

HARMONIZATION OF LEGAL ENVIRONMENTAL STANDARDS IN MERCOSUR COUNTRIES¹

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1. Introduction

The regional integration process between MERCOSUR countries began with The Treaty of Asunción, signed on March 26, 1991. The Treaty aimed to achieve the Southern Common Market by December 31, 1994, with the overcoming of two phases of the integration process: the free trade zone and the customs union, during this transition period (OLIVEIRA, 2002).

Since the MERCOSUR constitutive treaty (Treaty of Asunción, 1991) the Member States considered that the expansion of their national market dimensions through integration constituted as a fundamental condition to hasten their economic development process with social justice. It should be achieved through a more efficient way of using the available resources, environment preservation, improvement of physical interconnections, coordination of macroeconomic policies and complementation of different economy sectors, based on the principles of gradualism, flexibility and balance. The role of environmental issue is seen in two correlated points - more effective use of available resources (environmental goods), and environment preservation.

The Treaty of Asunción stated that the aimed common market implied in total liberation of goods, services and productive factors between the Member States, upon abolishing all barriers to in-block trades (whether they are tariff or non-tariff barriers), as well as establishing a common external tariff, a common commercial policy towards third States or even others State Clusters; coordinating their positions in regional and international economic trade forums. The Treaty also covers the coordination of macroeconomic and sectoral policies between the Member States: foreign trade, agricultural, industrial, fiscal, monetary, foreign exchange and capital, services, customs, transport and communication systems and others that may be agreed in order to ensure appropriate

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conditions competition among the parties. Finally, the Treaty concerns about the Member States commitment to harmonize their legislation in the relevant areas in order to strengthen the integration process (article 1 of the Treaty of Asunción).

After the MERCOSUR rise in 1991, the city of Rio de Janeiro held an environment global conference, known as United Nations Conference on Environment and Development. In this Conference, the sovereign States recognized the need to adopt global measures to protect biodiversity and climate. They drafted a program of action to halt environmental degradation with the goal of achieving sustainable development known as Agenda 21. To achieve this sustainable development within a regional integration bloc, efforts should be made to harmonize the environmental legislation of the Member States.

The MERCOSUR States are known for their numerous natural resources, but they have deep structural asymmetries (SOUZA *et al.*, 2010). In addition, Argentina, Brazil and Uruguay are exporters of agricultural and livestock products. Brazil and Venezuela deserved emphasis in their production and export of oil, an environmentally impacting economic activity. Given this situation, we believe that one possible way to reach such harmonization might be through the adoption of the principles of the major environmental treaties, usually related to United Nations framework. We believe that such incorporation should take place, firstly, at constitutional level in all national legal systems to allow the existence of some legislative uniformity and therefore facilitating the work of MERCOSUR institutions to achieve harmonization in important sectors of the Member States (OLIVEIRA, 2013).

In this article, we shall see the gradual incorporation of environmental law principles, arising from the major international treaties at the United Nations and from others MERCOSUR institutions (article 40 of the Additional Protocol to the Treaty of Asunción) in all national legal systems in the States members of this important process of South American regional integration.

Initially, the main MERCOSUR frameworks related to environmental domains will be presented in chronological form, through the Member States efforts to create unprecedented standards, as well as MERCOSUR institutions with decision-making powers that ended up creating standards derived from the integration rights. Subsequently, we present the main environmental forecasts in the legal systems of MERCOSUR countries, focusing specially on the constitutional provisions. This study shall contribute to MERCOSUR institutions to achieve the necessary legal environmental harmonization, contributing to the creation of a genuine environmental policy for the MERCOSUR Member States.

2. Harmonization forecast in MERCOSUR legal documents

While the Treaty of Asunción does not specifically regulate the issue of environmental preservation, it is possible to find an important mention in the its preamble, in which the Treaty consider that the aimed expansion of their domestic markets, through integration, should be *“achieved by making optimum use of available resources, preserving the environment, improving physical links, coordinating macroeconomic policies and ensuring complementarity between the different sectors of the economy, based on the principles of gradu-*

alism, flexibility and balance" (MERCOSUL, 1991). We could consider it a shy mention, but it proved to be an undeniably important as it given a direct link between economic development, pursued with integration process, and the preservation of the environment (BASSO, 1997; OLIVEIRA, 2002).

In Article 1 it is established the common market bases, and the environment is inserted when it is expected the coordination of macroeconomic and sectoral policies in order to ensure conditions of competition between the MERCOSUL and the obligations of those to harmonize their legislation in relevant areas in order to strengthen the integration process.

