

derecho de las sucesiones y a los derechos reales) se basaba en el Derecho de los Pandectas (*Pandektenrecht*). Su parte relativa a las obligaciones contenía también el derecho mercantil (según el *concept moniste*), al igual que ocurría con el Código suizo de las obligaciones (*Schweizerisches Obligationenrecht* de 1881). Debido a la situación política en el Imperio Ruso el código que contenía 2640 parágrafos basado sobre el concepto monista (*code unique*) no fue promulgado. Los redactores del proyecto de derecho de obligaciones de 1913 (el Libro V) siguieron el modelo del Código suizo de las obligaciones (*Schweizerisches Obligationenrecht* de 1881) en su estructura. Este último libro del proyecto del Código civil ruso contenía el derecho mercantil (las sociedades mercantiles). Al mismo tiempo era muy fuerte la influencia del BGB alemán y del Derecho Romano. En la reglamentación de las instituciones, como por ejemplo, del enriquecimiento injusto (*ungerechtfertigte Bereicherung*) y la representación contractual (*gewillkürte Stellvertretung*) que eran desconocidos hasta entonces en el derecho ruso, los redactores del proyecto volvieron al Derecho Romano.

El impacto de la Escuela Pandectista pudo sentirse también en el Código civil ruso-soviético de 1922 de A.G. Gorkbarg (1883-1962). Es básicamente una versión acortada del proyecto de 1905. Lo mismo ocurre con Los Principios de la Jurisdicción Civil surgidos en 1961 y aceptados como válidos en la mayor parte de la Unión Soviética que sirvieron como base para los códigos de las repúblicas federadas. Así que el Código civil ruso-soviético de 1964 se basó en la estructura de los Pandectas (*Pandektensystem*) no sólo en su estructura sino en la mayoría de sus instituciones y en los principios jurídicos que volvieron a las raíces del Derecho Romano. Los Nuevos Principios de la Jurisdicción Civil surgidos en la Federación Rusa en 1991 derogaron aquellas regulaciones anteriores que eran contrarias a los principios de la economía de mercado. El nuevo Código civil ruso (1995-2006) está entrando en vigor gradualmente como el nuevo código civil holandés (*nieuw Burgerlijk Wetboek*) y demuestra la influencia del BGB alemán y también del nuevo Código civil holandés.

Los Estados Bálticos que pertenecieron al Imperio Ruso hasta el año 1918 la influencia de la Escuela Pandectista alemana puede observarse en el *Liv-, Est- und Curländisches Privatrecht* de 1864 redactado en alemán (este código fue traducido en ruso unos años más tarde) que permaneció en vigor en Lituania, Letonia y Estonia durante algún tiempo después de la Primera Guerra Mundial. Mencionamos en este lugar que el *Svod Zakonov* no fue puesto en vigor en ciertas partes del Imperio Ruso, por ejemplo, en Polonia, Finlandia, Bessarabia y los Estados Bálticos.

El *Liv-, Est- und Curländisches Privatrecht* fue la obra del pandectista Fridrich Georg von Bunge (1802-1897) y fue revisado varias veces. Este voluminoso código de 4600 artículos contiene el derecho de familia, los derechos reales, el derecho de las sucesiones y el derecho de las obligaciones. El *Liv-, Est- und Curländisches Privatrecht* no siguió la estructura de los Pandectas (*Pandektensystem*) porque no contiene parte general (*Allgemeiner Teil*). La recepción del Derecho Romano en lo que se refiere a su contenido tuvo lugar en la actual Letonia y Estonia a través de la mediación de los colonos mayoritariamente sajones que aplicaban el derecho municipal alemán.

En los años de entreguerras la Escuela Pandectista alemana ejerció influencia especialmente en el Código civil de Letonia de 1937. Este código fue puesto en vigor después de la independencia de Letonia en 1991 con algunas modificaciones.

