

Book review: Luca Belli et al. *Transferência internacional de dados pessoais na América Latina: rumo à harmonização de normas*, Lumen Juris: Rio de Janeiro, 2024 / *Transferencia internacional de datos personales en América Latina: hacia la armonización de normas*, Ubijus: Mexico, 2025.

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“The unity of Latin America has always been more ideological than real.”² These words by Alain Touraine, written in 2003, attempt to explain the persistent failure to build a unitary vision of the Latin American region. According to the French sociologist, although the regional wars of independence initially united the liberated countries, factors such as the large influx of European immigrants soon caused them to drift apart. As a result, efforts to achieve cultural integration proved fruitless, and some countries, such as Brazil, became so wealthy that the imbalance became almost insurmountable. Touraine went on to suggest that it would be more appropriate to speak of South America rather than Latin America.³

Hence, one might conclude that, at least at present, Latin American countries do not seem to share more than borders. Nevertheless, the emergence of digital technologies presents a new and highly relevant challenge. How can we ensure international data transfers between countries that, despite their geographic proximity, do not share common standards? These all-important issues are addressed in depth by the book “*Transferência internacional de dados pessoais na América Latina: rumo à harmonização de normas*” (International Data Transfers in Latin America: Towards Normative Harmonization), whose main contribution lies in the identification of several strategies aimed to develop a Latin American model of international data transfers.

The book, which is also available in Spanish under the title “*Transferencia internacional de datos personales en América Latina: hacia la armonización de normas*” is the result of a collective effort, carried out by many hands. Luca Belli, Ana Brian Nougères, Jonathan Mendoza Iserte, Pablo Andrés Palazzi and Nelson Remolina Angarita draw on their vast national, regional and international experiences to try to create a work that is relevant to academia, but mainly to regulators and policymakers, in a clear attempt to allow the book to serve as a stimulus for the advancement of policy discussions at the regional level. In this spirit, they conclude their work ambitiously proposing a Draft Inter-American Convention on Informational Self-determination, Processing, and Circulation of Personal Data.

Importantly, this proposal was conceived and matured, within the framework of CPDP Latam, the conference on Computers, Privacy and Data Protection in Latin

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² TOURAINE, Alain. The difficult unity of Latin America. Folha de São Paulo, 10 ago. 2003. Available at: <https://www1.folha.uol.com.br/fsp/mais/fs1008200306.htm>. Accessed on June 12, 2025.

³ *Idem*.

America, which reveals itself, year after year, as a fundamental place for the exchange of ideas, research and multistakeholder debates and policy proposals, as well as an emblematic example of "why multistakeholder dialogue and cooperation at the regional level can be very useful in identifying shared problems, proposing solutions and building networks of like-minded people interested in trying to implement such a proposal for the benefit of the region." (p. 12)

For the sake of methodological approach and relevance of the authors, the work starts by analyzing the national frameworks of the following countries: Argentina, Brazil, Colombia, Mexico and Uruguay. As highlighted in the introductory section of the work, most Latin American countries already have national data protection frameworks, which are, for the most part, very similar. Nevertheless, what might seem to be the result of a meditative effort to create a common and unitary approach is rather the result of a coincidence, due to the countries' use of the European model as a common source of inspiration. In this sense, it would not seem too audacious to claim that perhaps the so-called "Brussels Effect" has united Latin American countries more than regional efforts. Such a context raises the fundamental question: how to overcome the inevitable (neo)colonial dimension of such influence and promote an independent regional thinking aimed at attending to regional peculiarities, while maintaining a compatible framework with that of the former colonial masters?

Therefore, the issue of a shared approach to international data transfers emerges as a central element to strengthen and empower the region. As pointed out by the authors in the introduction, data transfers become essential to make international trade viable, in addition to research and development in various fields, which can help to reposition the economies of Latin America, looking for regional development. On the other hand, the outstanding challenges that international data flows present, especially in relation to information security and privacy, require special attention to maintaining high levels of protection while promoting harmonization. This is because, as highlighted in the book, the countries of the bloc have very different levels of "technological development, cybersecurity readiness, and institutional maturity and effectiveness." (p. 11)

As asserted by the scholars, despite the common European inspiration, the data protection regimes of the countries within the region present significant differences, considering local specificities, which lead to legal fragmentation. This is largely explained by the absence of effective supranational and regional organizations that could take the initiative to define share standards and subsequently ensure the enforcement of the common norms to cross-border issues. This problem is epitomized by the well-known difficulty in reaching agreements with existing intergovernmental organizations. One illustration of this difficulty is that the first Draft Convention presented by the authors at CPDP LatAm 2024 was originally intended for the Organization of American States (OAS), a choice that was later reviewed, after discussions with regional stakeholders made clear that this path would end up becoming politically unfeasible.

