Journal of Policy and Society 2024, 2(2), 2273.
https://doi.org/10.59400/jps2273

Review

Harmonization of cross-border contract law: Legal solutions in a globalized world

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CITATION

Carreño Bernal EG. Harmonization of cross-border contract law: Legal solutions in a globalized world. Journal of Policy and Society. 2024; 2(2): 2273. https://doi.org/10.59400/jps2273

ARTICLE INFO

Received: 12 October 2024
Accepted: 15 November 2024
Available online: 15 December 2024

Abstract: The harmonization of law is an essential tool to address the regulatory challenges arising from globalization and the increase in international commercial transactions. This phenomenon focuses on creating consistent legal frameworks that reduce conflicts of laws and transaction costs while improving legal certainty. From its emergence in the 19th century with the intent to revive the Lex Mercatoria to the advancements made in the 20th century through institutions like UNIDROIT and UNCITRAL, harmonization has evolved as a flexible mechanism promoting normative integration without imposing absolute unification of legal systems. This process is particularly relevant in dynamic areas such as cross-border contract law, where legislative diversity hinders the effectiveness of contractual and economic relationships. However, harmonization faces significant challenges in sensitive areas such as family law and labor law, where cultural and political factors play a central role. Despite these difficulties, its adaptable nature allows states and individuals to adjust legal instruments according to specific needs. This paper analyzes the historical evolution, fundamental characteristics, and contemporary challenges of legal harmonization, highlighting its role as an effective response to regulatory conflicts in a globalized environment. It concludes that harmonization not only fosters international cooperation but also strengthens global economic development by providing practical and balanced legal solutions tailored to the demands of an increasingly interconnected trade landscape.

Keywords: law harmonization; cross-border contracting; globalization of law; international trade; conflict of laws; legal pluralism

1. Introduction and approach to the problem

Today, it is entirely commonplace for individuals to interact across national borders daily and effortlessly, especially in an era where technology facilitates communication between parties located on opposite ends of the globe.

This reality renders notions of proximity and physical or geographical distance increasingly irrelevant, enabling many activities to occur without regard for such constraints, primarily thanks to communication technologies, particularly the internet. As a result, not only distances but also borders have become less significant [1].

This phenomenon illustrates that the division of the world into states, in a globalized modernity, is largely artificial—at least from a business perspective—where people interact beyond state boundaries and engage in economic relations not only with counterparts from their own state but also across borders [2]. In many cases, there is a conscious disregard for the traditional distinction between national and international realms; the geographical location of a contracting party often holds little relevance when entering into an agreement [3].

In this context, international contractual relationships may be subject to various legal frameworks governing different aspects of the commercial relationship,

generating significant uncertainty for the parties about which regulations will apply [4]. This issue arises not only in cases of dispute but throughout the entire contractual relationship, constituting a factor that increases transaction costs and creates barriers to establishing new commercial ties.

Uncertainty is heightened by the absence of a single set of laws governing international contracts—that is, the lack of a globalized legal system.

The globalization of law refers to a process in which the entire planet could theoretically be governed under a single set of rules, adopted by an international institution or through a mechanism achieving global consensus [5]; in essence, it envisions a process leading initially to uniformity and, ultimately, to the unification of law worldwide [6]. However, this process has yet to achieve universal reach in terms of legal homogenization.

At best, it can be said that we are in an embryonic phase of creating a supranational legal framework. In this sense, the globalization of law has been conceived as an undefined set of universal legal orders directed toward specific sectors, such as international contracting. These frameworks, developed by entities or actors beyond the state, regulate social relations that extend beyond the traditional domain of the nation-state [6].

Consequently, less extreme mechanisms such as the harmonization of law have gained prominence, which is the focus of this work. This process aims to create provisions that reduce divergences between different legal systems, eliminate uncertainty about applicable law, and lower transaction costs. Various organizations and instruments for the harmonization of international commercial law have been established to achieve a harmonized set of regulations applicable regardless of jurisdiction. The goal is to enhance legal certainty and profitability in commercial operations.