LEGAL RESEARCH AND LAW TEACHING IN A MODERN UNIVERSITY WORKSHOP, 24-25 MAY 2007, GIESSEN, GERMANY

By **Claudia Lima Marques**, Professor at the Federal University of Rio Grande do Sul, Porto Alegre, Brazil. Doctorate in Law (Heidelberg), Master of Law (Tübingen), Specialist in European Integration Law (Saarbrücken), Full Professor of Private International Law at the School of Law of the Universidade Federal do Rio Grande do Sul (UFRGS), Head of the Department for Public Law and Philosophy of Law and of the Research Committee of the UFRGS Law School, Porto Alegre

Introduction

Universidade Federal do Rio Grande do Sul (UFRGS) is one of the premier research universities in Brazil, ranking high among the prestigious public universities in the country. The Federal University of Rio Grande do Sul ranks first in publication and second in scientific production, considering the number of professors, among the Federal universities in Brazil, and on the 4th place in research among all Brazilian Universities. Founded in 1895, the institution provides undergraduate and graduate education for the State of Rio Grande do Sul, in South Brazil. The School of Law and the School of Medicine were founded in 1900, constituting the first courses on humanities in the state. In 1950, the provincial "University of Rio Grande do Sul" was federalized to become the "UFRGS-Federal University of Rio Grande do Sul". On its 4 campi the UFRGS hosts circa 45.000 undergraduate students, 800 graduate students in masters and doctoral programs; and circa 2300 professors, 46 of whom belong to the Law School. The Law School has graduate master and doctoral programs, offers specialization certificates in International Law, Economic Law, Environmental Law, Settlement of Disputes and Consumer Law. The Law School is considered a small School, with circa 1200 students (120 per year), 46 professors and 22 junior-professors, but is deemed the best law school in the State of Rio Grande do Sul and the 5th best in the country. In the last ranking of the Ministry of Education Funding Agency-CAPES (2000-2003), our LL.M and Doctoral Programs were given the best national grade (5), but for the next ranking (2004-2006) we already applied for the second best international grade (6), given only to 4 Law Schools in the country.

(1)

Since 1985, when the Law School established the Master of Law (LL.M.) Program, we have been developing a very specific research profile, taking into account the expertise of our current most important law professors and the location of our city, Porto Alegre, in South Brazil, at the heart of Mercosur (the Free Trade Area between Argentina, Brazil, Uruguay, Paraguay, now Venezuela and with the Association of Bolivia and Chile). Our two main research areas are:

- 1) History and Philosophy of Law (new Law Theory, Principles and the Rule of Law)
- 2) Comparative, International and Mercosur Law (Consumer and Environmental Law)

We coordinate our research through the establishment of research groups or teams, which are registered and evaluated by the Brazilian Research Agency CNPq (Conselho Nacional de Pesquisa-MCT, Brasília) and by the University (PROPESQ-UFRGS). Scholarships, research grants and congress funds are then awarded to sponsor and encourage the conduct of studies. The Law School has a Research Committee (Comissão de Pesquisa), which I have the honor to direct after being elected by professors, students and staff members for the period of 2007-2009. This committee is responsible for the registration of all research groups and professors' individual research projects belonging to the Law School, as well as for helping and informing professors and students about grants, scholarships, awards and other funds available for research and organization of scientific events.

The research groups normally work as a research unit or institute, being composed by one professor as leader; one or two young professors as vice-leaders; 2 or 3 other junior-professors (sometimes invited from other Universities in Brazil); 1 to 3 doctoral students; 3 to 6 LL.M. Students; between 2 and 20 undergraduate students making research (individual research, joint or collective research, translations, editing law journals, organizing conferences and simulations, taking part in the writing of books). The Brazilian Research Agency CNPq (Conselho Nacional de Pesquisa-MCT, Brasília) chooses 40 among all the national research groups' leaders and give them an excellence grant (Bolsa Produtividade em Pesquisa-CNPq). Visiting scholars and foreign guests (post-doctoral researchers, PHD students, LL.M. students and graduate students) often join a research group during their stay with us in the Law School. In the moment we have 14 research groups working at Law School, 3 of them having been awarded the excellence grant, as follows:

Research Groups register and accepted by the Brazilian Research Agency CNPq
www.cnpq.br

