ISSN : 1875-4120
Issue : (Provisional)
Published : April 2024

Transnational Dispute Management
www.transnational-dispute-management.com

Young-OGEMID Author Interview #6: Prof. Dr. Xandra Kramer Prof. Dr. and Laura Carballo Piñeiro (March 2024)

About TDM

TDM (Transnational Dispute Management): Focusing on recent developments in the area of Investment arbitration and Dispute Management, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting.

Visit www.transnational-dispute-management.com for full Terms & Conditions and subscription rates.

Open to all to read and to contribute

TDM has become the hub of a global professional and academic network. Therefore we invite all those with an interest in Investment arbitration and Dispute Management to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

If you would like to participate in this global network please contact us at info@transnational-dispute-management.com: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an TDM-focused republication), but rather concise comments from the author's professional 'workshop'.

TDM is linked to **OGEMID**, the principal internet information & discussion forum in the area of oil, gas, energy, mining, infrastructure and investment disputes founded by Professor Thomas Wälde.

Young-OGEMID Author Interview #6:
Prof. Dr. Xandra Kramer Prof. Dr. and Laura Carballo Piñeiro (March 2024)

Prof. S.I. Strong: This week's speakers: **Prof. Dr. Laura Carballo Piñeiro** and **Prof. Dr. Xandra Kramer**. Together, Professor Carballo and Professor Kramer have edited the book, *Research Methods in Private International Law - A Handbook on Regulation, Research and Teaching*[1], which provides valuable insights into the various methodological approaches to private international law. The book also comprehensively unpacks central themes in the field including international jurisdiction, recognition and enforcement, and related matters.

Xandra Kramer is Professor of Private Law at Erasmus School of Law. She combines this position with a part-time professorship in Private International Law at Utrecht University. In addition, she is a Deputy Judge at the District Court of Rotterdam, and member of the advisory board of this court. She was a parttime professor at Leuven University (2013-2014), and has been a visiting professor and researcher at a number of universities and institutes, including the Max Planck Institute for Comparative and Private International Law and Stanford University. She is an elected member of the Royal Netherlands Academy of Arts and Sciences, of the Institut de Droit International (IDI) and serves on the Council of the European Law Institute (ELI).

Laura Carballo Piñeiro is Dean of the Faculty of International Relations at the University of Vigo. Prior to joining the University of Vigo, she worked at the World Maritime University, where she was the holder of the Nippon Foundation Chair of Maritime Labour Law and Policy, and at Santiago de Compostela in Spain. She is admitted to practice as a lawyer and has worked as a deputy judge in Spain. She has been visiting fellow at the Max Planck Institute for Comparative and Private International Law, Columbia Law School, the Institute of European and Comparative Law at Oxford University and UNCITRAL, and she has been visiting professor in a number of institutions in Europe and Latin America such as the Hague Academy of International Law, the Central European University, the Universities of Antioquia and Medellín in Colombia and the Central University of Venezuela.

And now, without further ado, I turn it over to our authors to begin the interview!

⚜

Prof. Dr. Xandra Kramer:

We are happy to participate in the author interview as editors of *Research Methods in Private International Law - A Handbook on Regulation, Research and Teaching (eds. Xandra Kramer & Laura Carballo Piñeiro)* and thank Prof. S.I. (Stacie) Strong for kindly introducing us. In today's post we will outline the book, which will show that we took the liberty of not only focusing on research methods but choosing a broader approach that include regulation and teaching methods. On Wednesday we will delve deeper into inter- and multidisciplinary approaches.

[1] Members of Young OGEMID can purchase the book with a 35% discount, using the code KRAM35 during the checkout process when ordering online: https://www.e-elgar.com/shop/usd/research-methods-in-private-international-law-9781800375529.html (Code will be valid from the moment the book is available for pre-order).

By Laura Carballo Piñeiro and Xandra Kramer

A quick look at a dictionary informs us that methodology is the theory by which research methods are systematized, selected, and applied to the pursuance of knowledge in a particular field. Such theory is not built in a vacuum, but upon the theories underpinning the researched field of study whose enquiries/issues will thus call upon the relevant research methods. A firm knot ties the theoretical framework of a discipline, the methodological approach to it, and the used research methods. This book fully embraces this correlation and, while devoting some chapters to a particular research method, especially those (relatively) new to private international law such as empirical research methods, others focus on private international law theory and the ensuing methodologies. The focus on one or the other side of the cycle - theory, methodology, research method - does not mean that their correlation is forgotten. Rather, it acknowledges that the use of research methods depends on understanding the methodologies that justify them, and how they change in line with the evolving theoretical frameworks and narratives by which private international law is being shaped, in particular by engaging with other disciplines such as politics, public international law, or feminism.

Private international law research has mainly focused on establishing a theoretical framework for analysis of the discipline's identity, principles, and rules; and not so much in undertaking a systematic analysis of multi- and interdisciplinary or empirical research. Questions such as the distinction with public international law, the coordination method between legal systems, and their applicability rules, have been extensively addressed in doctrine and successfully answered by a few unique principles and techniques tailored-made for managing legal pluralism. However, and although intellectually remarkable, such techniques may not be fit-for-purpose in finally resolving a private international law situation and for complex contemporary legal and societal problems.