2. Methodology

The methodology employed in this research involved, as a first step, an analysis of the object of study through extensive bibliographic research and the review of both printed and electronic information sources. Subsequently, efforts were made to establish relationships between the various topics addressed in the study, applying the appropriate legal analysis techniques and tools required for this type of investigation.

This work adopted a methodological approach primarily based on the comparative analysis of legal systems, consisting of the juxtaposition of legal institutions to facilitate the transfer or adaptation of measures that have proven effective or beneficial in a particular place, country, or region [7]. This approach was complemented by an exhaustive bibliographic review. Initially, the main doctrinal and normative sources related to the harmonization of law were identified, including documents from international organizations such as UNIDROIT and UNCITRAL. Subsequently, comparisons were drawn between different legal systems to illustrate the challenges and opportunities posed by the harmonization process in specific contexts, such as international commercial law.

In various sections of the study, the historical methodology was employed, based on the premise that understanding the evolution of a specific area of knowledge is a

fundamental informational factor. Consequently, a historical analysis contributes to a comprehensive understanding of the current harmonization process in its entirety, fostering a critical stance toward this process. While this method complements most others, its development primarily relied on the use of documentary techniques [8].

Additionally, the study examined instances of success and failure in the implementation of harmonization instruments across various jurisdictions, aiming to identify common patterns and derive lessons applicable to future legislative initiatives. This approach enabled a comprehensive understanding of the phenomenon, supported by both theoretical and practical evidence.

3. The harmonization of cross-border contract law

First and foremost, it is essential to address the phenomenon of globalization and its impact on today's world—a globalized world that has created a new international context where many economic transactions are not local. Instead, they involve parties located in different regions of the globe and are consequently subject to the laws of multiple countries [2].

This situation places us in a paradoxical scenario: a globalized world characterized by economic, technological, and cultural openness, yet simultaneously constrained by the persistence of legal pluralism—a byproduct of the classical model of legal formation rooted primarily in state-based sources [9], given the lack of legal globalization.

On the other hand, the modern world remains composed of a vast number of nations, each typically governed by its own distinct legal framework. Some of these nations, particularly those with pluralistic legislative systems (such as federal states), also exhibit internal regulatory diversity, with significant differences among their domestic legal regimes. Nevertheless, there are certain groups of countries that already share common supranational norms. A prominent example is the European Union, an organization with a shared legal framework applicable to its members in areas where it holds legislative competence [10].

This demonstrates that, although globalization has brought significant changes across various fields, including law, it is evident that legal globalization has not achieved universal reach in terms of homogenizing legal systems. Significant normative diversity persists even today, resulting in challenges such as contradictions between two or more legal systems concerning the same fact, act, or international legal situation [9]. This creates scenarios where participants in international trade must often accept legal risks and uncertainties, leading to high transaction costs.

In other words, legal pluralism gives rise to conflicting regulations, affecting the rights and obligations of individuals when a single conduct is subject to regulation by multiple legal systems or jurisdictions. This ultimately generates significant uncertainty for the parties to an international contract, stemming from the lack of clarity regarding the legal framework governing their contractual relationship [9].

The challenges presented in international contracting are therefore evident, particularly concerning the applicable law governing contractual relationships. This issue arises not only during disputes but throughout all stages of the commercial relationship. It is a matter of critical importance since such uncertainty increases

transaction costs and creates barriers to establishing commercial relationships and introducing new agents and products into the market [11].

As a response to these challenges, law, through private international law—a discipline whose existence is justified precisely by legislative diversity and human cosmopolitanism [12]—has proposed remedies such as the application of conflict-of-law rules. However, these rules present their own challenges, such as the existence of a multiplicity of private international law frameworks, issues related to forum shopping, and inconsistent judgments, among other examples.

Faced with the clashes between legal systems and various regulations, private international law tends to provide what is considered the best possible solution: The creation of better and simpler conflict-of-law rules. However, this objective can be difficult or impossible to achieve, as such rules are characterized by their complexity [13].