NOME	DEPARTAMENTO	TITULO PROJETO
1. Luiz Fernando Barzotto	Dir03 – PUBLICO	“Teoria da Justiça”
2. Eduardo Carrion e Luiza Helena Malta Moll (Bolsa Produtividade em Pesquisa-CNPQ)	Dir03 – PUBLICO Dir04 – TRABALHO	“Constituição e Sociedade”
3. Cezar Saldanha Souza Junior	Dir03 – PUBLICO	“A Supremacia do Direito”
4. Claudia Lima Marques (Bolsa Produtividade em Pesquisa-CNPq)	Dir03 – PUBLICO	“MERCOSUL e o Direito do Consumidor”

5. José Alcebiades de Oliveira Junior	Dir03 – PUBLICO	“Direitos Fundamentais e Novos Direitos”
6. Judith Martins Costa	Dir02 – CIVIL	“A Reconstrução do Direito Privado: Reflexos dos Princípios, Direito e Garantias Constitucionais no Direito Privado”
7. Luis Afonso Heck	Dir03 – PUBLICO	“Os Direitos Fundamentais no Plano Teórico e no Prático”
8. Martha Lucía Olivar Gimenez (Bolsa Produtividade em Pesquisa-CNPq)	Dir03 – PUBLICO	“Direito da Integração”
9. Cláudio Fortunato Michelin Junior	Dir03 – PUBLICO	“Filosofia e Direito Privado”
10. Tupinambá P. Azevedo	Dir01 – PENAL	“Ciência Penal Contemporânea”
11. Vera Maria Jacob de Fradera	Dir02 – CIVIL	“A Arbitragem como Meio de Solução de Controvérsias”
12. Carlos Alberto Álvaro de Oliveira	Dir02 – CIVIL	“Processo e Constituição”
13. Augusto Jaeger Junior	Dir03 – PUBLICO	“Direito Internacional da Concorrência”
14. Sergio José Porto (registration not yet concluded)	Dir02 – CIVIL	Direito Comparado na América Latina

The UFRGS is ranked first among the Federal Universities in number of research groups (overall there are 557 research groups) and was also a pioneer in organizing a university research system (Sistema Pesquisa www.ufrgs.br/propesq) to register all research projects and research products and patents, all research scholarships for students and professors from these research groups.

The other research unit of Law School is the LL.M and Doctoral Program organized as an independent department for graduate studies at Law School (Programa de Pós-Graduação em Direito-PPGDir-UFRGS, www.ppgd.ufrgs.br). The research profile of our Law School was established in 1989 together with the LL.M.-Programm as a requirement of the Ministry of Education Funding Agency-CAPES (equivalent of the DAAD in Germany) to provide this LL.M. Program with grants and to allow its registration in the Brazilian Graduate Programs Evaluation System. The doctoral Program was established in 1998,

when 7 professors completed their doctoral studies in Germany, France, Quebec, United Kingdom, Italy, Mexico and São Paulo. Our LL.M and Doctoral Programs now rely on 21 permanent professors (17 Professors from Law School and 4 professors from the Sociology, Philosophy, Economics and History Departments) and on some (3 or 5) honorary professors from other universities, invited to contribute to the programs. In the last ranking of the Ministry of Education Funding Agency-CAPES (2000-2003), our LL.M and Doctoral Program was given the best national grade (5), but for the next ranking (2004-2006) we applied for the second best international excellence grade (6). So far, only 4 Law Schools in Brazil have been given such a grade.

(2)

Historically, we have always focused on genuine legal research. Our school is known as a conservative "doctrinal" School, a respectable source of books and articles in Law Reviews, and an institution with a very good legislative and political interplay. Members of our Faculty are often nominated for governmental committees charged with the task of drafting new statutes and international treaties, such as:

- New Brazilian Civil Code of 2002-Draft of 1975 (Clóvis do Couto e Silva)
- Federal Constitution 1988 (Manoel André da Rocha, Cezar Saldanha de Souza Jr., Almiro do Couto e Silva)
- Changes of the Procedural Civil Code and Small Claims Tribunals 1985 (Carlos Alberto de Oliveira, Ruy Rosado de Aguiar)
- Consumer Protection Code and Children Protection Act 1990 (Claudia Lima Marques, Sérgio José Porto)
- new Family statutes (Carlos Noronha, Judith Martins Costa etc.)
- Brazilian Proposal to an Inter-american Convention on Consumer Protection-CIDIP VII (Claudia Lima Marques, Augusto Jaegger Jr.).