The Common Market Council Decision 01/92 approved the measures schedule to ensure full compliance with the objectives set out in the Treaty of Asunción for the transition period. This decision sets deadlines for the tasks given into charge of the various working groups. From the program and schedule the GMC, through his eleven SGTs, received specific instructions in the environmental field, explicit and implicit. In relation to the harmonization process, some of the subgroups are worth mentioning: (1) Working Subgroup No. 5 (Road transport) - harmonization of the transport of dangerous goods; (2) Working Subgroup No.7 (Industrial and Technology Policy) - the harmonization of national and state environmental legislation. The harmonization work, which included an analysis of the asymmetries found in the Member States legislation which were developed during the years of 1993 and 1994. Also as part of SGT No. 7, it was created an Environment Commission through Resolution GMC 05/93. This Commission drew up a comparative matrix between the national laws, developed the Technical Assistance Project for the Environment, and prepared the Recommendation No. 20/93, which led the Technical Cooperation Committee (TCC) to approve an Environment Cooperation Project.

The Working Sub-Group No. 8 (agricultural policy), responsible for the sustainability of natural resources and environmental protection in the agricultural sector, developed a series of analysis of the current legislation in the four countries in order to delineate a regional policy for sustainable agricultural production. The main recommended actions aimed to promote agricultural production not dependent on the mere extraction of natural resources, giving priority to preventive actions for conservation, protection and improvement of the region and observing compliance in the context of agricultural activity and current legislation on protection of natural resources . The laws harmonization should considered the different national realities, easing the creation of fundraising tools for solving environmental problems through fragile areas recovery projects. As a conclusion of this work, we recommend for the coordination of SGT-8 that the agricultural sector adopt the basic guidelines developed by Environmental Specialized Meeting (ESM).

The GMC Resolution 22/92 attributed to the Environmental Specialized Meeting (ESM) the responsibility to analyze all the Member States protection legislation and propose a range of actions for the environment protection. Until its creation, the environment themes were discussed in different MERCOSUR forums. With ESM birth there was a harmonization of discussion, position and work between the Member States.

Given the need to formulate and propose basic environment guidelines to contribute to the development of a joint management between the MERCOSUR countries, the

Common Market Group issued Resolution No. 10/94, setting up eleven basic guidelines regarding environmental policy, being the first and the eighth directly related to ensure the harmonization of the member's environmental legislation:

- 1 – Ensure the harmonization of the MERCOSUR member's environmental legislation, understanding that the harmonization does not imply the establishing of a single legislation. For means of comparative analysis, it will be considered the standards in force as well as their real application of the legislation. In case of loopholes in environmental legislation, it will be promoted the adoption of standards that adequately consider the environmental issues involved and ensured equitable conditions of competition in MERCOSUR.
- 8 - Ensure the coordination of actions aiming at the harmonization of legal or institutional procedures for licensing and environmental qualification, and the attainment of their monitoring activities that generate environmental impacts in shared ecosystems.

The first guideline addresses the urgent need to harmonize the different national laws, without this implying in uniqueness rules. This task has always been difficult for the institutions of MERCOSUR. Although MERCOSUR countries have some semblance in their constitutional texts and have participated in the major international environment discussion forums, it is still possible to identify many asymmetries between their environmental laws. In case of loopholes, it is recommended the adoption of rules that adequately consider the environmental aspects involved and thereby avoid unfair competition between the Member States.

We comprehend that according to the 8^o guideline, since 1994 the MERCOSUR countries have the obligation to adopt the licensing/environment qualification in their domestic legal system. This environment tool is closely related to the principle of prevention of environmental damage. Once it is properly implemented, the environmental damage is minimized through more appropriated practices or even compensated with others actions.

The MERCOSUR countries created cooperation rules about environmental issues, forecasting initially the cooperation in implementating international environmental agreements. This cooperation in environmental field should also rely on the participation of national organisms and civil society organizations, especially during the analysis of environmental problems in the subregion. They should implement, *inter alia*, searches and ensure the harmonization of environmental legislation, considering each country individual environmental, social and economic reality. The agreement also intended to encourage the harmonization of legal standards and institutions to prevent, control and mitigate environmental impacts MERCOSUR countries, with special attention to border areas (Article 6^o of Common Market Council Decision 02/01).

Through Article No. 3 of the Decision 14/04, the Common Market Council approved a joint action plan on environmental emergencies, claiming that the Member States should harmonize their legal basis to provide cooperation in face of such situations. In this

sense, the cooperation will be implemented through: a) prior exchange of information on situations that require common measures to prevent and also about those situations that may result in some environmental emergency; b) exchange of information and experience concerning the prevention, mitigation, warning, response, reconstruction and recovery; c) exchange of information concerning applicable technologies; d) joint planning for risk reduction; e) elaboration of plans, programs and contingency projects for joint action; f) incorporation of environmental emergencies statistics produced in the region to Environmental Information System of MERCOSUR (EISM); g) creation of an expert database in environmental emergencies for inclusion in the EISM; h) use of technical staff and others means of one Member State request help or assistance of another; i) providing technical and logistical support to face of environmental emergencies when a Member State resquests; and j) human resources training.

