Brazil and International Agreements

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Abstract

This article brings together an analysis about international agreements, highlighting their importance to States, either separately or in groups, considering aspects of the universal nature of their content, as well as regional aspects, stressing some particularities of the Brazilian legal system. It is based on the assumption that it is interesting for nation-States to participate in the elaboration of international agreements, although it is not always possible to implement them, their validity is not refuted or their efficacy denied. It is also relevant to reflect upon the international commitments internally, even more so when we see that the State will have to deal with a series of variables to validate such international commitments. At times when States are interdependent, the study about the participation of the State in the elaboration of international agreements is more than relevant, and is divided here in three perspectives. First, the participation of the State in regional agreements, highlighting the European experience of integration. Then, the Latin-American attempts at integration, from which MERCOSUL stands out, and, finally, matters unique to Brazil in light of international and regional challenges. At the end of this study, some answers as to how and why Brazil incorporates and implements its international agreements will be presented as final considerations.

Keywords: international agreements, Brazil, international scenario.

A. Introduction[1]

Brazil is part of the international community, and has always tried to occupy strategic positions initially intended for major dominant powers. This has led Brazil to establish regional as well as multilateral agreements, of which the process of implementation varies in accordance with the clauses agreed and the effects that they might have internally. This article aims to demonstrate the importance that Brazil attributes to international agreements, from its motivation to their consequences. It starts by questioning the purpose or intention of a sovereign State in participating internationally in the negotiation and elaboration of agreements and moves on to look at the interest in participating in regional agreements.

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1 Study resulting from the activities developed by the Research Group researching regional integration, globalisation and International Law.

Finally, it analyzes Brazil's interest in other agreements, some of which do not even come into effect internally.

We start looking at the motivation that States have to participate in international agreements, considering the relevance of subjects and the objectives of the proposed laws, pointing out some examples experienced by Brazil regarding their incorporation and implementation. The approach taken is retrospective; we start with secondary information, obtained from heavily bibliographical research that uses references from the General Theory on International Law, elements from the General Theory on State and Law, and peculiarities of Community Law, International Law for Integration and Private International Law.

B. The Participation of States in the Elaboration of International Agreements

It is a fact that even from ancient times, groups of humans have always proposed formal commitments among themselves, with the ability to adjust them. The difference between then and now is the way in which such commitments are established. To start with, it is very important to highlight that when mentioning international agreements, sovereign nation-States are needed, and for this analysis it is relevant to establish time limits. We will address this topic from the 20th century onwards, more specifically the period after 1945, from a western point of view.

Thus, we can start by stating that the 20th century drove an increase in the number of international agreements, highlighting the commitment of the national-States to make them public and to admit matters, which before such agreements, they had exclusive jurisdiction over. Subsequently what is agreed upon with other States incurs both internal and international legal consequences.

The first considerable example can be seen in the Charter of the United Nations. Concluded and signed in San Francisco, United States of America, in June 1945; this agreement signalled by creating an international organization of universal reach that peace keeping and the development of friendly relations among States was its purpose. It highlighted, then, the commitment of the members to register and publicize such objectives.[2] It is important to remember that there is no formal obligation for States to create or participate in the creation of international laws. However, if this is possible, it will be the States' duty to take the necessary actions to ensure that these laws prevail when international agreements are established. These actions can include the review and alteration of the implications caused by the obligations the States took on in order to avoid con-

2 Charter of the United Nations, Art. 102: (1) Every treaty and every international agreement, finalized by any Member of the United Nations, after the entry of such Charter in effect, must be registered and publicized by the administrative office within the shortest period of time possible. (2) None of the parties in any treaty or agreement that are not registered in accordance with the provisions in paragraph 1 of this Article can invoke such treaty or agreement before any United Nations' body.

flicts in terms of legal discipline within the international scenario.[3] If the international order, which legally constitutes the intention to regulate and discipline international relations, is redefined because of such established commitments, after confirming the wilfulness of the State, it means that there is a need to review concepts of national sovereignty, of the nature of nation-State and international content.