We also do interdisciplinary research (circa 1/4 of all researches), especially at the LL.M. and PHD Programs, where 4 professors come from the Sociology, Economics, History and Philosophy Departments. Now we are conducting 6 interdisciplinary projects, 3 conducted by other Faculties and 3 conducted by the Law Professors, as follows:

- Under leadership of the School of Education – Young, Education, Law and Violence (Grant Univ.Texas-CAPES)
- Under leadership of the Sociology Department (IFCH) – Violence and Law (Grant CNPq)
- Under leadership of the School of Languages (Termisul) – Encyclopedia of Environmental Treaties Terms (Grant FIPSE-CAPES)
- Together with the Sociology Department (IFCH) – Quebec and Rio Grande do Sul – New Civil Codification for new countries (Grant from Canada)
- Together with the Ecology Department and Water Institut UFRGS (IPH) – Environmental Responsibility – The Case of the Guarani Aquifer and the need for a Cooperation Treaty (Grant FIPSE-CAPES)
- Together with the Economics and International Relations Departments UFRGS – Law and Development (Grant PROBAL-CAPES)

We consider the quality of both types of research the same, but as a matter of fact the Brazilian Government (and its two agencies CAPES and CNPq) gives more grants and aid to interdisciplinary researches, which are all richly sponsored.

(3 and 4)

The University UFRGS provides institutional support for individual and collective research in three levels:

1) General research support (for costs, travels, hotels, visiting scholars, organization of conferences at UFRGS): In 2007, circa U\$ 100.000,00.¹

2) Scholarships for students to work as Research Assistants and engage in junior research, which are known as "introduction to science Scholarships-BIC": 317 Scholarships for the whole University, amounting in 2007 to circa U\$ 300.000,00.² Each professor can have only 1 scholarship and give to selected students, but in 2007 we have only 5 scholarships.

Also, two Agencies of the Brazilian Government (CAPES and CNPq) provide support for individual and collective research:

1) CNPq-Scholarships for students belonging to a Research Group to work as Research Assistants and engage in junior research, which are known as "introduction to science Scholarships-PIBIC-CNPq-UFRGS": 644 Scholarships for the whole University, amounting, in 2007, to circa U\$ 1.150.000,00.³ Each professor can have 1 to 2 scholarships and give to selected students.

2) CAPES-Scholarship for undergraduate students:
UNIBRAL (DAAD-CAPES), UFRGS-Giessen, 10 Scholarships -1 year
FIPSE-CAPES (EUA-Brazil), UFRGS-UFPA-Utexas-Austin-PaceU(NY), 16 scholarships - 1 semester (NY or Austin)

3) CAPES and CNPq Scholarships for professors:

2 Post-doctoral studies (6 Months to 1 Year)

4) CNPq- Scholarship for professors:

3 Excellence Grants in research (coupled with an extra Research Assistant scholarship).

The Law School has a special fund (circa U\$ 10.000) for Conferences and to assist our United Nation Simulation (UFRGSMUN) with travel, lodging and hosting costs. The LL.M. and Ph.D. Program has a fund for the publication of collective researches (circa U\$ 7.000,00). The Law School receives 25% of its budget from the Specialization Certificates in International Law, Economic Law, Environmental Law, Settlement of Disputes and Consumer Law and a similar sum is reinvested in research at the University. Our research groups and these Courses organize and support conferences together with NGOs and also with Judges and Public Attorneys.

The Presidency of the University also helps our United Nation Simulation (UFRGSMUN) with travel, lodging and hosting costs (circa U\$ 2.500,00) each year.

There is no available information about the distribution of such funds among the

¹ UFRGS-PROPEQ R\$ 202.976,24

² UFRGS-PROPEQ R\$ 627.600,00.

³ UFRGS-PROPEQ R\$ 2.318.400,00.

Law School and the other Schools.

The individual and collective researches are free and this funding is not conditional. The Brazilian Government offers 4 special grants that are conditioned to the fulfillment of certain requirements, but the Faculty of the Law school does not apply for this sort of funding.