This book has chosen to address the prevalence of doctrinal methods in the discipline from the perspective of the public/private divide as the pillar upon which private international law expertise in managing legal pluralism has been built. The divide was born to restrict State power to public matters setting private matters free from their influence. At the background of this narrative, private international law consists of secondary norms coordinating legal systems by allocating the relevant private international situation to the most closely connected in accordance with von Savigny's paradigm. In absence of public ordering, value-neutralism would guide the operation of these provisions and thus, the discipline would not engage with a particular situation, but only exercise a mediating role between legal systems.

Nevertheless, the blurring of the public/private divide already presents itself in these foundations to the extent that establishing the connecting factors in a conflict rule involves policymaking, at the very least by choosing between international harmony of decisions and internal coherence and thus the prevalence of the foreign law's values over those of the forum. Indeed, and methodologically speaking, the debate about to what extent foreign values and policies are tolerated in the forum is revolutionary because legal research can no longer be reduced to a matter of technique and hermeneutics but surfaces the normative and argumentative side.

The normative aspect of private international law methodology is illustrated in this book by the ongoing discussion about balancing public policy and private interests. *Christopher Whytock* shows in his chapter how policy debates permeate the discipline, as he concludes that private international law is actually allocating governance authority along the

public/private divide. This fascinating idea raises the question as to whether legal research in our field has ever been only about technique or that the preference for procedure over substance is also the outcome of political motivations. Be that as it may, fully embracing the role of private international law as a governance tool does not come without significant methodological queries taking into consideration path dependency in technique application and the inherent risks to opt for political activism in a complex and diverse global scenario. Even human rights' methodology proves to be divisive in that they have a dual face, both domestic and at the international level, as argued by *Patrick Kinsch*.

The increasing significance of strategic human rights' litigation illustrates how private international law has drifted apart from value neutralism. In this vein, the methodological shift has reached the rules and techniques themselves. As *Carlota Ucín* argues, they grant a level of discretion in their application which advises revisiting existing PIL methods and consider developing new ones, for example to assist judges in delivering justice in a manner that resembles the governmental interests' approach. This type of norms is a response to classical debates of the discipline on the equilibrium between legal certainty and flexibility, conflicts- and substantial justice, renewed by the prominent action of non-State actors in international scenarios and the need to go beyond the mere allocation of their disputes to a domestic legal system. A piece of the same puzzle to facilitate better implementation of law is the development of soft law instruments on PIL matters, which helps contextualizing PIL rules' application as argued by *Marta Pertegas*. They are a response to the global governance gap, i.e. to the fact that, while States remain responsible for law compliance and enforcement, the process of globalization has made this task increasingly challenging. In this regard, decentralization and pluralism are key features of modern PIL which have influenced the expansion of party autonomy and the recognition method in the discipline. How to methodologically handle non-State actors' power in global context is still open to debate as argued by both *Cristina Mariottini* and *Dulce Lopes* in their respective discussion of the limitation to private autonomy and the difficulties in applying the recognition method.

In addition to the shifts in PIL methodology, the challenges posed by the social, economic, technological, and ecological crises have accelerated a trend by which the discipline is not only resorting to empirical legal methods, but also partnering with others in order to better understand the context in which it operates, further the law's objectives of ordering society and influencing human behaviour, and thus better grasp substance. The resort to empirical and interdisciplinary methods comes, however, with its own challenges as highlighted by *Christoph Kern* while addressing empirical methods, *Diego A. Fernández Arroyo* on comparative law, *Gisela Rühl* on economic analysis of law, Adriani Dori on EU studies, and *Marco Giacalone* and *Paola Giacalone* on technology.

The blending of theories and methods require a new methodological approach taking into consideration that the integration of other disciplines in legal research remains far from being a straightforward task. Those disciplines have their own epistemology and research purposes, which are not always easily adaptable to the legal ones, as can be seen from the criticism raised by the combination of law and politics or law and economics. They also require special expertise which further complicates their application. Nevertheless, the benefits for PIL research are obvious as the old partnership with comparative law has taught us. As Fernández Arroyo states: PIL will be comparative or will be nothing. However, their interaction should not just be assumed, but the roots, reasons, contents, and epistemology framework of this partnership requires continuous exploration.

The reflections on theory, methodology, and methods inevitably lead to the questioning of the discipline's identity, objectives, and functions in a complex and changing world, but also to appreciate their benefits as a conflict-solving legal mechanism. PIL role as a governance tool nevertheless needs reinforcement, which requires a better understanding of its normative dimension. To that end, we need to open a discussion on the role that legal scholars play in making the normative choices behind PIL rules. *Verónica Ruiz* and *Ralf Michaels* go even further by suggesting the engagement of laypersons in taking these normative choices as already happens in other legal (substantive) disciplines. This entails embarking in a new methodological shift which requires revisiting the discipline's identity and how it distinguished itself from other legal disciplines. As Ruiz and Michaels explain, PIL requires 'thinking between legal orders' and it is thus not counterintuitive for the layperson. However, the educational purposes of the discipline should be promoted in that it embraces diversity at its core while providing an inter-cultural understanding of the world.

The ethics behind private international law raises another research question: whether it has not been used to perpetuate discourses on domination or oppression. In fact, critical social theory would contend that insisting on value neutralism may be considered a staunched defence of a certain status quo. And indeed, a feminist and decolonial lens to PIL rules provides food for thought as is clear from the chapters by *Mary Keyes* and *Sari Ramani Garimella*. Such new methodological approaches also uncover the significance of learning who actually makes the normative choices behind PIL rules, i.e. moving the research focus from technique to policy analysis and ultimately to legal scholarship. They remind us that, methodologically speaking, not only the what, why, and how questions are important, but also the who is researching.

