Integration law and harmonization of law in the context of RILA

Direito de integração e harmonização jurídica no contexto RILA

Derecho de integración y armonización jurídica en el marco de RILA

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Abstract: The Latin American Integration Route (RILA) is a proposal for regional development based on the economic, political, and social integration of Latin American countries. Its objective is to better develop the interaction between countries and the utilization of regional resources and opportunities, aiming at strengthening economic and social development. Integration Law is the field of International and Community Law responsible for governing relations between countries during the implementation of regional integration. It encompasses the norms and principles regulating the commercial, political, cultural, and social relations among the member countries of RILA. In this context, the main goal of this article is to present conceptual aspects of Integration Law and Harmonization of Law, and to reflect on their roles within the context of Latin American integration. The current text is a qualitative approach and bibliographical research, drawing from thinkers that bring the Integration Law and Harmonization of Law scheme to the regional economic integration scenario. It comes to the conclusion that International Law is fundamental to the maintenance and economic integration of the member countries of MERCOSUL, since it creates norms and principles by which the members of this bloc (nations and civil society) can guide themselves.

Keywords: Integration Law; Latin American Integration Route; Economic Development.

Resumo: A Rota de Integração Latino-Americana (RILA) é uma proposta de desenvolvimento regional baseada na integração econômica, política e social dos países da América Latina. Ela tem como objetivo aprimorar a interação entre os países e o aproveitamento dos recursos e oportunidades regionais, buscando o fortalecimento do desenvolvimento econômico e social. O Direito de Integração é a área do Direito Internacional e Comunitário que regulamenta as relações entre os países na implementação da integração regional. Ele contempla as normas e princípios que regulamentam as relações comerciais, políticas, culturais e sociais entre os países integrantes da RILA. Nesse sentido, o presente artigo tem como objetivo principal trazer aspectos conceituais acerca do Direito de Integração e da Harmonização Jurídica, bem como a traçar uma reflexão do papel desempenhado pelos mesmos no contexto da integração latino-americana. O texto em tela se configura como uma abordagem qualitativa e pesquisa do tipo bibliográfica, com a fundamentação de teóricos que trazem a temática do Direito de Integração e da Harmonização Jurídica para o cenário da integração econômica regional. Conclui-se que o Direito Internacional é fundamental para o funcionamento e a integração econômica dos países membros do MERCOSUL, uma vez que cria normas e princípios básicos norteadores das relações jurídicas entre os integrantes do bloco (nações e a sociedade civil).

Palavras-chave: Direito de Integração; Rota de Integração Latino-Americana; desenvolvimento econômico.

Resumen: La Ruta de Integración Latinoamericana (RILA) es una propuesta de desarrollo regional basada en la integración económica, política y social de los países de América Latina. Su objetivo es mejorar la interacción entre los países y aprovechar los recursos y oportunidades regionales, buscando fortalecer el desarrollo económico y social. El Derecho de la Integración es el área del Derecho Internacional y Comunitario que regula las relaciones entre los países en la realización de la integración regional. Contempla las normas y principios que regulan las relaciones comerciales, políticas, culturales y sociales entre los países miembros de la RILA. En este sentido, el objetivo principal de este artículo es acercar aspectos conceptuales sobre el Derecho de Integración y la Armonización Jurídica, así como esbozar una reflexión sobre el papel que jugaron los mismos en el contexto de la integración latinoamericana. El texto en cuestión se configura como un enfoque cualitativo y una investigación bibliográfica, fundamentado en teóricos que introducen la temática del Derecho de Integración y de la Armonización Jurídica al escenario de la integración económica regional. Se concluye que el Derecho Internacional es fundamental para el funcionamiento y la integración económica de los países miembros del MERCOSUR, ya que crea normas y principios rectores básicos de las relaciones

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jurídicas entre los miembros del bloque (naciones y sociedad civil).
Palabras clave: Derecho de Integración; Ruta de la Integración Latinoamericana; desarrollo económico.

1 INITIAL CONSIDERATIONS

The Latin American Integration Route (RILA) is a bold project of economic and political integration[2], and its main goal is to promote the cooperation and development between some Latin American nations: Brazil, Paraguay, Argentina and Chile. Integration Law and Harmonization of Law has a vital role in this scenario, for it creates principles and norms that guide the social and economic integration between the nations of the RILA, as well as other international organizations.

The already mentioned countries that compose the RILA, or the countries integrated by the Bioceanic Railway (Brasil, 2017) by means of the Declaration of Brasilia on this theme in December 21, 2017, are all native (Brazil, Argentina and Paraguay) or associated (Chile) members of MERCOSUL since 1991 (Brasil, 1991).

