

7) If your country is a party to the Inter-American Convention on the Taking of Evidence Abroad, are electronic means used to receive evidence from abroad, such as holding virtual hearings?

In **Argentina**, María Blanca Noodt Taquela and Julio C. Córdoba report that:

"Yes, they are used for taking evidence, in particular for holding hearings. In the case of international restitution, it is quite usual.

The Civil and Commercial Code of Procedures of the province of Corrientes, approved on April 21, 2021, as Law No.6556/2021 provides the following:

Article 297. *Witnesses domiciled outside the jurisdiction of the Court. In the offer of evidence, it will be indicated if the witness must testify outside the place of the process. In this case, the declaration will be sought by the most suitable technical means*.

A publication in the mass media refers to a case of virtual conciliation:

A young man of Colombian nationality who died in Campo Largo during the first days of last year, had no relatives in Argentina. The young man rented an apartment in town. After successive communications, and through documentaries forwarded in digital form, a virtual conciliation hearing was held (by means of the WhatsApp platform), between the owner of the property, who was domiciled in Campo Largo, and the relatives of the deceased young man in Colombia and Brazil. It was agreed that the delivery of the movable property and personal belongings of the deceased man would be made to a third party. The sentence was released by the Court of Peace and Misdemeanors of Campo Largo, in charge of Judge José Luis Haetel. Note published at: https://www.diariojudicial.com/nota/88828.

For its part, the Argentine Foreign Ministry informs, "In reference to the Inter-American Convention on the Taking of Evidence Abroad, the International Legal Assistance Department of the Argentine Foreign Ministry—in its capacity as the central authority of that Convention— processes most requests for evidentiary measures via electronic means. Notwithstanding this, and as previously reported, letters rogatory must be sent in paper format to some countries in the region that do not accept such instruments via digital means.

As for holding virtual hearings, not all Argentine courts have the necessary infrastructure for this. Consequently, the possibility of holding them by such means will depend on the competent judicial authority."

As reported by Valesca Raizer and her team, "**Brazil**, despite having signed the Inter-American Convention on the Taking of Evidence Abroad in 1975, has so far not ratified it."

In **Colombia**, José Luis Marín reports that:

"Paragraphs 2 and 3 of Article 103 of the General Procedures Code read as follows: SECOND PARAGRAPH. Notwithstanding the provisions of Law 527 of 1999, memorials and other communications between the judicial authorities and the parties or their lawyers are presumed to be

authentic, when they originate from the email account provided in the claim or in any other act of the process.

> "THIRD PARAGRAPH. When this code refers to the use of email accounts, electronic address, magnetic means or electronic means, it will be understood that other systems for sending, transmitting, accessing and storing data messages may also be used, provided they guarantee the authenticity and integrity of the exchange or access to the information. The Administrative Chamber of the Superior Council of the Judiciary will establish the systems that comply with the previous budgets and will regulate their use".

In **Costa Rica**, electronic means are used for taking evidence abroad, although this "is subject to the requirements of each state, since some authorities deem it sufficient to submit the digital certificate, while other countries request the digital in advance to move forward with the case until they receive the original document."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report: "We are not aware that electronic means are employed by applying the Inter-American Convention, but such means are used in federal bankruptcy proceedings via the procedures of international cooperation mechanisms contained in Articles 278 to 310 of the Commercial Bankruptcy Law."

Panama does not use electronic means or other technologies for this purpose. Traditional documents continue to be used, "although due to the pandemic, incomplete progress has been made in this regard."

In **Uruguay**, Daniel Trecca reports that electronic means are used to receive evidence produced abroad. The SCJ 7784 Agreements Nos. 7902 and 7815 were given the same value as the obligatory panel decisions (Acordada) to the Ibero-American Agreement on the Use of Videoconferencing.

"Likewise, Article 539 of Law No. 19924 added Article 64-BIS to the General Code of Procedures, which authorizes the use of videoconferencing or other suitable telematic means for holding any judicial hearing."

In **Venezuela**, María Alejandra Ruiz reports that: "Currently the judiciary is opting for virtual hearings; however, as this is a solution that began to be implemented due to the pandemic, there is little information regarding the reception of evidence produced abroad."

8) Are electronic means or technologies used in the enforcement of other Conventions to which your country is a party?

In **Brazil**, according to Valesca Raizer and her team, "within the scope of The Hague Convention on the International Collection of Alimony for the Benefit of Children and Other Family Members, all requests must still be made by physical means, by means of forwarding printed documents, with their respective translations, at the address of the central authority (Ministry of Justice, through the Department of Asset Recovery and International Legal Cooperation - DRCI). The system called *iSupor*t (Electronic Communication System for Process Management and Security) is still being implemented in Brazil, without a defined launching date and/or to what extent it will impact common citizens in the forwarding of the necessary forms (if the possibility of sending forms by digital means becomes real, for example). On the other hand, an email account is made available to the citizen to search for information or to access the necessary forms."

In **Colombia**, José Luis Marín reports that:

"Law 527 of 1999 [By means of which access and use of data messages, electronic commerce and digital signatures are defined and regulated, and certification entities are established, and other provisions issued] provides:

Article 5. LEGAL ACKNOWLEDGMENT OF DATA MESSAGES. The legal effects, the validity or the binding force will not be denied to all types of information for the sole reason that it is presented in the form of a data message.

Article 7. SIGNATURE. If any rule requires the presence of a signature or establishes certain consequences in the absence of such, in a data message, said requirement shall be deemed satisfied if:

A method has been used to identify the initiator of a data message and to indicate that the content has been approved.

a) The method is both reliable and appropriate for the purpose for which the message was generated or communicated.

b) The provisions of this Article shall apply whether the requirement established in any regulation constitutes an obligation, or if the regulations simply foresee consequences in the absence of a signature.

Article 8. ORIGINAL. When the norm requires the information to be presented and preserved in its original form, that requirement will be satisfied with a data message, if:

a) There is some reliable guarantee that the integrity of the information has been preserved, from the moment it was first generated to its final format, as a data message or in some other way;

b) If the information is required to be presented, can it be exhibited to the person whose presence is required.

The provisions of this Article shall apply whether the requirement established in any regulation constitutes an obligation, or if the regulations simply foresee consequences in the event that the information is not presented or preserved in its original format.

Article 10. ADMISSIBILITY AND PROBATORY FORCE OF DATA MESSAGES. Data messages will be admissible as means of proof and their probative force is as granted in the provisions of Chapter VIII of Title XIII, Third Section, Second Book of the Code of Civil Procedure.

In any administrative or judicial action, no efficacy, validity or mandatory or probative force will be denied to all types of information in the form of a data message, given that it is a data message or because it has not been submitted in its original format.

Article 11. CRITERIA FOR PROBATORY ASSESSMENT OF A DATA MESSAGE. For the assessment of the probative force of data messages referred to in this Law, the rules of sound criticism and other legally recognized criteria for the appreciation of evidence will be taken into account. Therefore, the following must be taken into consideration: the reliability in the way in which the message has been generated, archived or communicated; the reliability in the way in which the integrity of the information has been preserved, and the way in which its initiator is identified and any other pertinent factors.

Law 270 of 1996 [Statutory Law of the Administration of Justice]

Article 95. Courts, tribunals and judicial corporations may use any technical, electronic, computer and telematic means to carry out their duties.

The documents issued by the aforementioned media, whatever their support, will enjoy the validity and effectiveness of an original document as long as its authenticity, integrity and compliance with the requirements demanded by procedural laws are guaranteed.

Processes that are handled with computer support will guarantee the identification and exercise of the jurisdictional function by the body exercising it, as well as the confidentiality, privacy, and security of the personal data that they contain, according to the terms established by law.

Law 962 of 2005

Article 25. - Use of mail messages for sending information. Modified by art. 10, Law 962 of 2005. Public Administration entities must facilitate the receipt and delivery of documents or requests and their respective responses by certified mail. In no case can the requests or reports sent by natural or legal persons that have been received by certified mail through the National Postal Administration be considered inadmissible, unless the regulations require their personal presentation. For the purposes of expiration of terms, it will be understood that the petitioner submitted the request or responded to the

request of the public entity on the date and time provided by the certified mail company, with indication of date and time and the respective shipping receipt. Likewise, petitioners may request that their documents or required information be sent by mail to the public entity.

Law 1437 of 2011, by which the Code of Administrative Procedure and Administrative Litigation is issued."

In **Costa Rica**, "Electronic means are used for communications among the various central authorities that must work with Costa Rica, bearing in mind that it is an expeditious channel of communication. In this way it is used to send queries, digital advances, and partial or final answers, subject to the remission of the original documents, as tools to simplify and speed up cooperation. It is clarified that Costa Rica is not yet a party to the Medellín Convention on the electronic transmission of requests for international criminal assistance."

Panama does not use electronic means or other technologies for this purpose. Traditional documents continue to be used, "although due to the pandemic, incomplete progress has been made in this regard."

In **Uruguay**, Daniel Trecca reports that in application of the Hague Convention on the Civil Aspects of International Child Abduction and the Inter-American Convention on the International Return of Children, it is very common for the applicant to intervene in a hearing via videoconference.

a. Is Article 4.7 of the TRANSJUS Principles taken into account, for example, as regards favoring the use of new information and communication technologies (ICTs)?

In **Bolivia**, Canelas reports that: "The Constitution, in Article 103, indicates that the State must adopt policies to promote new information and communication technologies."

In **Brazil**, according to Valesca Raizer and her team, "although the ASADIP Principles of Transnational Access to Justice (TRANSJUS) are not yet prevailing in general terms in the Brazilian judicial practice, the facilitation of the use of information and communication technology represents, as stated above, a growing reality. Several tools, such as telephone calls and videoconferences, electronic messages and other means of communication are promoted within the legal limits already mentioned, for the purpose of promoting international legal cooperation and transnational access to Justice by the Brazilian judiciary."

In **Costa Rica**, "There is no evidence of application, in practice, of the TRANSJUS Principles, but they are not incompatible with current regulations."

In **Cuba**, Taydit Peña Lorenzo reports that: "Unfortunately [*Article 4.7 of the TRANSJUS Principles]* is not taken into full consideration, although the pandemic has some what prompted its use; however, we still do not have safe technological means to guarantee their efficacy and safety. We can guarantee that we are working on this. As I mentioned earlier, video calling or video conferencing has been used for notifications and negotiation attempts. Telephone communication has also been used between Central Authorities, as well as between the latter and the judicial authorities, in addition to email messages and diplomatic messaging."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report: "Although that international instrument is not specifically being enforced, warrants can be transmitted and notifications can be made electronically in some states, such as Nuevo León, State of Mexico, Mexico City, and the Judiciary of the Federation. But in the case of coercive proceedings, such as embargoes/searches, they continue to be processed personally. "

The report of the Permanent Mission to the OAS adds, "Unfortunately, there is currently no general knowledge among lawyers and jurisdictional authorities of the TRANSJUS Principles. That instrument has been analyzed by Mexican doctrine specialized in Private International Law, but there is deemed to be a field of opportunity to disseminate that soft law instrument among the legal community of the country."

In **Panama**, "There is interest in using the new technology, still used for documents, although due to the pandemic, some significant advances have been made and others have not yet materialized in this regard."

In **Uruguay**, Daniel Trecca reports that, although there is no record of these Principles having been invoked, in judicial practice, efforts are made to encourage the use of new ICTs, as established in art. 4.7 of the TRANSJUS Principles.

In **Venezuela**, María Alejandra Ruiz reports that THE PRINCIPLES TRANSJUS is not being taken into consideration.

b. Is the Ibero-American Protocol on International Judicial Cooperation taken into account? (the Protocol was approved at the Plenary Assembly of the XVII Ibero-American Judicial Summit, held in Chile from April 2 to 4, 2014). If so, how and in what cases?

The Foreign Ministry of **Argentina** reports, "When applying the sources of Mercosur, the Organization of American States or the Hague Conference on Private International Law, the International Legal Assistance Department of the Argentine Foreign Ministry primarily uses technological tools. Without prejudice to this, requests for assistance are sent via physical means in cases where the electronic option is not deemed viable.

Implementation of electronic channels in international cooperation has made it possible to fulfill requests for assistance more rapidly, substantially shortening the time it takes to process orders, postal costs, risks of loss and, above all, environmental impacts."

The Foreign Ministry report concludes with some very significant and encouraging final considerations for the work of the CJI, which deserve transcription here:

"In view of the above, we conclude that, although using technology in international legal assistance has derived from a need to adapt to the pandemic, it can also be seen as an opportunity to maximize the efficient performance of the legal duties of central authorities.

Mindful of this, we believe that digitalization has already incorporated into the daily work of international legal cooperation, and we estimate that it will remain in the future, given its positive outcomes.

For these reasons, the Guide to Best Practices for American countries will be a useful tool for collecting experiences and recommendations in this regard, facilitating the use of technologies for both judicial authorities and central authorities."

In **Brazil**, according to Valesca Raizer and her team, "as well as the principles of the ASADIP, the principles established by the Ibero-American Protocol on Judicial Cooperation are not yet being put into recurrent effect by the national judiciary."

In **Costa Rica**, "There is no evidence of application, in practice, of the Ibero-American Protocol on International Judicial Cooperation. However, Costa Rica is a party to the Ibero-American Convention on the Use of Videoconferencing in International Cooperation among Systems of Justice and its Additional Protocol on costs, languages and transmission (Ibero-American Judicial Summit, Mar de Plata, December 3, 2010), which instruments are mentioned in the former."

"In general, videoconferences are held with the help of the consular mission without requiring the intervention of authorities from the host country. However, if that possibility is not available, it is feasible to hold them in accordance with the provisions of the two current instruments just mentioned."

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report: "Although that international instrument is not specifically being enforced, warrants can be transmitted and notifications can be made electronically in some states, such as Nuevo León, State of Mexico, Mexico City, and the Judiciary of the Federation. But in the case of coercive proceedings, such as search and seizures, they continue to be processed personally."

The report of the Permanent Mission to the OAS adds, "We believe there is no general knowledge on the Ibero-American Protocol on International Judicial Cooperation."

In **Uruguay**, Daniel Trecca reports that the Ibero-American Protocol on International Judicial Cooperation is taken into consideration. He adds that "Although Uruguay has not ratified it yet, the SCJ has incorporated it, giving it the value of an obligatory panel decision (Acordada) by means of the 7815 Panel Decision (Acordada).

In **Venezuela**, María Alejandra Ruiz reports that the aforementioned Protocol is not being taken into consideration.