The idea that sovereignty is an attribute of an untouchable nation-State, which cannot be the subject of delegation, has divided opinions and created new considerations, especially in times of globalization.[4] On one hand, the understanding that state sovereignty stands as a whole, indivisible, and cannot be subjected to delegation, persists. This opinion is consistent with the context at the end of Middle Ages, beginning of the Modern Ages, and with the thoughts of Jean Bodin. On the other hand, we have the confirmation that matters belonging to a State are increasingly being shared by other States, and that by cooperating among themselves they decide to create applicable and required international laws.

Actually there is no such a thing as a State without sovereignty. What happens is that the concept of sovereignty does not tend to be analyzed only in accordance with national Law, but also takes into consideration the complexities of the international system.[5] Nevertheless, it is possible to comprehend the reasons of those who transfer some authority delegated to a State to another jurisdiction alleging lack of sovereignty or of its exercise. If the nature of the nation-State is altered as a result of progress of time, it will occur due to an act of state sovereignty. The following also occur through acts of state sovereignty: when international actions are established; when behaviour is verified and adjusted in order to make a State liable for an illegal action; when it is necessary to access international jurisdiction to solve legal actions, appear as members of international organizations, as well as establish diplomatic and consular relations.

Because of state wilfulness, international actions have repercussions in both the international and national scenarios, even more so if they result from the participation of the State in international organizations.[6] The idea of repercussion is equivalent to what we call internal efficacy, the only difference being that as compliance is expected, a communal agreement between the parties involved to respect and observe incorporation procedures is also expected.

International agreements established within an international context, which have the firm objective to regulate international relations, commit the signatories, that is, the nation-States, to both the international and national scenario.

3 Charter of the United Nations, Art. 103: In the case of conflict between the obligations of the Members of the United Nations due to the present Charter, and the obligations resulted from any other international agreement, the obligations agreed upon due to this Charter will prevail.

4 L.P.S. Oliveira, 'O conceito de soberania perante a globalização' [The concept of sovereignty in light of globalisation], *Revista CEJ*, Vol. 32, 2006, pp. 80-88.

5 M.D. Varella, 'A crescente complexidade do sistema jurídico internacional: alguns problemas de coerência sistêmica' [The increasing complexity of the international legal system: some problems of systemic coherence], *Revista de Informação Legislativa*, Vol. 42, No. 167, 2005, pp. 135-137.

6 *Ibid.*, p. 145.

Internationally, this commitment propitiates a sense of security and predictability. Internally, however, the process of incorporation of rules regarding some international conventions will occur much sooner than others, depending on the content of the ruling and the internal political situation. There will be international agreements varying from conventions about diplomacy and consular services to conventions about topics related to economic Law, human rights, or the functioning of international organizations, such as the United Nations, which might have an incorporation process faster in one State than another, compromising the efficacy and security of the international scenario.

In these aforementioned conventions, the consensus to create such legal content results in an obligation or commitment by the parties involved to enact it. To do that, it must be quickly incorporated or internalized, enhancing the legal systems with new legal provisions that would make the community of States more systematic. Thus, there would be agreements for diplomatic relations,[7] with objective to recognize diplomats and to develop friendly relations between nations (a constant assumption of the preamble of the aforementioned international act). It was also the reason for the creation of the Articles of Agreement of the International Monetary Fund,[8] as a result of the conferences that took place in Bretton Woods in 1944. In this specific case, the Articles of Agreement aimed at international monetary cooperation, which was perceived as essential and dependent on the commitment of all of its signatories.

It is interesting to note that in the two aforementioned conventions, there is no expressed reference as to what jurisdiction a State will be able to resort to in the case of a conflict or which measure should be appropriate. It is interesting not simply because they are two examples of emblematic organizations, but because it is assumed that it is impossible not to comply with their rules, given the importance of the matters agreed upon. This means that having a general rule about both diplomatic and consular relations implies an interest in applying it immediately, as complying with it will have practical effects either to the State's private matters or the way they are conducted internationally. The advantage here is to have an international agreement based on statutes, summarising well-known practices conducted by the States, and widely guaranteeing international security.