To continue flourishing and furthering its objectives and functions, private international law requires the nurturing of strong scholarship and thus research on creating a suitable learning environment for it to be diversified. A focus on PIL teaching methodologies has lacked so far, but this book contends that it might be critical for the future of the discipline. While Ruiz and Michaels have put their bets on educating laypersons, countries are also struggling with teaching PIL to students. In the opinion of *Abubakri Yekini* and *Chukwuma Samuel Adesina Okoli* as regards Nigeria, and *María Mercedes Albornoz* and *Nuria González Martin* in relation to Mexico, the more marginal position of PIL in the curricula may be due to the lack of awareness about the discipline's role as a global governance tool, for example in advancing the sustainable development goals.

The complexity of PIL requires more research on the design of the curriculum as *Aukje van Hoek* has done in relation to the Netherlands. She differentiates between courses on doctrinal approaches based on a single legal system (e.g. directed to Dutch students), comparative law approaches (including international students), and critical approaches. The latter are exceptional as they are designed to promote critical thinking and are therefore highly challenging. It is hoped that by having included these reflections on teaching in a book on research methods helps to underline the educational purposes of private international law, and in particular, its ability to develop critical thinking and inter-cultural competence.

Laura & Xandra

Prof. S.I. Strong:

Dear Xandra

Many thanks for your excellent post. There is a great deal to digest in here. I am sure we will have some additional questions, but I have a few in hopes of catching you before the end of the business day in Europe.

First, you mention the need and desire to subject private international law to various methodologies. Are there any methodologies that you believe to be completely inappropriate? For example, the law-and-economics movement has become quite important in the United States (though its influence is perhaps waning), and some commentators have suggested that law and economics is inappropriate in the area of civil procedure because law and economics prioritizes efficiency and efficiency cannot be the sole or perhaps even primary motivator in the field of civil justice. However, law and economics might be attractive to those who are trying to find a way to balance public and private interests, which you indicate is an area of interest and importance.

Second, you mention the need of education - either education of laypeople or education of law students - in the area of private international law. One of the reasons I chose to teach at the University of Sydney (where I was until quite recently) was that it was the only law school that I knew of in the common law world that made private international law a compulsory course. However, even they are dealing with a bit of pushback from faculty colleagues who may not appreciate the important of private international law. Do you know if any countries in the civil law tradition that make private international law a mandatory part of the curriculum, and if so, how has that gone? I agree with you that educating both lay people and lawyers is important, but it seems as if we won't be able to get to the first group if we can't get to the second group.

Prof. Dr. Laura Carballo Piñeiro:

Many thanks for your interest and queries. They both touch among issues that, we think, have to be acknowledge.

First you ask whether there are any methodologies that we believe to be completely inappropriate. The answer is negative as long as they are carefully designed, applied and research input properly interpreted. Reaching to that point all the way to delivering the research findings is nevertheless not an easy task when an inter-disciplinary approach is taken as the example of law and economics illustrates. Both areas have their own ontology and epistemology, hence their blending should not consist of simply putting them together but involving the development of a new epistemological approach based upon both pillars and their respective research purposes. In this vein, the acknowledgement that law and economics priorities differ needs to be accounted for in the methodological plan. It goes without saying that this type of research is particularly challenging and strong expertise on both fields is necessary. Years in the making, trial and error, discussions as the ones surrounding law and economics are an essential part of this development.

Your second question regards whether private international law is sufficiently positioned in the legal curricula, in particular via mandatory courses. Civil law countries do have a better grasp about the significance of the subject, and many have mandatory courses on it. For example, and as presented in the book, Mexico does have this type of courses contrary to Nigeria which is an important strength. However, private international law scholars in civil law countries also experience the kind of pressures you had in the University of Sydney; they might likely be the result of power dynamics within schools of law in a context of scarce funding and poor investment on human resources. Against this backdrop, the plea for educating laypersons in private international law matters is closely related to allocating the subject in the law curriculum the significance it deserves because it is actually making the point that it is not an arcane field, the privilege of just some scholars and without real impact on the lives of people in general and not just on an elite. We should acknowledge that, while there is this conversation about making legal jargon less abstruse, many PIL scholars make a point in being particularly difficult.

Thanks again for the questions!

Laura & Xandra

Prof. S.I. Strong:

Further to the second question about educating lawyers versus laypeople, I am pleased to hear some civil law jurisdictions have prioritized private international law. That leads to another question - do you believe that there is a route for improving the treatment of private international law by improving judicial education on this subject? Here again we may have differences across the common law/civil law divide. In common law countries, judges are pulled from the ranks of senior lawyers and may not receive any specialized legal education before starting on their careers as judges. Some countries mandate judicial education, whereas other countries (such as the US) does not. It would appear that there is room for some specialized courses for common law judges on private international law. Who do you believe might be well placed to offer that training?

