

Jurisdictional battlegrounds: Navigating LatAm legal disputes

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Harmonising legal standards, creating specialised courts for cross-border disputes and exploring alternatives such as arbitration are some of the solutions to Latin America's age-old conundrum: where is the best jurisdiction to host the resolution of international disputes that involve multiple countries?

In the rapidly evolving field of international law, disputes involving Latin American countries have emerged as a significant and contentious issue. With the rise of global commerce, legal systems around the world increasingly confront cases that traverse international borders and legal frameworks. Courts must navigate complex questions of authority and determine which jurisdiction is best suited to resolve disputes when multiple legal systems are at play. These challenges are acutely felt in industries where clients regularly engage in cross-border transactions, such as hospitality, maritime and tourism.

Latin America's jurisdictional landscape is dynamic and unpredictable. This has become more evident as different markets have begun in efforts to modernise their legal frameworks to accommodate increasingly globalised commercial activity. One of the most significant shifts has been in the application of the *forum non conveniens* doctrine in US courts. Historically, US courts have used the doctrine to defer to Latin American courts – dismissing cases on the grounds that the forums were more appropriate for resolving disputes within the region. However, over time, US courts have grown more cautious in dismissing such cases due to growing concerns about the adequacy of justice in certain Latin American countries, particularly in relation to accessing remedies and judicial efficiency.

Some Latin American countries are experiencing jurisdictional growth. For example, Argentina and Brazil have become more assertive in cases involving foreign defendants. This increase in local courts' willingness to exercise jurisdiction reflects a broader trend of protecting national interests and ensuring that foreign companies comply with local laws.

Yet, inconsistencies in how different Latin American courts apply jurisdictional principles remains a significant issue. While some countries have robust legal frameworks for international disputes, others lag behind, creating a fragmented legal landscape. This variability causes uncertainty for multinational companies operating in Latin America, as they may face differing legal outcomes depending on where a case is brought.

Steering disputes over choppy waters

Maritime law has its own unique set of jurisdictional complexities, primarily due to its inherently international nature. With cargo moving across borders and ports, jurisdictional issues arise regarding which country's laws apply when disputes occur. These cases often involve multiple stakeholders, including the shipping company, cargo owners, insurers and third-party contractors. For instance, if cargo originating from a Latin American port is damaged en route to Europe and multiple foreign parties are involved, determining the appropriate forum becomes complex. Factors such as where the damage occurred,

which contracts are in force and the shipping company's home jurisdiction all influence the final decision. The intricacies of international conventions, such as the Hague-Visby Rules, and the practical reality that the ship is often outside of territorial waters add to the challenge of defining jurisdiction.

Often, the decision is based on jurisdictions that can afford any damages sought, though recent cases demonstrate that other factors are at play. In *Goldstein v Hard Rock Cafe Int'l (USA)* and *Unitednet v Tata Commc'ns Am*, courts prioritised practical considerations such as witness location and evidence accessibility, as well as the foreign jurisdiction's interest in the dispute, over potential differences in damages. These decisions show that while damages can be important, they are not always the driving force behind jurisdictional determinations in international cases.

The US Supreme Court case *Lauritzen v Larsen* established a pivotal multifactor test for determining applicable law in admiralty tort cases with cross-border features. The test considers factors such as the place of the injury, nationality of the vessel, nationality and residence of the parties, and the place of employment. This approach provides a flexible framework for resolving conflict-of-laws issues in complex international maritime scenarios.

The good, the bad and the uncertain

Latin American courts are increasingly asserting jurisdiction in cases involving foreign corporations, which represents progress in empowering local plaintiffs. This trend can be seen as a positive step toward ensuring that multinational companies comply with local safety regulations and legal standards. By holding foreign entities accountable in local courts, these countries are asserting their sovereignty and promoting the enforcement of local laws. For businesses, this shift encourages alignment with local legal standards, promoting improved safety protocols and corporate responsibility. However, inconsistencies in laws and safety standards across jurisdictions can create obstacles. Companies operating internationally may try to maintain uniform practices while complying with often conflicting local requirements.

Additionally, the growing reluctance of US courts to dismiss cases in favour of Latin American jurisdictions under the *forum non conveniens* doctrine represents a more careful consideration of practical realities. Courts are increasingly examining factors such as the adequacy of the foreign forum, the likelihood of receiving a fair trial, applicable statutes of limitation, and the availability of legal remedies.

However, a lack of uniformity in jurisdictional approaches across Latin America remains a clear obstacle. Each nation's legal system applies different criteria for asserting jurisdiction, fuelling unpredictable outcomes. This lack of consistency often results in forum shopping, where litigants seek out courts that they think will offer a more favourable outcome. For businesses, this adds uncertainty and makes it difficult to assess the legal risks of operating in multiple jurisdictions, while multinationals may end up engaging in protracted legal battles across different forums, increasing costs and complicating operations.

Furthermore, some Latin American courts are ill-equipped to handle complex international disputes, particularly those involving foreign entities. Inadequate judicial resources, a lack of expertise in international law and slow court processes all contribute to concerns about the fairness and efficiency of these forums. The drawn-out nature of jurisdictional disputes often delays the resolution of the underlying claims, prolonging the hardship for and inflating the legal costs of the parties.

Taking notes on the European model

The European Union's approach to jurisdictional issues, particularly through the Brussels Regulation, offers a valuable point of comparison for Latin American countries. The Brussels Regulation states that the courts of the EU Member State in which the defendant is domiciled will have jurisdiction to hear the dispute, regardless of the defendant's nationality. This principle provides a clear and consistent starting point for resolving jurisdictional disputes within the EU. Adopting a similar approach across Latin America could provide much-needed clarity and consistency in resolving jurisdictional issues. Such a system could help streamline cross-border litigation and reduce legal uncertainty.

A similar, regional approach to harmonising jurisdictional and legal standards across Latin America could offer much-needed clarity and help countries in the region establish uniform guidelines for determining jurisdiction in cross-border disputes. Such agreements could promote consistency in legal outcomes, reduce the risk of conflicting judgments, and provide businesses with greater legal certainty.

Another solution could be to establish specialised courts for handling international jurisdictional disputes within Latin American countries. These courts would house judges with expertise in cross-border legal matters, ensuring that cases are resolved efficiently and fairly. Specialised courts also could serve to train local judges on international legal principles, improving the quality of judgments and fostering greater trust in the legal system.

Meanwhile, alternative dispute resolution mechanisms, such as international arbitration and mediation, could provide a faster and more flexible means of resolving cross-border disputes. Encouraging businesses and plaintiffs to resolve their disputes outside traditional courts would help avoid lengthy jurisdictional battles and reduce the burden on judicial systems. International arbitration offers a neutral forum where parties can bypass jurisdictional issues and resolve their disputes through binding decisions.

Considering all of the above, governments and courts should also implement clearer guidelines for determining jurisdiction in cases involving multinational corporations. These guidelines should focus on where the harm occurred, the location of the defendant's operations and the plaintiff's nationality. Greater transparency in how jurisdiction is determined can reduce

unpredictability and improve legal outcomes for all involved.

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