International acts that make the States' commitment to potential sanctions clear, such as those that establish cooperative ties in terms of international security can still be found. The first example is the Resolution adopted by the United Nations Security Council, dated 28 September 2001, with the aim to prevent and clampdown on the financing of terrorist acts by taking on measures that can be adopted by the States themselves, based on international cooperation. The second example, which practically complements the first, is the Inter-American Convention against Terrorism, a variable of the aforementioned Resolution, concluded in Barbados, in the Caribbean, in June 2002, containing applicable inter-

7 Vienna Convention about diplomatic relations, concluded and signed in Vienna on April 1961; Vienna Convention about consular relations, concluded and signed in Vienna on April 1964.

8 Articles of Agreement of the International Monetary Fund, concluded and signed at the end of the Conferences in Bretton Wood, in the United State, on 22 July 1944.

national tools. This Convention lists various international acts about terrorism, purely to acknowledge cooperation as a resource for legitimate authorities.

These two other examples demonstrate that the States are interested in sharing joint responsibility for some issues, which is evident in both international and regional contexts. The difference between them extrapolates issues that are merely geographical, but they stress that the willingness to participate turns the commitment into an ideal, which is beyond national interest, with rules more legitimate than in the past.[9]

C. The Participation of States in Regional Agreements: European and Latin-American Models

The majority of European States have the same concerns and have participated in international institutions from the 1950s until now, progressing in legal matters that are beyond a national level, but a level below the international level in the so-called regional scenario.[10] The current European Union, an international organization that has its own structure, forces its members to review their concepts regarding national sovereignty and the reach of its regional rules by creating a middle ground between the internal and international orders. Community Law, created from the European Union, has characteristics that allow it to be applied directly, which reflects in some of the state jurisdiction, creating supra-national jurisdiction that excludes some competences that are exclusive to nation-States, regardless of international law.[11]

In the Latin-American regional context the view is different. The review of the concept of national sovereignty and even the delegation of competences required for subject matters of regional integration will be debated for a long time. The progress of projects regarding the integration of the American continent faces constitutional limitations, which in turn are based upon the instability and the ageing of the Latin-American nation-State, which has not yet completed two centuries of political emancipation. Thus, it becomes difficult to comment on the cession of national jurisdiction and delegation of sovereignty when Latin-American States are still establishing their legal and political institutions – even if the objective is to make markets efficient.

Even if the acknowledged structural difficulties related to Latin America persist, there is an initiative that deserves to be highlighted because of its innovative feature at the time, even though it is a common practice these days. In the middle of the last decade of the 19th century, the first international agreements already proposed the creation of associations with regional reach and their own structure.

9 Varella, 2005, p. 146.

10 S. de Camargo, 'União Européia: uma comunidade em construção. Contexto Internacional' [European Union: a community under construction. International context]. *Rio de Janeiro*, Vol. 30, No. 2, 2008, pp. 467-522.

11 R.F. Bacellar Filho, 'Direito Comunitário emergente: a importância de sua discussão' [Emerging community law: the importance to discuss it], *Revista da Faculdade de Direito da UFPR*, Vol. 31, 1999, p. 157.

The movements known as Pan-Americanism, both the Bolivarism and Monroeism, gave American nations the possibility to commit to issues that were common to all of them because of international agreements established at the end of each Conference.[12]

If the common practice these days is to create laws in international meetings, it is not too much to reiterate what we consider admirable after the emancipation of former Hispanic colonies: the efforts to create statutes for the region, even more so as this occurred when state structures were being created. Thus, Latin-American nations remain tied to the classic concept of nation-State, which is of an untouchable state sovereignty. This occurs because the processes of consolidating their political freedom was hard over the years and also because of the fact that power was abruptly exchanged, which compromised institutions and the fulfilment of agreements or the creation of new international agreements.[13] This scenario explains the lack of success of the associations that were responsible for integration, such as the Latin-American Free Trade Association (LAFTA), an organization created by the Montevideo Treaty of 1960. Despite the structural economic matters that stopped such integrating enterprises from being successful, the fact that many signatories were under dictatorship control removed the possibility of international cooperation as nations were concerned with internal business and national order.