Civil law judges are often course trained for the bench from the earliest days of their careers. How much emphasis is put on private international law in their education, either initially or after the judges become active? I note that both you and Xandra sit (or have sat) as judges, though I do not know whether you heard any international cases. Still, your experience on the bench might give you both some insights that you can share …

Prof. Dr. Laura Carballo Piñeiro:

I will just answer this query from my perspective, but I believe that having a better grasp of private international law is a demand from judges and other professionals such as public notaries across the European Union due to the impact of the globalization processes in their workloads and the direct application of EU regulations on PIL matters. They did not have such an education apart from the mandatory courses in their degrees since access to

those professions usually focuses on other areas of law than PIL. In Spain, for example, becoming a lawyer, a judge or a public notary requires passing several exams but the weight of PIL on them is negligible. Judges in particular might get a better education once they get admitted into special training before becoming active since they do have PIL courses. Anyway, I believe we are living in interesting times and the appetite for PIL is strong! The establishment of networks by these professionals to discuss PIL matters is testament to this interest. In addition to discussing new legal developments, the focus is in technical matters of their actual cases, which makes such an exchange particularly fruitful. Again, at least within the EU.

As to your specific query on who is well placed to offer training to judges, I would put the emphasis on other judges (in addition to professors of course as it is our job!). Cross-country networking enhances the learning experience while having many side benefits for transnational justice.

Earvin Delgado, FCIArb

First of all, thank you to both of you for sharing your time and expertise with Young-OGEMID. I'm glad the book will be able to help a lot of people navigate the field whether they're pursuing their first law degrees, or are already practicing legal professionals in their respective jurisdictions.

Here are some questions that popped into my head:

1. What are the benefits and challenges of integrating other disciplines, such as politics or technology, into private international law research?

2. In what ways does private international law research intersect with broader discussions (e.g. ethics, feminism, and decolonial perspectives), and how do these shape methodological approaches within the discipline?

Prof. Dr. Laura Carballo Piñeiro:

Many thanks for your congrats and questions. They are very welcomed.

1. What are the benefits and challenges of integrating other disciplines, such as politics or technology, into private international law research?

The type of situations with which private international law deals has exponentially increased in recent times, not even being necessary to move from your bedroom to be involved in a legal relationship with a foreign element. Against this backdrop, legal scholarship in our field study is faced with the need to get a better grasp of the societal context in which law operates. The pressure on a shift in the research focus does not come thus just from within, but from external forces which not only demand compliance with the hermeneutic function of legal research but an upgrade on the law's function in ordering society and influencing human behaviour. Partnering with

other disciplines (which also address human behaviour but from different angles) offers a lot of benefits to comply with these objectives.

As to the challenges, we touched on this briefly in our post yesterday and will expand on this in our post on Wednesday. It requires additional efforts and skills as different types of expertise need to be combined in such a way that their theoretical frameworks and research purposes do not collide but are capable to provide sound and incremental research findings as regards to their separate operation. Indeed, this is not an easy task and that's why institutions provide better funding to research projects incorporating ground-breaking methodologies, usually involving inter-disciplinary approaches to a particular research question. Further problems might come from the lack of recognition of frontier research in institution structures where classifications in research areas might penalize those at the cross-roads.

2. In what ways does private international law research intersect with broader discussions (e.g. ethics, feminism, and decolonial perspectives), and how do these shape methodological approaches within the discipline?

As a cultural product, private international law cannot be dissociated from the society in which it is developed and thus from the broader discussions you are mentioning. Interestingly, the narrative implying that PIL is about technique, coordinating legal systems without pondering about values, interests, and rights to be respected in their operation still has a bearing on research undertaken in the field, refusing to take responsibility over the implied normative choices we make when prioritizing a connecting factor over other. For example, Mary Keyes graphically points out how apparently innocent concepts such as nationality, habitual residence, and party autonomy can hide sex discrimination and gender imbalances; while Sari Ramani Garimella illustrates how a country like India where conflicts of laws are inter-personal still bases PIL rules upon territorial factors like domicile.

Best regards,

Laura & Xandra

⚜

Wooseok SHIN

Thank you so much for the wonderful introduction to the book. I found the content personally very interesting, especially as I've recently been delving into some PIL questions related to the use of the Convention. I also agree that the interaction of utilizing the comparative law approach should not just be assumed; the roots, reasons, contents, and epistemology framework require continuous revisits and exploration.

I have two follow-up questions regarding potential contents that the book may cover:

Q1: Are there any global trends or observed attempts by states or state courts to avoid exerting excessive influence on private transactions, in order to prevent burdens on private parties under the name of state-to-state relationships? For example, States have shown a

tendency to abolish or alleviate reciprocity preconditions when enforcing or recognizing foreign judgment.

Q2: It would be great to explore issues in contrast to the situation in Q1. Are there any attempts from the States to willingly exert influence on private transactions (cross-border), such as sanctions?

Prof. Dr. Laura Carballo Piñeiro:

Many thanks for your questions. Very interesting indeed. Since your questions are closely connected, we try to answer them together.

Deregulation and privatization are features of our modern and globalised societies. In this vein, it cannot really be said that states are trying to avoid exercising excessive influence on private transactions, but the contrary is happening in order to gain more control on cross-border transactions and torts. A global governance gap has been identified by which non-state actors can move across borders avoiding state enforcement systems; i.e. they can engage in forum shopping putting a lot of pressure upon domestic legal systems which are tempted to engage in (de-)regulatory competition to attract businesses.