(5)

We have three regimes of Professors in our university, and only two of them are involved with research, but all are involved with teaching (including juridical clinic). The regimes are:

20h time per week, for judges, public attorneys, diplomats and other public servants with only teaching functions (including the juridical clinic). This regime demands 8 hour teaching per week, but no research is needed.

40h time per week, for Professors with a Doctor degree who want to do research, but also want to maintain their consultancy work, or to work as lawyer or as a government expert at side. This regime demands 8 hour teaching per week (4 of which can be spent at the LL.M. or PHD Program level).

Full dedication (*Dedicação exclusiva*), for Doctors with exclusive involvement with the University as Professors. No consultancy work is possible, only sporadic lectures and congresses in other universities and pro bono work for the government. This regime demands research and 12 hours classes per week (4 of which can be spent at the LL.M. and PHD level). At the Law School, out of the 46 Professors, only 20% have full dedication, but 55% of them have the 40 hour time regime. Usually all Professors are involved with teaching activities; 16 Professors are also teaching in the LL.M. and PHD Program, and 75% (3/4) are involved with research and research groups.

In the research groups and in the research done at the LL.M. and PHD level, students are involved, as well as Junior-Professors and students with scholarships (junior-researcher-scholarships as junior staff). Only Professors with Full dedication or 40 hour-time can ask for funds. The distribution of funds follows the project's quality, but more funds are granted to Professors who are leaders of research groups or work at the LL.M. and PHD Program.

(6)

Normally, our Faculty focuses on research on doctrinal issues, but empirical research is usually done on Procedural matters, specially regarding our own Small Claim Tribunal-UFRGS and our Juridical Clinic (legal aid department for the underprivileged - SAJU, Serviço de Assistência Jurídica), and on Consumer Law issues, such as the research on health insurance plans⁴, product liability, punitive damages, good faith and, more recently, in consumer overindebtedness and bankruptcy.⁵ Now, almost every Faculty research project, including

those on doctrinal issues, applies the method of case analysis as well, for example in Family Law,⁶ Consumer Law, Environmental Law,⁷ and International Law.⁸

(7)

Our research is not linked with consultancy work. The interplay between legal research and private consultancy is not well seen at the Law School. After the research and its results are published, however, the Faculty member is normally asked to help the Brazilian Government in law changing process or in establishing a new law or treaty on the research subject. This always takes place as a *pro bono* consultancy (by a consultant or an *ad hoc* delegate) and is seen as an honor and great recognition for the quality of "applied" research.

In Brazil there is a lack of non-university institutions. The country's most known institution of this kind is FGV-Fundação Getúlio Vargas, a federal research institute, which recently became a University (with two Law Schools, in Rio de Janeiro and São Paulo). UFRGS used to cooperate with other non-governmental institutes from NGOs in its researches in Brazil, for example, Consumers International, Amnesty International, WWF, Greenpeace and with international organizations such as Mercosur, ALADI, OEA, etc. We do cooperate with the legislative, judiciary and executive powers in the State of Rio Grande do Sul, as well as with federal powers.

(8)

The Brazilian government and its two Agencies conduct a well-established national evaluation program (QUALIS Program-CAPES), which evaluated the quality of all articles and books published. All the faculties in the country participate in a national on-line Curriculum Vitae system (CVLATTES-CNPq), which provides a form to be filled out. A copy of every publication has to be handed out to one of the libraries at the Federal system (SABI-UFRGS) and will be evaluated (quantitatively) according to the same criteria.

Research groups are evaluated by the CNPq and ranked according to the number of excellence grants achieved by its members (*bolsa produtividade*). The Law School has 14 Research Groups, 3 of them with excellence awards. In the whole country only 40 Law research groups have this award.

The research and activities of the LL.M. and PHD programs have been evaluated by CAPES since 1994. In the last report of the Ministry of Education Founding Agency -

⁴ See the publication: MARQUES, C. L., LOPES, J. R. L., PFEIFFER, R. Saúde e Responsabilidade: Seguros e planos de assistência privada à saúde. São Paulo: Revista dos Tribunais, 1999 (476 pages).