C. Doctrine

9) What are the doctrinal approaches in your country regarding the issue addressed in this questionnaire?

In **Brazil**, according to Valesca Raizer and her team, in the opinion of **Fabrício Polido**, "The reality of the Internet and new technologies in general collides with the traditional models of international legal cooperation between States. This in part is due to the fact that most of the treaties were concluded before the emergence of new information and communication technologies and the spread of the Internet as it is conceived today."[30]

> "It is in this sense that **Davi Oliveira** and other scholars assert that international cooperation is not necessarily a new phenomenon, given that "Brazil, for example, is a signatory of cooperation agreements in force dating from the 1950s, years before the emergence of the internet, and even before its popularization for civil use)."[31]
>
> "There is still a long way to go regarding the use of networks and technologies in the operation of existing international cooperation mechanisms to assist the courts and administrative bodies of the States in transnational cases. Despite the advances in the implementation of new technologies, many international legal cooperation mechanisms are still mediated by analogical means and notarial instruments."
>
> "It is understood that the interaction of these mechanisms is fundamental for the preservation of the minimum procedural guarantees – for example a broad, contradictory defense, due legal process - in treaties and constitutions. For this reason, the interaction between transnational process and international legal cooperation must be referenced in the consolidation of legal and communicational interoperability mechanisms between States, organizations and players of the Internet, and also in the observance of the values of global justice and transnational due process."[32.]
>
> "With the aim of investigating the influence of the Internet on the reality and practice of international legal cooperation in Brazil, the "IRIS - Instituto de Referência em Internet e Sociedade [Reference Institute for the Internet and Society] carried out a preliminary study evaluating the agreements signed by Brazil on this matter, one of its limits being the agreements that use the Internet to give effect to international legal cooperation measures in transnational litigation". "The studies carried out showed that the influence of this new tool occurs in at least 36 of the cooperation agreements signed by Brazil Observing the high numbers, it can be seen that most of the objects of cooperation measures (48%) have to do with obtaining evidence, while the majority of agreements that provide reciprocity (88.2%) in criminal matters (66.1%) are bilateral. 58.3%), with 9 from the United States

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[30] POLIDO, Fabrício Bertini Pasquot. *Direito internacional privado nas fronteiras do trabalho e tecnologias: ensaios e narrativas na era digital.* Rio de Janeiro, Lumen Juris, 2018. p. 76.

[31] OLIVEIRA, Davi Teófilo Nunes et al. A Internet e suas repercussões sobre a Cooperação Jurídica Internacional: estudo preliminar sobre o tema no Brasil. Instituto de Referência em Internet e Sociedade, Belo Horizonte, 2018. Available at: http://bit.ly/38Dxpt0. Accessed: 09/06/2021. p. 6.

[32] POLIDO, Fabrício Bertini Pasquot. Op. cit. p. 92.

> and 8 from Switzerland. Provisionally, it can be affirmed that the Brazilian Judicial Power, in matters of international legal cooperation, is still not fully adapted to the new forms of communication and possibilities of interaction offered by the Internet."[33]
>
> "Regarding the data found and their respective analysis, the study indicates that:
>
> "The Internet is conceived, in these agreements, for the purpose of sharing specific information for or about a given case (securing evidence). From the profile, it can be seen that the countries that use the internet mostly in agreements (which allows them to use it in cooperation practices in processes) are countries of the global North, that is, they share a high participation rate in industrialization and financial assets. The interest in criminal matters also predominates, and this opens the hypothesis that perhaps most of the agreements signed refer to this matter in general terms, so that the use of the Internet would be profuse in agreements of this nature. In addition, reciprocity is highly frequent, and this can be seen as a positive aspect, since use of the Internet becomes more effective, that is, a very widespread tool that allows everyone involved the same technical possibility of using it. Considering the effective date, we can conclude that the year with the highest number of agreements was 2008, with 6 agreements; the frequency of agreements in this regard subsequently decreased. Most of the agreements entered into force before that year, with 24 agreements between 1960 and 2008. Thus, the international legal cooperation scenario regarding the use of the Internet in their performances is lacking more up-to-date forecasts."[34]

"In the same sense, author **Carmen Tiburcio**, a reference in the study of Private International Law in Brazil, points out that international legal cooperation instruments can be quite effective when they make use of technological resources.[35] Considering the Brazilian case, national legislation, despite not being explicit, contains elements that allow us to understand the possibility of using technological resources to serve requests for international legal cooperation. This is due to the fact that the Code of Civil Procedure approved in 2015, which entered into force in 2016, in Article 26, paragraph V, establishes spontaneity in the transmission of information to foreign authorities as a principle applicable to legal cooperation. Therefore, in the Brazilian legal system today there is an open path for legal operators to use technological tools in the fulfillment of requests, whether active or passive, for the benefit of international judicial cooperation."

"Speaking on the transformations in the field of direct communications and their implications for international legal cooperation, **Mônica Sifuentes** considers that:

> "It is clear that one of the most vigorous, if not the best advance in terms of technology in recent years is due to the communication field. We live in a world within a network, so that phenomena such as globalization and flexibility of borders in most countries are making the classic forms of international cooperation (the use of letters rogatory) obsolete. The anachronistic mechanism used by judges to request help or cooperation from a foreign authority through diplomatic channels, which took months or years to be fulfilled, seems to have its days numbered. In order to facilitate communication, greater transparency and mutual trust, the scope of international cooperation has ended up promoting the creation of new mechanisms and tools that appear to be more agile and consensual vis-à-vis our new current state of interaction."[36]

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[33] OLIVEIRA, Davi Teófilo Nunes et al. Op. cit. p. 24.

[34] Ibidem, p. 23.

[35] TIBURCIO, Carmen. The current practice of international co-operation in civil matters. Recueil des cours. v. 393 (2018). p. 266.

[36] SIFUENTES, Mônica. *Uso das comunicações judiciais diretas na Convenção da Haia de 1980: nova ferramenta de cooperação jurídica internacional*. In: RAMOS, André de Carvalho; ARAÚJO, Nadia de (Org.). *A conferência*

"The article by **Inez Lopes** on private international law and information technologies: *Facilitating International Legal Cooperation* addresses international legal cooperation in civil and commercial matters as one of the bases for international access to justice and for the resolution of transnational disputes. One of the effects of globalization is the increased movement of people and goods beyond the borders of the States, which favors the emergence of cross-border disputes. This increases the need for States to cooperate with each other in an environment of mutual trust in order to comply with certain judicial and administrative acts."

> "This cooperation constitutes a form of reciprocal legal assistance between the countries, allowing them to enforce a series of measures necessary for the development of processes that are handled in the territory of one State but depend on the fulfillment of certain procedures in another. Legal cooperation is based on bilateral or multilateral treaties, and, in the absence of an international instrument, it can take place on the basis of reciprocity of treatment. To a great extent, the object of cooperation includes the implementation of services abroad, the location of a person or property, the securing of evidence, information on foreign law, precautionary or emergency measures and the recognition of arbitration decisions or foreign judgments."[37]
>
> "The article shows how the use of information technologies has contributed to facilitate and speed up communications between state authorities. Increasingly, electronic media such as videoconferences, email messaging, telephone and Internet networks (Iber-Red) are used as tools for international legal cooperation. These technologies allow the creation of databases on the profile of countries on certain issues of private international law, such as the international kidnapping of minors (INCADAT). The article also analyzes the use of an Internet communication system through a government platform for the exchange of information between central authorities (iSupport)."
>
> "In the framework of transnational family law, international legal cooperation is essential for the recognition and application of transnational family rights. In this specific case, Professor Inez Lopes analyzes the phenomenon of migration and its influence on the formation of transnational families.[38] It shows how international legal cooperation is a fundamental principle that ensures access to transnational justice and facilitates the resolution of disputes arising from issues related to family law as they spread and extend through space, such as in the case of divorce or separation and the collection of alimony/maintenance pensions."

"Lopes briefly studies the importance of international cooperation to guarantee the rights of transnational families and the importance of harmonizing private international law. In international civil procedural matters, the text studies issues relating to international jurisdiction in family matters and the current rules of the Code of Civil Procedure. It presents the main mechanisms of international legal cooperation in general, and their application in family matters such as letters rogatory, direct assistance, the ratification and enforcement of foreign judgments and urgent protection. It analyzes international administrative cooperation and the role of central authorities, international cooperation networks between authorities and the different techniques of international cooperation in family matters, such as techniques of model forms in international agreements, guides to good practices, the Incadat and iSupport."

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da Haia de direito internacional privado e seus impactos na sociedade: 125 anos (1893-2018). Belo Horizonte: Arraes Editores, 2018. p. 180-181.

[37] LOPES, Inez. *Direito Internacional Privado e Tecnologias da Informação: Facilitando a Cooperação Jurídica Internacional* In: 5º Congresso de Direito na Lusofonia, 2018, Braga. Direito e Novas Tecnologias. Braga: Editora Escola de Direito da Universidade do Minho, 2018. p.145 -154.

[38] LOPES, Inez. *A Família transnacional e a cooperação jurídica internacional* In: Cooperação Jurídica Internacional. ed. São Paulo: Thomson Reuters Brasil, 2018, p. 83-114.

"In this context, SIFUENTES describes how the facilities that direct communication between judges, with the use of technological mechanisms facilitating the flow of information, can be effective in the context of international legal cooperation in the Hague Convention on International Abduction of Children and Adolescents. It is imperative to highlight that her reflections expose the state of the art in the use of direct communication mechanisms between judicial bodies of the most diverse sovereignties; however, a national doctrinal perspective reveals a position of openness of the Brazilian legal system regarding the acceptance of technological tools designed to improve national cooperative practices. On this point, on the legal bases existing in Brazil for the achievement and promotion of technological mechanisms in direct communication, the author formulates some reflections" that are available in the report.[39]

"In turn, Valesca Raizer Borges Moschen, in an article on international legal cooperation in the matter of transnational families, when explaining the Brazilian procedural system, mentions that the new regime inaugurated by the Code of Civil Procedure meets the advances in the harmonization of the international civil procedure legislation in matters of international legal cooperation in the following:

"The new Brazilian procedural regime legitimized by the search for cumulative global access to justice, based on procedural guarantees and on the principles of effectiveness and promptness of jurisdictional supply, is developed from two dimensions: a) spontaneity of acts of cooperation and the greater performance of the central authority in the management of cooperation; and b) the option for the promotion of direct assistance, as an instrument for revitalizing cooperation proceedings. The characteristics of the spontaneity of the acts of cooperation and the greater performance of the central authorities are related to the search for speed and efficiency in the jurisdictional supply. (...) Regarding both the principle of spontaneity and that of efficiency, two other issues can be incorporated into the debate: a) that of direct communication networks between judges and the consequent use of technology for the speed of the duties of cooperation and b) the promotion of the instrument of direct assistance."[40]

"In relation to the existing legislative sources in Brazilian law for direct judicial communications, the author continues stating that:

"Although direct judicial communications do not find a legislative basis from an internal source in Brazil, in addition to the conventional one that authorizes and regulates their use, their legality is circumscribed in the various principles of the 2015 CPC, such as the *authority of the judge* that commands the procedure and collects evidences, according to Article 13; the principle of the *cooperation of the judge*, Article 6, characterizing the new procedural model, which is called "cooperative process", in which greater activism is foreseen in the resolution of the dispute, as well as the lack of the need for strict observance of form; and, of course, the very principle of the spontaneity of transmission of information to foreign authorities of Article 26, which also serves as the basis for the legitimacy and legality in Brazil of the use of modern communication tools, such as the Internet."[41]

"Especially with regard to the use of technological mechanisms to achieve cross-border interjurisdictional dialogue, MOSCHEN states the following:

"As an example of instruments that facilitate access to justice by promoting procedural speed in the field of international legal cooperation, it is still worth mentioning the technique of model electronic forms, encouraged by the harmonization of private international law, in particular that of the legal cooperation in the field of family law, as exemplified by INCADAT and ISUPPORT. Both instruments were developed by The Hague Conference system on Private International Law as examples of digital platforms, in terms of an agile, safe and effective form of cooperation. The first of them focusing on the

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[39] Ibidem. p. 183-185.

[40] MOSCHEN, Valesca Raizer Borges. *El caleidoscopio de la armonización del derecho internacional privado en materia de derecho procesal civil internacional*. In: FRESNEDO, Cecília e LORENZO, Gonzalo (Org.) *130 Aniversario de los Tratados de Montevideo de 1889: Legado y Futuro de sus soluciones en el concierto internacional actual*. Montevideo, Instituto Uruguayo de Derecho Internacional Privado, 2019. p. 470-471.

[41] Ibidem. p. 472-473.

compilation of legal data on international child abduction available to the operators of the law "to promote a uniform interpretation on the matter", and the second with the aim of facilitating the cross-border collection of maintenance/alimony obligations processed within the scope of the of The Hague Convention on the International Collection of Maintenance of the year 2007."[42]

Finally, the informant highlights the reports from the Asset Recovery and International Legal Cooperation Department (DRCI) on the use of electronic mechanisms in the process of operationalization of cooperation requests.

"In these terms, it should be noted that, in this year (2021), the 7th Civil Chamber of the Tribunal of Justice of the State of São Paulo, in case No. 2071616-69.2021.8.26.0000, authorized the summons, in an alimony collection procedure, of the party residing abroad by means of the WhatsApp application, under the justification of the greater-than-usual delay for Letters Rogatory by virtue of the COVID-19 pandemic. However, it is necessary to affirm that the authorization of notices, summons and notifications by an instant messaging application must be seen as an exception, also from the perspective of the legality of the national legal system, and the possibility of using [the messaging application] refers to the extreme necessity posed by the specific case, in order to avoid delays [that would be caused] by carrying out the notices, summons and/or notification through a Letter Rogatory, by virtue of the COVID 19 pandemic, as this would generate damage that is difficult or impossible to repair."

In **Costa Rica**, "The doctrine on the matter in Costa Rica is still incipient. The large number of legislative creations and reforms in recent years must be considered, as well as the accession of several international instruments, which draws a new, fully-evolving regulatory framework, about which only a few academic discussions are being raised."

"In general, the doctrine has not opposed the use of technological means for international legal cooperation, even without requiring modifications of the national regulations that do not contemplate it or explicitly prohibit it."

"Exceptions are made regarding the legal value of apostilled or legalized documents in physical media, whose authenticity cannot be validly corroborated by means of a digitized document if it is not found on an official platform of the competent authority that has issued, apostilled or authenticated it."