MERCOSUL has many norms and international deals that establish the principles that regulate the aforementioned integration. Such deals pertain to matters related to the free circulation of goods, people and services, as well as the technical regulations in the monetary, fiscal, sanitary, social and other such spheres.

However, though MERCOSUL is a "Treaty for the Constitution of a Common Market between the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay" and applies some norms over the countries associated to the regional bloc, such as Chile, these norms that come from south american nations are not ones that are especially elaborated for the legal relations of the new age dictated by this transnational project called RILA.

In this context, even though it is a theme still in construction and under constant discussion, the present work aims to bring to light conceptual aspects on the Integration Law and Harmonization of Law, as well as to establish a reflection on the role it has in face of the urgent and necessary challenge of the integration and harmonization between socio-legal norms in the context of the involved countries.

Integration Law and Harmonization of Law also has the mission of preventing and resolving eventual socio-legal conflicts that might appear in the RILA countries integration scenario, generally by means of arbitration courts.

To reach such objective, the article is structured in three parts: first, it presents the RILA and its social economic relevance to the state of Mato Grosso do Sul, considering that the project will promote several changes in this state's territory, and because of that, this topic leaves a reflection about the opportunities and challenges the reader might find if the project is implemented;

After that, the article discusses International Law theory, namely, its basic principles and concepts, as well as the association of such principles with the latin american integration process and their distinction from the community law applied in the European Union (Almeida, 1996); and

[2] "The economic driving force is not overlooked, therefore, as a new development stage for this region at the heart of South America, which was envisioned by many governments and private enterprises. Be them by colonialist or neoliberal trends, or by integrationalists or development proponents, these dynamics are not new. Portugal and Spain, for example, by signing the Treaty of Tordesillas, in june 7, 1494, divided and secured territorial zones to preserve their expansion, navigation, and commercial exploration interests in the region." (Sunakozawa, 2020, p. 1)

finally, in the third part, it outlines considerations regarding the necessity of legal harmonization and integration between Brazil, Paraguay, Argentina, and Chile, facing the challenges that demand security and stability on social, environmental, educational, economic, cultural, historical and legal relations, that arise from the regulation of public and private conducts and governmental and institutional actions.

On the methodological aspects, the present article characterizes itself as a qualitative approach and bibliographical research, exploring theories that bring the Integration Law and Harmonization of Law theme to the regional economic integration scenario. The text presented here seeks to contribute to the greater understanding of the legal implications that arise from the integration process that will be consolidated through the RILA.

2 THE RILA AND ITS IMPORTANCE TO THE DEVELOPMENT OF MATO GROSSO DO SUL[3]

The term "frontier", meaning border, has latin roots in the word *front*, which gives it territorial characteristics with the advent of the Modern State, thus consolidating the territorial sovereignty os the States, since this is the first time that a precise border delimitation is established, that is, the notion of sovereignty delimitations also appears in this moment in histpry (Steiman; Machado, 2012).

Regarding the conceptual framework, Raffestin (2005) states that a border is not a line, but a dynamic expression of a given territory; such premise brings up the difference between a limit and a border, which are commonly confused, even in the media. A border is associated to a series of social and biological aspects in a given territorial portion, while a limit is a physical marker that determines the beginning and the end of a territory.

> [...] a border is understood as a historical construction process that, in practice, can be considered as a territorial margin that can manifest different characteristics from those of other regions of the same territory. In this perspective, the limit is commonly viewed as a static symbol that, in spite of being indispensable to the territories, is nothing more than a figurative and linear component between two borders (Paixão, 2006, p. 51).

The nuances of the modern and contradictory 21st century allow us to comprehend that the borders are geographical (sub)spaces with uncountable complexities because of the intense influx of goods, people, information and money that passes through them. At the same time, they are spaces for economic meetings and cultural multiplicity, and have a direct correlation with the geographical concept of territory, that, in Raffestin's (1993) understanding, is the stage for the power relations practiced by social authors. The current globalization

> [...] is not just the existence of this new system of techniques. It is also the result of actions that assure the emergence of a so called global market, responsible for the essentials of the political processes currently effective. The factors that contribute in the explanation of the current globalization architecture are: the uniqueness of the technique, the convergence of moments, the cognoscibility of the planet and the existence of a single historical motor, represented by the globalized surplus value. A global market that utilizes these advanced techniques results in this perverse globalization (Santos, 2001, p. 23).