Conflict-of-law rules are also extremely technical, making them appealing to lawyers but frustrating to merchants due to the costs, delays, and, most importantly, the uncertainties they involve. These rules vary considerably among different legal systems and are often more uncertain than other types of legal norms. In contrast, merchants value certainty, as it provides a more solid basis for their commercial judgment. Therefore, any development that creates a safer and more predictable area of law is highly valuable to market participants [10] as the uncertainty stemming from a lack of clarity about the applicable legal regime ultimately increases transaction costs due to the need to mitigate potential future risks [10].

In response, merchants engaged in international trade have developed various measures within the scope of their private autonomy to avoid conflicts of laws without resorting to state legal systems. They also seek to distance themselves from state courts. On the one hand, they use complex contracts designed to address all or most foreseeable contingencies and risks. On the other hand, they include clauses in these contracts stipulating that any disputes will be resolved outside state courts, typically through arbitration clauses that submit disputes to arbitral tribunals often composed of merchants or experts appointed by trade associations [10].

These complex contracts are often based on standardized templates and model contracts developed by institutions representing and advocating for merchants' interests in specific sectors. These contracts compile recognized practices and customs into contractual models that are generally accepted within their respective industries [10].

Nevertheless, these contracts are far from perfect. It is impossible to foresee all potential risks and contingencies in a business arrangement within a contract's terms. Moreover, while parties are free to include diverse provisions in their contracts, they cannot fully escape national legislation. For example, contracts cannot contravene mandatory national laws or public policy rules [10].

Furthermore, some merchants deviate from standardized contracts due to their complexity, opting instead to address only the basic and relevant aspects of the transaction, such as price, quantity, quality, duration, and delivery location. This approach often neglects crucial issues such as the applicable law and the jurisdiction for potential disputes. Consequently, the contract and the respective rights and obligations of the parties are exposed to significant legal uncertainty. This uncertainty

stems not only from the substantive law applicable to the contract but also from national jurisdictional rules that determine the competent courts in the event of a dispute and private international law rules that establish the substantive law governing the contract [13].

As a result, the international community has recognized the need to find solutions to normative dispersion, giving rise to mechanisms such as the harmonization of legal rules. This process seeks to establish standards applicable independently of jurisdiction and detached from state legal systems, offering a potential solution to the normative contradictions created by legal pluralism [14].

It is important to clarify that the legal harmonization discussed here refers to the modern conception of this phenomenon, which stands in contrast to older notions such as legislative unification, a concept historically linked to processes of colonization and conquest, as exemplified by the spread of common law and civil law systems imposed by European colonial powers on their former territories [10].

Today, the phenomenon of normative harmonization refers to processes whose legitimacy is grounded in the consent of states. Exercising their sovereign power, states accept various legal instruments that have been developed and promoted through initiatives aimed at harmonizing legal norms, primarily spearheaded by specialized international organizations dedicated to studying and advancing this phenomenon.

For over a century, specialists from different nationalities have convened in various forums to promote the convergence and harmonization of domestic legal systems, with particular focus on those aspects related to international commercial transactions [5].

To this end, specialized institutions have been created to study the needs and methods for modernizing and harmonizing primarily international commercial law. As a result, most existing harmonization instruments have been developed by these institutions.

Notably, three principal organizations stand out for their contributions to the field: UNCITRAL, UNIDROIT and HCCH. These institutions have played a central role in the creation and negotiation of international commercial law instruments that are currently in effect.

It is also worth emphasizing that the international community's need to address normative fragmentation through the creation of harmonized legal frameworks is not a new concept. Efforts in this direction can be traced back to the Roman Empire, where one of the primary objectives of its governance was the introduction of identical legal norms throughout its territories.

Furthermore, the immense influence of Roman law on modern legal families is no secret. This legal tradition has significantly shaped numerous Western legal systems, making Roman law a colossal source of inspiration for many nations that maintain this legal heritage today [15].