Below, Costa Rica's very comprehensive response to the questionnaire provides a bibliography for that country.

In **Cuba**, Taydit Peña Lorenzo reports that: "In general, the doctrinal positions proposed consider that the use of the information technologies and communications is no longer an option but has become a necessity, a key tool for legal operators and authorities linked to legal activities in general. They are used to increase effectiveness in this field of action.

"Given its nature and its constant development, we consider that the situation of national laws and international conventions adopted to regulate a highly sensitive event on a world scale is insufficient".

"At present, regulations, international assistance and cooperation through electronic means require the integration of the domestic legislation, embracing the most advanced literature on the issue and developing the sphere of information technology and communications in order to grant uniformity and progress in the regulation of the new kinds of relationships developed on a transnational scale".

> "Legal relationships in the various areas of private life very often cross Cuban borders, a situation that gives them internationality and considerable increase in people's insecurity. This gives rise to inequality between the legal systems where its effects unfold. Faced with this reality, there is an urgent need to ensure the effectiveness and guarantee people's rights in these relationships. Therefore, international judicial cooperation by electronic means plays an essential role, supporting various key aspects directly linked to security and speeding up these international private processes. Voices have been raised to highlight

[42] Ibidem. p. 473.

some elements of analysis that, in our opinion, should be taken into account to rethink and formulate legal solutions that our system is demanding. “

In **Mexico**, Carlos E. Odriozola Mariscal and Nuria González Martín report the following: “In Mexico there were constitutional reforms in 2017 that ordered Congress to issue new legislation on civil and family procedures.

“The Supreme Court of Justice of the Nation has ordered that said regulations must be issued no later than December 15, 2021. Currently, the Commission of Justice of the Senate of the Republic resumed the legislative work aimed at setting up the Exclusive Legislation for Civil and Family Procedural Matters. See http://reformajusticia.senado.gob.mx“

An analysis on the subject can be seen at:

ODRIOZOLA MARISCAL, Carlos Enrique:

“Apuntes en torno a la regulación de la cooperación procesal internacional en el pretendido Código Nacional de Procedimientos Civiles y Familiares” Hacia un Derecho Judicial Internacional. Ponencias al XLII Seminario Nacional de Derecho Internacional Privado y Comparado”, Pereznieto Castro, Leonel (Ed.) Poder Judicial del Estado de México y Academia Mexicana de Derecho Internacional Privado y Comparado, A.C., 2019, México, p. 115-131.” (Free translation)

In **Uruguay**, Daniel Trecca provides a list of doctrinal articles on the subject, as does Marcos Dotta of the Uruguayan Foreign Ministry.

In **Venezuela**, María Alejandra Ruiz reports that:

“Although since 2001 we have a legal framework that encourages the use of technology, in general terms the use of technology in the Judiciary is incipient. The Decree enacted with Force of Law on Data Messages and Electronic Signatures (2001) was the first instrument that incorporated the notions and basic principles of Law and Technology into the Venezuelan legal system, being inspired by the UNCITRAL Model Law on E-Commerce (1996). In addition to this, the Law on Access and Electronic Exchange of Data, Information and Documents between State Bodies and Entities was enacted, also known as the “Interoperability Law” (2012) and the Law on Info-Government (2014), the latter aimed at regulating the use of technology in the Public Administration. Venezuela seemed to be (normatively) prepared to face advances and the technological acceleration that is being experienced worldwide. However, in practice, there was no significant progress until the pandemic.

“This is partly due to the fact that we do not have i) a technological culture, and ii) adequate computer systems and supports. Thus, author Gabriel Sira Santana (2016) pointed out that “these normative instruments must be accompanied by public policies to facilitate their performance; otherwise, they will only serve as references. That is, they will be “dead-letter legislation” - lacking coercive power - since the rights and duties that they provide will not be enforceable by any of those involved, due to the lack of adequate enforcement mechanisms. This is a common assumption regarding Venezuelan legislation. “In the same sense, María Alejandra Vásquez Sánchez (2012) concluded that there are sufficient bases for the judicial process to be carried out electronically. However, two elements must be configured to allow the use of electronic tools in court processes in Venezuela, namely: “In the first place, the digital electronic signature system for judicial officials; and secondly, a program allowing the use of electronic notifications, guaranteeing their reception and reading by the notified party.” (p. 25)

“The pandemic has forced the authorities to create solutions allowing the application of technological tools in the Judiciary. However, they are limited to the use of email messages for the delivery and receipt of documents, such as proceedings and writs/petitions/briefs, as well as holding virtual hearings. It is important to note that even though documents can be sent and received by email, writs/petitions or briefs have to be submitted in the form of hard copies, so that they may be attached to the records. Therefore, it does not seem to be a very effective solution. The truth is that our progress has been very limited so far.

"As these are changes that only recently have been enforced, little information can be found regarding their efficiency in matters of International Legal Cooperation. Furthermore, so far only a few authors have addressed the subject. However, in matters involving minors, technological tools are used more frequently, due to the importance and urgency of this type of questions. "

Annex

GUIDE TO BEST PRACTICES IN INTERNATIONAL JURISDICTIONAL COOPERATION FOR THE AMERICAS

INTRODUCTION

At its 98th Regular Session (April 5-9, 2021) the Inter-American Juridical Committee (hereinafter, CJI) approved, for inclusion in the CJI's Agenda, the topic "New technologies and their relevance for international legal cooperation" (OEA/Ser. Q, CJI/doc. 637/21 of April 6, 2021), the rapporteurship for which was entrusted to Professor Cecilia Fresnedo de Aguirre, a member of the aforementioned Committee.

The topic falls under "Promotion and study of areas of legal sciences" contained in the mandates of the General Assembly to the American Juridical Committee ("Mandatos.AG.ES.2021.pdf"). The summary, operative paragraph 8 provides: "To request the CJI to promote and study those areas of juridical science that facilitate international cooperation in the inter-American system for the benefit of the societies of the Hemisphere."

As a first step to begin working on the topic, the rapporteur prepared a questionnaire that, within the framework of cooperation established between the CJI and the American Association of Private International Law (ASADIP), was sent to various specialists in the region. Six responses were received and reflected in the first progress report, presented at the 99th Regular Session of the CJI, which took place in August 2021. On that occasion, the issue was discussed in the CJI and comments were received from some of its members.

At the September 16 meeting between the OAS, the Hague Conference on Private International Law, and the Legal Advisors of the Ministries of Foreign Affairs, it was suggested that OAS member states be invited to respond to the above-mentioned questionnaire. Replies have been received from the Ministries of Foreign Affairs of Argentina, Canada, Costa Rica (prepared by the Office of Cooperation and International Relations, Area of International Law), Ecuador, Panama (Mr. Otto A. Escartín Romero, Director in Charge of Legal Affairs and Treaties, and Mr. Juan Carlos Arauz Ramos, President of the Panama Bar Association), Mexico, and Uruguay (Dr. Marcos Dotta, Director of International Law Affairs of the Ministry of Foreign Affairs).

Throughout the process of researching, consulting on, and drafting this Guide, the rapporteur worked closely with the OAS Department of International Law (hereinafter DIL) headed by jurist Dante Negro, with important contributions from jurist Jeannette Tramhel, among others.

The rapporteur subsequently received input and suggestions from the team of collaborators composed of Drs. Daniel Trecca (Director of the Central Authority of Uruguay), Manuel Ferreira and María José Rodríguez (legal advisors of the Central Authority of Uruguay).

Part 1. Objectives of the Guide and their rationale

1. The objective of this Guide to Best Practices in International Jurisdictional Cooperation for the Americas is to provide legal practitioners (judges, lawyers, etc.) with a *soft law* instrument that will enable them to take full advantage of the tools that technology offers us today when applying existing conventions and autonomous norms in this area. This will make it possible to update, in practice and by means of *soft law*, the *hard law* instruments in force that for chronological reasons do not provide for the use of technology, but which generally do not prohibit it either.

2. This Guide does not impose solutions on the States and the various public and private legal operators. Rather, it proposes ways to achieve its objective: the best use of the technology available in

each country, improving and optimizing the functions performed by the Conventions and autonomous norms in force in the States, without the need, at least initially, to modify or replace the aforementioned regulations. It also offers solutions or recommendations for cases in which there are no conventions between States. This is without prejudice to the future development of an adequate legal framework to allow the use of information and communication technologies (ICTs).[43]

3. In practice, the solutions suggested in the Guide regarding the use of information and communication technologies may be implemented to the extent that the economic and technological realities of each State render them feasible. This will make it possible to benefit from their use without waiting for time-consuming (convention-based and autonomous) coding processes.

4. The COVID-19 pandemic accelerated the application of technology in the practice of law, to a greater or lesser extent, in all countries, showing that certain acts of international jurisdictional cooperation can be expedited, shortening times, while maintaining all the necessary guarantees of authenticity and privacy.

5. This Guide draws on successful experiences, proposes new ones, and suggests expanding their use in order to improve and streamline international jurisdictional cooperation among the American States in the way their legal operators apply the regulations in force.

6. This Guide will be applied in a manner that complements the ASADIP Principles on Transnational Access to Justice (TRANSJUS). If their proposed solutions differ, the one most likely to enhance and expedite international jurisdictional cooperation shall prevail.

7. The Guide may also prove useful as a model for the development of new regulatory instruments or the modification of existing ones.

8. It is recommended that the Ibero-American Protocol on International Judicial Cooperation, approved at the Plenary Assembly of the XVII Ibero-American Judicial Summit, held in Chile from April 2 to 4, 2014, be incorporated into the legal systems of the States, through such constitutional mechanisms as each one may establish.

9. This Guide includes an analysis of some (both conventional and autonomous) regulatory solutions in force in the region, with a view to detecting to what extent these norms do not prohibit, and in some cases admit and even impose as mandatory, the use of technological means in international jurisdictional cooperation.[44]

Part 2. General rules for the interpretation and application of the conventional and autonomous norms in force

Rule 1. Interpretation and application of the norms

The interpretation and application of the conventional and autonomous norms in force in each State in the area of international jurisdictional cooperation shall be broad and flexible, incorporating as far as possible the technological tools available in the States involved and taking into account the transnational nature of the cooperation and its consequent requirements.

[43] See, in this regard, the excellent study by ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities," *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224-254, https://doi.org/10.1080/17441048.2021.1950332 where they state, summarizing the objective of the study: "The analysis of international conventions, some soft law instruments and domestic PIL rules supports the argument that an adequate legal framework that accepts the use of ICTs in international cooperation is necessary. Indeed, there is no turning back from the use of technologies in this field, where modern and suitable regulation would strengthen legal certainty, of utmost importance for the parties involved in cross-border litigation." (p. 224)

[44] See, in this regard, ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224–254, https://doi.org/10.1080/17441048.2021.1950332 p. 226-227.

Rule 2. Speed and efficiency of cooperation

In the interpretation and application of the conventional and autonomous norms in force in each State, an attempt shall be made to ensure that international jurisdictional cooperation is prompt and efficient.

Rule 3. Subjective purpose and legal formalities

In the interpretation and application of the conventional and autonomous norms in force in each State in the area of cooperation, priority should be given to their substantive purpose rather than to legal formalisms, whose only raison d'être is to guarantee substantive rights, while always respecting the guarantees of due process.

Rule 4. Unknown tools and mechanisms

Judges and other legal operators of a State shall admit the use and efficiency of technological tools and mechanisms existing in another State, even if they are unknown or not accessible in their own State, provided that they facilitate international jurisdictional cooperation and do not impair the guarantees of due process.

Rule 5. Use of technological means

Technological means shall be used, as far as possible, for all proceedings, hearings and procedures, and the parties, judges, and other legal operators shall be allowed to take part in the processes or procedures using whatever digital means are available, without the need to require and comply with in-person or similar formalities that are not strictly necessary, based on the existing functional analogy between both means.

Rule 6. Tools and hardware

To the extent that due process guarantees are not impaired, there shall be no requirement to use handwritten signatures, personal presentations, or additional authentications, incorporations or presentations on physical media, or to present original physical documentation, as digitalized documentation is deemed to be sufficient.

Rule 7. Analog media and hardcopy (paper) documents

There will be a tendency to replace analog media and traditional paper-based notarial instruments with electronic media and documents.

Rule 8. Publicizing of official communication and information channels

official authorities involved in international jurisdictional cooperation shall endeavor to publish through their respective websites the official communication and information channels through which they will provide their services, as well as the technological mechanisms employed. Likewise, States shall endeavor to keep the information they provide to international organizations, such as the OAS, the Hague Conference on Private International Law, and the United Nations, among others, up to date.

Rule 9. Utilization of technology in general

As far as possible, and to the extent that each country’s technology permits, the use of electronic files, electronic documents, simple computer encoding, electronic signatures, digital signatures, electronic communications and electronic domicile shall be authorized in all judicial and administrative proceedings before the Judiciary, with the same legal effectiveness and probative value as their conventional equivalents. At the same time, care shall be taken to maintain technical security conditions and due process guarantees.

Rule 10. Electronic mail

As far as possible, e-mail—preferably that of the agency, not the personal institutional accounts of officials—shall be used for the receipt and forwarding of letters rogatory, notifications, and electronic summons, alone or accompanied by documents and other communications. For such purposes, and as established by the regulations of each country, judges, lawyers, litigants, and other legal operators must establish the corresponding mail -or equivalent- to be used for processing judicial matters. However, for informal communications, other means of electronic communication may be used.

Comment on Rule 10: For example, such electronic means of communication may include *WhatsApp* or *Telegram*. Others that serve that function may appear in the future.

Rule 11. Electronic address/domicile

To the extent that it is technically and economically feasible, States shall promote the use of electronic domicile in all judicial (and administrative?) proceedings before the judiciary, and it shall be recognized as having the same effectiveness and probative value as its conventional (or traditional?) equivalent. States shall regulate it and provide for the technical mechanisms that guarantee its safety and gradual implementation.

Rule 12. Videoconferencing

In order to overcome the difficulties and delays caused by physical distances, the use of videoconferencing is recommended for evidentiary and other proceedings, in order to help make them more expeditious, efficient, and effective, while ensuring technical security and due process guarantees.

Comments to Rule 12

- ***Agreements (Acordadas) of the Supreme Court of Justice (SCJ) of Uruguay***

This rule is inspired by, among other sources, the *Acordadas* of the Supreme Court of Justice (SCJ) of Uruguay,[45] Nos. 7784, 7902, and 7815, which gave the Ibero-American Convention on the Use of Videoconferencing the status of an *Acordada*.