3. Environmental forecasting in MERCOSUR countries

Since the Treaty of Asunción we have seen that there are legal provisions making it necessary to harmonize the different legal systems on the environmental field. However, it is essential to be aware of the national legislation in this subject. We will approach these standards, starting with the constitutional provisions, without forgetting to mention the major infra environmental rules.

3.1. Argentine Republic

Specifically in article 41, The Argentine Constitution foresses the protection of the environment in Chapter II, which deals with new rights and guarantees. This constitutional provision contains numerous regulative principles of the relationships between mankind and with the environment, such as the right to an ecologically balanced environment, sustainable development, participation, “polluter pays”, information, environmental education, being considered by Menéndez (2000: 40) as similar to “*the Constitutions of Portugal, Spain, Peru, Brazil, etc., and including our own provincial public law*”.

To Corbatta (2013) the sustainable development presented in the Argentina Contitution should be seen as:

Dentro de esa búsqueda de un desarrollo que no solamente asegure al hombre de hoy sino a los hombres del futuro la posibilidad de un desarrollo aceptable, se dice que se debe preservar en las actividades de producción la capacidad del ambiente para poder dar satisfacción a las necesidades presentes sin contribuir al trastabillamiento de los hombres del mañana. Es una manera de establecer un compromiso hacia el futuro, es decir lo que se considera el derecho intergeneracional, o sea que aquellos que van a heredar este ambiente puedan vivir en condiciones tan buenas o aún mejores. En otras palabras se habla del eco desarrollo y del desarrollo sustentable es decir aquel en el cual el ambiente ya pasa a formar parte inescindible de las

condiciones necesarias para el progreso humano. (CORBATTA, 2013: 1).ⁱ

In relation to these principles, adopted by Argentina in its Constitution, beyond the sustainable development principle, presented in the first part of article 41, we also see the principle of participation when it says: “*and they have to preserve it*”, where as it sets a right it also provides the duty to preserve the environment. Subsequently, the “polluter pays” principle it is located when the Constitution says that the “*(...) environmental damage shall bring about the obligation to repair it according to law*”. Here Corbatta (2013) highlights the term, considering that it is extremely important to repair the damage, but this is something tremendously difficult to achieve when it comes to environmental field. In this sense, the author considers that the regulamentation of the environmental subject is, without any contest, the most important mission to improve. It is still possible to found the mandatory State intervention principle in various domains when it is prescribed that “*(...) the authorities shall provide for the protection of this right (...)*” (CORBATTA, 2013: 1).

It must be sought in the Argentine State “*(...) the rational use of natura resources (...)*” and “*(...) the preservation of the natural and cultural heritage (...)*”. This can be seen as an innovation because, normally, the constitutions only refer to the natural environment, forcing a broad interpretation. When the Constitution presents “*(...) and of the biological diversity (...)*” and “*(...) and shall also provide for environmental information and education (...)*” it means that all the information related to the environment should be made available for the population, as well as the Argentine State duty to offer an environmental education, both informal and formal (at all levels of education).

It also establishes a type of concurrent jurisdiction when it says that “*the Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions*”. In this sense:

Dentro de cada territorio, la responsabilidad en los temas ambientales corresponde a la jurisdicción en la que se localizan. Las responsabilidades de los gobiernos locales son primarias. Las provincias tienen una responsabilidad absolutamente fundamental en el manejo de los asuntos ambientales. Pero corresponde a la Nación dictar una legislación de base con los presupuestos mínimos necesarios que aseguren por una parte iguales condiciones de protección a todos los habitantes de la Nación en cualquier lugar en que estos se encuentren y, por la otra que asuman la necesidad del establecimiento de las normas vinculadas con los procesos globales de preservación ambiental. De tal manera que la Nación tendrá que dictar esas normas de base (piso), dejando a cargo de los gobiernos provinciales y locales la responsabilidad en la legislación y jurisdicción en esos niveles (techo). La lógica nos indica que las provincias conocen fehacientemente el material sobre el cual están llamados a legislar y de ninguna manera están obligadas a adoptar medidas por debajo de los requerimientos provinciales. (CORBATTA, 2013: 1)ⁱⁱ

One of the highlights is the constitutional prohibition to entry into the Argentine territory any radioactive waste, currently or potentially dangerous, from other countries. In order to guarantee this fundamental right to a healthy environment, the Argentine Constitution established in Article 43 the right of action. On environmental legislative forecast in Argentina, Valls (1999) points out that the environmental problems in Argentina are not caused by the lack of environmental standards, but by its deficient instrumentation, broadcasting, knowledge, application and enforcement.