In order to close this gap, inter-state cooperation is critical, but insufficient for which reason schemes such as the UN Guiding Principles on Business and Human Rights have been developed. We can recommend *Whytock's* chapter in our book because he addresses the role of private international law in closing this gap. *Cristina Mariottini* also offers an excellent overview of the privatization trend you are mentioning, but working on the other side of the rope, i.e. the need for counterbalancing because there are values, policies, and rights at stake which would not be otherwise protected without some limitations to the realm of private autonomy.

Best regards,

Laura & Xandra

⚜

Guofang Xue :

I have two follow-up questions:

1. AI has changed our lives and are there any problems AI might bring to private international law?
2. How do we integrate other development such as AI into private international law education?

Prof. Dr. Laura Carballo Piñeiro:

Many thanks for bringing AI to the table!

Marco Giacalone and Paola Giacalone have written a wonderful chapter in our book about When private international law meets technology where they thoroughly assess the impact of AI on our field. First, AI methods such as Decision Support Systems (DSS) can help the parties and their professionals obtain clear guidance on complex legal cross-border issues and help predict outcomes. The same applies to the conduct of cross-border proceedings. Second, all PIL sectors (jurisdiction, applicable law, international cooperation and recognition and enforcement) are affected by AI driven technology and the fact that transactions and torts are committed online or with the aid of technology, hence, rules need to be adjusted to the new (virtual and potentially global) scenario.

Against the abovementioned backdrop, it is clear that AI-related problems need to be discussed in the classroom. There is no escape taking into consideration that such problems are reaching judicial and arbitral systems. Actually, AI is also changing the way in which judicial and arbitral proceedings are being conducted and that needs to be taught as well. Not to mention the fact that our students are well-versant in the new technologies and we need to adjust to their capabilities!

Best regards,

Laura & Xandra

⚜

Prof. S.I. Strong:

Many thanks for your interesting questions and of course to Laura and Xandra for their initial post and responses. You are welcome to continue the ongoing discussion relating to those points on our first string, but it is now time to move on to our authors' second substantive contribution.

Xandra and Laura, whenever you're ready!

Prof. Dr. Xandra Kramer:

Following Monday's first post outlining the ideas of our edited volume Research Methods in Private International Law, today we will zoom in on inter- and multidisciplinary approaches as are discussed in Part II of the book. We thank you for the questions we have received in the meantime, and we hope we have been able to answer them. Today's post also addresses the questions Earvin Delgado posed last Monday on the benefits and challenges of engaging with other disciplines in greater detail.

Apart from partnering with comparative law, the focus in private international law discourse has traditionally engaged with the analysis of a legal system and its rules dealing with the existence of other legal systems. Focal points have always been the public/private law divide, as discussed in our previous post, unilateral versus multilateral approaches, the categorisation of conflict of law rules and the most appropriate connecting factors. This was also reflected in teaching curricula which would extensively deal with general doctrines, including conflict methods, the qualification of legal relationships, renvoi, public policy, overriding mandatory rules and renvoi.

International fora, in particular the Hague Conference of Private International Law, have been for long the recipients and enablers of this doctrinal approach. But over the last few decades the practical relevance of private international law has increased exponentially. The Bretton Woods Agreement laid the foundation of increased free movement of goods, services, and capital via international organisations and the application of a harmonised set of principles by national states. This has resulted in a dramatic rise in the volume of international trade, also fuelled by increased regional integration and other related initiatives. Not only have business entities and companies benefitted from the opening of borders, but private individuals have as well, who, for example, regularly engage in online cross-border transactions or in professional and leisure activities abroad. Also in specific regions free trade agreements have boosted cross-border activities, the European Union being the most integrated economic block facilitating not only free movement of goods, service and capital but also of persons. Along with globalisation, regional integration, increased (physical and, more recently, virtual) mobility of persons has resulted in the rise of cross-border personal relationships. This has resulted in interesting developments in private international law: for example, with regard to marriage, parenthood, and the renewed interest in addressing matters relating to migration.

In view of these developments and the need to better grasp the societal context in which law operates, legal research has become more interdisciplinary and engages with behavioural sciences including, among others, sociology, psychology, anthropology, and economics. This has also resulted in an increased use of empirical research methods that are commonly used in behavioural sciences. In addition, rapid technological developments require a reflection on how private international law interacts with technology. Interestingly, the abovementioned globalization processes are pushing worldwide developments in law which have to a certain extent already taken placed at US level where the internal market dynamics, the federal system, and the focus on litigation have already fuelled interdisciplinary approaches to legal analysis. Private international law has a history of its own in this country for which reason this research is not entirely transposable elsewhere. However, in terms of developing a new methodology to a particular research question based on an interdisciplinary approach, scholars can rely on much of the work done in this country.

In Part II of the book, we have included several inter- and multidisciplinary approaches to private international law, albeit far from complete. For instance, it does not specifically cover anthropology, psychology, and cultural studies, which would also provide an interesting angle regarding the development of private international law. Also, some other chapters that clearly engage with other disciplines, such as the chapter by *Christopher Whytock* on politics in private international law, were placed in Part I of the book (on public, private and regulatory approaches) or Part II (on shaping the future of private international law through methodological approaches), as that seemed most appropriate.