However, the modern conception of legal harmonization and unification did not emerge until the 16th century. This development was prompted by the burgeoning growth of international trade, driven by technological advances in transportation and communications during the Industrial Revolution. These innovations created fertile ground for expanded international commerce.

The rise of the modern nation-state and its growing importance globally led to a revival of ideas surrounding legal integration in Europe. Unlike previous approaches characterized by imposition, these efforts sought to address a pressing issue: The national, sovereignty-based nature of legal systems at the time failed to meet the needs of international trade. In the absence of universally applicable legal systems, high transaction costs and other obstacles hindered commerce. Eliminating these barriers was seen as a way to increase legal certainty and profitability in commercial transactions.

This problem gave rise to a fundamental question that remains relevant today: "Which legal system should govern a transaction involving international private law elements"? Different legal systems sought to answer this question in various ways, often resulting in inevitable legal uncertainty. However, during this period, there was no efficient solution to the challenges posed by normative fragmentation [13].

It was not until the 19th century that a true modern harmonization movement emerged, fueled by a strong desire to revive the golden days of the Lex Mercatoria, which some authors argue governed markets across medieval Europe. Advocates of this movement contended that the creation of a common legal framework, applicable regardless of jurisdiction and state legislation, would aid global trade. They reasoned that the territorial nature of law created barriers to commerce and increased transaction costs, which, if eliminated, could enhance legal certainty and improve trade profitability [13].

However, these initial harmonization efforts were overly ambitious and, as a result, failed to achieve the desired impact and success. Nevertheless, they were not entirely in vain, as they raised general awareness about the challenges that modern states' local laws posed to international trade. Even in closely related states with shared legal traditions—such as those in Europe with their Roman law heritage—significant legislative diversity had developed [13].

Despite the strong aspirations for harmonization that emerged during this period, effective harmonization instruments were not achieved in the 19th century. This was partly due to the complexity of preparing such instruments, which is not a task that can be easily undertaken by merchants, academics, or any private or public institution. Drafting harmonization instruments requires time, financial resources, extensive research, coordination, drafting skills, and, above all, considerable diplomatic expertise. These resources can be more effectively and appropriately channeled through institutions specifically created and equipped for this purpose [10].

The obstacles to trade resulting from legal conflicts were not confined to Europe or to the realm of international commerce. Similar issues arose within countries themselves, particularly in states with pluralistic legislative systems. Examples of such internal challenges include the United States and Australia, where diverse contract codes and commercial laws existed across their respective states.

The United States addressed this problem early on through the drafting of the Uniform Commercial Code, which has since been adopted in most states as a harmonizing instrument for commercial law [10].

Over time, international trade continued to expand, often exponentially. In addition to technological advances in transportation and communications, the emergence of trade agreements and alliances between nations further intensified the

globalization phenomenon. This led to a growing number of international commercial activities and relationships, which, in turn, became more complex due to the lack of uniformity in state regulations governing commercial activity.

It was only in the 20th century, particularly during the last three decades of the century, that the harmonization process began to yield significant results. This progress was driven by the creation of a new geopolitical framework that spurred a legal revolution within national legislations. Following the two world wars, a movement emerged to harmonize international commercial law, led by international organizations such as UNCITRAL and UNIDROIT.

Today, the harmonization of law remains a practical solution to the problem of conflicts of laws in international transactions. The harmonization instruments referenced deliberately avoid extreme approaches, such as the general unification of legal systems, which aligns more closely with the concept of legal globalization. Instead, this work focuses on legal harmonization efforts that target areas of law where eliminating normative fragmentation and conflicts of laws is most urgent. These efforts are particularly relevant in domains where diverse national laws have been viewed as obstacles to international contracting and commerce.