In **Acordada No. 7784**,[46] of 2013, we highlight the following:

In paragraph I *in fine* it states: "Proceedings by videoconference reaffirm the principles of non-delegability, immediacy and access to Justice, by circumventing the difficulties posed by physical distances."

> "(II) it is an unquestionable truth that technological progress placed at the service of Justice enables the use of new tools to contribute to agile, efficient, and effective proceedings."
>
> (III) a modern Judiciary must assume that international collaboration between courts of different States is increasingly common and supported by a series of circumstances. These include large-scale migration of people, the increasing interconnectedness of economies and the development of the media. It is therefore necessary to address the creation and implementation of solutions that take advantage of technological development and the resources available to the Uruguayan Judiciary, so as not to undermine the degree of development of the Republic in this area and avoid being at a disadvantage with other nations."

V in fine:

[45] **Agreements (*Acordadas*):** Decisions of the **Supreme Court of Justice** in plenary session or of some of its Chambers, especially in oversight matters (*Superintendencia*). They are true "Administrative Regulations". Resolutions of the Chief Justice: These are orders of the Chief Justice of the **Supreme Court**.

[46] https://www.poderjudicial.gub.uy/documentos/70-2013/3007-171-2013-reglamento-de-dilgenciamiento-por-videoconferencia.html

> "Rules 34, 35, 42, and 95 of the so-called One Hundred Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability (*Acordada* 7647) encourage the possibility of using information technology tools to favor those who live in remote places,[47] through the use of technologies that alleviate the disadvantages they face. By way of example, the displacement of witnesses from small towns and villages involves an extraordinary expense that is often too much for the most disadvantaged to bear;"

Of course, Article 3 of the *Acordada* provides: "The IT services of the Judiciary will progressively install the necessary technical infrastructure in the various regions of the Republic, including a secure connection. Provision shall be made for its use both between courts of the Republic and for international connections."

In **Acordada No. 7902**,[48] of 2017, we highlight the following:

> "(III) that in order to provide better service to the parties before the courts, it is necessary to take full advantage of technological development and the resources available to the Judiciary;"

In **Acordada No. 7815**,[49] of 2014, we highlight the following:

Acordada 7815 grants *Acordada* status to the Ibero-American Protocol on International Judicial Cooperation, approved at the Plenary Assembly of the XVII Ibero-American Judicial Summit, held in Chile from April 2 to 4, 2014, and establishes that it, where appropriate, it shall be followed as a guideline for action.

In its Recital II) it states that the Ibero-American Protocol "...constitutes a valuable tool to promote inter-agency collaboration at the national and international levels and to facilitate compliance with requests for cooperation made by the judiciaries of the Ibero-American States;"

- ***Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters***

As for the Hague Convention of March 18, 1970, on the Taking of Evidence Abroad in Civil or Commercial Matters, there is nothing to prevent to the proceedings provided for in its Articles 7, 8, and 9 being carried out by technological means. Furthermore, Article 9, paragraph 2, is open-minded with respect to the procedures to be followed in the execution of letters rogatory:

> "However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance (sic) by reason of its internal practice and procedure or by reason of practical difficulties."

- ***Inter-American Convention on Support Obligations***

The "giving notice to the debtor" provided for in Article 13 of the Inter-American Convention on Support Obligations (CIDIP-IV, Montevideo, 1989) can be by videoconference, since the rule does not specify anything in this regard and does not require it to be in person; the "holding of a hearing" (Article 13) could also, for the same reasons, be by electronic means.

- ***ASADIP Principles on Transnational Access to Justice (TRANSJUS)***

Art. 4.6 of the Principles establishes:

> "With a view to ensuring security and maximum efficiency of inter-jurisdictional procedural measures, judges and other judicial officials may establish direct and impromptu

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[47] https://www.acnur.org/fileadmin/Documentos/BDL/2009/7037.pdf

[48] https://www.poderjudicial.gub.uy/documentos/66-2017/2169-072-2017-acordada-n-7902-preceptividad-del-interrogatorio-de-peritos-por-videoconferencias.html

[49] https://www.poderjudicial.gub.uy/documentos/69-2014/2864-122-2014-acordada-7815-protocolo-iberoamericano-de-cooperacion-judicial.html

means of judicial communication, using any appropriate mechanism to achieve certainty and security.

Accordingly, judges and other judicial officials may hold common hearings **via videoconference or other available means** or coordinate their decisions so as to avoid conflicts and ensure the effectiveness of such decisions.

The parties shall have access to the communications between the courts or, where this is not appropriate, they shall be informed of such communications."

- ***Ibero-American Convention on the Use of Videoconferencing in International Cooperation between Justice Systems and its Additional Protocol Related to Costs, Linguistic Regime, and Submission of Requests. (Mar del Plata, 2010)***

The preamble of this Agreement recognizes "the importance of increasing the use of new technologies as a tool to contribute to expeditious, efficient, and effective administration of justice." Article 1 states that the purpose of the agreement is "to promote the use of videoconferencing between competent authorities of the Parties as a specific means to strengthen and accelerate mutual cooperation in civil, commercial and criminal law, and other matters by express agreement between the parties."

Rule 13. Electronic files and documents issued by judicial and administrative authorities

Electronic files and documents issued by the judicial and administrative authorities of the States, including those containing electronic certifications and signatures, shall have the same legal validity and probative effectiveness as files and documents in physical format.

Rule 14. Direct judicial communications

Without prejudice to the transmission of letters rogatory through the formal channels established in conventional and autonomous norms in force in each State regarding international jurisdictional cooperation, judges may establish direct and spontaneous judicial communications, using any suitable mechanism that guarantees certainty, security, and due process, in order to make the requested cooperation effective (TRANSJUS Article 4.6-7, Article 2612 CCCN of Argentina, and Agreement (Acordada) No. 7885 of the Supreme Court of Justice of Uruguay),50 Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges).

Rule 15. Joint hearings and coordinated decisions

Judges and other justice operators may hold joint hearings through videoconferences or any other available means, and even coordinate their decisions to avoid contradictions between them and ensure their effectiveness. The parties may have access to communications between the courts and when this is not appropriate, they must be informed of the same.

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50 https://www.poderjudicial.gub.uy/documentos/67-2016/2586-164-2016-acordada-n-7885-designar-juzgados-de-frontera-limitrofes-con-la-republica-argentina.html. In its Recital I), Agreement 7885, of 2016, refers to the Framework Collaboration Agreement between the Supreme Court of Justice of the Eastern Republic of Uruguay and the Federal Board of Courts and Superior Courts of Justice of the Argentine Provinces and the Autonomous City of Buenos Aires, which is geared to improving direct judicial communications in matters of international cooperation. In Recital II), it states: "That, in the aforementioned agreement, it was established that the courts to be identified may use the judicial channel as a means of transmission of letters rogatory, when they involve an international request for first degree cooperation (*cooperación de primer grado*), consisting of mere formalities, the submission of evidence, and precautionary measures. For that purpose, letters rogatory may be sent, digitally signed, by means of the aforementioned e-mails;"

Rule 16. Digital, mechanical analog, digitized, or scanned signature

When judges and other operators do not have digital signatures, they may validly sign the acts, orders, and decisions they adopt by means of mechanical, digitized, or scanned autographic signatures, as available. States and their authorities shall endeavor to adopt the necessary domestic measures to ensure the security of documents signed by these means.

Rule 17. Management systems and computer support

The States shall endeavor to have adequate management systems and computer support to meet the minimum requirements for validating notifications, communications, summons, and so on, such as, inter alia, the authenticity of the documents, the certainty that the document or the letter rogatory comes from the authority from which it claims to come, as well as to allow it to be used as a valid means of evidence in judicial proceedings.

Rule 18. Electronic forms

Among other tools to expedite procedures in the area of international jurisdictional cooperation, efforts will be made to use model electronic forms.

Rule 19. When the rule does not distinguish, the interpreter may not do so

It is a general principle of law that when a rule does not distinguish, the interpreter may not do so. As we will see when analyzing some conventional and national texts in the following chapters, conventional and legal norms do not generally prohibit the use of technological means, but simply do not mention them, for chronological reasons. The most modern standards generally expressly allow such use. Therefore, as will be explained in more detail, when the rule refers to "document", without specifying, it may be interpreted as referring to a paper or digital document; when it refers to "transmit", without specifying the medium, it may be interpreted as meaning that such transmission may be physical or electronic, and so on.

Rule 20. Evolutionary or progressive interpretation of the law.

It is recommended that instruments—both *hard law* (conventions, laws, regulations) and *soft law*—governing aspects of international jurisdictional cooperation without reference to modern technological and information technology tools be interpreted in an evolutionary or progressive manner, including their use in the application and operation of the aforementioned normative instruments.

Comments to Rule 20

As discussed in the report preceding these rules, many conventions and laws on international jurisdictional cooperation, mainly for chronological reasons, do not refer to the various technological and computer tools currently available. However, neither do they prohibit the use of such new tools; moreover, for the most part, their broad language allows the technology to be included without contradicting the regulatory text. The incorporation of technology often modifies the support of the exhortation, for example, but not its content and security guarantees. On the contrary, in some cases it increases those guarantees, and always greatly streamlines procedures.

It should be added that the available technological and information technology tools are already being used in many countries, as shown in the preceding report.

The purpose of the suggestion embodied in this Rule 20 is "to remedy, precisely by means of interpretation, the aging of regulatory texts."[51]

[51] https://leyderecho.org/interpretacion-evolutiva/#:~:text=La%20interpretaci%C3%B3n%20evolutiva%20es%20producto,o%20por%20los%20padres%20constituyentes

It should be added that the so-called "evolutionary" or "dynamic" interpretation is that which "attributes to a text a current meaning," (...) "which ascribes to a normative text a new meaning, different from the usual or consolidated one. Evolutionary interpretation is the product of the adaptation of old, or relatively old, laws (or Constitutions) to new situations not envisaged by lawmakers in the past (or by the constitutional drafters)." (...) "the interpretation of normative texts must change when the circumstances in which they are to be applied change." [52]

In Colombia, Castro Herrera et al. state that "evolutionary interpretation—making specific use of the institutions of legal sociology—manages to construct a paradigm of legal interpretation suitable for the context of twenty-first century law."[53]

The aforementioned author adds: "This positive law, which emanates naturally from the social component through legally established procedures, is applied to a society that is innately dynamic and changing, and which, for elementary reasons, cannot remain static or immobile. This point, which has always been contentious, is accentuated and becomes more serious when society, institutions, customs, values, and ways of life undergo especially rapid and profound change." [54]

And concludes:

"... evolutive interpretation acts as a figure that determines the commitment of judges to interpret legal norms in a reasonable manner, that is to say, adhering to the concept of justice; and to obtain the full achievement of the application of justice in a given place and time, the judge must interpret positivized postulates based on the needs and social circumstances of the context and time in which they are applied. As Manuel Segura Ortega rightly states: "Judges have the duty to put an end to the indeterminacy of the law and, therefore, neither the obscurity, insufficiency, or silence of normative texts can be used as grounds for not rendering a decision. Accordingly, it is the legal system itself that—positively—orders judges to complete the work of the legislator where necessary." (Segura Ortega, 2008, p. 222).[55]

"... anyone who undertakes the exercise of interpreting must bear in mind and weigh each factor independently of positive law; those factors helped to strengthen the harmonization of interpretation and bring about an effective solution in each specific case. This is how sociology and the data collected from social reality become judgments that determine and give force to applicable law."[56]

Coincidentally, the renowned Uruguayan scholar, Prof. Dr. Héctor Gros Espiell, said:

"Law is a social phenomenon. It is an element of social reality. It is not only normative, but also a part of the reality to which it applies, which cannot be grasped if the law that governs it is not known. But this positive law, born from society through legally established procedures, is applied to a society that is dynamic and changing, never static nor immobile. This point, which has always been problematic, is accentuated and becomes more critical when society, institutions, customs, values, and ways of life

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[52] https://leyderecho.org/interpretacion-evolutiva/#:~:text=La%20interpretaci%C3%B3n%20evolutiva%20es%20producto,o%20por%20los%20padres%20constituyentes

[53] Castro Herrera, L.E., Maiguel Donado, C.A., Barrios Márquez, E.J., & Jaraba Salcedo, A. (2021), Construcción de sentido e interpretación evolutiva aplicada a la praxis legal y constitucional. Revista Academia & Derecho, 12 (23), p. 2.

[54] Castro Herrera, L.E., Maiguel Donado, C.A., Barrios Márquez, E.J., & Jaraba Salcedo, A. (2021), Construcción de sentido e interpretación evolutiva aplicada a la praxis legal y constitucional. Revista Academia & Derecho, 12 (23), p. 16.

[55] Castro Herrera, L.E., Maiguel Donado, C.A., Barrios Márquez, E.J., & Jaraba Salcedo, A. (2021), Construcción de sentido e interpretación evolutiva aplicada a la praxis legal y constitucional. Revista Academia & Derecho, 12 (23), p. 16-17.

[56] Castro Herrera, L.E., Maiguel Donado, C.A., Barrios Márquez, E.J., & Jaraba Salcedo, A. (2021), Construcción de sentido e interpretación evolutiva aplicada a la praxis legal y constitucional. Revista Academia & Derecho, 12 (23), p. 17-18.

undergo especially rapid and profound change. Our age—the age in which we live—is one of the best examples in history of this phenomenon."[57]

"...the law in force today cannot and must not be interpreted, necessarily and always, according to what was thought when the rule was adopted. Respect for social change, respect for what change means and will mean in an open, tolerant, and democratic society, requires that the law be interpreted and applied in a way that gives the words, terms, and concepts that the law employs the significance and meaning consistent with the times in which the interpretation is made."

"It is absurd to consider that a norm conceived and developed in the 19th century, for example, should be interpreted, necessarily and absolutely, according to then-reigning ideas, while disregarding the ideas, realities, criteria, values, and meanings, that such words, terms, and concepts have today." [58]

"... I think we all understand that when we speak of evolutionary and dynamic interpretation, we mean interpretation that necessarily takes into account the changes and evolution that the law has undergone, and considers those changes and that evolution when interpreting norms in terms of how they apply today." [59]

"It is that attitude that underpins what, in my opinion, constitutes the necessary evolutionary, dynamic, and progressive interpretation of all law, both public and private. An interpretation that considers the modern meaning of concepts, which predominates over what they used to mean and does not bar the way to future interpretations that may, in turn, come about taking into account realities that supersede those currently in existence." [60]

By way of conclusion, it should be noted that evolutionary interpretation does not mean changing the text, but rather adapting it to new realities as a result of technological progress.