In Argentina, some environmental laws are worth of being highlighted: Law 23.274/89 (Vienna Convention on the Ozone Layer Protection), Law 23.778/90 (Montreal Protocol on Substances that Deplete the Ozone Layer); Law 23.922/91 (Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal); Law 24.295/93 (United Nations Convention on Climate Change); Law 25.438/01 (Kyoto Protocol); Law 25.612/02 (Integral Management of Wastes and Service Activities Law); Law 25.688/02 (Water Environmental Management Act).

The Constitution also has a legal framework on air, soil, water, flora, fauna and fishing protection, among others natural resources. One of the main ones is the Law 25.675/02, known as the Environmental General Law. This law establishes minimum conditions for a sustainable and proper environmental management, the preservation and protection of biological diversity and the implementation of sustainable development. It also sets precedents of environmental policy, jurisdiction, policy instruments and management, environmental planning, environmental impact assessment; education and information, citizen participation, safe and environmental restoration fund, environmental federal system, federal agreements ratification, self-management, environmental damage and environmental compensation fund.

3.2. Federative Republic of Brazil

In Brazil the set of legal frameworks and principles are edited in federal, state and municipal levels, seeking a balance between humankind and environment, covering all the classic legislation (MORAES, 2002). The Brazilian legal system structure consists of legal rules staggered at different levels. The Constitution is the supreme source of law, which is above all others pieces of legislation. These laws should comply with the constitutional requirements.

Any modification in the Constitution can be made through a rigorous procedure, distinct from the procedure of infraconstitutional laws. This characterizes the Brazilian constitution as of codified nature. In this point, Canotilho (1998) conceptualizes that:

A constituição é – insista-se – uma ‘ordem’ jurídica fundamental. Não admira, por isso, que dentre as suas principais funções se inclua a de ela ser uma ordem fundamental do Estado, pois é ela que conforma juridicamente a instituição social de natureza global, composta por uma multiplicidade de órgãos diferenciados e interdependentes, que nós designamos ‘Estado’. O Estado concebido como um complexo

institucional é determinado e conformado na sua organização e formas de actuar pelo 'direito' (Estado de direito) e, desde logo, pelo direito plasmado na constituição. A constituição é ainda uma 'ordem fundamental' noutro sentido: no sentido de constituir a pirâmide de um sistema normativo que nela encontra fundamento. Neste sentido, a constituição aspira, como se viu, à natureza de 'norma das normas' (cfr. art. 112.º), pois é ela que fixa o valor, a força e a eficácia das restantes normas do ordenamento jurídico (das Laws, dos tratados, dos regulamentos, das convenções coletivas de trabalho, etc.). (CANOTILHO, 1998: 1336-1337)ⁱⁱⁱ

In the Brazilian Federal Constitution of 1988, the environmental protection appears for the first time in several of its devices. However, even before 1988 the environment (with its components) had already been receiving wide infraconstitutional treatments, such as with the National Environmental Policy of 1981, the Forest Code of 1965 and with the Fauna Protection Law of 1967.

A balanced environment became one of the law's concerns, especially with legal standards presented on the Brazilian Constitution, with constitutional provisions regarding healthy environment, as well as imposition, both for the Government and the community, to preserve it. We took advantage of Silva's teachings (2008):

As normas constitucionais assumiram a consciência de que o direito à vida, como matriz de todos os demais direitos fundamentais do homem, é que há de orientar todas as formas de atuação no campo da tutela do meio ambiente. Compreendeu que ele é um valor preponderante, que há de estar acima de quaisquer considerações como as de desenvolvimento, como as de respeito ao direito de propriedade, como as da iniciativa privada. Também estes são garantidos no texto constitucional, mas, a toda evidência, não podem primar sobre o direito fundamental à vida, que está em jogo quando se discute a tutela da qualidade do meio ambiente, que é instrumento no sentido de que, através dessa tutela, o que se protege é um valor maior: a qualidade da vida humana. (SILVA, 2008: 849)^{iv}

In the Brazilian environmental legislation the concept of environment is extensive, because it protects life in all its forms, including the protection of tangible and intangible assets, always aiming to ensure a good quality of life for present and future generations. In the National Policy Law for the Environment we locate the concept of environment in its article 3, paragraph I, which understood as a meaning of environment "*the set of conditions, laws, influences and interactions of physical, chemical and biological, allowing, houses and govern life in all forms*".

The *caput* of article 225 of the Federal Constitution of 1988 provides that "*all have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations*".

Thus as constitutionally provided right, it brings situations and actions that should be developed in order to ensure such aimed development. Thereby, we have the Government developing core activities for the preservation of systems, ecosystems, diversity of ecological systems among others, always regulating mankind's relations with the environment. Hence, it hopes for an interaction between man and the environment, also seeking to make the most of environmental resources without degrading or destroying it (paragraphs 1 to 6 of article 225 of the Federal Constitution of 1988).