Two decades later, it would be the Latin-American Integration Association's responsibility (LAIA or ALADI-Spanish acronym) to resume the process of integration that was initiated in the 1960s. The greatest contribution made by this association was to create a convergence forum for integration issues. Once cooperation was resumed and the need to predict regional statutes understood and state determination highlighted, it was possible to establish partial agreements (which was not allowed by LAFTA), allowing for the creation of new organizations that would reach the whole region, such as MERCOSUL.[14]

MERCOSUL's major merit so far has been to pursue integration, considering the initiatives and alliances between Brazil and Argentina, unchanged since 1960. The purpose of continuing with the process of regional integration, which had already started and been interrupted, was described in the preamble of the agreement, which became more efficient when the organization strengthened through the Protocol of Ouro Preto, which created the final version of the institutional structure, which already predicted that regional jurisdiction could have defined regional statutes and their main directives would be effective.

In the international scenario, the existence of an organization such as MERCOSUL re-establishes a new parameter in international relations, especially the so-called inter-American relations, resuming the economic process aimed at

12 W. Menezes, *Direito Internacional na América Latina* [International law in Latin America], Juruá, Curitiba, 2007, p. 57.

13 O. Ianni, 'A questão nacional na América Latina' [The national issue in Latin America], *Estudos Avançados*, Vol. 2, No. 1, 1988, pp. 5-40.

14 P. da Mota Veiga & S.P. Rios, *O regionalismo pós-liberal na América do Sul: origens, iniciativas e dilemas* [Post-liberal regionalism in South America: origins, initiatives and dilemmas], United Nations, International Trade and Integration Division, 2007.

commercial exchange and the process to create regional statutes simultaneously. In the case of commercial exchange, the agreement clearly has commercial features, a reference found in the preamble of the Treaty of Asuncion, which, once concluded and signed in March 1991, shows that the initiative would be an effort to progressively develop the integration of Latin America.[15]

This international agreement also establishes, in Article 1, a commitment for its members, here known as party States, to harmonize their legislation in relevant areas in order to guarantee the success of integration. This implies that by establishing the agreement, the commitment to incorporate and harmonise with principles found in internal law will be the State's responsibility.

If in the first international agreement the fundamental point was the creation of a moral bond to comply with statutes and demand their compliance, regionally speaking this moral bond, or commitment, will have legal effect, regardless of there being agreements originating from international organizations with legal nature and a specific ability to act.

The differences between the European and Latin-American processes of integration go beyond the objective of the enterprise and its institutions and are apparent in the legal structure that tends to be created.[16] Even if the member-States share the same understanding, based on collective will, of how to establish economic spaces (sometimes known as economic blocks), it will be the legal dimension and the level of participation and commitment by the member-States of these blocks that will distinguish one initiative from another. We must not forget that historical motivations are taken into account in the creation of regional agreements, taking forward in Europe, the creation of its own Law, with community features, whereas in Latin America the principles of international law of the region are followed. The concept of a regional community for Europe enabled the creation of its own law, as well as a structure that has a characteristic that caused issues such as state sovereignty to be rethought, in which supra-nationality is the most evident result.[17]

Within the Latin-American context, taking MERCOSUL as the largest example of integration, there is nothing to be said in terms of supra-nationality. Questions involving the institutionalization and the type of integration that is intended are asked, however the response will very probably depend on legal factors as opposed to economic factors. The difficult part will be to have to allow the creation of a central decisive power in light of a number of governments that are still committed to reform national legislation and have rigid constitutions. The intergovernability, which is characteristic to MERCOSUL, facilitates and impairs integration to a certain extent: it facilitates in the sense that without supra-national

15 Treaty of Asuncion, preamble: Aware that the present Treaty must be considered as a new advance in the effort tending towards the progressive development of the integration of Latin America, according to the objective of the Treaty of Montevideo, 1980.

16 P.L. Kegel & M. Amal, 'Instituições, Direito e Soberania: a efetividade jurídica nos processos de integração regional nos exemplos da União Europeia e do Mercosul' [Institutions, law and sovereignty: the legal effectiveness in the processes of regional integration in the European Union and Mercosul], *Revista Brasileira Política Internacional*, Vol. 52, No. 1, 2009, p. 53.