The benefits of studying private international law not only as a doctrinal field with its own distinctive and rather complex techniques, but also as law in action and interacting with societal changes and challenges are clear. Exemplary is the rise of AI, on which we reflected already in response to the questions of Guofang Xue on AI and private international law and the need for education in this regard. But there are also a lot of challenges, which we have also briefly addressed in replying to the questions by Earvin Delgado. For those of us who do not have degrees in different disciplines, it requires a lot of efforts and courage to be able to engage with, for instance, economics, technology or psychology. These disciplines have their own terminology, theoretical and epistemological frameworks and methodological regimes. The same goes for empirical legal studies that have a longer history in some jurisdictions, for

instance in the United States, but have also gained ground in Europe (for instance, at my home university the Erasmus Centre of Empirical Legal Studies was established[2]). Although applying empirical methodologies in legal research has become more common, conducting more extensive qualitative or quantitative research requires substantial investments. This includes training, practice, time, financial and practical means (e.g. access to platforms, coding, and analytical tools) while also ethical requirements and data integrity often come into play. In more challenging research projects collaboration with experts in other disciplines may be very fruitful.

In the book, an excellent example of the blending of disciplines - although staying within the legal and doctrinal domain - is represented by the comparative approach to private international law that we also briefly introduced in our first post. By entitling his chapter '*Private International Law Will Be Comparative or It Will Be Nothing*' *Diego Fernández Arroyo* makes clear that private international law cannot be understood without being comparative. This is in particular a result of the changing roles of state and non-state actors which have triggered further changes not only in private international law addressees but also in public and private adjudicators and sources. Despite the fact that private international law and comparative law have a long common history, questions remain as to how to conceive a common epistemological framework.

A chapter by *Christoph Kern* focuses on the use of empirical methods. There, this experienced professor analyses the pros and cons of such methods which include, on the one hand, the benefits of empirical insights informing rule drafting, interpreting, and evaluating, and, on the other hand, the challenges of learning how to properly use different empirical methods (e.g. interviewing, surveying, experiments), and how to handle and interpret the data obtained. It goes without saying that empirical insights contribute significantly to knowledge regarding the actual use and effects of private international law, which contribute to better policymaking, legislation, and legal practice. For instance, in the EU the evaluation studies of private international law legislation (in recent years for instance the Rome II Regulation and the Brussels Ia Regulation) also include the gathering of empirical data on the use of and problems with these instruments.

Another chapter focuses on private international law and economics. Law and economics have been well established in most parts of the world and is considered useful in understanding and explaining human behaviour and regulation in economic terms. In her chapter, *Giesela Rühl*, one of the key European experts on economic analyses of private international law, provides critical and enlightening guidance regarding this multidisciplinary approach. She makes a compelling case for further research applying both methodologies. While there is already a substantive body of successful research cases in these matters, developments in both disciplines will continue to contribute to cross-fertilisation.

The harmonisation of private international law in the European Union has substantially accelerated over the past 25 years as a result of the establishment of an Area of Freedom, Security and Justice and extended legislative competence for instruments facilitating judicial cooperation. The chapter by *Adriani Dori* focuses on the interaction of EU internal market law and private international law. She researches how private international law methodology and regulation is shaped by the requirements of legal and socio-economic convergence across

[2] https://www.eur.nl/en/esl/research/our-research/erasmus-centre-empirical-legal-studies

the EU Area of Justice. The research is multidisciplinary in also involving other related disciplines, economic and political analysis, and analysis of empirical data.

The last chapter in this part, *Marco Giacalone* and *Paola Giacalone* examine how technological development, and in particular AI, shapes private international law. A few decades ago, discussions already started on how internet activities challenge the geographical connecting factors that private international law uses to determine international jurisdiction and the applicable law (for instance, the place where a tortious act occurs or where a contract is performed). These are still not fully resolved. In addition, the rapid increase of online connectivity - also during the Covid years - have resulted in a steep rise in online transactions and torts. But new AI technologies also create their own specific solutions and challenges. In reply to the questions raised by Guofang Xue we referred to AI methods such as Decision Support Systems (DSS) that can help the parties and their professionals obtain clear guidance on complex legal cross-border issues and help predict outcomes. While not long ago this chapter would have been considered futuristic, today considering their influence on private international law is essential. The authors also provide insights into how the legal framework can be geared towards a rapidly and unpredictably changing technology.

These chapters, addressing some key multidisciplinary and methodological approaches are in our view extremely enriching in shaping private international and connecting it not only to strictly legal, but also to other political, economic, societal and technological challenges.

Xandra & Laura

⚜

Dr. Stanislava Nedeva:

Thank you both for taking the time to participate in this author interview and share your knowledge with the Young-OGEMID audience.

My question was prompted by the chapter by Diego Fernández Arroyo, who makes the assertion (with which I suspect many would agree) that a comparative approach is entrenched in PIL. But as you mention, PIL has undergone a number of changes throughout the years. Hence, does the comparative approach/methodology need to change and if so how, to reflect the developments in PIL?

How would this affect education - do you think that teaching/learning of PIL through a comparative approach should be adapted as well (my immediate thought would be in terms of teaching interactions between private and public international law, but perhaps there are other examples too)?

Prof. Dr. Xandra Kramer:

Many thanks for your insightful questions.

If you are familiar with the work of *Prof. Fernández Arroyo*, you may know that he has contended for many years that, in view of the developments in private international law, PIL scholars need to readjust the use of comparative law and adopt a more comprehensive and dynamic approach to it to be applied both in research and

teaching. His current chapter goes a step further in arguing that such use should be mandatory, meaning that comparative research of private international law elements is indivisible, even when the latter partners with other disciplines. He is thus including comparative law in the ontology of private international law, more so because nowadays PIL is denationalized and coopted by human rights (with its dual face as discussed by *Kinsch* and thus requiring comparative law as well). He further discusses how private international law operates through comparative law in all its aspects such as identifying the closest law to a situation or providing access to a reasonable forum.