It is incontestable that the environment must deliver goods to man, and that this one should explore it rationally. Machado (2005: 55) considers that "*the resources included in the planetary environment, such as water, air and soil, must meet the common needs of all earths inhabitants. The common needs of human beings can spend as much as using or not the environment*".

The today's man must be aware of the importance of preserving the environment, as without an ecologically balanced environment there is no way to talk about life. Humankind is completely linked to the environment it lives, making part of it. Therefore, man must take responsibility for the preservation of the environment (OLIVEIRA, 2012). The 1988 Brazilian Constitution systematizes the National Environmental Policy (Law 6938/81) in order to establish basic principles and guidelines to be observed and fulfilled. In others words, they are mandatory requirements for everyone, whether government or citizens.

In addition to article 225 of the 1988 Federal Constitution, we can find in the Constitution numerous provisions dealing with the environment, such as the exclusive competence of the Union to legislate on water, *inter alia*, in Article 22, section IV. The common competence of the Union, States, Federal District, and the municipalities in relation to various matters relating to the natural, artificial and cultural environment, especially section VI, which refers to protecting the environment and combating pollution, as well as the responsibility to protects forests, fauna and flora (section VII). Another competence it to legislate in a concurrently way. This means that the Union, the states and the Federal District, except the municipalities has competence to legislate on "*forests, hunting, fishing, fauna, nature conservation, soil protection and of natural resources, environmental protection and pollution control*" (item VI). Nevertheless, we cannot disregard the competences of the municipalities, described in article 30 of the Federal Constitution (OLIVEIRA, 2012).

In Brazil, it stands out the Law No. 6.938 (August 31, 1981), which regulates the National Environmental Policy. For the first time it was incorporated the conciliation precept of economic development with environmental preservation. It should be also noted the establishment of the National Environmental System (SISNAMA) and the National Environmental Council (CONAMA). This council acts as a superior body, composed of ministers of state, whose function is to advise the president on aspects of national policy and government guidelines.

This Law casts Brazilian environmental policy tools, such as the establishment of environmental quality standards, environmental zoning, the evaluation of environmental aspects, licensing and review of polluting or potentially polluting activities, incentives for

production and installation of equipment. It also incentivizes the creation of absorption technologies for improving environmental quality and the creation of territorial spaces specially protected by the federal government, state and municipal. The national system of environmental information was also presented in Law No. 6.938, which regulate the federal register of technical activities and instruments for environmental protection. Finally, this Law disciplines the compensatory penalties for non-compliance of the measures necessary to preserve or environmental degradation correction.

The Law 9.605/98 (Environmental Crimes Law) consider that behaviors or activities considered harmful to the environment shall subject the offenders, individuals or legal entities, to penal and administrative sanctions, without the obligation to repair the damage. There is a series of infraconstitutional environmental standards related to water resources (Law 9433/97), Flora (Law 4771/65), procedural aspects (Law 4717/65 and 7347/85), urban policy (Law 10257/01), among many others.

3.3. Republic of Paraguay

The 1992 Paraguayan Constitution provides, among its rights, duties and guarantees the right to an environment in articles 6^o and 7^o, when the Constitution prescribe the right to quality of life and the right to a healthy environment.

Initially, we must highlight the importance that the Paraguayan State assigns to the environment, listing it among the list of human fundamental rights. Regarding the above mentioned devices, we can point out the adoption of the principle of sustainable development in the combination of the second paragraph of article 6^o with the second paragraph of article 7^o. In addition to this principle, among the purposes underlying the Paraguayan legislation and government policy, we can see that the preservation, conservation, restoration and improvement of the environment is predicted as goals and given priority social interest. To Labrano (1996), the Paraguayan Constitution includes not only a right but also a constitutional obligation for the State and its institutions, and for all the inhabitants of the Republic. The article 8^o of the Paraguayan Constitution presents the environmental protection, where the activities susceptible to produce any environmental change will be regulated by law, and may be restrict or prohibit if they are classified as dangerous.

Broader than the Constitution of Argentina, the Paraguayan prohibits not only the entering in the territory of toxic waste, but also the manufacture, assembly, sale, possession and use of nuclear, chemical and biological weapons. Regarding the defense of the right to an ecologically balanced environment, the article 38 of the Paraguayan Constitution provides the right to complain to public authorities, on an individual basis or collectively, in case of violation of the right to a healthy environment. But this defense must be exercised by the figure of the public defender, as provided for in article 276 of the Paraguayan Constitution: *“The Public Defender is congressional commissioner charged with defending human rights, with channeling popular complaints, and with protecting community interests. In no case will he perform any judicial or executive function”*.