Moreover, evolutionary interpretation is precisely what allows legal norms to retain their applicability and propriety, despite the time elapsed between their drafting and entry into force and their current application.[61]

Rule 21. Exhortation

States whose domestic laws prevent compliance with any of the rules set forth in this Guide are urged to proceed to a progressive development of their domestic legislation.

Part 3. Rules for international jurisdictional cooperation

Rule 22. Most favorable practices

State authorities shall always accord priority to the most favorable practices for ensuring prompt and effective international jurisdictional cooperation.

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[57] "El cambio social y político, las definiciones jurídicas y la interpretación dinámica y evolutiva del Derecho", Héctor Gros Espiell, at http://www.chasque.net/frontpage/relacion/0408/derecho.htm

[58] "El cambio social y político, las definiciones jurídicas y la interpretación dinámica y evolutiva del Derecho", Héctor Gros Espiell, in http://www.chasque.net/frontpage/relacion/0408/derecho.htm

[59] "Social and Political Change, Legal Definitions and the Dynamic and Evolutionary Interpretation of Law," Héctor Gros Espiell, in http://www.chasque.net/frontpage/relacion/0408/derecho.htm

[60] "Social and Political Change, Legal Definitions and the Dynamic and Evolutionary Interpretation of Law," Héctor Gros Espiell, in http://www.chasque.net/frontpage/relacion/0408/derecho.htm

[61] Cecilia FRESNEDO DE AGUIRRE, 147. "Public Policy: Common Principles in the American States," *Recueil des cours*, Vol. 379 (2016), Leiden/Boston, Brill Nijhoff, 2016, p. 73-396, p. 209.

Comments to Rule 22

- ***Inter-American Convention on Letters Rogatory***

This rule is inspired by Article 15 of the Inter-American Convention on Letters Rogatory,[62] which states: "This Convention shall not limit any provisions regarding letters rogatory in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties or preclude the continuation of ***more favorable practices in this regard that may be followed by these States.***" (Emphasis added.)

- ***Inter-American Convention on the Taking of Evidence Abroad***

Art. 14 of the Inter-American Convention on the Taking of Evidence Abroad (CIDIP-I, Panama, 1975) refers, as does Art. 15 of the Convention on Letters Rogatory, to more favorable practices, so we refer to the comments made therein.

- ***Inter-American Convention on Execution of Preventive Measures***

Art. 18 of the Inter-American Convention on Execution of Preventive Measures (CIDIP-II, Montevideo, 1979) establishes:

"*This Convention shall not limit any provisions regarding preventive measures in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties, or preclude the continuation of* ***more favorable practices*** *in this regard that may be followed by these States.*" (Emphasis added)

- ***Inter-American Convention on the International Return of Children***

Article 35 of the Inter-American Convention on the International Return of Children (CIDIP-IV, Montevideo, 1989) uses the expression "more favorable practices," which is also used in other conventions:

"This Convention shall limit neither the provisions of existing or future bilateral or multilateral conventions on this subject entered into by the States Parties, nor the **more favorable practices** that those States may observe in this area."

- ***Inter-American Convention on Support Obligations***

Like other Inter-American Conventions, such as the Restitution Convention, the Inter-American Convention on Support Obligations (CIDIP-IV, Montevideo, 1989) recognizes and prioritizes "more favorable practices": *"This Convention shall limit neither the provisions of existing or future bilateral or multilateral conventions on this subject entered into by the States Parties, nor the* ***more favorable practices*** *that those States may observe in this area.*"

- ***MERCOSUR Protocol on Precautionary Measures***

Article 26 of the MERCOSUR Protocol on Precautionary Measures, as well as other rules already mentioned, establishes: "*This Protocol* ***shall not restrict the application of provisions more favorable to cooperation*** contained in other Conventions on Precautionary Measures in force on a bilateral or multilateral basis between the States Parties."

- ***ASADIP Principles on Transnational Access to Justice (TRANSJUS)***

The materialization of these practices can be found, for example, in the ASADIP Principles on Transnational Access to Justice (TRANSJUS), which can be applied "where the parties have agreed that procedural aspects of their legal relationship shall be governed by them, unless expressly prohibited by the law of the forum," and also [These Principles may be applied] as long as such application is technically feasible and does not result in an outcome manifestly incompatible with the fundamental principles of the applicable law (art. 1.3).

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[62] https://www.oas.org/juridico/spanish/tratados/b-36.html

Although there are very few reports on the application of the TRANSJUS Principles, some countries report that although they do not apply them, they recognize that they are not incompatible with current regulations (e.g.: Costa Rica). There therefore seems to be no problem with applying them or this Guide.

The TRANSJUS Principles include the principle of *in dubio pro cooperationis* (Article 1.2 b), as follows: "International legal cooperation is essential to the balanced consideration of the parties' rights. In case of doubt generated by persistent normative conflict, solutions promoting international legal cooperation shall be favored."

- ***Doctrine***

Worth noting here are, as Tellechea points out, is that

> "*The position arrived at by the doctrines of Argentina and Uruguay on the occasion of the XXV Argentine Congress of International Law, Section of Private International Law, in La Plata, September 26 and 27, 2013, which addressed the issue based on the valuable summary of the issue by Professor María Blanca Noodt Taquela, referred to the "Application of the rule most favorable to international judicial cooperation", concluding unanimously: In the event of a plurality of -- in principle -- applicable sources, and without prejudice to any relevant rules on the compatibility of treaty law, the rule most favorable to international judicial cooperation shall apply" and "1.3. In particular, cooperation may be provided by having recourse to rules from different sources in accordance with the methods of private international law and general principles accepted in the field." These are concepts embraced by the ASADIP Principles, which in Chapter 1, "General Provisions and Principles", Article 1.2, espouse the aphorism in dubio pro cooperationis, adding that "legal operators must be oriented toward favoring international legal cooperation.*"[63]

Rule 23. Ways and means of transmitting letters rogatory

States shall tend to accept and use electronic means of transmitting letters rogatory, regardless of the channel used (by the parties concerned, by the judicial, diplomatic or consular channels or by the central authority), in order to expedite cooperation and make it more effective. It is recommended that the States use and develop the Central Authority channel and, as far as possible, progressively remove the legal and practical obstacles that prevent or limit direct communication between judges in neighboring countries.

Comments to Rule 23

- ***Inter-American Convention on Letters Rogatory***

Art. 4 of the Inter-American Convention on the Law Applicable to International Contracts establishes that:" Letters rogatory may be transmitted to the authority to which they are addressed by the interested parties, through judicial channels, diplomatic or consular agents, or the Central Authority of the State of origin or of the State of destination, as the case may be. (…)".

- ***Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor, and Administrative Matters of Las Leñas and its Buenos Aires amendment***

Article 5 of the Protocol on jurisdictional cooperation and assistance in civil, commercial, labor, and administrative matters (MERCOSUR, Las Leñas, 1992) establishes:

> "*Each State Party shall send to the jurisdictional authorities of the other State, through the channel envisaged in Article 2, letters rogatory regarding civil, commercial, labor, or*

[63] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116. 103-124, p. 109.

administrative matters, when their purpose is: a) to undertake procedural formalities, such as summonses, subpoenas, service of process, notifications, and so on; b) the receipt or taking of evidence."

The Buenos Aires amendment of 2002 adds to the channel provided for in Art. 2,[64] which is the central authority, the diplomatic or consular channel and the private channel. However, like the rules already analyzed, neither the Protocol nor its amendment refer to the means used, so that transmissions can be made by electronic means without contravening the rule.

The aforementioned rules establish the channels of transmission of the letters rogatory but are silent about the **means** to be used for such transmission, so there is nothing to stop letters rogatory being transmitted by digital means, regardless of whether the channel used is private, judicial, consular, or diplomatic, or the central authority. In other words, the rule does not prohibit—and therefore it is permitted—that letters rogatory be transmitted by any of the channels established in Art. 4 of the Convention in digital form.

- ***Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters***

Art. 2 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters also does not provide for the means by which letters rogatory are to be received and remitted, so the same comment applies.

Article 27 of the aforementioned Convention envisages the possibility of using other channels for remitting letters rogatory:

"*The provisions of the present Convention shall not prevent a Contracting State from*:

(a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;

(b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;

(c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention."

- ***Guide to Good Practice on Use of Video-Link under Hague Evidence Convention***

The HCCH published in November 2019, after years of research, the Good Practice Guidance on the Use of Video-Link under the Convention on Evidence. We refer readers to it and recommend its application.

- ***Inter-American Convention on the Taking of Evidence Abroad***

Article 3, paragraph 2 of the Inter-American Convention on the Taking of Evidence Abroad (CIDIP-I, Panama, 1975) establishes:

"Should the authority of the State of destination find that it lacks jurisdiction to execute the letter rogatory but consider that another authority of the same State has jurisdiction, ***it shall ex officio forward to it, through the appropriate channels, the documents and antecedents of the case***." (emphasis added).

The reference to "appropriate channels" for transmission leaves the door open to the use of computerized media.

- ***Inter-American Convention on the International Return of Children***

The Inter-American Convention on the International Return of Children (CIDIP-IV, Montevideo, 1989) establishes in its Article 7, paragraph 3:

[64] https://legislativo.parlamento.gub.uy/temporales/D2019081185-005013625.pdf#page=8

"*The Central Authorities of the States Parties shall cooperate with one another and exchange information on the operation of the Convention in order to secure the prompt return of children and to achieve the other purposes of this Convention.*"

It is evident that IT tools are extremely useful to make the cooperation and exchange of information provided for in the aforementioned regulation faster and more efficient.

Article 8 establishes:

"A party seeking a child's return may file an application or petition with the competent authorities in accordance with Article 6: a. By a letter rogatory; b. By filing a request with a central authority; or c. Directly, or through diplomatic or consular channels."

As usual, the rule does not refer to the means used to transmit the letter or request, so it can be in paper or digital format. The same applies to the contents of said instruments and accompanying documents.

Article 22 establishes:

"*Letters rogatory and requests for the return or the locating of children may be transmitted, as appropriate, to the requested authority by the parties themselves, or through judicial, diplomatic, or consular channels, or through the Central Authority of the requesting or the requested State.*"

The channels contemplated by the rule governing the transmission of letters rogatory and requests do not establish that the medium must be a paper document, so that digital documents may be used.

- ***Hague Convention of October 25, 1980, on Civil Aspects of International Child Abduction***

  Article 2 of the Hague Convention of October 25, 1980, on Civil Aspects of International Child Abduction adopts a broader approach to the measures that States may take to comply with the objectives of the Convention:

"*Contracting States shall take **all appropriate measures** to secure within their territories the implementation of the objects of the Convention. For this purpose, they shall use the most expeditious procedures available."*

Article 7 provides that:

"*The Central Authorities **shall collaborate*** with each other and promote collaboration between the competent authorities in their respective States in order to secure the immediate return of the children and to achieve the other objectives of this Convention. *They shall, in particular, either directly or through an intermediary, take **all appropriate measures to enable**:*

(a) to discover the whereabouts of a child who has been wrongfully removed or retained; (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures; (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues; (d) to exchange, where desirable, information relating to the social background of the child; (e) to provide information of a general character as to the law of their State in connection with the application of the Convention; (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access; (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers; (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child; (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application."

Given the nature of the actions to be taken by the Central Authorities to achieve the objectives of the Convention, it is evident that technological tools are extremely useful for ensuring that they act with the required speed. This is observed in practice in many countries.

Likewise, in order to comply with the mandate of Art. 9, computerized channels for transmitting requests "directly and without delay" are much more effective than the traditional ones. Article 9 mandates the following:

> "*If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State,* ***it shall directly and without delay transmit the application*** *to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be."*

Article 28 establishes:

> "*A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to appoint a representative empowered to act on the applicant's behalf.*"

The "written authorization" may be in the form of a paper or digital document, as the rule does not distinguish between the two.

The HCCH has generated a number of tools in support of the Convention and its practical implementation, such as the Guide to Good Practice, the International Hague Network of Judges, the International Child Abduction Database (INCADAT), and the Electronic Case Management System for the 1980 International Child Abduction Convention (iChild), among others.[65] Their use is recommended.

Those countries where in practice it is a requirement, in active and passive international judicial assistance (letters rogatory, obtaining evidence, etc.), to issue physical documents, sometimes even with the copies indicated in some international instruments, for their transmission by the appropriate means,[66] may in fact replace the physical transmission of paper documents with electronic transmission of originally digital or digitized documents.

Practice shows that central authorities, as agencies specialized in private international law and international jurisdictional cooperation, are a more efficient way of transmitting letters rogatory than diplomatic or consular channels, which "usually take several months."[67]

Therefore, this Guide recommends that States use and develop the Central Authority channel. For the purposes of greater efficiency, Tellechea agrees with what we have been arguing:

> "*...the transmission of letters rogatory, when carried out through the mail, generally registered mail, in practice takes several days to send the letter rogatory from the requesting central authority to the requested central authority. The speedy execution of justice makes it necessary to analyze the possibility of using electronic means both for the transmission of letters rogatory and for other communications between the central authorities regarding their execution, a possibility that was not foreseeable when these bodies were created in the nineteen sixties and seventies by the Hague and Inter-American Conventions, but that today constitutes a reality thanks to current technologies allowing*

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[65] See https://www.hcch.net/es/instruments/conventions/specialised-sections/child-abduction/ihnj

[66] Take, for example, Costa Rica, which requires it for the transmission of letters rogatory and the like through the General Secretariat of the Supreme Court of Justice and the Ministry of Foreign Affairs and Worship to the different diplomatic and consular representations in charge of forwarding the request to the central authority or the competent authority of the other country, or vice versa.