[3] Some parts of this second topic came from an article titled: "Um estudo comparado acerca da educação nas Constituições do Brasil e do Paraguai" ("A comparative study on the education in the Constitutions of Brazil and Paraguay")- presented in the XXIX Congresso Nacional do Conpedi Balneário Camboriú, SC, in December 8, 2022 – GT Direitos e Garantias Fundamentais III.

This way, being a stage for social relations, borders are spaces that are not completely arranged, therefore, they have potential to conceive new events. In other words, a border must be seen as space that is not fully structures and subject to various modifications (Becker, 2007).

> The border is not an obstacle in a territory, but a mechanism that results from all actions in a given territory. A border is invariable in structural terms. It is multiple in its functions and meanings (Courlet, 1996, p. 289).

Under the auspices of the current economic globalization, it is clear that the meaning of the term "border" surpasses the notion of State sovereignty and its respective territorial limits, that is, it advances from the political to the economic – and this includes the border's functions. Beyond the mentioned economic development, the interactions between nations is a factor that deserves to be highlighted in modern borders, for it brings about various *modus vivendi* (Oliveira *et al*, 2015), that can reach, in some cases, the so called "cultural hybridism".

In the case of Brazil, it is convenient to highlight its extensive territorial borders, that reach ten countries in total (see Figure 1), and many municipalities along this border tend to cluster themselves with others from neighboring countries (Oliveira *et al*, 2015), which produces a geography full of particularities and creates social and legal implications.

Figure 1 – Brazilian borderline

Source: UFMS (*s.d.*).

Such a condition gives Brazil a "privileged" position when it comes to dialoguing with the other MERCOSUL nations (Furtado, 2011). It is not just its border that puts Brazil in highlights in the South American scenario, but also its natural resources abundance and the available workforce to transform those resources. Also, its agricultural productivity stands out, because it already has favorable natural conditions to thrive and it's been the leverage for technological development in the field in the last decades, putting Brazil in the lead among various South American countries.

Following this track, the state of Mato Grosso do Sul stands out as a state with a particular border condition, for it shares border lines with Bolivia and Paraguay, which makes the circulation of people, goods and services easier, creating a better familiarity among the border municipalities to the point of creating regions of conurbation and semi conurbation in Brazilian and Paraguayan soil.

The fact is that the geography of Mato Grosso do Sul does not escape globalization: a high demand of fixed assets that will support the flow of goods, services, information and people, and vice versa, for this flow also makes the innovation on fixed assets possible, in other words, they complement each other; this fixed asset and flow logic, in turn, makes the capital reproduction from a local to a global scale possible.

> Space gained a new dimension — the thickness, the depth of the becoming — thanks to the number and variety of objects (that is, the fixed assets) that compose it, and the exponential number of actions (that is, the flow) that traverse it (Santos, 2001, p. 34).

Being it a favorable *locus* of capital reproduction, Mato Grosso do Sul has been put under the spotlight, for it is part of the Latin American Integration Route (RILA). As it is shown in Figure 02, the city of Campo Grande is at the "heart" of this bold project that integrates continents and brings economies together. Countries from MERCOSUL as well as from the greatest economic bloc of our days, the European Union, already show interest in deals for the diminishing and even the ending of customs barriers, putting RILA in a position of high socio economic importance (Sunakozawa; Reynaldo; Oshiro, 2019).

Figure 2 – South American Bioceanic Railway

Source: Venceslau (2021).

The presented railway aims to make the international market more competitive and integrated, especially the axis that connects the state of Mato Grosso do Sul (with the export of Brazilian products) to Antofagasta, in Chile, making its way through Paraguay and Argentina, significantly reducing the distance traveled, as well as affecting the costs of transportation, making the moving of cargo and passengers more efficient, besides other logistic benefits being developed through the RILA.

3 ON INTERNATIONAL LAW

International Law consists of a framework of norms and principles that regulate the relations between States, international organizations and subjects on a global scale (Silva, 2018). It is a complex field of study that is in constant development, since it improves itself through treaties, international deals, international court decisions and customs. In the words of Menezes (2007, p. 150):

> Historically, International Law came about to resolve conflicts between peoples, reigns and City States, as a pacification instrument for interrelational societies. With it, not only rules of conduct were elaborated, but also a conscience of the peoples was developed, in the sense of trying to resolve its disputes before the use of force, renouncing conflicts and war.

It is divided in two main branches: Public International Law and Private International Law.