As you mention, comparative law needs to be fit for purpose and go beyond its own dogmatic approach to be functional if PIL objectives are to be taken into account. This is particularly important in view of proper legislating where a comprehensive approach is required and simply comparing national PIL rules - for instance in preparing a new Hague Convention or for a regional legislator like the EU institutes - does not suffice. In his chapter, *Prof. Fernández-Arroyo* also highlights how the International Academy of Comparative Law has changed the manner the methodology of drawing up General Reports. These are not only fed by national rapporteurs, but also by non-national rapporteurs accounting for developments such as soft law or other policies of non-national bodies which might be relevant for the research question and for the operation of private international law.

Needless to say, *Prof. Fernández Arroyo* also favours a comparative private international law in teaching contending the utility of other types of courses. In our edited volume, *Prof. Aukje van Hoek* in het chapter on teaching private international law also refers to State-centred and critical courses in addition to this type, depending also on for which students the course is designed (e.g. national, international, bachelor or mater students). Is the time ripe for at least getting rid of state-centred courses and move to comparative ones? The proposal is certainly appealing, and we think that we all include comparative law in our lessons. However, the existence of obstacles should not be undermined, especially in those countries where comparative law is not a standalone subject in the curriculum. What might work is a simulation of negotiations leading to a PIL instrument or discussing a case and the different paths that it might take to reach one or another jurisdiction, or an ADR-method. Your comment on teaching interactions between public and private international law is also interesting, and may indeed also be an approach. Admittedly, using a more rigid comparative approach or including other (sub)disciplines in our usually overloaded course curricula is a challenge.

Laura & Xandra

Prof. S.I. Strong:

Thanks very much for this interesting discussion to date. So far, we have enjoyed a lot of food for thought for scholars and researchers. My question focuses on the practical impact of your findings. What effect does the diversification of research methodologies have on the actual practice of law? For example, should practitioners be introducing psycho-social empirical research into their submissions, or citing law and economics to judges?

Another way that your findings might affect the practice of private international law is through the promulgation of statutes, either in response to harmonization efforts by the Hague Conference, UNDROIT and/or UNCITRAL, or independently, by reform-minded legislatures. How might the results from your book affect the work of lawmakers?

Thank you for your questions as regards the practical impact of the diversification, in particular on legal practice (first part of your question) and on national legislature (second part of your question).

Prof. Dr. Xandra Kramer:

Our take is that the diversification of research methodology also has an effect on legal practice. This will often more indirectly, through regulation that has been put in place on the basis of more encompassing research and that has to be applied an interpreted in legal practice. In many average international commercial cases it should not be necessary to go beyond citing legislation and case law and providing arguments on the basis of these. But there are cases where insights from other disciplines, including law and economics are important. This is not uncommon in criminal proceedings and other civil law cases either, and particular in the context of the taking and evaluation of evidence. Law and economics insights and psychology may in particular be important for the legislature, as it can help to predict behaviour of consumers or businesses and thus play a role in the effectiveness of legislation, but that will play out in legal practice.

For instance, in the area of collective actions - very topical in the EU in recent years -, some countries have adopted opt-out procedures as law and economics and psychology teach us that opt-in systems can be less effective as it requires certain efforts (even though from a strictly legal perspective one may find opt-in procedures more appropriate). And less effective enforcement may in turn affect behaviour of wrong-doers as well as their willingness to settle, or may generally diminish effectiveness of legal actions. For instance, the Netherlands has adopted an opt-out collective action system, with the exception of foreign based beneficiaries. The judge may, however, in cases that are not under the scope of the EU Representative Action Directive, on request of a party apply an opt-out procedure. In a recent case, which involved intellectual property right holders in the US along with Dutch right-holders, the judge granted applying the opt-out procedure, as the representative claimant organization convincingly argued that individual rightholders in the US would likely not (all) be willing to send opt-out letters to the Dutch court and this would undermine the effectiveness of the collective proceedings. Of course, this is also a practical point, but goes back to economic and psycho-socio insights that underpin the effectiveness of the law.

As to your second part of the question, relating to the way the insights of our edited book may affect lawmakers, indeed, some of the chapter findings will be very useful. Just to mention a few, the chapter by *Chris Whytock* on the interwovenness of private international law and politics and the chapter by *Adriani Dori* on the interaction between the European Area of Freedom, Security and Justice provide valuable insights into the political and socio-economic context in which private international law operates, which is of great importance to lawmakers. And to give another example, modern private international law regulation must take account of technology, as is

made very clear in the chapter by *Marco Giacalone* and *Paola Giacalone*. We have discussed the importance of comparative law at length already answering questions about the chapter by *Diego Fernández Arroyo*. It is clear that for instance the Hague PIL conventions are strongly influenced by comparative law (along with benefitting from a sense of political and economic reality) and these in turn either apply directly in the Contracting States or have a more indirect influence in other countries. In codifying and revising national PIL legislation these will - or should - always be a point of reference. Also the carefully crafted, non-binding Hague Principles on Choice of law of 2015 have meanwhile made their way into the laws and policies of countries in different regions in the world, including Asian, African and Latin-American countries and some of which are not (yet) a member of the Hague Conference.