⁵ See empirical researches in MARQUES, C. L., CAVALLAZZI, R. L. Direitos do Consumidor endividado: Superendividamento e Crédito. São Paulo: Revista dos Tribunais, 2006, v.1. (400 pages)

⁶ See the publication: MARQUES, C. L., Kulturelle Identität und Quelledialog im brasilianischen internationalen Adoptionsrecht nach Inkrafttreten des neuen brasilianischen Zivilgesetzbuches von 2002. In: Hems-Peter Mansel, Thomas Pfeiffer, Herbert Kronke, Christian Kohler, Rainer Hausmann. (Org.). Festschrift von Enk Jayme. Munique, 2004, v. , p. 505-526. MARQUES, C. L., O direito internacional privado solucionando conflitos de cultura: os divórcios no Japão e seu reconhecimento no Brasil. In: Alfonso-Luis CALVO CARAVACA; Esperanza CASTELLANOS RUIZ. (Org.). El Derecho de familia ante el siglo XXI: aspectos internacionales. Madrid, 2004, p. 547-572. MARQUES, C. L. SCHMITT, Cristiano Heineck. A Aids e os contratos de planos e de seguros de assistência privada à saúde nos Tribunais. In: Maria Cristina Pimentel Franceschi. (Org.). Aids, Direito e Justiça: o papel do direito frente à aids. Porto Alegre, 2004, v. IV, p. 29-54. Franceschi. (Org.). Aids, Direito e Justiça: o papel do direito frente à aids. Porto Alegre, 2004, v. IV, p. 29-54. MARQUES, C. L., A subsidiariedade da adoção internacional: diálogo entre a Convenção de Haia de 1993, o ECA e o Novo Código Civil Brasileiro. In: Eduardo Oliveira Leite. (Org.). Adoção - Aspectos Jurídicos e Metajurídicos. Rio de Janeiro, 2005, v. , p. 23-60.

⁷ Cadernos do Programa de Pós-Graduação em Direito, n. II, Esp, agosto 2004 "Harmonização da legislação ambiental", Cadernos do Programa de Pós-Graduação em Direito, n. VI, set 2006 "Globalização econômica, meio ambiente e sociedade civil".

⁸ See publications Marques, C. L. (Org.); Araújo, Nádia de (Org.). O novo Direito Internacional: Estudos em homenagem a Enk Jayme. 1. ed. Rio de Janeiro: Renovar, 2005. v. 1. 908 p.

CAPES (2000-2003), our LL.M. and Doctoral program was ranked with the best national note (5). In the next ranking (2004-2006) we ranked second best in international excellence (note 6). In the field of Law only 4 Universities have this note.

The Law School has no officially long-term strategy for legal research, but our LL.M. and the Doctoral Program have been succeeding in building, maintaining and developing international scientific contacts and cooperation projects with Germany, France, Italy, the United States of America, Japan and Argentina. Indeed all research units and groups at the Law School are concerned about quality of research and its evaluation by the two Agencies of the government. We constantly look forward to publishing internationally and in foreign languages (English, German, French, Italian and Spanish). The Law School has a Journal that publishes articles in foreign languages and the LL.M. and PHD Program has its own Journal named "Cadernos", which has a special section for international visitors. Many of our Faculty members are Editors in Chief or involved in the Editorial boards of national and foreign Journals in Argentina, USA, Belgium, Uruguay, Spain and Portugal.

In order to achieve the international excellence note (6), our LL.M and PHD Department has made a collection of our international publication and came to the following results: from 2000 to 2003, our Faculty has achieved a total of fifty-six (56) international publications in seventeen (17) Countries in the World.⁹

(9)

In order to assure internationality of research we adopt three strategies:

1 - Invitation of the most known Professor in our research fields to come to our Law School for a lecture, a course or long-term visit, in order to assist the research of a young Professor and to initiate a joint research on the subject in Brazil. So, for example, Prof. Paolo Grossi (Italy) was invited to lecture on Law History and initiated a research about contemporaneity, history and law. Prof. Dr. Dr. h. c. mult. Erik Jayme (Heidelberg) was invited to lecture about postmodernity and law and initiated a research line in the LL.M. and PHD Program on the subject. Prof. William Powers (Texas-Austin, USA) was invited to lecture on product liability and punitive damages. Prof. Thierry Bourgoignie (Belgium-Canada), Prof. Jorge Mosset Iturraspe, Prof. Atilio Alterini and Prof. Ricardo Lorenzetti (all from Argentina) were invited to lecture on consumer protection and contracts. Prof. Jaqueline Morand-Deville (Sorbonne) was invited to lecture on environmental protection. Prof. Camille Jauffret-Spinozi (Paris 2) was invited to lecture on Comparative Law. Prof. Iain Ramsay (Toronto, Canada) and Prof. Gilles Paisant were invited to lecture on Consumer Overindebtedness and Bankruptcy, to give some examples. These so called new "lines of research", with new subjects, became new research focuses for the LL.M. and PHD program

⁹ In Germany (1 Book, 3 Chapters of Books and 2 articles), in Italy (2 Chapter of Books and 4 articles), in France (1 Book and 2 articles), in Belgium (5 articles) and now in the United States of America (1 Chapter of Book and 4 articles), but our Faculty has also published in Canada, the Netherlands, Greece, Spain and Portugal and in more distant countries such as Japan and New Zealand. We also need to mention that the Law Faculty members have a special impact in many joint publications in our neighbor country Argentina (16 publications: 1 Book, 9 Chapters of Books, 6 articles). Between 2000-2003 we achieved also publications in other Latin-American countries, like Bolivia, Chile, Colombia, Peru and also Puerto Rico. Our doctor candidates have also achieved the international level and quality, so they have important publications in Argentina (2), Bolivia (2) and Portugal (1).

at the faculty and subject of new congresses and publications at UFRGS. We translate and publish the texts of the Professors invited, sometimes a collective or individual, national or foreign, publication of our researches on these subjects become possible. These publications allow us to become more known and to establish cooperation projects with international partners.¹⁰

2) Invitation of young foreign researchers for short (3 months) or long periods (1 to 2 years) to teach in the undergraduate and graduate law programs. We have already had in the long program 6 visiting Professors or long term lecturers (3 from Germany, one from the USA, one from Spain, one from Belgium).¹¹ Constantly invitation of our neighbor colleagues from Argentina and Uruguay, also in order to participate in congresses organized with colleagues from Germany, France and the USA and to enhance our participation in their collective research projects (Argentina has many joint projects with Spain, Italy etc.) and

3) Help our Professors, who are leaders of a research group, to join internationally well-established research networks and academic institutions, such as Law and Society, the IUCN-Academia of International Environmental Law, International Association of Consumer Law, Forumdialog der Zivilgesellschaft Deutschland-Brasilien, Deutsch-lusitanische Juristenvereinigung or to join Brazilian institutions with international recognition, such as Brasilcon-Brazilconsumer Institute, Instituto "O Direito por um Planeta Verde", etc.

We employ international staff, as full time Professors (from Argentina, Colombia and Uruguay) and as visiting professors and long term lecturers with special grants from the Brazilian Government or from CAPES and DAAD.

Since 2000, we have been listing the activities of our cooperation agreements and joint research projects with Universities and Research Institutes of thirteen (13) countries around the world, especially with Germany (8 Universities), France (5 Universities), Argentina (5 Universities), USA (4 Universities), Italy (2 Universities) and Canada (2 Universities) and also with Japan, Portugal, Spain, Switzerland, United Kingdom, and Uruguay. Indeed, the UFRGS Law School maintains successful and active cooperation projects with thirty-one (31) different Universities in 4 continents, which include not only exchange of Faculty members, but also of Students with Argentina, Germany, Canada and the USA. In the future we are planning on developing new contacts with Russia and African Countries, as well as to broaden our contacts with Germany, USA, France, Japan and the United Kingdom.

(10)

In my opinion, we need more general grants to legal research at public universities in

¹¹ The Book of Lorenzetti (Comercio electrónico), for example, was translated into Portuguese, with added notes by Menke, Fabiano and Lima Marques, Claudia and published in São Paulo by RT. Later on another joint book was published in Argentina, LIMA MARQUES, C., LORENZETTI, Ricardo. Contratos de servicios a los consumidores. Santa Fé (Argentina): Rubinzal-Culzoni, 2005 (605pages).