Public International Law addresses the relations between States and international organizations, that is, it is the branch of International Law that deals with questions related to the sovereignty of nations, eventual conflicts, diplomatic and commercial relations, as well as Human Rights. Also, it encompasses the norms and principles that govern the operation of international organizations, like, for example, the United Nations (UN) and the European Union (EU).

Private International Law takes care of governing the relations established between individuals of various nations, as well as questions that arise from international contracts and transactions, including those related to the competence and jurisdiction of courts in international cases, besides eventual norm conflicts.

In both cases, the importance of the International Law as an essential element in the maintenance of peace and stability among nations is clear, and it also functions as an instrument to promote social justice and the Human Rights in a global scale.

3.1 International Law Principles

There are many principles considered to be fundamental to International Law and to the relations between States, international organizations and individuals on the global scale, and this article will study the main ones based on the work of Menezes (2007).

> Particularly, in the case of International Law, because it involves a historic sedimentation of the global society at the same time it has an extremely open system, substantially based on the will and moral conscience of the international society, the principles have a place of importance not only as norms for organizing the system, but as a true normative pillar (Menezes, 2007, p. 141).

The International Law principles are backed by various international documents and are the fruits of a long historical journey of the nations, from the experiences and necessities of each one (Menezes, 2007). Following the same strain of thought of Aréchaga (1980 *apud* Silva, 2018, p. 141), which "[...] considers the general principles of International Law the most notable innovation of the Charter of the United Nations"[4]:

[4] Named "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States" (or Resolution 2625), the document recognizes, in its preamble, the political, economic and social changes which the international society has gone through since the elaboration of the Charter of the UN, such that an adaptation the the new reality is called for with the objective of improving the efficacy of the principles and, consequently, the maintenance of peace in the international community (United Nations General Assembly Resolution 2625).

> CHAPTER I: Purposes and Principles
>
> ARTICLE 1- The Purposes of the United Nations are:
>
> 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
>
> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
>
> 3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
>
> 4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.
>
> ARTICLE 2- The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.
>
> 1. The Organization is based on the principle of the sovereign equality of all its Members.
>
> 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
>
> 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
>
> 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
>
> 5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
>
> 6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
>
> 7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.

The principle of equality is fundamental to the International Law because it provides a system of equality between the nations that are under it, that is, all the States are equal when it comes to rights and obligations, in a way that said principle brings with itself the so called "normative isonomy" (Menezes, 2007).

In the same way, in 1907, a second Hague Conventions ratified such ideas and affirms that that are no distinctions between nations, which means that all of them have the same rights and duties, therefore, the equality principle among nations prevails, a "legal-normative postulate" (Menezes, 2007).

No less important, and indeed much used in various parts of the world, including in Internal Law, is the principle of good faith, an important principle of the International Law

branch, which basically provides for the interpretation and strict compliance with legal norms in the international context, in order to bring legal guarantee/security to the parties involved, be they nations/organizations (public law legal persons) or even private entities (private law legal persons) (Menezes, 2007).

Good faith walks towards the pacification of conflicts, and therefore constitutes itself as a subjective element of another principle which is also fundamental to International Law: the principle of the peaceful solution of conflicts[5], that provides "[...] the existence of a litigation, a controversy, an antagonism of interests between States on the international plane, and [...] to prevent the amplification of existing conflicts [...]" (Menezes, 2007, 150). It is worth noting that the peaceful solution of conflicts aims at preventing wars of global scales, as have happened in emblematic moments in history[6].

On the same strain of thought, there is the principle of cooperation among peoples, that aims for the progress of humanity through the idea of a more solidary development, that is, centered in the solution of difficulties that occur in all nations (Menezes, 2007). Also, this principle rests on the foundation of maintaining international peace and security, as well as the world economic progress (Silva, 2018). In this sense,

> The thesis of international cooperation as a principle gained force as the international relations were intensified, deepened, abandoning the character of mere coordination rules for a more intricate action, especially with the multiplication of international organizations and organisms, reaching the modern idea of cooperation, that now influences the development of a more profound cooperation process, that is, the regional integration (Menezes, 2007, p. 153, emphasis added).

In a certain sense, the regional integration becomes a factor to be worked on and improved among the nations that pretend to achieve plain economic development, and that is why the incentive for the principle of cooperation among peoples is essential in the context of such integration.

In addition, it must be stressed that this principle aims to avoid that hegemonic nations, by means of colonial imposition, impose values and cultures that do not belong to a people, in a way that promotes subjugation and domination (Menezes, 2007).