Before reaching the proposal of a Draft Convention, the authors didactically explore the chosen national frameworks, focusing on existing options for data transfers. In the first chapter, the authors analyze the data transfer regime of the five chosen countries, dedicating special attention to the way in which they regulate adequacy

decisions, model contractual clauses or standard contractual clauses (SCCs), binding corporate rules, codes of conduct and certifications, and, finally, they emphasize the scarcity of international agreements between these countries.

Adopting a more practical perspective, the second chapter is dedicated to the model of contractual clauses developed by the Ibero-American Data Protection Network, which has proven to be an important *locus* for discussions, although frequently criticized for being driven primarily by the Ibero, rather than by the American component. Finally, the third chapter lays the foundations for what could become a Latin American Data Protection Convention, in addition to seeking to highlight what would be the possible benefits in relation to the adoption of these regional integration approaches. The final version of the text incorporates the valuable contributions received from the participants of the 2024 CPDP LatAm, which reinforces the value of multistakeholder participation to improve the drafting of policy proposals.

Analyzing its scope, the authors tellingly embed their human-rights and developmental approach to one of the recitals, that remarkably stands out: "CONVINCED that increasing the level of protection of personal data is a priority for the region and an essential condition for individual and social development and also for its full and equal participation in all spheres of the information society." (p. 240) Among the principles listed are: human dignity, legitimacy, consent for the processing of data related to children or adolescents, legality, loyalty and good faith, transparency, purpose, minimization, quality, responsibility, security, confidentiality and, finally, prevention and precaution. Importantly, the main pillar of this effort is the right to informational self-determination, which makes this proposal particularly powerful and timely. Indeed, the authors note that informational self-determination has been recognized by the Inter-American Court of Human Rights (IACHR) as an autonomous human right, in the CAJAR vs Colombia case, which imposes the obligation to respect this new right in order to fully comply with the framework of the inter-American human rights system.

The authors identify several challenges that may also be viewed as opportunities for improving data transfers. These include: the fragmentation of regulatory frameworks, data security concerns, the effectiveness of informed consent, transfers to countries lacking adequate levels of protection, and, finally, the interpretation of transparency and accountability. To address these gaps, the authors advocate, for instance, the importance of enforcing existing international treaties on human rights and data protection in the recipient countries of personal data transfers. This idea reinforces the fundamental relevance of thinking about the construction of international normative frameworks, whether at the global or regional levels.

In the same vein, they emphasize the importance of exploring the possibility for Latin American countries to develop digital public infrastructures for the management of personal data. This is because, as has been observed, the region has a significant lack of investment in the area of information security, which, ultimately, poses very serious risks in the context of threats to the construction of digital sovereignty at both national and local levels.

As argued by the authors:

The arrival of the internet and digital technologies has brought new challenges, such as the need for transparency and protection not only against the misuse by governments in the exercise of state sovereignty, but also against the abuses of new private sovereigns that operate transnationally and whose digital borders occupy transnational spaces, challenging traditional notions of jurisdiction and control. In this context, the debate around the regulation of data transfers is essential to facilitate international cooperation and, at the same time, strengthen the digital sovereignty of the State, that is, the ability to "exercise agency, power, and control to shape the infrastructure, data, services, and digital protocols." through what a growing number of academics define as "data sovereignty." (p. 06)

None of this, however, can be achieved without the existence of control and supervision authorities that bear full autonomy and can act impartially and independently, as highlighted in Article 28 of the Convention proposed at the end of the work. The ability to resist any external influence, whether direct or indirect, is a fundamental and vital premise to ensure that the international transfer of data is in accordance with the constitutional prerogatives of each country in the region.

Ultimately, the authors argue that the construction of a robust normative frameworks on the subject would allow Latin American countries to be included amongst the countries enjoying the free circulation of data and, ultimately, of technologies and wealth. That is why the book written by Luca Belli, Ana Brian Nougères, Jonathan Mendoza Iserte, Pablo Andrés Palazzi and Nelson Remolina Angarita proves to be a powerful guide for those who want not only to know the reality of some countries in the region, but, above all, to identify opportunities for improvement and advances, which can serve to inspire countries that are still in an earlier stage of their data protection development.

Undeniably, the strengthening of international data transfer mechanisms at the regional level could help bridge the gaps that still exist between these countries today, whose idea of unity, as highlighted in the first lines of this review, is still an ideology or, perhaps, a utopia. But if utopia it is, one should conclude with Eduardo Galeano's famous lines quoting Fernando Birri: "What is utopia for? That's what it's for: so that I don't stop moving forward."⁴

⁴ Eduardo Galeano, *Las palabras andantes*, with José Borges (Mexico City: Siglo XXI, 1994), quoting Fernando Birri.