4. Fundamental notions of the harmonization of law

The harmonization of law entails a process aimed at achieving legislative conformity among diverse legal systems. Its objective is to establish a consistent, coherent, and comprehensive normative framework that allows different states to adopt aligned legal standards, thereby ensuring adequate legal certainty [16]. However, this does not necessarily imply the adoption of a uniform text [17].

Harmonization serves as a starting point for national legislators, enabling them to address and prevent potential conflicts of laws in international contracts. The search for solutions that minimize legal conflicts is typically conducted through the alignment of legal criteria among countries with similar legal traditions and economic development. Such countries often engage in interactions that give rise to challenges in determining the applicable law for contracts connected to multiple legal systems. These realities underscore the need to foresee international solutions through the harmonization of national legal systems [12].

That said, it is not strictly necessary for harmonization efforts to be limited to states with similar conditions. Indeed, there are harmonization initiatives with universal aspirations, such as the UNIDROIT Principles, which stand as one of the most successful globally oriented harmonization instruments to date. However, experience indicates that it is generally easier to achieve harmonized norms among states that share similar legal, economic, social, and geographical realities. For this reason, regional harmonization processes tend to be more feasible and, consequently, more common.

Finally, it is essential to note that harmonization is a flexible mechanism for normative integration. It enables states to adapt to the demands of the specific legal areas targeted for alignment. Some areas lend themselves more readily to harmonization than others; for example, international business and contract law—characterized by their dynamic and pragmatic nature—show greater adaptability than

fields such as labor law, which often carry significant political weight [12], or family law, where deeply rooted cultural values strongly influence the regulation of institutions such as marriage.

Harmonization allows modifications to be made to the harmonizing instrument, whether by the parties in their private international contracts or by states themselves. This flexibility enables states to tailor the harmonization instrument to their national interests and the needs of their populations. It provides significant maneuverability, allowing for the incorporation of legal concepts and notions unique to each state's legal system [12].

5. Characteristics of the harmonization of law

The harmonization of law can be characterized by several defining features, among which the following stand out:

- A Process of Integrating Criteria from Diverse Legal Systems

Harmonization involves merging legal principles derived from various legal systems and traditions. This integration incorporates influences from different cultures, economic models, and social frameworks.

- Application of the Comparative Method

Harmonization is underpinned by the comparative method, which seeks to identify commonalities and resolve discrepancies among the legal systems of different states. This method entails studying diverse legal frameworks to find similarities and differences with the aim of developing common or analogous legal norms.

- Abstraction of Material Criteria

The harmonization process abstracts material criteria, which form the principles used to formulate harmonized legal norms [12]. This does not necessarily result in the creation of a unified legal instrument [18].

- Analysis of Proposals to Reduce Legal Conflicts

Harmonization examines proposals aimed at diminishing legal conflicts, normative dispersion, and legislative discrepancies. It seeks to identify similar legal criteria across the various legal systems targeted for alignment. The resulting normative compilation serves as a model for states in their legislative processes [12].

- A Process Driven by Globalization

As emphasized throughout this work, harmonization is a product of globalization. The globalized context has created a marketplace where merchants of all nationalities engage in transactions involving the acquisition, provision, purchase, or sale of goods and services. This normalization of international commercial relations has prompted the law, as a science regulating human conduct, to move toward harmonization. This effort addresses the diversity and dispersion of legal norms originating from the most varied regions of the world.

6. Some methods for the harmonization of international contract law

The harmonization of international contract law has required the implementation of various methods or techniques developed by states, agencies, and regional and universal organizations. These methods aim to modernize and harmonize the legal

frameworks applicable to cross-border trade, utilizing legal instruments tailored to the specific needs of the parties involved [19].

By harmonization methods, we refer to those mechanisms used to achieve the objectives of legal harmonization. These instruments not only vary in their nature and scope but also in the degrees of commitment and acceptance they entail. Thus, it is crucial for participants in international trade to identify the techniques best suited to their circumstances [20].