> Although it is not an essentially Latin American principle, the principle of the self determination of the peoples has a very close link to Latin America, for when the Europeans reached the continent, they found civilizations that were culturally advanced and more evolved than the invaders in many aspects. Despite that, all the values and culture from the Aztecs, the

[5] On this subject, Silva (2018, p. 144) says: "According to the Resolution 2625, the States must resolve their controversies by peaceful means in such a way that neither the international peace and security nor justice is put at risk. They must find a fast and fair resolution through negotiation, investigation, mediation, conciliation, arbitration, judicial solution, resource to regional organizations or systems, or other peaceful means that they themselves elect."

[6] It's interesting to observe that, although the present work addresses the International law, it must not be forgotten that national law adopted the principle of objective good faith to the solution of conflicts, as it is seen in the 2002 Código Civil Brasileiro and the 2015 Código de Processo Civil. Emphasis on the application of said principle in the contractual sphere. Jurisprudential decisions are also made based on the principle of good fate. Let us see:
"[...] IV. The principle of objective good faith imposes that the parties involved in a relation adopt a posture that maintains conformity to the social and ethical standards, correction and transparency, and respect to the legitimate expectations deposited to the parts of a relation. In this context, the principle of objective good faith creates duties attached to the main obligations, which also must be respected by both parties. Among such duties, there is the duty to cooperate, that presupposes reciprocal loyalty in the contractual relation, that once disrespected will cause the contractual default of the party that caused it (positive violation of the contract)" (Distrito Federal, 2019).

> Mayan and the Incas were destroyed, and in its place the European culture, the languages, the latin, the spiritual values, the social structure, etc, was imposed. Consequently, the self determination principle was certainly constructed, in part, because of the Latin American experience and the affirmation and influence of a new set of States that are agents of the international society they had throughout their history and freed themselves from colonization and consecrated, by means of diplomatic action in international forums, this principle as a corollary of international relations (Menezes, 2007, p. 157-8, emphasis added).

Because of the intense exploration through colonization in Latin American soil, International Law, in all of its documents of normative order, has always highlighted the principle of the self determination of the peoples, as in article 3, paragraph "e"[7] of the Charter of the Organization of American States (OAS), and in article 17[8] of the same text, that adopt the aforementioned principle in an objective manner (Menezes, 2007).

Because of the sovereignty of each nation, the principle of non intervention appears and assures that no State can intervene, be it directly or indirectly, on internal or external affairs of another State, nor in questions of political, economical or social order (Menezes, 2007).

It is interesting to observe that sovereignty is key, or better yet, is one the basis of the conception of the Modern State and an underlying element in various principles mentioned in this work. Following on that, Jellinek (1954, p. 356) defines sovereignty as "Poder soberano de um Estado es, por tanto, aquel que nos reconoce ningún outro superior a sí; e, por conseguinte, el poder supermo e independente"[9]. Bertolazo (2014, p. 224) understands that sovereignty corresponds to the "[...] negation of all subordination and limitation of the State to any other power, including the international scope. If sovereignty is an absolute power, it has no legal limits".

However, even though it is an element of great importance to the principles of International Law, sovereignty must not be confused with the element that overlaps the norms of the International Law itself, because if that were to happen, the idea of an international society would crumble and chaos would ensue. With that, the following proposal appears:

> [...] to underpin International Law is to say that the guarantees do not rest solely on the will of the State, but also in its validity, though it is not necessary that the validity proceeds from the will. Because the norms of International Law do not emanate from only one State, but from the requirements of international relations (Bertolazo, 2014, p. 224).

In this sense, the most adequate way to conceptualize sovereignty resides in a negative definition, namely, a limited sovereignty, that does not presuppose accuracy, that is a historical category, and not a perfectly defined concept (Bertolazo, 2014).

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[7] Article 3, paragraph "e", of the OAS: "Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems;"

[8] Article 17 of the OAS: "Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality."

[9] Translation: "The sovereign power of a State is, therefore, that which has no other power superior to it, and, consequently, the supreme and independent power."

The principle of non intervention, in turn, consists on the premise that no nation will intervene in another, be it in internal or external affairs, since there is sovereignty inside the territorial limits previously established (Menezes, 2007).

4 CONCEPTUALIZATIONS ON INTERNATIONAL LAW AND HARMONIZATION OF LAW

Facing the growing flow of people, goods and services, it is indispensable to reflect on the possible challenges that will arise as a result of such movements, as well as a structure that will support the intense socioeconomic, cultural, academic and legal transit that flows beyond Brazilian borders, , reaching Paraguay, Argentina and Chile, forming the RILA – the new *locus* of economic development aimed at the exportation of commodities, services, investments, etc (Sunakozawa; Oshiro Reynaldo, 2019).