¹² We publish some of the work of our successful visiting professors and permanent lecturers, who enriched our Law School in 2000 (Harriet C. Zitscher, Germany), in 2001 (Ulrich Wehner, Germany and Jens Kartens, Louvain-la-Neuve, Belgium), in 2003 (J. Miguel Lobato Gómez, Spain), in 2004 (Catherine Tinker, USA), in 2006-2007 (Thomas Richter, Germany). CAPES and DAAD make possible this important renewal of our way of thinking and learning with the stay of our foreign friends in Porto Alegre.

Brazil. Above all, we need to maintain the actual freedom of research and freedom of methodology choice for research projects and research groups. The problem is that the evaluation can have a "washback effect": gradually, only research projects with chances to become funded are envisaged by the young faculty, and that can destroy that freedom in the future. Moreover, the new concern with imposing partially private funding can block interesting doctrinal research projects. Finally, allow me to express my personal point of view: only through tolerance, knowledge, and respect towards different countries, cultures and legal systems can we assure a productive and harmonic dialogue between jurists around the world. Knowledge is the path to development, and joint research is a very good way to create fruitful co-operations between Law Schools.

IMPASSES DO DIREITO PROCESSUAL CIVIL INTERNACIONAL DO MERCOSUL E A OPORTUNIDADE PARA O *REVIVAL* DAS CIDIPs¹

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Introdução

Este artigo apontará os impasses enfrentados pelo processo de integração do Mercosul como um todo, a fragilidade do sistema de solução de controvérsias e da aplicação de suas normas e o oportuno momento para o *revival* das Conferências Especializadas Interamericanas de Direito Internacional Privado (CIDIPs).

1. Os processos de codificação anteriores ao Mercosul

Os processos de codificação na América começaram com o Congresso de Lima de 1877-1878³ e podem ser divididos em duas grandes fases: a primeira desejava uma codificação global do Direito Internacional Privado (DIP), na qual está inserida o Código de Bustamante, de 1928⁴, por exemplo, e a segunda descreve uma nova etapa aberta com o surgimento da Organização dos Estados Americanos (OEA), de codificação gradual e progressiva⁵. Elas podem ser aqui exemplificadas com os trabalhos dos Congressos de Montevidéu e com os das CIDIPs.

1.1. Os Tratados de Montevidéu de 1889 e 1940

Frustrada a participação de Estados americanos em congressos europeus para a codificação do direito internacional, tomou-se a iniciativa de convocar um congresso sul-americano. Assim, a convocação do Congresso de Montevidéu para o ano de 1889, por iniciativa de Argentina e Uruguai, determinou o apogeu do movimento codificador do Século 19 na América Latina. Essa convocatória representou uma manifesta contrariedade ao

¹ Artigo escrito durante uma estadia de estudos na Justus-Liebig-Universität Giessen, Alemanha, em novembro de 2006, inserida no Projeto Conjunto de Pesquisa, Cooperação Científica e de Intercâmbio entre o Departamento de Direito Público e Filosofia do Direito e a Academia Juris Internationalis, desenvolvido entre essa Universidade e a Universidade Federal do Rio Grande do Sul, Brasil, e financiado pela CAPES e pelo DAAD. Ele consolida a conferência realizada sobre o tema em Würzburg, em 18 de novembro de 2006, na Deutsch-Lusitanische Juristen Vereinigung (DLJV), a convite dos Profs. Doutores Erik Jayme, Christoph Benicke e Stefan Grundman, a quem agradeço.

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³ FERNÁNDEZ ARROYO, Diego P. La codificación del Derecho internacional privado en América Latina, p. 90-95.

⁴ Sobre esse importante Código ver FERNÁNDEZ ARROYO, Diego P. La codificación del Derecho internacional privado en América Latina, p. 123-158 e SAMTLEBEN, Jürgen. Derecho Internacional Privado en América Latina: teoría y práctica del Código Bustamante, 399 p.

⁵ FERNÁNDEZ ARROYO, Diego P. La codificación del Derecho internacional privado en América Latina, p. 61-63.