17 *Ibid.*, p. 57.

structures, the fear of losing sovereignty is eliminated, but it impairs because a number of the established agreements depend on the how fast the States can make the rules compulsory.

There are two legal realities: the European supra-nationality favoured the strengthening of the integration process and the consolidation of its own law, based on the idea of creating a community. In the Latin-American context, the various attempts related to this originate from associativism, convenient to solve immediate problems in order to allow the creation of a regional agreement, always leaving the right to incorporate to the State and more specifically the power to analyze content in order to demand compliance to the Executive Power. Some States, however, have distinct structures related to their participation and commitment, such as is the case of Brazil, which will be the subject of the considerations to follow.

D. The Legal Consequences of Commitments Set Out in Agreements to Which Brazil Is Party

International agreements are considered relevant by Brazil. As a matter of fact, they are mentioned when the principles that rule international relations are referred to in the constitution, which makes Brazil responsible for the maintenance of relationships with foreign States and participation in international organizations.[18] To be more precise, the Brazilian Constitution attributes in Article 84, VIII, exclusive competence to the President of Brazil to celebrate treaties, conventions and international acts, all of which are subject to a referendum at the Brazilian Congress.[19] Once States are interested in participating in deliberations made by international society, the possibility of establishing agreements increases when economic interdependence is considered to be an undisputable fact. Factors such as technological innovation and transport enable prompt communication between States. Through their leaders, States are aware that it is not possible to just make agreements to solve a problem without registering commitment to the agreement. By creating a new understanding of public interest, which is also international, new foundations will be created for the relationship between States, with legal content found in international agreements.[20]

Brazil is constantly participating in international jurisdictions, seeking to gradually position itself in an international context. Despite Brazil's presence and effort to participate in the discussion and elaboration of legal content, some important international agreements have not yet been incorporated nationally, and are still awaiting analysis by congress. The system used to incorporate international agreements into Brazilian law requires them to be analyzed in order to

18 Brazilian Constitution, Art. 21: It is the Union's responsibility: I. Maintain relationships with foreign States and participate in international organisations.

19 Brazilian Constitution, Art. 84: It is the President of Brazil's sole responsibility to: VIII. Celebrate treaties, conventions and international acts, subject to a referendum at the Brazilian Congress.

20 J.M. Filho, 'Globalização, interesse público e direito internacional' [Globalisation, public interest and international law], *Estudos Avançados*, Vol. 9, No. 25, 1995, p. 77.

make them valid and effective internally. It will not be possible to acknowledge as valid any rules contained in international agreements before the Legislative Department previously examine and adjust them according to the rules of internal law. This is applicable to the most complex international agreements, such as those that address controversial issues like Brazilian participation in multilateral agencies, or the certification of origin in matters related to international or even regional trade.

There is no general rule to define the promptness or delay in the process of incorporation of international agreements. Crises of an economic nature and international boundaries, the centralising of governments or even the change in the profile of the parliament can cause serious consequences in the process of incorporation. There are examples of agreements that in their content required a considerable commitment and caused the legislation to change rapidly. On the other hand, there are examples of agreements that contained much simpler requirements, which were questioned as there was a concern that the incorporation would make the agreements incompatible with the rules of internal law, as we will now analyze. Bearing in mind that Brazil's participation in issues of international reach has always been on the agenda of the leaders of the Executive Power, listing the agreements established and their particularities would be a difficult job, and include some of universal reach and others of regional reach. The latter are aimed more at matters of integration. The level of subject interest being proportionate to the period of time needed to incorporate the agreement can be observed.