In such context, it is of the most importance to highlight the formation of the economic blocs for the competitive stimulus and for the financial success of the Latin American States in face of the economic powers, specially those that are not exclusively focused on the economic aspects but, above all, those who look to achieve social development of the nations (Gomes, 2006).

> The idea is, thus, to think about the possibility of the Latin American integration under the umbrella of the shared experiences and the strengthening of the local realities not only due to the appreciation of the cultural identity, practices and knowledge, but also with the objective of reversing the development paradigm, so that it is seen as a counterbalance to globalization. Consequently, the political and economic practices that arise from this integration will allow fairer strategies for a repositioning of the importance of Latin American countries in the global society, making it, even against the interests of the present economic powers, more decent and fair (Bastos, 2019, p. 14).

In face of this landscape, the necessity to guarantee legal security in the relations between States and companies emerges, since globalization imposes an increasingly complex and fast economic dynamic. This way, the international community requires new legal mechanisms that make it possible for a greater integration amongst nations, surpassing the classical notion of International Law (Menezes, 2007). So,

> The legal order, that justifies itself as an objective and prescriptive regulation mechanism in a society, describes an unreal world to the daily problems and priorities of the social groups, the degree of which scales exponentially in a multifaceted society. The consequence is the alienation of these groups from the State's legal order and the creation of indigenous regulation mechanisms and conflict solutions (Barral, Munhoz, 2006, p. 298).

Facing this scenario, the mission to establish a relation among the most relevant instruments to the constitutional framework of the Latin American States in face of the International law appears, aiming to achieve some level of commitment from each Latin American State with the International Law norms (Menezes, 2007).

In this direction, Baptista (2008, p. 66) warns that for that to be a positive result in the regional integration (which includes the formation of regional blocs), there is the need for deals among the sovereign nations, and thus: "The right to integration becomes indispensable to the accomplishment of what was agreed upon, as well as to the continuity of certain enterprises, deepening and gearing up integration measures".

Before entering the conceptual part of the Integration Law, it is important to stress that much is talked about Community Law, that is understood as the branch of legal science

responsible for the European legal framework, not to be confused, therefore, with the concept of Integration Law, for this, in turn, encompasses the rest of the integration experiences around the globe (Viegas, 2004).

> [...] it is safe to say that the backbone of *Integration Law* came from Community Law, this having the specificities of the European reality and that one walking towards the field of a comprehensive theory of the cooperation as well as integration blocs (Viegas, 2004, p. 617).

And so, Integration Law can be understood as set of norms and principles that aim to regulate the formalities of economic, social and political integration between Nation States and international organizations. In this sense, it encompasses all of the treaties and deals on rules and principles about international commerce[10], not to mention the institutions and mechanisms responsible for the interpretation and application of the law.

The Integration Law also reaches the fundamental principles that guide the relations among States and, mainly, among the economic integration organizations such as the European Union, MERCOSUL, and the WTO (World Trade Organization).

4.1 MERCOSUL and International Law

When talking about RILA, MERCOSUL must not be left out, as it is a regional integration organization that ratifies the legal sources[11], uniting Argentina, Brazil, Paraguay and Uruguay, being fundamental to the development of the area of study of this work.

On a conceptual level, according to Di Lorenzo (2022, p. 161):

> [...] MERCOSUL unites countries forming a bloc that aims to propitiate the socioeconomic development of its members. This economic bloc encompasses various States, with emphasis on Argentina, Brazil, Paraguay and Uruguay, permitting still the association of other Latin American countries, for example, Bolivia, Chile and Venezuela, which are also part of the LAIA.

Making use of the aforementioned International Law sources, MERCOSUL Law finds itself under constant development (Basso, 2000), for the legal nature of MERCOSUL is intergovernmental and there is a gap when it comes to the norms that permeate the bloc, creating numerous "[...] constitutional and legislative obstacles for the incorporation by the Brazilian law of norms brought about by MERCOSUL [...]", for example (Nascimento, 2005, p. 7).

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[10] With regard to the actors in the international commerce scenario, it is fit to address that: "The main participants of the International Trade Law are the transnational companies that provide goods and services. The normative production requires flexibility and agility through international sources, notably the rules produced by business organizations of a private nature, because the legal norms of sovereign states cannot keep up to the speed of business. Self regulation plays an important part in international commerce by emphasizing the rules produced by the parties themselves in their normative documents, it pays attention to the uses and customs declared by private entities and which collaborates for the standardization of International Trade Law. The complexity of legal relations in international trade and its unpredictability demand cooperation for the use of mechanisms of legal harmonization and unification, as well as an international code on various subjects. Contractual freedom and autonomy find resonance in Flexible Law, since there are no mandatory rules for the businessmen, but only models, codes of conduct and legal guidelines" (Bijos; Oliveira; Barbosa, 2013, p. 255-56).