Regarding the Paraguayan environmental regulation, Souza (2003) teaches that in this country, the lack of effectiveness related to environmental standards arise as a

major challenge to MERCOSUR countries. This author claims that Paraguay counts with a substantial law body, one that offers good conditions for environmental protection. However, in many cases, these laws are not followed, they just met with international organizations requirements, but were not taken into consideration by policy makers, and most of the population do not know about these standards. The author refers to the main Paraguayan environmental standards, such as the Environmental Impact Assessment Law, the Wildlife Law, the Protected Wild Areas Law, the Promotion of Forest Conservation and Reforestation Law and the law that penalizes the environmental crimes.

3.4. Republic of Uruguay

The Uruguayan Constitution of 1967, with the amendments of 1989, 1994, 1996 and 2004, establish an environmental treatment in article 47, which prescribes the protection of the environment as being of general interest. In this sense, everyone should refrain from any act that causes degradation, destruction or severe contamination to the environment, subject to penalties for transgressors.

This constitutional provision brings initially a negative obligation to all in order not to degrade the environment, as its protection is considered of general interest. The Constitution consider water as an essential and natural resource for life, elevating the right to access to clean water and sanitation as a basic rightsof the human person.

Discussing the Uruguayan infraconstitutional forecasts, Souza (2003) argues that the country significantly evolve its environmental legislation, highlighting:

O Uruguai tem apresentado uma evolução significativa em sua legislação ambiental, destacando-se entre outras Laws o Código de Águas, de 1979, a incorporação ao Código Processual da Teoria dos Interesses Difusos, (artigo 42, em 1989), criação do Ministério de Médio Ambiente (Law Nº 16.112, de 30/05/90/); subscrição da Convenção da Biodiversidade, aprovada pela Law Nº 16.408, de 1993; a avaliação de impacto ambiental é exigida pela Law Nº 16.466/94 - Ley de Evaluación del Impacto Ambiental - que subordina a execução de atividades enumeradas em seu artigo 6º, à obtenção de uma licença prévia que será conferida após a realização do estudo de impacto ambiental. Esta Law foi regulamentada pelo Decreto nº 435/94 – Reglamento de Evaluacion del Impacto Ambiental. aprovação da Law Nº 16.588/97, conhecida como Law da Irrigação, por meio da qual se institui a gestão tríplice de recursos hídricos, envolvendo os Ministérios: do Meio Ambiente, Transportes e Obras Públicas (que mantém um órgão especial, denominado Direção de Hidrografia) e, Agricultura (que tem uma área denominada RENARE (Recursos Naturales Renovables; Aprovação, em 1998, do Protocolo Ambiental do MERCOSUR; Aprovação da Law Nº 17.234, de fevereiro de 2000, que criou um sistema de áreas protegidas e outorgou ao Ministério do Meio Ambiente a polícia ambiental, criou unidades em cada zona do País, envolvendo na sua implementação cooperativas, cidadãos e o apoio

técnico da Universidade. Destaque especial deve ser dado à recente aprovação da Law Nº 17.283, de fevereiro do 2001 que estabelece a Law Geral de Preservação do Médio Ambiente, seguindo o mandato do artigo 47 da Constituição da Republica, explicitando a política nacional de meio ambiente do Uruguai (SOUZA, 2003: 13-14).^v

The most prominent legal standard is Law 17.283/00, known as General Law of Environmental Protection. This Law states of general interest, and in accordance with article 47 of the Constitution, the environmental protection, including air quality, water, soil and landscape. This law regulates the conservation of biological diversity, the configuration and structure of the coast, the reduction and proper management of toxic or hazardous substances and wastes whatever their type. The Environmental Protection address the prevention, elimination, mitigation and compensation of negative impacts, the protection of shared natural resources and located outside areas subject to national jurisdictions. The regional and international environmental cooperation and participation in solving global environmental problems are also subject to this law. Finally, it presents the design, instrumentation and implementation of environmental national policy and sustainable development.

3.5. Bolivarian Republic of Venezuela

Venezuela promoted the inclusion of a separate chapter regarding the environment in order to respect the international agreements signed by it, and also aiming to achieve sustainable development, expressed in article 112, by providing that all people can devote to the economic activity of their choice, but respect some limitations, as the environment. In chapter XI, the Constitution establishes the rights to the environment in the Venezuelan State. In this device, we verify the adoption of several constitutional principles, such as the sustainable development, the right of people to live in a safe, healthy and ecologically balanced. The Venezuelan government obligation to protect the environment, biodiversity, genetic resources, ecological processes, national parks and natural monuments and other areas of special ecological importance are also presented. In an innovative way, this device regulates even the patent of the genome of living beings, which cannot be patented.

As for spatial soil, it should be developed by the Venezuelan government with popular participation (article 128). Article 129 predicted the study of environmental and socio-cultural impact, being considered a requirement for all activities that can generate damage to ecosystems. This same device, similar to the constitutions of Paraguay and Argentina, prevent the insertion in the national territory of toxic and hazardous waste. The Venezuelan State prohibits the inclusion of toxic and dangerous waste, as well as the manufacture and use of nuclear, chemical and biological weapons. It also regulates the extension of a number of obligations to others, national or foreign, in the contracts concluded by Venezuela.