Xandra & Laura

⚜

Yesenia L. Alfonso:

Thanks very much for sharing your most recent work with Young-OGEMID - I have enjoyed following the insightful questions and commentary thus far.

Earlier in this thread, you mentioned that, as an example, the use of empirical methodologies in legal research is becoming more common, but usually involves the investment of significant time and financial resources. To what extent are the research methodologies employed in private international law really a product of the resources available to that PIL scholar or student? Does this then present an "access to law" problem, or would you say that this is less of a concern because legal research in PIL is increasingly a collaborative effort?

Many thanks again for sharing your work and for getting us all thinking about this important topic!

Prof. Dr. Xandra Kramer:

Many thanks for bringing up this important point. You are absolutely right in that certain type of research is not available without resources. However, it is also true that institutions provide this type of resources to other social scientists and thus, they are also usually also available to legal scholars. And luckily not all empirical methods need to be costly, some platforms and tools are (almost) for free and nowadays interviewing is also more often done remotely, which saves travel expenses etc. But setting up a more extensive empirical research project is time-intensive and may entail additional costs, besides needing the appropriate expertise in how the different empirical methods work. As you mention, collaborative work is important in this regard. In this vein, we hope our book shakes the preconception that legal scholarship has to be individual and solitary, and helps our community move towards other type of arrangements as happens in other scientific fields.

Laura & Xandra

⚜

Prof. S.I. Strong:

I don't know if any of you have ever watched the PBS series, 'Inside the Actors Studio,' but the longtime host, James Lipton, used to conclude the formal interview with a series of questions he said were based on those asked by French talk-show host Bernard Pivot. Pivot's questions were themselves based on a questionnaire developed by Marcel Proust. After some debate with colleagues, I decided not to ask the Lipton questions of our authors (lawyers being somewhat more reticent than actors), but have instead come up with our own list of questions that are in the same spirit. These questions are asked of all our interviewees.

To that end, I ask both Laura and Xandra to answer the following questions:

***Laura & Xandra**: We have received some challenging questions this week, but we both thought these ones tops it all! Being lawyers, we may negotiate some of the questions and answers...*

1. What is your favourite word?
   ***Xandra**: Never thought about that before, but cross-fertilization is a nice one.*
   ***Laura**: chocolate con churros.*

2. What is your least favourite word?
   ***Xandra**: deadline (used both in English and Dutch - and I always tell myself: 'they are not deadly' when I'm about to miss one again).*
   ***Laura**: after deadline, reminder, and after reminder, cucumber (maybe cucumber goes first...)*

3. Which fictional hero do you consider your own personal hero?
   ***Xandra**: I don't have fictional personal heroes really, but if I would have to choose one then perhaps Jane Eyre.*
   ***Laura**: Mafalda (such a fun and insightful girl, she has a saying for everything, including our book: the problem with being an observer is that you ultimately understand and learn things it was better not to know...)*

4. Which historical figure do you identify most with?
   ***Xandra**: I don't identify with any historical figure in particular, but I do admire many and perhaps would want to have a bit more of their traits. For instance, Marie Skłodowska-Curie for geniality and perseverance, Rosa Parks for being courageous and righteous, or Amelia Earhart for her pioneering spirit.*
   ***Laura**: I am very happy with my time in history (I know, not the right time to say this) to identify with a historical figure, but I do want to choose someone from my country, Galicia, who is of course close to me: Rosalía de Castro, a poet who is an example of how just one person regardless of their origin is capable of changing the course of history, at least for a very modest country.*

5. What sound or noise do you love?
   ***Xandra**: the gentle sound of rippling water of a river.*
   ***Laura**: waves in all versions.*

6. What sound or noise do you hate?
   ***Xandra**: loud, sharp noises (I'm a sensitive creature ;).*
   ***Laura**: snoring.*

7. What profession other than your own would you like to attempt?
   ***Xandra**: something artistic, like a photographer or a musician (but that requires talents I don't have I'm afraid).*
   ***Laura**: lighthouse keeper (on an inland I know, Ons, with a decent connection to land!).*

8. What profession would you not like to do?
   ***Xandra**: I wouldn't be much good as a kindergarten teacher (when my kids were at that age, I found managing their birthday parties like a survival of the fittest contest).*
   ***Laura**: queen (would be thinking all the time that people want to behead me).*

9. What is your own personal motto?
   ***Xandra**: No Mud no Lotus (Thich Nhat Hanh).*
   ***Laura**: Always look on the briiiight side of life, tara, tara...*

10. What do you hope your colleagues will say about you when you retire?
    ***Xandra**: I hope they will remember me for more than having edited and written books, papers, teaching and doing consultative work.*
    ***Laura**: Finally!* 😉

PS (Xandra): You crack me up Laura, thanks for co-editing this wonderful book with me and for having been my friend for over 20 years (no, and we haven't aged a bit!)

We thank Stacie for inviting us and all of you for participating in this interview, and we owe it to the excellent team of authors of the book that we were able to participate.

Prof. S.I. Strong:

Our interviewees may have found these last questions difficult, but I'm loving their answers!

Laura and Xandra will be on the listserv for a few more days in case any more substantive questions arise, but I will take this opportunity to close the event and ask you all to help me thank both Xandra and Laura for their time and insights this last week.

⚜