[11] According to the Treaty of MERCOSUL, legal sources must be uniformed by this organization when it comes to legal application over all member countries, so imposed: "CHAPTER V - MERCOSUL Sources of Law (...) Article 41. MERCOSUL Sources of Law are: I - the Treaty of Asunción, its protocols and additional or complementary instruments; II - the accords celebrated under the Treaty of Asunción and its protocols; III - the decisions of the Common Trade Council, the resolutions of the Common Trade Group, and the guidelines of the MERCOSUL Comission, adopted from it until the implementation of the Treaty of Asunción."

Still in the year 2000, professor Maristela Basso drew attention in her article published in the UFPR Law School Magazine for the fact that the studies on International Law with emphasis on Integration Law were a complementary source of great importance for MERCOSUL Law.

International Law exercises a vital function when it comes to the structure and operation of MERCOSUL, since it regulates the relations between its members and all issues that emerge from the region's integration. It should be noted that MERCOSUL has its own legal system, formed by international deals and treaties that stipulate rules and principles on the integration of the member countries.

> In MERCOSUR, the necessary bodies were created for the legal representation of the intergovernmental institution, political and normative management and conflict resolution between the member countries. As the need arises, other bodies are formed in order to satisfy the new reality, and we can mention the Parliament of MERCOSUL as an example. This process went through periods in which provisional institutions predominated and others with the establishment of a definitive institutional structure (Di Lorenzo, 2022, p. 162).

MERCOSUL has a Permanent Revision Court that interprets and enforces the international agreements and treaties, as well as to resolve conflicts between the member States. Furthermore, International Law is also important to MERCOSUL in regards of its relations with other international organizations, such as the European Union and the World Trade Organization, because MERCOSUL has agreements of free trade with these institutions, requiring, therefore, the observation of the norms and principles of International Law (Mercosul, 2022).

In December 2017, the MERCOSUL members signed an agreement on the Consumer Law, more specifically, on Applicable Law on International Consumer Contracts. First, the agreement was intended to bring legal certainty to those involved in consumerist relations, and later it dealt with matters pertinent to the harmonization of legal norms, considering that it brought to light what fits and what doesn't in the norms mentioned above (Gomes; Fonseca, 2018, p. 1894).

On the matter of Human Rights, Oliveira (2015, p. 475) says

> MERCOSUL work bodies, reunions and subgroups have played an important role when it comes to human rights within the bloc, which creates an optimistic view regarding the "political" integration of the member countries. On the other hand, human rights norms still have some difficulties with their applicability and effectiveness. Although most part of these norms are just soft law, others must be incorporated to the internal legal system of the member States for them to be executed.

Human Rights are still a work in progress in Latin America and need a special care, since the global society has the 17 UN Sustainable Development Goals to achieve.

> The 17 SDG are ambitious and were based on the 8 MDG, encompassing goals that go from the eradication of hunger and poverty and the protection of the planet to the pursuit of peace and prosperity. The new 2030 Agenda includes the 17 SDG and comes as a tool for sustainable development, recognizing the needs for advancements in science, technology and innovation, taking into account the global climate changes, going hand in hand with the UN Conferences on climate (Melo; Gattás; Raimundo, 2018, p. 267).

In other words, the Human Rights topic and everything that is discussed in the present work on socio environmental sustainability must not be put in second place, for the 17 SDG are an urgent and necessary demand of the 20th century and deserve to be legal regulations, since the RILA holds various originary peoples, vulnerable societies and biospheres as world

heritage, for example, the Mata Atlântica, the Cerrado and the Pantanal, the Chaco in Paraguay, Quebradas de Humahuaca between the Andes and Argentina, the Andes Montain Range, the Atacama desert, and others.

4.2 Possible observations in face of the legal harmonization of the participants of the RILA

Because it is a work still in progress, the observations made here are based on published scientific works and build from the assumption the legal harmonization involving several themes, including logistics, customs, free trade, education, environment, transnational crimes and public security, is crucial for the economic integration of the Latin American countries. This way, here are some observations on the legal harmonization of the RILA.

I) **Logistics:** The legal harmonization related to logistics is fundamental to guarantee the efficiency and security of the transportation of goods in the RILA. For that, the need of a harmonization of the laws related to cargo transportation, storage and customs dispatch is a priority to the economic development in the region (Fernandes, 2017, 2019).