Generally, harmonization methods can be classified into three main categories [21]:

- Legislative techniques: These include instruments such as conventions, treaties, and model laws, which have a normative character and often involve the active participation of states.
- Contractual techniques: These rely on the use of standardized contracts that facilitate commercial agreements under uniform terms, promoting security and efficiency in commercial relations.
- Explanatory techniques: These consist of legal guides and interpretative declarations designed to provide guidance and clarify the application of legal norms.

Another way to classify harmonization methods is based on the entity responsible for generating the instrument [22], dividing them into two categories:

- Centralized instruments: These refer to instruments developed within a political framework that determines or imposes the harmonizing text. In these cases, the state actively participates in proposing, negotiating, and adopting the instrument. Conventions or treaties fall within this category.
- Decentralized instruments: These harmonization techniques are not created within a specific political framework imposing the instrument. This category primarily includes soft law methods, such as principles, where states do not actively participate. Instead, their creative influence stems from commercial practices and the specific needs of international trade participants [22].

7. Implications and future directions

The findings of this study have significant implications for both legal theory and practice. In the theoretical realm, they highlight the importance of promoting flexible and consensual approaches in harmonization processes, as well as the need to consider the cultural, political, and economic particularities of the jurisdictions involved. These elements are essential to ensuring the acceptance and effectiveness of harmonizing instruments.

In practice, the results suggest that harmonization can be a key tool for reducing transaction costs and improving legal certainty in international commercial relations. However, they also underscore the importance of accompanying harmonization processes with effective implementation mechanisms tailored to local realities.

As for future directions, it is recommended to conduct further research into the impact of harmonization in emerging areas such as digital law and artificial intelligence. Additionally, it would be valuable to explore how harmonization processes can contribute to addressing legal inequalities between developed and

developing countries, as well as their potential to strengthen normative frameworks in specific regional contexts.

8. Conclusion

The harmonization of law emerges as a practical and necessary response to the challenges posed by normative diversity in an increasingly globalized world. From its origins in the 19th century, inspired by the desire to revive the Lex Mercatoria, to the significant advancements of the 20th century driven by international organizations such as UNCITRAL and UNIDROIT, this phenomenon has sought to provide effective solutions to the legal conflicts inherent in international transactions.

Although early efforts were overly ambitious and met with limited success, they laid the groundwork for a growing awareness of the obstacles caused by normative dispersion and the need for coherent legal frameworks.

Today, harmonization stands out as a flexible mechanism that does not aim to achieve absolute unification of legal systems but rather to promote consistency and alignment among them. This is particularly crucial in dynamic and globalized areas such as business law and international contracting, where legal certainty and reduced transaction costs are fundamental pillars of economic development. Regional harmonization efforts have proven to be more practical, though they do not preclude universally oriented initiatives like the UNIDROIT Principles.

Nonetheless, harmonization faces significant challenges, especially in areas where political, cultural, and social values play a major role, such as family law or labor law. Despite these difficulties, its adaptable nature allows states and private actors to adjust harmonization instruments to their specific needs and priorities. In doing so, harmonization not only supports the growth of international trade but also provides a vital tool to address the complexities of an interconnected and diverse world.

However, it is important to highlight that despite the significant advances achieved in the harmonization of international commercial law, there remains a critical gap in research within the area of cross-border contracting. While instruments such as the UNIDROIT Principles provide valuable frameworks, their application to cross-border contractual relationships continues to face significant challenges. Among the key issues are the lack of uniform adoption among states, inconsistent interpretation of harmonized rules by national courts, and practical difficulties in reconciling these instruments with mandatory domestic legal provisions. These gaps hinder the development of a truly predictable and cohesive legal framework for cross-border contracting, underscoring the need for further research into how harmonization initiatives can better address these persistent obstacles.

In conclusion, the harmonization of law remains an evolving process, reflecting global changes and the need to bridge legal divides that transcend territorial boundaries. This phenomenon fosters normative integration and promotes international cooperation, demonstrating that, despite its complexity, the pursuit of legislative alignment is an indispensable path for global development.

Conflict of interest: The author declares no conflict of interest.

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