As for the water regulation, the Constitution specifies in article 304 that all waters are public resources, and the State by law shall take the necessary measures to ensure

their protection, recovery and restoration, respecting the different phases of water cycle and the sorting criteria of the territory.

The Venezuelan Civil Code concerns in article 539, second paragraph, that lakes and rivers are public assets and, consequently, inalienable by article 543. In case of any irregularity in this permission, the Penal Code alarms for imprisonment from six months to a year and a fine of six hundred to a thousand times the minimum wage. The water use regime in Venezuela is regulated through the Land and Agricultural Development Law, of November 9, 2001 (article 26 and following).

The oil activity is crucial to Venezuelan economy. Therefore, this subject should be widely discussed by all the MERCOSUR countries in the search for a legal harmonization that reconciles this important economic activity for Venezuela with environmental protection. The Venezuelan Constitution defends sustainable development, which can be considered a breakthrough in legal alignment in the MERCOSUR. The principle of sustainable development triggers other important principles especially the environmental licensing, an important instrument in front of potential and significant environmental degradation activities.

4. Conclusion

The MERCOSUR countries expressed concerns about the environment since the early stages of the regional integration process, as it can be seen in the Treaty of Asunción (1991). During the first legal frameworks there was some concern that the environment was not considered an obstacle for trades and others commercial relations. It was recognized the need for harmonization of domestic legislation for this purpose. This is explained by the fact that MERCOSUR integration process was initiated, initially, with economical goals.

Although it is stated in MERCOSUR constitutive treaty and while there has been an effort to create a number of laws in relation to some issues, it is difficult to identify a real and clear environmental policy in MERCOSUR region. It is not easy to identify an environmental general legal framework, despite the efforts in that direction.

The efforts of MERCOSUR countries and institutions to achieve harmonization of environmental legislation must continue to be primordial and within a regional integration process. This must happen both to protect and preserve the environment but also for the domestic legal distortions do not become obstacles to free trade, a key factor of any regional integration process with economic purpose, as is the case of MERCOSUR. It is precisely this aspect worthy of not limiting rules for impact economic activities, but made compatible with the preservation of the environment. This will be possible through increasing harmonization of the rules on environmental licensing, as has occurred under the guidance of MERCOSUR institutions. This situation in MERCOSUR is fully possible because it finds legal support for the principles of environmental law printed in the constitutions of the states parties.

We believe that the licensing of activities should take place for undeniably impacting activities, such as oil (which impacts on air, water and forests), as well as for others

coming from the industrial and agricultural sector. However, the rules should be clear and directly applied by the MERCOSUR countries. In case of noncompliance it shall provide national judicial systems and even international conflict resolution.

In discussing national predictions about the environment, we note that there are certain similarities in these forecasts, which find their basis in the major international treaties on global environment. It is an advantage point to achieve the harmonization of environmental law in MERCOSUR because all constitutional texts start from a common origin. However, MERCOSUR institutions should strive to identify the points where there is greater need for harmonization, collaborating with the creation of a genuine MERCOSUR environmental policy that does not constitute barriers to trade. But, especially, with direct and indirect benefits for MERCOSUR citizens who have a right to an ecologically balanced environment, as how national constitutions rose as a fundamental right.

Notes

i During this search for a development that not only assures for present generation, but also for future ones the possibility of an acceptable development, it is said that in all production activities it should be preserved the environmental capacity in order to satisfy the present needs without compromising the man in the future. This is a way of establishing a commitment to the future, to consider the same as the international law agrees, that those who will inherit this environment will be able to live in a good or even better conditions. In other words, to speak of sustainable development and eco development is the same as saying that the environment has become an inseparable part of the necessary conditions for human progress (CORBATTÀ, 2013: 1 - own translation).

ii Inside each territory, the environmental responsibility rests within its jurisdiction. The responsibilities of local governments are primary. When it comes to managing environmental issues, the provinces have an absolutely and fundamental responsibility on it. Nevertheless, the Nation has a duty to dictate the legislation on one hand based upon the minimum protection requirements necessary to ensure equal conditions to all nation inhabitants wherever they are located, and on the other hand to safeguard the necessity of being linked to global environmental preservation standard. With this, the Nation will have to dictate basic rules, laying down for the the provincial and local governments, the responsibility of decreeing *legislación y jurisdicción* in more techno levels. Hence, this logic stipulates that the provinces deeply know the material on which they are expected to legislate, and they are not required, in any way, to take measures under provincial requirements. (CORBATTÀ, 2013: 1 - own translation).