All the agreements that will be analyzed below are still in effect, which make them representative examples in terms of Brazil's commitment to incorporate and make the contents of international agreements effective. This does not mean that if the contents are not incorporated they are ineffective, as in certain circumstances they can even be referred to in matters of international security, as the proposition of resolutions of some international organizations. The fact is that, similarly to agreements, resolutions are international acts, and should therefore be incorporated, which, according to the Brazilian legal system, implies analysis by the Senate. However, except for resolutions originating from MERCOSUL's jurisdiction (what prevails here is the organization's scope and its functional reach), the aforementioned resolutions become compulsory. The same thing happens with Resolutions of the United Nations and those of the General Assembly and even more so, those of the Security Council. In the first case, this occurs because of the comprehensive nature of what has been established in the General Assembly, which will always be subject to standardization in its other jurisdictions. Resolutions of the Security Council contain some compliance rules that are incontestable.

In subjects that have universal reach, if the commitments found in the content of the agreement are of interest to Brazil, the incorporation procedure is facilitated, as placement in the international legal context is certain. This happened in the case of the Convention about Diplomatic Relations, the Articles of Agreement of the International Monetary Fund (IMF) and the Articles of Agreement of the World Trade Organisation (WTO). In the example about diplomacy

and diplomatic relations not only Brazil but a considerable number of States expressed their wish to incorporate the ruling principles immediately. Thus, the agreement concluded and signed on 17 April 1961 came into effect on 24 April 1965 in Brazil.[21]

In the previously mentioned Bretton Woods Conferences, the creation of one of the major institutions occurred through the Articles of Agreement of the IMF.[22] Because of the seriousness of the nature of its objectives, for having consensus to establish a new international system without widely questioning its function, this agreement was virtually immediately acknowledged as effective and as part of our legal system. Obligations regarding exchange rate regimes, operations and fund transactions, details about capital transfer or obligations of the member-States were fully complied with because of the assumed usefulness of the created system.

Years later, or even during economic recession, actions and provisions of the IMF are questioned by some, as they forget that the institution was created to maintain an international economic system immune to or with a tendency to be immune to crises. Therefore, ruling arguments seem irrelevant.[23] Not only did Brazil adhere to the terms but it also admits that some executive agreements can be celebrated with the IMF. In these agreements, the President of Brazil explicitly delegates that the Minister of Economy may make commitments with serious financial repercussion in Brazil, without involvement from the Legislative Department. The confidentiality clauses and conditions contribute to the rapid implementation of agreements, which is a result of the States' commitment to follow the international organization's rules to which it is party, even if it means a larger commitment from the Brazilian economy.[24]

At the end of the business round of the General Agreement of Tariffs and Trade (GATT), the Articles of Agreement of the WTO, concluded and signed by Brazil in Marrakesh, Morocco, on 12 April 1994, was duly approved by executive order in December of the same year.[25] The reason for such speed was expressed within the organization's objectives, and the way the members of the agreement conduct commercial relations, considered essential for the implementation of a

21 Vienna Convention on diplomatic relations, ratified on 25 March 1965, enacted by Executive Order no. 56,435 on 8 June 1965, published on the Brazilian Official Newspaper on 11 June 1965.

22 Articles of Agreement of the International Monetary Fund, concluded and signed at the Bretton Woods Conferences, in the United States, on 22 July 1945, approved by Brazil by Executive Order no. 21,177 from 22 December 1945.

23 V. de Oliveira Mazzuoli, 'Algumas considerações sobre a natureza jurídica dos acordos SAF/ESAF e dos arranjos PRGF com o FMI' [Some considerations about the legal nature of the SAF/ESAF agreements and PRGF with IMF], *Revista CEJ*, Vol. 30, 2005, pp. 34-39, 36.

24 L.R. de Oliveira, 'As Repercussões do Acordo com o FMI sobre os ajustes da economia brasileira' [The repercussions of the agreement with the IMF about the adjustments regarding the Brazilian economy], *Pesquisa & Debate*, Vol. 17, No. 1(29), 2006, p. 85.

25 Articles of Agreement of the World Trade Organisation, ratified on 21 December 1994, enacted by Executive Order no. 1355 from 30 December 1994, published on the Brazilian Official Newspaper on 31 December 1994, special edition.

legally secure international system, and that has been desired since Bretton Woods.