[67] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116. 103-124, p. 109-110.

for instantaneous and secure communication and capable of accrediting the authenticity of the request."[68]

The private channel also has advantages, and its operation can be improved by the ratification, by those States that have not yet done so, of the Hague Convention of October 5, 1961, Abolishing the Requirement of Legalisation for Foreign Public Documents. Thus, as Tellechea points out:

"*Using this channel, the interested party withdraws the letter rogatory from the issuing office and remits it to a correspondent in the requested State who, in accordance with the regulations of the latter, will be responsible for forwarding it to the competent court for processing: a procedure that ensures rapid and confidential transmission of requests for judicial assistance. In practice, this method is impaired by the fact that, by its very nature, it requires proof of the authenticity of the foreign letter rogatory. Between States not party to the Hague Convention of October 5, 1961, Abolishing the Requirement of Legalization for Foreign Public Documents, this accreditation requires legalization, with all the delays that this entails.24 Therefore, for this channel to be more efficient, it would be worth encouraging the countries of the Americas that have not yet done so, to adopt the Convention and ensuring that a future revision of the inter-American regulatory framework contemplates that, among States Parties to conventions such as the Hague Convention that provide for more expeditious procedures for accreditation of the authenticity of foreign documents, those procedures will be followed.*"[69]

Regarding direct communication between judges in neighboring countries, Tellechea states:

"*Various conventions provide for this option, which does not require legalization. They include the Inter-American Conventions on Letters Rogatory, Article 7; the Inter-American Convention on International Traffic in Minors, Article 15; and the Ouro Preto Protocol on Precautionary Measures, Article 19, fourth paragraph. This type of jurisdictional communication is tailored to the circumstances found in border areas, where the sociological environment favors the emergence of international private relations of all kinds and litigation arising from them, and consequently makes it necessary to attend to a significant volume of international cooperation between judges in close proximity to each other.*

This type of judicial communication has begun to be successfully applied along the Argentine-Uruguayan border on the Uruguay River, including in precautionary matters. This is not the case, unfortunately, on the border with Brazil, a country that, based on case-law interpretation of its Constitutional requirement that letters rogatory must be subject to centralized control, exequatur, before the Superior Court of Justice25, rejects the possibility of direct transmission of letters rogatory between judges in border areas, even though the issue, strictly speaking, refers to the transmission -- not control or oversight -- of the letters rogatory. This position triggers serious delays that often frustrate jurisdictional assistance and the realization of justice itself, since, e.g., a letter rogatory issued by a Uruguayan judge in the border city of Rivera to his counterpart in the neighboring city of Livramento, has to be sent to Montevideo so that the central authority in Uruguay can send it to the central authority in Brasilia, which in turn has to send it to the Superior Court of Justice, which, after checking it, sends it to the Court in Livramento for processing, which then returns it via the same route. When properly managed, this so

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[68] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116. 103-124, p. 110.

[69] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116. 103-124, p. 112.

far underutilized channel should facilitate effective jurisdictional assistance at the borders. This proposal is consistent with the "Recommendations to the States of the Americas on Border or Neighboring District Integration", adopted by the Inter-American Juridical Committee on March 3, 2014, at its 84th regular session, CJI/RES.206 (LXXXIV-O/14). In this regard, it should be noted that by Agreement (Acordada) no. 7885 of December 21, 2016, the Supreme Court of Justice of Uruguay resolved to designate the Courts bordering the Argentine Republic in the Departments of Artigas, Salto Paysandú, Río Negro, Soriano and Colonia, as "Border Courts" for the purposes of processing requests for international judicial cooperation, with this Agreement coming into force for communications sent as of April 1, 2017."[70]

Regarding precautionary matters, Tellechea affirms:

"Given the nature and needs of border areas, it would be worth including direct communication in this area between judges in neighboring countries, an option not contemplated in the channels listed by Article 13 of the Convention and which Article 19 (4) of the Ouro Preto Protocol expressly included. *At the inter-American level, direct jurisdictional communication between tribunal in border areas without the need for authentication is accepted in relation to merely procedural and evidentiary assistance by the Convention on Letters Rogatory and, in a broad manner, by the 1994 Mexico Convention on International Traffic in Minors, Article 15*."[71]

It is recommended that authentication be eliminated as a general requirement.

Tellechea's arguments in this regard are as follows:

14.a, deals with the requirement in a generic manner, without expressly excluding from it the transmission of letters rogatory through diplomatic, consular, and central authority channels, which -- based on their official nature, doctrine, and positive law -- coincide in not requiring legalization. This is the position taken by the final part of Article 11 of the 1940 Treaty on International Procedural Law of Montevideo regarding the transmission of letters rogatory through diplomatic or consular agents and, more broadly, by the 1975 Inter-American Convention on Letters Rogatory (Articles 6 and 734), which includes transmission via a central authority and direct communication between judges in neighboring countries. 6 and 734. The conventional provision in its current wording results in practice in some countries requiring legalization to authenticate requests for precautionary assistance, regardless of the channel used, when that requirement would only be appropriate in cases of transmission through private channels and, even then, provided that there is no conventional regulation between the requesting and the requested State that, like the Hague Convention of October 5, 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, establishes a more expeditious procedure for this purpose."[72]

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[70] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116. 103-124, p. 112-113.

[71] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116.

[72] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 116.

- ***Hague Convention of November 23, 2007, on the International Collection of Alimony for Children and other Family Members and Protocol on the Law Applicable to Alimony Obligations***

Art. 1 of the 2007 Convention establishes its objective as follows:

"The object of the present Convention is to ***ensure the effective*** *international recovery of child support and other forms of family maintenance, in particular by:*

(a) establishing a ***comprehensive system of co-operation*** *between the authorities of the Contracting States;*

(b) ***making available applications*** *for the establishment of maintenance decisions;*

(c) providing for the recognition and enforcement of maintenance decisions; and

(d) requiring ***effective measures for the prompt enforcement*** *of maintenance decisions.*"

It seems unquestionable that the use of technological means helps achieve the proposed objective. In addition, the use of computer tools is not prohibited by law, so there is no regulatory impediment to their use.

Chapter II of the 2007 Convention refers to Administrative Cooperation. Art. 5 establishes the general functions of the Central Authorities in the following terms:

"*Central Authorities shall:*

a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;

b) seek, as far as possible, solutions to difficulties which arise in the application of the Convention."

Art. 6, for its part, determines the specific functions of the Central Authorities:

"1. Central Authorities shall provide assistance in relation to applications under Chapter III. In particular, they shall:

a) transmit and receive such applications;

b) initiate or facilitate the institution of proceedings with respect of such applications.

2. In relation to such applications they shall take all appropriate measures:

(a) where the circumstances require, to provide or facilitate the provision of legal assistance;

(b) to help locate the debtor or the creditor;

(c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;

(d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;

(e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;

(f) to facilitate the collection and expeditious transfer of maintenance payments;

(g) to facilitate the obtaining of documentary or other evidence;

(h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;

(i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;

(j) to facilitate service of documents.

(…)."

It is evident that technology in general and information technology are useful to ensure more efficient and prompt performance of all the functions - general and specific - imposed by the Convention on Central Authorities.

Article 12 refers to the "Transmission, receipt and processing of applications and cases through Central Authorities", and paragraph 7) thereof states: "*Central Authorities shall employ t**he most rapid and efficient means of communication** at their disposal.*" The previous comment applies here, too.

Next, Art. 13 refers to "means of communication and provides:

"*Any application submitted through the Central Authorities of the Contracting States in accordance with this Chapter, or any documentation or information attached to or provided by a Central Authority, **may not be challenged by the respondent on the sole ground of the medium or means of communication used*** between the respective Central Authorities."

This rule is of particular importance. It should be taken as an example that, if the requested State does not yet use certain media or means of computerized communication that the requesting State does use, it must admit them, because the medium and the means do not alter the substance of the document.

Chapter V on recognition and enforcement of decisions includes Art. 29, which states:

"The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter."

This is one more example of cases in which it is not necessary to require attendance in person.

Another rule of the Convention that deserves to be highlighted in this Guide is Art. 52, which enshrines the so-called "Most Effective Rule", as follows:

"1. *This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a reciprocity arrangement in force in the requested State that provides for:*

(a) broader bases for recognition of maintenance decisions, without prejudice to Article 22 f) of the Convention;

(b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions;

(c) more beneficial legal assistance than that provided for under Articles 14 to 17; or

(d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State.

2. This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph 1 a) to *c). However, as regards simplified, more expeditious procedures referred to in paragraph 1 (b), they must be compatible with the protection offered to the parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal*."

With respect to the forms contemplated in this Agreement, it is worth reiterating that nothing prevents them from being completed in digital format and transmitted by computer.

It may be concluded, as Albornoz and Paredes do, that this Agreement has a strong relationship with technology and encourages its use. Its entire cooperation scheme was structured with the objective of making the best use of ICTs and the new opportunities that future ICT advances may create. The link between the Child Support Convention and technology is clearly illustrated by *iSupport*, an electronic

case management and secure communications system for cross-border child support collection, developed by the HCCH. This innovative platform, which uses e-CODEX electronic communications technology, enables States to achieve considerable savings and provide their citizens with effective access to justice.[73]

- ***Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards***

The Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (CIDIP-II, Montevideo, 1979) also does not specifically provide for the use of technological means for its application in practice. However, there is nothing to prevent meeting its requirements using the technological tools available today.

- ***Inter-American Convention on Support Obligations***

Art. 11 of the Inter-American Convention on Maintenance Obligations (CIDIP-IV, Montevideo, 1989) establishes the conditions that a judgment must meet to be extraterritorially effective. These include "*That the judgment and the documents annexed to it are covered by the external formalities necessary for them to be considered authentic in the State from which they originate*" (paragraph d), without specifying whether the judgment and the documents annexed to it have to be on paper or can be digital, so there is nothing to prevent the latter.

The same is true with respect to the requirement of subparagraph e) regarding notice and summons: "*That the defendant has been served or summoned in due legal form in a manner substantially equivalent to that accepted by the law of the State where the judgment is to take effect*" and of the requirement of Art. 12: "*A request for enforcement of an order shall include the following; A certified copy of the order; Certified copies of the documents needed to prove compliance with Article 11.e and 11.f; A certified copy of a document showing that the support order is final or is being appealed.*" However, there is nothing to prevent meeting its requirements using the technological tools available today.

- ***The Hague Convention of May 29, 1993, on Protection of Children and Cooperation in Respect of Intercountry Adoption***

As in other conventions, the Hague Convention of May 29, 1993, on Protection of Children and Cooperation in Respect of Intercountry Adoption requires, in order to achieve its objectives, effective and rapid communications between Central Authorities, as well as with other competent authorities of the States Parties. Such communication is crucial for the proper implementation of this Convention. Although the Convention does not expressly refer to ICTs, their use is fully compatible with the Convention regime and should be promoted in practice, as recognized by the 2005 and 2015 Special Commissions.[74]

- ***Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law -UNCITRAL***

Chapter IV of the Model Law refers to cooperation with foreign courts and representatives.[75] Article 25.2 expressly empowers courts to communicate directly with foreign courts or representatives

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[73] ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224-254, https://doi.org/10.1080/17441048.2021.1950332 p. 232, where they cite the corresponding HCCH site: https://www.hcch.net/en/instruments/conventions/isupport1/

[74] ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224–254, https://doi.org/10.1080/17441048.2021.1950332, p. 231-232.

[75] https://undocs.org/pdf?symbol=en/A/RES/52/158

or to request information or assistance -- also directly-- from them. In the same vein, Art. 26 refers to direct communications.

Most notable is Article 27, which establishes that the cooperation referred to in Articles 25 and 26 may be implemented by **any appropriate means**. This flexible approach undoubtedly encourages the use of ICTs, such as telephone, e-mail, video-link or others in international cooperation, at least in cross-border insolvency matters.[76]

- ***ASADIP Principles on Transnational Access to Justice (TRANSJUS)***

Art. 5.1, 2nd paragraph of the Principles establishes:

In any case, and in particular when it is not possible to achieve the initial summons, subpoena, or notification of the defendant in person, the claimant may request that service of process or other notices to the defendant be effected **by any available technological means**, pursuant to Article 4.7 of these Principles."

In fact, the possibility for the claimant to request the use of technological means is not limited to situations where notification cannot be made in person, as the Transjus Principles strongly encourage the use of technological tools to foster cooperation in international litigation.[77]

- ***Conference of Ministers of Justice of Ibero-American Countries (COMJIB)***

On October 30, 2004, in Cartagena de Indias (Colombia), the Member States of the COMJIB[78] created the IberRed (Ibero-American Network for International Legal Cooperation),[79] which "is a cooperation tool, in civil and criminal matters, made available to the legal operators of 22 Ibero-American countries and the Supreme Court of Puerto Rico (including Spain, Portugal and Andorra), which benefits more than 500 million citizens."[80]

IberRed has a web page with a public and a private access that constitutes a secure communication system, called Iber@, for points of contact and central authorities. The security of the Iber@ system and the ease with which it can be used and accessed allow for a "collaborative 2.0 environment" through which members can interact to optimize knowledge management with respect to matters addressed in the Iber network. In addition, Iber@ does not require software, which means it can be used from any PC thanks to its authentication system, and allows secure, real-time communication, no matter where the point of contact is located."[81]

- ***Treaty of Medellin on the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities (2019)***

It is crucial that the States take into account the solutions envisaged in the Treaty of Medellin, Article 1 of which establishes that its purpose is to regulate "...the use of the Iber@ electronic platform as a formal and preferential means of transmission of requests for international legal cooperation between Central Authorities, within the framework of the treaties in force between the parties and which contemplate direct communication between said institutions."

For the purposes of the Treaty, "requests for international legal cooperation" means "requests between Central Authorities whose transmission is carried out under a treaty in force in criminal, civil,

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[76] ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224–254, https://doi.org/10.1080/17441048.2021.1950332, p. 233.

[77] ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224–254, https://doi.org/10.1080/17441048.2021.1950332, p. 235.

[78] https://comjib.org/

[79] https://comjib.org/iberred-presenta-su-nueva-plataforma-de-cooperacion-juridica/

[80] https://comjib.org/iberred/

[81] https://comjib.org/iberred/

commercial, labor, administrative or any other field of law, as well as subsequent actions arising therefrom or which are covered by the same treaty." As can be seen, the material scope of application of the treaty is broad.

Likewise, "transmission" of requests for international legal cooperation, for the purposes of the Treaty, means "...the sending between Central Authorities, by means of Iber, of any type of request for international legal cooperation, its response, follow-up or any communication related thereto and its execution, such as clarifications, extensions, and suspensions, among others. In this sense, it is understood to include the spontaneous transmission of information in accordance with the treaties in force between the Parties." This standard also allows for a broad interpretation that in practice is very useful.

Rule 24. Medium used for the letter rogatory

It is recommended that State authorities remit the letter rogatory in digital format.

Comments to Rule 24

Neither Art. 4 of the Letters Rogatory Convention nor any other refers to the medium to be used for a letter rogatory, so that it need not necessarily be on paper, and may be digital. It should be noted that it is not the content of the letter rogatory that is being modified, but rather the medium in which the information is stored, which goes from being material to being electronic.