iii The Constitution is - emphasis - a fundamental legal standard. Therefore, it is not a surprise that among its main functions is included the fact that this legal document is a fundamental order of the State, since it is what legally conforms and shapes, legally, this social institution of a global nature, consisting of a multitude of different but interdependent organs, which we designate 'State'. The State conceived as an institutional complex is determined and shaped in its organization and in ways of doing the 'right' (rule of law), of course, the right enshrined in the constitution. The Constitution can be still considered a 'fundamental order' in another perspective: it constitute the pyramid of a regulatory system that found a foundation on it. Hence, the constitution aspires to the greatest of all (cfr. art. 112^o), because it is the constitution that sets values, strengths and effectiveness for the remaining legislations (Laws, treaties, regulations, collective labor agreements, etc.). (CANOTILHO, 1998: 1336-1337 - own translation).

iv The constitutional standards have taken the knowledge that the right to life, as mother of all other fundamental human rights, is there to guide all forms of activity in environmental protection issues. It realized that the right to life is an important value, above any considerations such as development, the respect for the right of ownership, or as the private sector. These are also guaranteed in the Constitution, but they can not take precedence over the fundamental right to life, which is at stake when discussing the environmental protection, because the environment is an instrument in the sense that, through this guardianship, it protects a greater value: the quality of human life. (SILVA, 2008: 849 - own translation).

v The Water Code of 1979, the incorporating the Procedural Code of the Theory of Diffuse Interests (Article 42, 1989), creation of the Ministry of Environment (Law nº16.112/90), the Biodiversity Convention (Law nº. 16.408/93), the Environmental Impact Law (Law nº 16.466/94) and its Decree No. 435/94, the Irrigation Law (Law 16.588/97, which establishes the triple water resources management, involving the Ministries of Environment, Transport and Public Works,

and Agriculture) (...), the approval of MERCOSUR Environmental Protocol (in 1998 by Law 17.234/2000). (...) Special emphasis should also be given to the recent approval of Law nº. 17.283/2001, which lays down the General Environmental Preservation Law, in respect for what follows in article 47 of the Constitution of the Republic, explaining the National Environmental Policy of Uruguay (SOUZA, 2003: p.13-14).

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HARMONIZATION OF LEGAL ENVIRONMENTAL STANDARDS IN MERCOSUR COUNTRIES

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Abstract: This article discusses the need to harmonize legal environmental standards under the legal systems of MERCOSUR countries (Argentina, Brazil, Paraguay, Uruguay and Venezuela). The main MERCOSUR legal texts considers harmonization essential to advance regional integration processes, but through literature review the incorporation of these determinations is slow and only certain similarities in the environmental field appears on all domestic jurisdictions, mainly in constitutional texts. In order to contribute to this harmonization process, it will be presented the main constitutional and infra forecasts of the Member States and argued how it has become apparent that these States should move forward in this process to achieve this important and necessary harmonization of the environment field.

Keywords: MERCOSUR, harmonization, environment, environmental law

Resumo: Este artigo trata da discussão a respeito da necessidade de harmonizar as normas jurídicas ambientais no âmbito dos ordenamentos jurídicos dos Estados Partes do MERCOSUL (Argentina, Brasil, Paraguai, Uruguai e Venezuela). Os principais textos legais mercosulinos consideram a harmonização essencial para o avanço do processo de integração regional, porém através de revisão bibliográfica o processo de incorporação dessas determinações é lento e se constata em todos os ordenamentos jurídicos domésticos somente certas similaridades no âmbito ambiental, principalmente nos textos constitucionais. Com o objetivo de contribuir para essa harmonização, são apresentadas as principais previsões constitucionais e infraconstitucionais nos Estados Parte, e chega-se à conclusão que esses Estados devem avançar nesse processo para alcançar essa importante e necessária harmonização no domínio do ambiente.

Palavras-Chave: MERCOSUL, harmonização, meio ambiente, direito ambiental

Resumen: Este artículo aborda la discusión sobre la necesidad de armonizar las normas legales ambientales bajo los ordenamientos jurídicos de los Estados partes del MERCOSUR (Argentina, Brasil, Paraguay, Uruguay y Venezuela). Los principales textos legales MERCOSUR consideran una armonización que es esencial para el avance del proceso de integración

regional, pero a través de la revisión de literatura es lento el proceso de incorporación de estas determinaciones y resulta en todos los sistemas jurídicos nacionales sólo ciertas similitudes en el ámbito del medio ambiente, especialmente en textos constitucionales. Con el objetivo de contribuir a esta armonización, las principales previsiones constitucionales son presentados y infra-constitucionales y Estados llegan a la conclusión de que estos Estados deben avanzar en el proceso de armonización esta importante y necesaria en el campo del medio ambiente.

Palabras Clave: MERCOSUR, armonización, medio ambiente, derecho ambiental