This level of commitment by the States to the trade principles established by the WTO goes beyond the text that restrains the actions of the institution. The complementary agreements, which appeared as annexes, forced the States that signed to the agreement with the WTO to also follow them, including notably agreement 1C, which addresses aspects related to intellectual property rights related to commerce.

We initially highlighted that the inclusion of this topic was, to a certain extent, facilitated because of the progressive regulation around intellectual property. It was no coincidence that this topic, with necessary updates, was included in conventions that took place in Berne and Paris and by the World Intellectual Property Organisation (WIPO). There was interest in creating a jurisdiction that ensured more effective solutions when intellectual property rights were violated (in the wider sense, including scientific, artistic and literary matters, related rights such as trademarks and patents related to industry and commerce). This took into consideration investment and research and development issues between nations.[26]

The WTO has admitted, exceptionally, that different deadlines for the incorporation of the TRIPS Agreement might have existed, considering that the States might be at different levels of development and that the new rules about intellectual property would end up not resolving what has been proposed if they were incorporated immediately, which would alter the internal legislation of the member-States of the agreement (WTO). The success of TRIPS depended on the acknowledgment that the slightest differences between the nations and rules could impact technological development. In the case of Brazil, the rules about intellectual property, which used to be complementary to the legislation in effect, were incorporated during a new industrialization phase which occurred in Brazil, in the mid-1990s. The position of Brazil with respect to the established agreements does not change much in terms of regional reach.

With respect to disarmament and international security, the Inter-American Treaty of Reciprocal Assistance, concluded and signed in Rio de Janeiro on 2 September 1947, was duly incorporated into the Brazilian legal system on 13 October 1948.[27] In this case, it can be said that this promptness confirmed the interest of Brazil in remaining faithful to friendliness, its neighbours and the Pan-American principles. The aforementioned treaty contains a description of the geographical reach of the region it refers to, highlighting that the consolidation of the inter-American system is valid and effective within this area, and Brazil continues to participate in it.

26 M.B. Santana Jr., 'O contexto da implantação do acordo TRIPS' [The context of the implementation of TRIPS], *Revista Brasileira de Direito Internacional*, Vol. 4, No. 4, 2006, p. 237.

27 Inter-American Treaty of Reciprocal Assistance, ratified on 25 March 1948, enacted by Executive Order no. 25,660 from 13 December 1948, published on the Brazilian Official Newspaper on 8 December 1948.

With respect to Private International Law, following Pan-Americanism principles from the International American Conference, the results from the work carried out by Latin-American jurisconsults that aimed to synchronize legislation resulted in the so-called Bustamante Code.[28] The Private International Law Convention is the best example of regional standardization with principles that are still valid, and it can be used in integration processes that require standardization.

The success and longevity of the international agreement of regional reach is due to the fact that it makes the national competences clear within its ruling jurisdictions, establishing connecting criteria to solve potential legal conflicts within the area. The systematics follow the standards of guiding principles for privatization and were easily incorporated by Brazil because of its interest in the agreement as well as the certainty that there would be no major change in legislation.

Continuing with the theme of integration, some procedural matters established within the Inter-American Conferences for Private International Law *(CIDIP – acronym for Conferência Inter-Americana de Direito Internacional Privado)*, somehow distinctively, were analyzed for a long time by parliamentary commissions. An example is the Inter-American Convention about letter rogatory; the final agreement of CIDIP was made in Panama, concluded and signed on 30 January 1975, but only enacted in Brazil on 9 May 1996.

The text from the Inter-American Convention about letter rogatory does not bring anything new to the practice regarding existing jurisdictional cooperation.[29] It establishes the reach of the convention, that is, it states that the convention will apply to letter rogatory issued in commercial or civil proceedings, as long as the objective is to carry out on-going procedural acts or to obtain and receive evidence – in the latter in particular, the State that will receive the rogatory shall decide whether the means of evidence is admissible or not. Although this convention had received a complementary regulation on another occasion through an additional Protocol from another International Conference on Private International Law, which took place in Montevideo, Uruguay, in May 1979, Brazil enacted it in October 1996.