- ***Inter-American Convention on Execution of Preventive Measures***

Like most such texts, the Inter-American Convention on the Execution of Preventive Measures of 1979 uses expressions such as plead, inform, return, interpose, transmit, accompany, and process in reference to letters rogatory and other documents and their handling (in particular, arts. 5, 10, 11, 13, 15 and 16), but nowhere does it mention that such letters rogatory and documents and their processing must be done by traditional means, in person, on paper.

- ***Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters***

Article 1 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters provides that States shall request the taking of evidence or other measures "by letter rogatory", without specifying whether it should be on paper or in a digital file, so that the latter would not be prohibited; it is simply not mentioned for chronological reasons.

- ***Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards***

As for the Inter-American Convention on the Extraterritorial validity of Foreign Judgments and Arbitral Awards (CIDIP-II, Montevideo, 1979), it should be noted that the conditions that the judgment or award must meet, according to Art. 2, in order to be recognized as extraterritorially effective can be met, at least most of them, in digital format. Thus, for example, "*the formal requirements necessary for them to be deemed authentic in the State of origin*" (subparagraph a) need not necessarily be recorded on paper, as evidenced by the electronic note in the margin (*apostilla*). Much less translations (subparagraph b), which can perfectly well be done and transmitted in digital form. As for the legalization requirement (subparagraph c), it is sufficient to refer to what was said in Part 3 on merely procedural cooperation.

Art. 3 lists the documents of proof required to request execution of judgments, awards and decisions:

"(a) A certified copy of the judgment, award or decision;

"(b) A certified copy of the documents proving that the provisions of items (e) and (f) of the foregoing article have been complied with; and

"(c) A certified copy of the document stating that the judgment, award or decision is final or has the force of *res judicata.*

There is nothing requiring that the "certified copies" be on paper; therefore, they can be digital.

- ***Supplemental Agreement to the Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor, and Administrative Matters.***

Art. 19 of the Protocol on jurisdictional cooperation and assistance in civil, commercial, labor, and administrative matters (MERCOSUR, Las Leñas, 1992) establishes: "Request for recognition and enforcement of judgments and arbitral awards by judicial authorities **shall be transmitted by way of rogatory letter through the Central Authority**."

As can be seen, the rule does not require that the letter rogatory has to be in paper form and that its transmission be by physical transfer of that paper, by hand, so that the letter rogatory can perfectly well be drawn up and transmitted by computerized means.

Regarding the conditions for its extraterritorial validity, required by Article 20, the same comments apply as those made regarding Article 2 of the Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

- ***Hague Convention of November 23, 2007, on the International Recovery of Child Support and Other Forms of Family Maintenance***

Among the definitions in Art. 3 of the Hague Convention of November 23, 2007, on the International Recovery of Child Support and Other Forms of Family Maintenance, we find that paragraph d) states that "***agreement in writing***" "*means an agreement* ***recorded in any medium****, the information contained in which is accessible so as to be usable for subsequent reference."* It is very clear that the definition of "written agreement" includes agreements recorded in digital format.

- ***Treaty of Medellin on the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities (2019)***

Pursuant to Article 3.1 of the Treaty of Medellin, the Parties agree to use the secure electronic platform "Iber@" "for the transmission of requests for international legal cooperation between Central Authorities, within the framework of the relevant treaties in force between the Parties and with the legal effects provided for in such treaties." And subparagraph 3 adds: "The documentation transmitted between Central Authorities by means of Iber@ shall be considered original and/or authentic for the purposes provided for in the treaties in force between the parties. Iber@ validates the electronic transmission; however, the competent authorities shall be responsible for analysis of the content. Transmission of applications and their documentation via Iber@ shall not require subsequent physical submissions."

Rule 25. Requirements for compliance with the letter rogatory

It is recommended that State authorities allow compliance with the requirements to be met by a digital letter rogatory.

Comments to Rule 25

- ***Inter-American Convention on Letters Rogatory***

Article 5 of the Convention stipulates: "Letters rogatory shall be executed in the States Parties provided that they meet the following requirements:

a. The letter rogatory is legalized, except as provided for in Articles 6 and 7 of this Convention. The letter rogatory shall be presumed to be duly legalized in the State of origin when legalized by the competent consular or diplomatic agent;

b. The letter rogatory and the appended documentation are duly translated into the official language of the State of destination."

The rule establishes two requirements: legalization and translation.

- ***HCCH Apostille Convention [Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents]***

With respect to legalization, it should be noted that when the States involved are party to the Convention of October 5, 1961, abolishing the requirement of legalization for foreign public documents *(HCCH Apostille Convention of 1961)*,[82] the documents will be authenticated through this mechanism and not through legalization.

The Convention has more than 120 States Parties, and many countries have now implemented one or more components of the e-APP (e-Apostille Program) or are in the process of doing so. That program "...was launched in 2006 to promote and facilitate the implementation of technology within the framework of the Convention of October 5, 1961, Abolishing the Requirement of Legalization of Foreign Public Documents (Apostille Convention). It is designed to ensure the continued effective operation of the Convention through the issuance of electronic Apostilles (e-Apostilles) and the use of electronic Apostille records that recipients can access online to verify the origin of an Apostille they have received (e-Records)."[83]

This shows that documents, whether in paper or digital format, can be authenticated by electronic means, such as the electronic apostille. When the Apostille Convention is not applicable, the manner in which digital documents may be digitally legalized may also be regulated.

Regarding the translation requirement, the rule does not preclude the translation being done digitally, including the mechanisms for its signature and authentication.

Rule 26. Documents accompanying the letter rogatory

It is recommended that State authorities allow digital documents accompanying a letter rogatory. Where digitization is not possible, the most efficient and fastest practices possible shall be used.

Comments to Rule 26

- ***Inter-American Convention on Letters Rogatory***

Article 8 of the Convention stipulates: "Letters rogatory shall be accompanied by the following documents to be delivered to the person on whom process, summons or subpoena is being served:

a. An authenticated copy of the complaint with its supporting documents, and of other exhibits or rulings that serve as the basis for the measure requested;

b. Written information identifying the judicial or other adjudicatory authority issuing the letter, indicating the time-limits allowed the person affected to act upon the request, and warning of the consequences of failure to do so;

c. Where appropriate, information on the existence and address of the court-appointed defense counsel or of competent legal-aid societies in the State of origin."

[82] https://assets.hcch.net/docs/52558144-9886-451b-8a54-8ec253fba7ff.pdf
[83] https://assets.hcch.net/docs/f71e22ca-3bc4-4aca-a57f-426b011b3e33.pdf

The expression "documents to be delivered to the person on whom process, summons or subpoena is being served" does not mention that the document has to be on paper, so it can be in digital format. It also does not require that the delivery be physical or in person, so it can be done electronically, where that possibility exists.

Regarding the documents referred to in paragraph a. above: "Authenticated copy of the complaint with its supporting documents, and of other exhibits or rulings that serve as the basis for the measure requested", if they were originally digital, there will be no problem delivering them by electronic means. Otherwise, if the original document is on paper, there are technical means to digitize it, such as scanning.

If the digitization of documents originally issued on paper is difficult for reasons of time and/or cost, because they are very bulky, or for any other reason, there are alternative ways to overcome the problem. Thus, for **example**, in Uruguay, "If the notification is accompanied by existing documentation in paper format, after being notified electronically, the addressee has 3 working days to withdraw the documents in question. If the interested party does not withdraw the documents on time, the notification will be deemed to have been made upon expiration of those three days." (Report by Dr. Daniel Trecca)

Rule 27. Preparation of letters rogatory

States Parties to the 1979 Additional Protocol to the 1975 Convention on Letters Rogatory and/or the 1984 Additional Protocol to the 1975 Convention on the Taking of Evidence shall prepare letters rogatory by completing in digital form the forms provided by said Protocols and their Annexes. The copy to be kept by the requested State and other documents may be digital. States not party to the aforementioned Protocols shall endeavor to develop and provide their authorities with forms that can be digitally completed and processed.

Comments to Rule 27

- ***1979 Additional Protocol to the Letter Rogatory Convention***

Article 3 of the 1979 Additional Protocol to the Convention on Letters Rogatory provides that:

"*Letters rogatory shall be prepared on forms that are printed in the four official languages of the Organization of American States or in the languages of the State of origin and of the State of destination and conform to Form A contained in the Annex to this Protocol.*"

Based on an evolving or progressive interpretation, as mentioned in **Rule 20**, nothing precludes the preparation of forms created in digital format, in the required languages.

"Letters rogatory shall be accompanied by:

a. Copy of the complaint or pleading that initiated the action in which the letter rogatory was issued, as well as a translation thereof into the language of the State of destination;"

- ***1984 Additional Protocol to the 1975 Convention on the Taking of Evidence Abroad***

The 1984 Additional Protocol to the 1975 Convention on the Taking of Evidence provides, as does the 1979 Additional Protocol to the Convention on Letters Rogatory, annexed forms on which letters rogatory requesting the taking of evidence are to be drawn up (Article 2) and instructions on their transmission and processing all (Article 3). We refer here to the comments made above with respect to the forms and rules on the subject in the 1979 Protocol.

There is nothing in the text of the rule to prevent the digital letter rogatory from being accompanied by the documents indicated in the rule, in digitized format, if the original was on paper. In order to avoid burdening the judicial or other authority with the task of digitizing the documents referred to, the party concerned may be asked to submit a digital version of the complaint or pleading in question. In fact, the original complaint or pleading is prepared on a computer, and then printed out to be filed with the appropriate court or authority.

"*b. Untranslated copy of the documents attached to the complaint or pleading*."

Same comment as for paragraph a). The parties may be requested to submit this documentation in digital form.

"*c. Untranslated copy of any rulings ordering issuance of the letter rogatory*."

Same comment as for paragraph a). Note that the original of the aforementioned rulings is typed into a computer, so the digital document already exists, and can also be digitally signed and authenticated.

"*d. Form conforming to Form B annexed to this Protocol and containing essential information for the person to be served or the authority to receive the documents; and*"

Nothing precludes Annex B from being completed on the computer, in its digital version, and then transmitted electronically.

"e. Certificate conforming to Form C annexed to this Protocol on which the Central Authority of the State of destination shall attest to execution or non-execution of the letter rogatory."

Nothing precludes Annex B from being completed on the computer, in its digital version, and then transmitted electronically.

"The copies shall be regarded as authenticated for the purposes of Article 8(a) of the Convention if they bear the seal of the judicial or administrative authority that issued the letter rogatory."

The incorporation of the seal of the judicial body in the aforementioned documents is an IT issue to be solved by the respective technicians, which is undoubtedly technically feasible.

"*A copy of the letter rogatory together with Form B and the copies referred to in items a, b, and c of this Article shall be delivered to the person notified or to the authority to which the request is addressed. One of the copies of the letter rogatory and the documents attached to it shall remain in the possession of the State of destination; the untranslated original, the certificate of execution and the documents attached to them shall be returned to the Central Authority of the State of origin through appropriate channels*."

Delivery to the notified person and transmission to the authority to which the request is addressed may be made in digital form. The copy to be kept by the requested State may be digital, as well as the other documents mentioned in this paragraph of Art. 3 of the Protocol.

"*If a State Party has more than one official language, it shall, at the time of signature, ratification or accession to this Protocol, declare which language or languages shall be considered official for the purposes of the Convention and of this Protocol. If a State Party comprises territorial units that have different official languages, it shall, at the time of signature, ratification or accession to this Protocol, declare which language or languages in each territorial unit shall be considered official for the purposes of the Convention and of this Protocol. The General Secretariat of the Organization of American States shall distribute to the States Parties to this Protocol the information contained in such declarations."*

- ***The Hague Agreement on the Notification or Transfer Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters***

Pursuant to Art. 3 of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965), requests for service must be made on model forms annexed to the convention.

- ***Supplemental Agreement to the Protocol on Precautionary Measures***

The Supplemental Agreement to the Protocol on Precautionary Measures (Montevideo, 1997) approves 7 forms,[84] with two columns, one in Spanish and the other in Portuguese, to avoid translation, which is costly and time-consuming, to which data is simply entered in the spaces left blank.

Forms 1 to 3 refer to letters rogatory requesting precautionary measures; Form 4, to letters rogatory communicating requesting the stay or revocation of provisional measures (*contracautela*); Form 5, to letters rogatory communicating compliance with the requested measure; Form 6, to letters rogatory communicating the filing of the lawsuit in the main proceeding; and Form 7, to letters rogatory communicating the lifting of the precautionary measure.

The Agreement makes no reference to the fact that the forms must be printed or that the information required must be incorporated on paper; it is clear that their use in digital format is perfectly feasible, does not contradict any standard, and greatly expedites their preparation and transmission, so that States are urged to make use of the resources offered by technology.

In sum: the above rules do not mention digital tools but do not prohibit them either, so there is nothing to prevent their use to comply with the way letters rogatory are prepared or the use of the attached forms in digital format.

Rule 28. Transmission and processing of the letter rogatory

It is suggested that State authorities transmit and execute letters rogatory digitally.

Comments to Rule 28

- ***Additional Protocol to the Convention on Letters Rogatory***

Article 4 of the 1979 Protocol to the Convention on Letters Rogatory of 1975 stipulates:

"*Upon receipt of a letter rogatory from the Central Authority in another State Party, the Central Authority in the State of destination shall transmit the letter rogatory to the appropriate judicial or administrative authority for processing in accordance with the applicable local law*."

"Upon execution of the letter rogatory, the judicial or administrative authority or authorities that processed it shall attest to the execution thereof in the manner prescribed in their local law and shall transmit it with the relevant documents to the Central Authority. The Central Authority of the State Party of destination shall certify execution of the letter rogatory to the Central Authority of the State Party of origin on a form conforming to Form C of the Annex, which shall not require legalization. In addition, the Central Authority of the State of destination shall return the letter rogatory and attached documents to the Central Authority of the State of origin for delivery to the judicial or administrative authority that issued it."

If the applicable domestic law does not expressly prohibit it but simply does not mention it, and of course if it expressly authorizes it, such transmissions, records, remissions, certifications and dispatches may be made in digital form.

If in any country there is a regulation that expressly prohibits these operations in digital form, which we have not been able to ascertain, it would be best to amend in line with the recommendations of this Guide and contemporary requirements.