II) **Customs:** The harmonization of the customs norms is crucial to facilitate the trade and avoid delays and bureaucratic obstacles within the RILA. According to Silva (2018), the harmonization of laws related to customs formalities, quality control and anti-fraud is important to guarantee the legal security and the economic development of the region.

III) **Free Trade:** The harmonization of laws related to free trade is essential to keep the equality of conditions to all the countries involved in the RILA. The implementation of free trade agreements and the regulation of technical barriers to commerce are some measures that can be adopted to reach this goal (Rodrigues, 2019). According to Ramos (2020), legal harmonization related to intellectual property, fair trade and the respect for human rights is fundamental to guarantee the economic and social sustainability of the region.

IV) **Education:** The legal harmonization of norms related to education in important to guarantee the equality of opportunity and the human development within the RILA. According to Gonçalves (2020), this would be the harmonization of laws related to access to education, the quality of this education and the formalization. In short, the harmonization of legal norms in the educational sphere is fundamental to maintain equity and quality in the educational system in all the RILA countries. The implementation of programs to better capacitate teachers and the definition of minimal standards for teaching can be some examples of measures that could be taken to advance this objective (Gomes, 2018).

V) **Environment:** The environment is a common good that must be protected in a harmonic way by all countries involved in the RILA. The legal harmonization regarding the environment may include, for example, the implementation of preservation politics and the regulation of the natural resources exploration for the good of economic sustainability (Silva, 2018).

VI) **Transnational Crimes:** The growing globalization and the growth of trades between the RILA participants call for special attention regarding transnational crimes, like the trafficking of drugs, weapons and even people. The harmonization of legal norms on public security is of the most importance to guarantee the protection of the citizens and the preservation of peace and order (Martins, 2018).

VII) **Public Security:** Public security is one of the main concerns of the member countries of the RILA, that must work together to guarantee the protection of their citizens and the combat

against transnational crimes. The legal harmonization regarding public security can include the creation of conjoint programs for training the police and the exchange of information on criminality (Silva; Silveira, 2018).

4.3 Reflexive observations on the causes of the absence of a normative conscience and culture and its frontier legal harmonizations

The absence of a normative culture and conscience, together with the absence of a border legal harmonization, can cause a series of factors and challenges that must be faced, among which can be mentioned:

Frame 1 – Challenges to be faced in the implementation of the RILA, given the absence of integrating norms

Conflicts between legal systems and norms as a result of the absence of legal harmonization, aside from the cultural and historic diversity among the member countries;
Difficulties with the circulation of goods because of the absence of integrative norms;
Low schooling indices among the countries of the RILA, fruits of an undervalued integration law;
The lack of a solid Integration Law does not allow for the RILA to keep up with the technological changes;
The possibility of a growth in the transnational crime numbers because of the increased flow of people and goods throughout the member countries of RILA;

Source: Elaborated by the authors based on the theoretical references.

Communication among different countries might be made difficult by linguistic and cultural barriers. This can lead to misunderstandings and obstacles in finding common ground on normative and legal questions.

Medical, political and social interests vary from country to country, and this can hinder the harmonization of norms and regulations. The balance between the protection of nations and the search for international patterns can be challenging.

The fast technological development has created new legal challenges, like questions of privacy, cybersecurity and electronic commerce. Legislation not always keeps up with innovation, creating transborder normative gaps.

Transborder legal harmonizations are crucial to facilitate trade, cooperation and global governance. To face these challenges, it is necessary to promote international collaboration and incentivise the construction of a consensus on important normative issues. This can be achieved through international negotiations and agreements, the creation of global norms and guidelines, and the strengthening of the international institutions capable of mediating disputes and implementing common rules. Also, it is essential to invest in educational and cultural enterprises to promote an open and cooperative mentality among different cultures and legal system around the world.

5 FINAL CONSIDERATIONS

It is demonstrated that International Law is an essential element to the operation and the economic integration of the MERCOSUL nations, since it stipulates basic norms and principles that guide the relations between the member countries and other international organizations.

Thus, the harmonization of transnational legal norms is crucial to the economic and regional development of the Routh of Latin American Integration and the Bioceanic Railway. It allows for the reduction of trade barriers, increases the efficiency of commerce and guarantees legal security to businesses and investments. Various articles and publications highlight the importance of the harmonization of legal norms to the economic integration of the region and discuss the challenges and opportunities faced by the countries in the search for harmony.

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