The lack of interest in implementation from the incorporation of international agreements tends to be explained by a combination of factors. With time, Brazil developed a government with a strong tendency for centralization, with limited parliamentary action. Besides, it was understood that the fact the Inter-American Convention was geared towards continental matters (this agreement aimed to reach some procedural practices throughout the American continent, comprehended here as that described in geographical terms), which were already common practice, to a certain extent, through jurisdictional cooperation, did not

28 Private International Law Convention, Bustamante Code, was signed and concluded in Havana, Cuba, on 20 February 1928, and approved and enacted in Brazil by Executive Order no. 18,871, from 13 August 1929.

29 R.P.M. da Silva, 'Cooperação jurídica internacional e auxílio direto' [International legal cooperation and direct assistance], *Revista CEJ*, Vol. 32, 2006, p. 79.

invalidate the initiative or the agreement. The agreements established with a view to regional integration would be first priority, depending on the relevance of the issue. In the case of MERCOSUL, specifically, although the Treaty of Asuncion of 1991 was immediately incorporated, the complementary protocols about specific subjects took a long time to be incorporated due to their commercial implications.

At this point, it is important to highlight the efficacy mechanism used in regional agreements: they only become a requirement once all the member-States incorporate them – and the Protocol or Annex constitutes legitimate agreements. This is good to guarantee that the agreement is fulfilled, that is, complied with; however, the period of time needed for this objective to be reached discourages specialists in Latin-American integration.

A problem co-related to integration issues regards the actions that arose from the jurisdictions of MERCOSUL's institutional structure. With the Additional Protocol to the Treaty of Asuncion, the Protocol of Ouro Preto,[30] MERCOSUL starts counting on jurisdictions that have the capacity to produce executive acts, such as in the case of decisions made by the Common Market Council, or the resolutions passed by the Common Market Group. Both the decisions and resolutions are mandatory for all member-States, needless to say that this only applies if they are duly incorporated and complied with by all members.

Another point is that the subjects set out in the *decisions* made by the Common Market Council or in resolutions passed by the Common Market Group vary greatly. An example of this is the decision detailing the appointed board of directors for MERCOSUL's administrative office, the certification of products that have different tariffs because of different regimes or the recognition of academic diplomas, all of which have to be analyzed by the Legislative Department of all members before being accepted.

Due to practicality some of the legal contents found in *decisions* and *resolutions* come into effect because there is a real need for them to be implemented. This measure is good to boost MERCOSUL, however it can raise concerns because of the repercussions of practical nature that it might cause, such as allegations of unconstitutionality.

E. Conclusions

Understanding the phenomenon of the incorporation of international agreements represents one of Brazil's greatest achievements, considering that the elaboration of its text tends to be the result of debates, or even the collaboration of specialists on the subject. The participation of Brazil in the elaboration of some of these agreements is not always highlighted, and it is sometimes only referred to in reasoning or some historiographical essays. However, this is not the main concern raised by specialists.

30 Additional Protocol to the Treaty of Asuncion, Protocol of Ouro Preto, concluded and signed in Ouro Preto, Brazil, on 17 December 1994, approved by Executive Order on 15 December 1995, enacted by Executive Order no. 1,910 from 9 May 1996.

The biggest problem is finding a mechanism that highlights or differentiates the method of incorporation that does not shed light on the question that guarantees effectiveness or that rules are complied with due to the incorporation of established agreements. Under our constitution, the immediate efficacy of an agreement will not be easily approved before its content has been analyzed by the Brazilian Congress, or more precisely by commissions of the Brazilian Senate.

The paradox is that this rule is considered absolute, having two variables: for regional matters, it will be a mechanism that will impair the progress of integration, such as that proposed by MERCOSUL, which is already impaired by regional economic issues. With regards to stability, more specifically when the State resorts to the IMF, establishing credit and loan agreements, some serious consequences can be predicted by any person with a minimal understanding of the economy.

Other factors, such as, circumstantial, an economic crisis, the centralization of governments or even a change in the profile of the Legislative Department end up compromising the process of international agreements being incorporated into internal legal systems. The Brazilian context does not differ from that of other nations, as this is the mechanism through which the country establishes and implements international agreements.