[84] http://www.sice.oas.org/Trade/MRCSRS/Decisions/DEC997.asp and https://www.casi.com.ar/sites/default/files/e19971215%20AC%20PROTOCOLO%20MEDIDAS%20CAUTELARES.pdf

It is especially recommended that direct communications between the central authorities and the courts of the State to which they belong "in all matters relating to the receipt, transmission and processing of requests for international assistance", (...) "eliminating the intermediation of other agencies, which will significantly shorten the time required for processing assistance." In order to avoid possible interferences by the administration in the performance of a cooperative act, it is interesting to note the Uruguayan judicial system's Supreme Court of Justice Resolution 7134/92, which, for the purpose of scheduling the shifts of the offices involved in processing letters rogatory received from abroad, takes into consideration the date they were issued, thus avoiding any manipulation in this regard. To that end, the Supreme Court annually approves a Schedule of Shifts for processing foreign letters rogatory. Similarly, to avoid interference in the processing of letters rogatory, the Private International Law Section of the Argentine Association of International Law recommended at the XXV Argentine Congress of International Law, Conclusion 2.3: "To ensure to the greatest extent possible the technical independence of the central authority."[85]

- ***The Hague Agreement on the Notification or Transfer Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters***

Article 5 of the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters (1965) provides:

> *"The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either:*
>
> *a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or*
>
> *b)* by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed. (…)"

If the legislation of the requested State admits the use of electronic means and channels, there will be no impediment; in principle, there will be no impediment if such legislation does not prohibit it. If the requesting party so requests, there should also be no objection to the use of technological tools, unless the legislation of the requested State expressly prohibits it.

For their part, Articles 10, 11, and 19 show openness to other forms of document referral, thereby authorizing the use of technological tools:

> **Article 10:**
>
> "Provided the State of destination does not object, the present Convention shall not interfere with:
>
> *a) the freedom to send judicial documents, by postal channels, directly to persons abroad,*
>
> *b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,*
>
> *c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.*"
>
> **Article 11:**
>
> "*The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of*

[85] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 111.

transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities."

Although, obviously for chronological reasons, the aforementioned regulations do not mention digital technological tools, there is nothing to prevent them from being used in compliance with this agreement, given the broad wording used: "...channels of transmission other than those provided for in the preceding Articles... *"*

As a reaffirmation of the above, it should be recalled that the Hague Conference (HCCH) has expressly stated that e-mail is functionally equivalent to postal means of communication.[86]

Art. 19:

"To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions."

In conclusion, it can be affirmed, with Albornoz and Paredes, that there is no legal obstacle in this Convention to Central Authorities or diplomatic or consular personnel using electronic means to transmit requests for cooperation and the subsequent certificates informing whether the documents were served or not. Therefore, it can be concluded that the Convention implicitly accepts the use of ICTs, which is undoubtedly very beneficial for the implementation of cooperation and is consistent with the spirit of the Convention.[87]

- ***Inter-American Convention on Execution of Preventive Measures***

Article 17 of the Inter-American Convention on Execution of Preventive Measures (CIDIP-II, Montevideo, 1979) establishes:

"States Parties belonging to economic integration systems or having common borders ***may agree directly among themselves upon special methods and procedures more expeditious than those provided for in this Convention****."* *These agreements may be extended to include other States in the manner in which the parties may agree*." (Emphasis added)

- ***MERCOSUR Protocol on Precautionary Measures***

The MERCOSUR Protocol on Precautionary Measures (Ouro Preto, 1994) contains provisions along the same lines as those mentioned above.

Article 2 establishes: "Precautionary measures *may be* ***requested****...*"

Art. 4 mentions the actions of ***decreeing*** precautionary measures and ***adopting*** orders.

Art. 11 refers to "***providing for*** precautionary measures."

Article 14 establishes: "*The judge or court of the requesting State* ***shall communicate*** *to the judge or court of the requested State: a) when* ***transmitting*** *the rogatory letter, the time limit - counted from the enforcement of the protective measure - within which the application (demanda) in the main proceeding must be* ***filed*** *or* ***brought****; b) as soon as possible, the date of* ***filing*** or the non-filing of the application in the main proceeding."

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[86] ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224–254, https://doi.org/10.1080/17441048.2021.1950332 , p. 228, which contains the following footnote reference: "E.g., the 1999 Geneva Round Table and the 2003 and 2009 Meetings of the Special Commission on the Practical Operation of the Service Convention. See HCCH, Practical Handbook on the Operation of the Service Convention (HCCH, 4th ed., 2016) 169."

[87] ALBORNOZ, María Mercedes and PAREDES, Sebastián, "No turning back: information and communication technologies in international cooperation between authorities", *Journal of Private International Law*, 2021, Vol. 17, No. 2, 224–254, https://doi.org/10.1080/17441048.2021.1950332, p. 228.

Article 15 establishes: *"The judge or court of the requested State **shall** immediately **inform** the judge or court of th*e requesting State of the date on which the requested precautionary measure was complied with or the reasons why it was not complied with."

Article 19 refers to the channels of transmission of letters rogatory: "*diplomatic or consular channels, through the respective Central Authority or by the interested parties*."

As in other Conventions already analyzed, this one does not establish whether the requests, decrees, adoption of orders, communications, transmissions, and so on must be on paper or may be made in digital format.

Rule 29. Technical capacity-building of the Central Authorities

It is recommended that the States train and keep their central authorities officials up to date with latest developments.

Comments to Rule 29

As stated by Professor Tellechea, "The complexity of the activity entrusted to central authorities makes it necessary to train their officials in the different levels and forms of international judicial assistance. To that end, it will be advisable to provide in future documents for periodic meetings between central authorities in the Americas for this purpose, as well as to try to standardize their actions through the preparation of good practice guides."[88]

Rule 30. Evaluate the possible territorial decentralization of Central Authorities

The possible territorial decentralization of central authorities is recommended for very large States.

Comment to Rule 30

"The purpose of this initiative is to make the operation of the central authorities more agile and more closely linked to the environment in which they operate and to the needs of the parties and operators in judicial proceedings. This concurs with Conclusion 2.2, issued by the Private International Law Section of the Argentine Association of International Law at the aforementioned XXV Congress."[89]

Rule 31. Special formalities and procedures in the enforcement of evidentiary cooperation measures

The requesting State may request, and the requested State shall endeavor to comply with, special formalities and procedures, such as the use of information technology, when complying with the requested evidentiary cooperation measure.

Comments to Rule 31

- ***Inter-American Convention on the Taking of Evidence Abroad***

Article 6 of the Convention provides:

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[88] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 111.

[89] TELLECHEA BERGMAN, Eduardo, "Hacia Una necesaria profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros En el ámbito interamericano", Revista de Derecho de la Universidad de Montevideo- No. 32 - Year 2017, p. 103-124, p. 111-112.

"*At the request of the authority issuing the letter rogatory, the authority of the State of destination may accept the observance of additional formalities or special procedures in performing the act requested, unless the observance of those procedures or of those formalities is contrary to the laws of the State of destination or impossible* [of performance]."

This rule enables the requesting State to request the use of information technology, and the State is entitled - and this Guide encourages it to do so - to comply with such a request.

The two exceptions that the rule provides for in respect of such compliance are: first, that the requests "*are incompatible with the law of the requested State*", which, as discussed above, is infrequent; and second, that the request is "*impossible for* the requested State *to comply with.*" In the latter case, this Guide encourages and recommends that States incorporate the necessary technology.

(See Comments to Rule No. 12)

Rule 32. Scope of the public order (ordre public, sometimes translated as public policy) exception

It is especially recommended that in matters of international jurisdictional cooperation, the authorities of the States clearly recognize that the use of technological tools does not contravene fundamental principles of international public order, even if their use is not provided for in their domestic laws. These tools are merely instrumental, and do not affect substantive aspects, as long as the security of the means used is guaranteed and the guarantees of due process are respected.

Comments to Rule 32

International public order is an exception to the application of foreign law that otherwise be applied by a judge pursuant to judicial conflict of law rules. The exception to the application of foreign law operates only in cases contravening **international** public order, constituted by those **fundamental principles that make up the essence and legal individuality of a State**. These principles may, or may not, be set forth in positive rules.[90]

It is not enough that applicable foreign law formally contravenes the rules establishing the public order principles; it must contravene the fundamental principles themselves. As Boggiano puts it, the incompatibility of foreign law must be with the spirit of the judge's law.[91]

The **internal** public order is made up of all those rules in the State's legal system that cannot be modified by the will of the parties. International public order is much more restricted than domestic public order.[92]

In general, contracting States include a public order reservation clause in treaties, which makes it unquestionably lawful to resort to the international public order exception when applying a treaty, although within the conceptual limits governing that exception. When the issue was discussed at CIDIP-I, in Panama, in 1975, it was agreed to include the formula of Article 17 of the Convention on Letters Rogatory, which is transcribed below, albeit recognizing "the necessary exceptional nature of its application."[93]

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[90] FRESNEDO DE AGUIRRE, Cecilia, *Curso de Derecho Internacional Privado*, Volume I, 2nd ed., Montevideo, FCU, 2004, p. 268ff.
[91] BOGGIANO, Antonio, *Derecho Internacional Privado*, T. 1, 2nd Ed., Buenos Aires, Depalma, 1983, p. 291.
[92] FRESNEDO DE AGUIRRE, Cecilia, *Curso de Derecho Internacional Privado*, Volume I, 2nd ed., Montevideo, FCU, 204, p. 272.
[93] PARRA ARANGUREN, Gonzalo, *"La Convención Interamericana sobre Normas Generales de DIPr. (Montevideo, 1979)"*, p. 178, No. 23.

- ***ASADIP Principles on Transnational Access to Justice (TRANSJUS)***

With respect to the "**security of the means used**", it should be noted that the ASADIP-TRANSJUS Principles establish, in Article 4.7:

> "As long as the security of the communications can be guaranteed, judges and other judicial officials shall promote and foster the use of new information and communication technologies, such as telephone communications, videoconferencing, electronic messaging and any other means of communication appropriate for effecting the requested cooperation."

- ***Inter-American Convention on General Rules of International Private Law***

On the occasion of CIDIP-II (Montevideo, 1979), it was decided to basically accept the text approved in Panama, although, at the behest of GOLDSCHMIDT, a clause was introduced to the effect that for the international public order exception to operate, the application of foreign domestic law would have to manifestly contravene the "principles" of public order of the law of the forum (lex fori). The text of Article 5 of the General Rules Convention states:

> *"The law declared applicable by a convention on private international law may be refused application in the territory of a State Party that considers it manifestly contrary to the principles of its public policy (ordre public).*

The formula approved in Montevideo takes up the idea already admitted in Panama that the violation must be manifest, a specification that is intended to exclude the possible operation of the exception in cases of doubt; but it perfects it in the sense of specifying that it apply to the principles of the law itself, "without allowing its intervention when only the norms that develop those principles are affected."[94] The inclusion in Article 5 of the expression "manifestly" underlines the completely exceptional nature of international *ordre public.*[95]

VALLADÃO had stressed the importance of including the word "manifestly,"[96] in order to restrict the natural tendency to extend the hypotheses regarding the operation of the exception.

Let us look at some examples of rules on the public order exception, contained in conventions formulated, in general, in similar terms.

For instance:

- ***Inter-American Convention on Letters Rogatory***

Article 17 of the Inter-American Convention on Letters Rogatory (CIDIP-I, Panama, 1975):

- ***Inter-American Convention on the Taking of Evidence Abroad***

Article 16 of the Inter-American Convention on the Taking of Evidence Abroad (CIDIP-I, Panama, 1975):

- ***Inter-American Convention on Support Obligations***

Article 22 of the Inter-American Convention on Support obligations (CIDIP-IV, Montevideo, 1989): "T*he enforcement of foreign judgments or application of foreign law prescribed by this*

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[94] PARRA ARANGUREN, Gonzalo, "La Convención Interamericana sobre Normas Generales de DIPr. (Montevideo, 1979)", *Inter-American Juridical* Yearbook, Washington, OAS Secretariat for Legal Affairs, 1979, p. 157-186, p. 177, No. 22. 157-186, p. 177, No. 22.

[95] GOLDSCHMIDT, Werner, "Normas Generales de la CIDIP-II. Hacia una teoría general del derecho internacional privado interamericano", p. 152, No. 5.

[96] PARRA ARANGUREN, Gonzalo, "La Convención Interamericana sobre Normas Generales de DIPr. (Montevideo, 1979)", *Inter-American Juridical* Yearbook, Washington, OAS Secretariat for Legal Affairs, 1979, p. 157-186, p. 177, No. 22.

Convention may be refused when the requested State Party considers such enforcement or application ***manifestly contrary to its fundamental principles of public policy*** *(order public).”*

- ***MERCOSUR Protocol on Precautionary Measures***

Article 17 of the MERCOSUR Protocol on Precautionary Measures (Ouro Preto, 1994) and its Supplemental Agreement (Montevideo, 1997) establishes: “*The jurisdictional authority of the requested State may refuse to comply with a letter rogatory concerning precautionary measures, when these are* ***manifestly contrary to its*** **ordre public [*orden público*].”**

Without prejudice to the inclusion or not of an express rule on the international public order [*orden público internacional*] exception in the thematic conventions, that exception is part and parcel of the general theory of private international law, which always operates. It is also enshrined in Article 5 of the Inter-American Convention on General Rules of Private International Law (CIDIP-II, Montevideo, 1979), already referred to.

- ***Declaration of Uruguay with respect to the scope that the Republic grants to ordre public***

Regarding the restricted scope to be given to the international public order exception, it is useful to note here the Declaration made by the Uruguayan delegation upon signing the General Rules Convention, which essentially stated that:

> *Nevertheless, Uruguay wishes to state expressly and clearly that, in accordance with the position it maintained in Panama, its interpretation of the aforementioned exception refers to* ***international public order as an individual juridical institution, not necessarily identifiable with the internal public order of each state****. Therefore, in the opinion of Uruguay, the approved formula conveys an exceptional authorization to the various States Parties to declare in a nondiscretionary and well-founded manner that the precepts of foreign law are inapplicable whenever these concretely and in a serious and open manner offend the standards and* ***principles essential to the international public order on which each individual state bases its legal individuality****.*”[97]

This statement clearly establishes the distinction between internal and international public order, concepts that should not be confused, and the exceptional nature of the international public order exception.

CONCLUSIONS

The research findings set down herein show that there are instruments - both *hard law* and *soft law* - that allow, or at least do not prohibit, the use of ICTs in their practical application. What is needed, then, is knowledge of these instruments and their effective application by State authorities.

[97] https://www.oas.org/juridico/spanish/firmas/b-45.html